

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 113 (National Assembly Bills No. 26)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

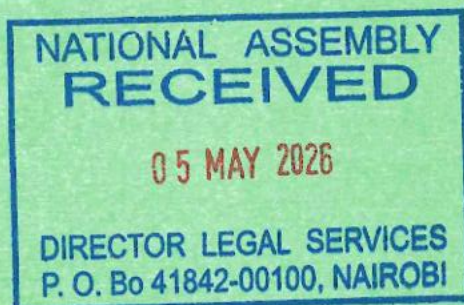
**NATIONAL ASSEMBLY BILLS, 2026**

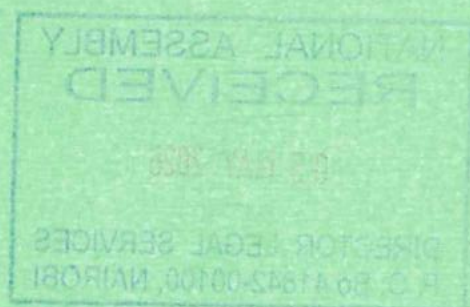
**NAIROBI, 5th May, 2026**

**CONTENT**

Bill for Introduction into the National Assembly —

	PAGE
The Finance Bill, 2026 .....	953





# THE FINANCE BILL, 2026

## A Bill for

### AN ACT of Parliament to amend the laws relating to various taxes and duties; and for matters incidental thereto

ENACTED by the Parliament of Kenya, as follows—

#### PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2026, and shall come into operation as follows—

Short title and commencement.

- (a) on 1st January, 2027, sections 19, 20, 25, 35, 36, 37(a)(i), 59(a)(ii), 59(b)(ii), 32(a)(x) new paragraph 163;
- (b) all other sections, 1st July, 2026.

#### PART II—INCOME TAX

2. Section 2 of the Income Tax Act is amended in subsection (1)—

Amendment of section 2 of Cap. 470.

- (a) in the definition of “immovable property”, by deleting the word “and” appearing immediately after the words “immovable property” the end of item (a), and substituting therefor the word “or”;
- (b) in the definition of “management or professional fee”, by inserting the words “and includes interchange fees and merchant service fees arising from transactions that use a card as a means of payment” immediately after the word “calculated”;
- (c) by deleting the definition of “royalty” and substituting therefor the following new definition—

“royalty” means a payment made as a consideration for—

- (a) the use or the right to use—
  - (i) any copyright of a literary, artistic or scientific work;
  - (ii) any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees;

- (iii) any cinematograph film including a film or tape for radio or television broadcasting;
  - (iv) any patent, trademark, design or model, plan, formula or process;
  - (v) any industrial, commercial or scientific equipment;
  - (vi) information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty; or
  - (vii) a proprietary digital platform, payment network, payment-card scheme, payment processing system, switching system, clearing system or settlement system, including access, participation or usage rights in such system through a card, whether the consideration is periodic or transaction-based and whether or not the payment is described as a service fee, transaction fee, network fee, assessment fee, processing fee or similar charge; or
- (b) the distribution of software where regular payments are made for the use of the software through the distributor;
- (d) by deleting the definition of “withdrawals” and substituting therefor the following new definition;

“withdrawals” means any amount of money, cash equivalent, or money’s worth paid or disbursed to the account of a player, by a person licensed issued under the Gambling Control Act, 2025;

No.15 of 2025.

- (e) by inserting the following new definition in proper alphabetical sequence—

“winnings” means a pay-out, by a person licensed issued under the Gambling Control Act, 2025, from a lottery or prize competition under the Gambling Control Act, 2025, but does not include the amount staked or wagered.

3. Section 5 of the Income Tax Act is amended in subsection (4)—

Amendment of section 5 of Cap. 470.

- (a) in the proviso to paragraph (g), by inserting the following new paragraph immediately after paragraph (b)—
  - (c) the gratuity was for a contract of service for a continuous period of at least three years;
- (b) by inserting the following new paragraph immediately after paragraph (g)—
  - (ga) any contribution to a gratuity in respect of employment or services rendered:

Provided that—

- (i) the gratuity was for a contract of service for a continuous period of at least three years;
- (ii) the total contributions does not exceed thirty-one per cent of the basic salary of the employee; and
- (iii) this paragraph shall not apply to any person who is eligible for deductions under section 22A.

4. The Income Tax Act is amended by inserting the following new section immediately after section 6A—

Insertion of a new section 6B to Cap. 470.

Imposition of non-resident rental income tax.

**6B.** (1) Where the income of a non-resident person is accrued in or derived from the use or occupation of property situated in Kenya, a tax to be known as non-resident rental income tax shall be payable by that non-resident person at the rate specified in the Third Schedule which shall be a final tax on the income.

(2) A non-resident person subject to the tax payable under subsection (1) shall—

- (a) register and account for the tax through a simplified registration framework prescribed by the Commissioner; and

(b) submit a return and pay the tax due on or before the twentieth day of the month following the end of the month for which the rent is paid.

(3) Subsection (2) shall not apply where the income accrued in or derived from the use or occupation of the property received by a resident person on behalf of the non-resident person who is subject to the deduction of tax specified in section 35(3)(j).

5. Section 8 of the Income Tax Act is amended by deleting subsection (5A).

Amendment of section 8 of Cap. 470.

6. Section 9 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment to section 9 of Cap. 470.

(1A) The tax charged under subsection (1) shall be payable within five days after the payment is received or the ship leaves the port of lading, whichever is earlier.

7. Section 10 of the Income Tax Act is amended in subsection (1), by inserting the following new paragraphs immediately after paragraph (m)—

Amendment to section 10 of Cap. 470.

(n) sale of scrap metal;

(o) winnings.

8. The Income Tax Act is amended by repealing section 11 and replacing it with the following new section—

Repeal and replacement of section 11 of Cap. 470.

Trust income deemed income of trustee.

11. (1) Any income chargeable to tax and received by a person in the capacity of a trustee, executor or administrator, shall be deemed to be the income of that trustee, executor or administrator.

(2) Dividend or interest which is included in the income of the trustee, executor or administrator under subsection (1) shall not be subject to further tax under this Act.

(3) Where a trustee, executor or administrator has paid tax on the chargeable income of the trust, a beneficiary of the trust shall not be liable to pay tax on that income.

9. Section 12 of the Income Tax Act is amended in subsection (1), by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 12 of Cap. 470.

(a) if to the best of his judgement and belief he will have no income chargeable to tax for that year of income other than emoluments.

10. Section 15 of the Income Tax Act is amended in subsection (2), by inserting the following new paragraph immediately after paragraph (ae)—

Amendment of section 15 of Cap. 470.

(af) in the case of an employee, the amount of interest, not exceeding three hundred and sixty thousand shillings, deducted for the repayment of a loan advanced by the Central Bank of Kenya for the construction, purchase or improvement of a house occupied by the employee.

11. Section 16 of the Income Tax Act is amended in subsection (2)(j)(iii)(E) by deleting the words “lending and leasing business” appearing after the words “involved in” and substituting therefor the words “lending or leasing business, or both”.

Amendment of section 16 of Cap. 470.

12. Section 18D of the Income Tax Act is amended—

Amendment of section 18D of Cap. 470.

(a) in subsection (1), by deleting the expression “subsection (3)” appearing after the words “accordance with” and substituting therefor the expression “subsection (2)”;

(b) in subsection (2), by deleting the expression “subsection (1)” appearing after the words “accordance with” and substituting therefor the expression “subsections (1) and (1A)”;

(c) in subsection (5), by deleting the expression “subsection (1)” appearing after the words “accordance with” and substituting therefor the expression “subsections (1) and (1A)”.

**13.** Section 18F of the Income Tax Act is amended—

Amendment of  
section 18F of  
Cap. 470.

- (a) in the definition of “a country-by-country report”, by deleting the expression “section 18D(1)” appearing after the words “filed under” and substituting therefor the expression “section 18D(1) and (1A)”;
- (b) in the definition of “excluded multinational enterprise group”, by deleting the expression “section 18D(1)” appearing after the words “specified in” and substituting therefor the expression “section 18D(1B)”;
- (c) by deleting the definition of “ultimate parent entity” and substituting therefor the following new definition—

“ultimate parent entity” means a constituent entity of a multinational enterprise group where—

- (a) the constituent entity owns directly or indirectly a sufficient interest in one or more other constituent entities of the multinational enterprise group;
- (b) the constituent entity is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (c) there is no other constituent entity of the multinational enterprise group that owns directly or indirectly a sufficient interest in any of the other constituent entities of the multinational enterprise group.

**14.** Section 19 of the Income Tax Act is amended—

Amendment of  
section 19 of Cap.  
470.

- (a) in subsection (5)—
  - (i) by deleting the words “life insurance fund” appearing in paragraph (a) and substituting therefor the words “statutory fund”; and

- (ii) by deleting the words “life insurance fund” appearing in paragraph (b) and substituting therefor the words “statutory fund”;
- (b) in subsection (5A), by deleting the words “life insurance fund” wherever they occur and substituting therefor the words “statutory fund”;
- (c) in subsection (6), by deleting the words “life insurance fund” appearing in paragraph (b) and substituting therefor the words “statutory fund”;
- (d) in subsection (6A), by deleting the words “life insurance fund” wherever they occur and substituting therefor the words “statutory fund”;
- (e) in subsection 7—
  - (i) in the definition of “annuity fund”, by deleting the words “life insurance fund” wherever they occur and substituting therefor the words “statutory fund”;
  - (ii) by deleting the definition of “life insurance fund”;
  - (iii) by inserting the following new definition in proper alphabetical sequence—

“statutory fund” means a fund established under section 45 of the Insurance Act.

Cap. 487.

**15.** The Income Tax Act is amended by repealing section 23.

Repeal of section 23A of Cap. 470.

**16.** Section 24 of the Income Tax Act is amended in subsection (1), by deleting the words “that part of the income” appearing after the words “he may direct that”, and substituting therefor the words “at least sixty per cent of that part of the income”.

Amendment of section 24 of Cap. 470.

**17.** Section 35 of the Income Tax Act is amended—

Amendment of section 35 of Cap. 470.

- (a) in subsection (1)—
  - (i) by deleting subparagraph (iii) appearing in paragraph (a);
  - (ii) by deleting paragraph (u);
  - (iii) by adding the following new paragraphs immediately after paragraph (u)—

(v) the sale of scrap metal;

(w) winnings;

(b) in subsection (3), by adding the following new paragraph immediately after paragraph (o)—

(p) the sale of scrap metal;

(q) winnings.

**18.** Section 52 of the Income Tax Act is amended—

Amendment of  
section 52 of Cap.  
470.

(a) in subsection (1), by deleting the words “within a reasonable time, not being less than thirty days from the date of service of the notice” appearing immediately after the words “furnish him”, and substituting therefor the words “by the last day of the fourth month following the end of the person’s year of income”;

(b) by inserting the following new subsection immediately after subsection (1)—

(1A) Where the tax return submitted under subsection (1) relates to a nil amount of tax payable, the person required to submit the tax return shall submit the return within one month following the end of the year of income to which the return relates.

**19.** Section 52B of the Income Tax Act is amended—

Amendment of  
section 52B of  
Cap. 470.

(a) in subsection (1)—

(i) by deleting the words “including a self-assessment of his tax from all sources of income, not later than the last day of the sixth month following the end of his year of income” appearing in paragraph (i) and substituting therefor the words “by the last day of the fourth month following the end of the person’s year of income”;

(ii) by deleting the words “including a self-assessment of his tax from all sources of income, not later than the last day of the sixth month following the end of his year of income” appearing in paragraph (ii) and substituting therefor the words “by the last

day of the fourth month following the end of the person's year of income";

- (b) by inserting the following new subsection immediately after subsection (1)—

(1A) Where the tax return submitted under subsection (1) relates to a nil amount of tax payable, the person required to submit the tax return shall submit the return within one month following the end of the year of income to which the return relates.

**20.** Part I of the First Schedule to the Income Tax is amended—

Amendment of the First Schedule to Cap. 470.

- (a) in paragraph 53, by inserting the following paragraph immediately after paragraph (c) of the proviso—
- (d) benefits arising due to death;

- (b) inserting the following new paragraph immediately after paragraph 75—

76. Any capital gains relating to the transfer of property to a real estate investment trust registered by the Commissioner under section 20(1).

**21.** The Second Schedule to the Income Tax Act is amended in the table appearing in paragraph 1(1), by adding the words "per year, in equal instalments" immediately after the expression "10%" appearing in item (a)(viii).

Amendment of the Second Schedule to Cap. 470.

**22.** Head B of the Third Schedule to the Income Tax Act is amended—

Amendment of the Third Schedule to Cap. 470.

- (a) in paragraph 2, by deleting subparagraph (i);
- (b) in paragraph 3—
- (i) by deleting the proviso to subparagraph (d);
- (ii) by inserting the following new subparagraphs immediately after subparagraph (w)—
- (x) in respect of the sale of scrap metal, one and a half per cent of the gross amount;
- (y) in respect of winnings, twenty per cent;

- (c) in paragraph 5, inserting the following new subparagraphs immediately after subparagraph (p)—
- (q) in respect of the sale of scrap metal, one and a half per cent of the gross amount;
- (r) in respect of winnings, twenty per cent.

**23.** Paragraph 2 of the Eighth Schedule to the Income Tax Act is amended—

Amendment of  
the Eighth  
Schedule to Cap.  
470.

- (a) in subparagraph (c), by deleting the expression “subparagraph (a)” appearing immediately after the words “to which” and substituting therefor the expression “subparagraph (b)”;
- (b) by inserting the following new subparagraph immediately after subparagraph (c)—
- (d) gains derived from the alienation of shares by a non-resident person where the shares derive their value from Kenya or the alienation results in a change of the group membership of a company resident in Kenya or of ownership of, title in, or interest in property located in Kenya.

**24.** The Ninth Schedule to the Income Tax Act is amended—

Amendment of  
the Ninth  
Schedule to Cap.  
470.

- (a) in paragraph 2, by inserting the following new subparagraph immediately after subparagraph (3)—
- (4) The non-resident tax rates for repatriated income by a licensee under section 7B shall be fifteen per cent.
- (b) in paragraph 7—
- (i) in subparagraph (3), by deleting the words “thirty-seven and a half per cent” appearing in item (b) immediately after the words “non-resident company” and substitute therefor the words “thirty per cent”;
- (ii) by adding the following new paragraph immediately after subparagraph (3)—
- (4) The non-resident tax rates for repatriated income by a contractor under section 7B shall be fifteen per cent.

**PART III—VALUE ADDED TAX**

**25.** Section 2 of the Value Added Tax Act is amended in subsection (1)—

Amendment of section 2 of Cap. 476.

- (a) by deleting the definition of “assessment”;
- (b) by deleting the definition of “information technology”;
- (c) by deleting the definition of “tax computerized system”.

**26.** Section 13 of the Value Added Tax Act is amended in subsection (6), by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 13 of Cap. 476.

- (a) in the case of a supply of goods from a person licenced to carry on hire purchase business under a hire purchase agreement registered in accordance with the Hire Purchase Act, any financial charge payable in relation to the supply of credit under the agreement.

Cap. 507.

**27.** The Value Added Tax Act is amended by inserting the following new section immediately after section 17—

Insertion of a new section 17A to Cap. 476.

Adjustment of input tax after supplies become exempt.

**17A.** (1) Where, on the date taxable supplies by a registered person become exempt and the person has deducted input tax on such supplies but the supplies remain unsold, the person shall account for an amount equal to the input tax relating to the supplies which remain unsold in the tax return of the period when the taxable supply became exempt.

(2) When accounting for input tax under subsection (2), the person shall use the method used when input tax was deducted in respect of the supplies before the date the supplies became exempt.

(3) Where the adjustment results in excess input tax, the person shall be liable to pay the resulting tax to the Commissioner.

**28.** Section 31 of the Value Added Tax Act is amended in subsection (1), by deleting the words “two years” appearing in paragraph (a) immediately after the words “period of” and substituting therefor the words “three years”.

Amendment of section 31 of Cap. 476.

**29.** Section 42 of the Value Added Tax Act is amended—

Amendment of section 42 of Cap. 476.

(a) in subsection (1), by deleting the word “registered person” appearing immediately after the expression “subsection (2), a” and substituting therefor the word “person”;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) An invoice showing an amount that purports to be tax shall only be issued in respect of a taxable supply.

**30.** The Value Added Tax Act is amended by repealing section 66.

Repeal of section 66 of Cap. 476.

**31.** Section A of the First Schedule to the Value Added Tax Act is amended—

Amendment of First Schedule to Cap. 476.

(a) in Part I—

(i) by deleting paragraph 49;

(ii) in paragraph 51—

(A) by inserting the words “spare parts” immediately after the word “lubricants” appearing in paragraph 51;

(B) by adding the following new proviso—

Provided that any exemption granted for spare parts before the 30<sup>th</sup> June 2026, shall apply until the conclusion on the project.

(iii) by deleting paragraph 58;

- (iv) by deleting paragraph 62;
- (v) by deleting the words “any other aircraft spare” appearing in paragraph 89 and substituting therefor the word “aircraft”;
- (vi) by deleting the words “three hundred” appearing in paragraph 99(i) and substituting therefor the words “two thousand”;
- (vii) by deleting paragraph 109;
- (viii) by deleting paragraph 153;
- (ix) by inserting the following new paragraphs immediately after paragraph 157—
  - 158. Dialyzers of tariff number 8421.29.00.
  - 159. Scrap metal.
  - 160. Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.
  - 161. Inputs or raw materials locally purchased or imported for the manufacture of pharmaceutical products upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to health.
  - 162. Transportation of sugarcane from farms to milling factories.
  - 163. The supply of imported or locally purchased telephones for cellular networks and other wireless networks.

164. The supply of motorcycles of tariff heading 8711.60.00.
165. The supply of electric bicycles.
166. The supply of solar and lithium-ion batteries.
167. The supply of electric buses of tariff heading 87.02.
168. Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).
169. Worn clothing and other worn articles of tariff heading 6309, other than upon importation.
170. The supply of goods for the direct and exclusive use in the implementation of infrastructure projects undertaken under a public private partnership framework, upon approval by the Cabinet Secretary on the recommendation of the Cabinet Secretary for the Ministry responsible for the implementation of the project.

(b) in Part II—

- (i) in paragraph 1, by deleting subparagraph (b) and substituting therefor the following new subparagraph—
- (b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but does not include—
  - (i) the services of carriage of cash, restocking of cash machines, sorting

or counting of money; and

(ii) money transfers, payment processing, settlement, merchants acquiring, gateway or aggregation services supplied over a software or platform for a fee or commission by a payment service provider;

(ii) paragraph 25 is amended by inserting the following new definitions—

For the purposes of this paragraph—

“tour operator” means a tour or safari operator licensed as such by the competent authority responsible for regulating and overseeing the tourism sector; and

“in-house supplies” means supplies made from a tour operator’s own resources; or bought from third parties but materially altered so that the supply made is substantially different to that purchased.

(iii) by deleting paragraph 26;

(iv) by adding the following new paragraph immediately after paragraph 38—

39. The supply of services for the direct and exclusive use in the implementation of infrastructure projects undertaken under a public private partnership framework, upon approval by the Cabinet Secretary on the recommendation of the Cabinet Secretary for the Ministry responsible for the implementation of the project.

**32.** The Second Schedule to the Value Added Tax Act is amended in Part A—

Amendment of  
Second Schedule  
to Cap. 476.

(a) by deleting paragraph 11;

- (b) by deleting paragraph 21;
- (c) by deleting paragraph 29;
- (d) by deleting paragraph 30;
- (e) by deleting paragraph 31;
- (f) by deleting paragraph 32;
- (g) by deleting paragraph 33;
- (h) by deleting paragraph 34;
- (i) by deleting paragraph 35;

#### **PART IV—EXCISE DUTY**

**33.** Section 2 of the Excise Duty Act is amended by inserting the following new definition in proper alphabetical sequence—

Amendment of the section 2 of Cap. 472.

“antique, vintage or “classic vehicle” means a motor vehicle whose year of first registration is at least thirty years before the date of purchase of the motor vehicle and whose value is at least ten million shillings exclusive of depreciation.

**34.** Section 6 of the Excise Duty Act is amended by inserting the following new subsection immediately after subsection (4)—

Amendment of section 2 of Cap. 472.

(4A) Despite subsections (1) and (4), the liability of an importer or a licensed manufacturer for excise duty on a locally purchased or imported telephones for cellular networks and other wireless networks shall arise at the time of the activation of the phone.

(4B) The Cabinet Secretary may make regulations for the better carrying out of subsection (4A).

**35.** Section 36 of the Excise Duty Act is amended—

Amendment of section 36 of Cap. 472.

(4A) Despite subsections (1) and (3), the excise duty payable in respect of telephones for cellular networks and other wireless networks shall be paid to the Commissioner by the time of the activation of the phone.

(4B) The Cabinet Secretary may make regulations for the better carrying out of subsection (4A).

**36.** The First Schedule to the Excise Duty Act is amended—

Amendment of  
the First Schedule  
to Cap. 472.

(a) in Part I, in the second table—

- (i) by deleting the description “imported cellular phones” and the corresponding rate of excise duty and substituting therefor the following new description and rate of excise duty—

<i>Tariff Description</i>	<i>Rate of excise duty</i>
Telephones for cellular networks and other wireless networks of value. tariff heading 8517.	25% of the excisable

- (ii) by deleting the description “fruit juices (including grape must) and vegetable juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter” and the corresponding rate of excise duty;
- (iii) in the description “bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices”, by deleting the words “bottled or similarly packaged waters and other” appearing immediately before the words “non-alcoholic beverages, not

- including fruit or vegetable juices”;
- (iv) in the description “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%”, by deleting the proviso to the corresponding rate of excise duty;
  - (v) in the description “spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages” by deleting the words “purchased by licensed manufacturers of spirituous beverages”;
  - (vi) in the description “cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes” by deleting the corresponding rate of excise duty and substituting therefor the new rate of excise duty of “Ksh. 18,000 per kg”;
  - (vii) in the description “other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences” by deleting the corresponding rate of excise duty and substituting therefor the following new rate of excise duty “Ksh. 12,550 per kg”;
  - (viii) in the description “Imported sugar confectionary of tariff heading 17.04” by deleting the word “imported”;
  - (ix) by deleting the description “imported articles of plastic of tariff heading 3923.30.00” and the corresponding rate of excise duty;

- (x) in the description “imported ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of tariff heading 6910” by deleting the corresponding rate of excise duty and substituting therefor the following new rate of excise duty—  
“5% of the excisable value;
- (xi) by deleting the description “imported articles of plastic of tariff heading 3923.30.00 and 3923.90.00” and the corresponding rate of excise duty;
- (xii) in the description of “ Imported ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics of tariff 6907” by deleting the corresponding rate of excise duty and substituting therefor the following new rate of excise duty—  
“5% of the excisable value”;
- (xiii) in the description “Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)”, by deleting the proviso;
- (xiv) in the description “Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

- (xv) in the description “Imported printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xvi) in the description “Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xvii) in the description “Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xviii) in the description “Imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from East African Community Partner States that

- meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xix) in the description “Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7005 but excluding those imported by a registered processor upon the recommendation by the Cabinet Secretary responsible for matter relating to industry and those originating from East African Community Partner States that meet the East African Community Rules of Origin, by deleting the words “and those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xx) in the description “Imported other self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxi) in the description “Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics,

- noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxii) in the description “Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxiii) in the description “Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but

- excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxiv) in the description “Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxv) in the description “Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxvi) in the description “Gummed paper and paperboard of tariff number 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;
- (xxvii) in the description “Imported Uncoated kraft paper and paperboard, in rolls or

sheets; kraftliner; unbleached of tariff number 4804.11.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

(xxviii) in the description “Imported other kraft paper or paperboard weighing 150g/m<sup>2</sup> or less, in rolls or sheets; unbleached of tariff number 4804.31.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

(xxix) in the description “Imported other kraft paper or paperboard weighing more than 150g/m<sup>2</sup> but less than 225 g/m<sup>2</sup>, in rolls or sheets; unbleached of tariff number 4804.41.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

(xxx) in the description “Imported other kraft paper or paperboard weighing 225 g/m<sup>2</sup> or more others in rolls or sheets; unbleached of tariff number 4804.51.00

but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

(xxxix) in the description “Imported Glass of heading 70.03, 70.04 or 70.05, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials of Tariff Heading 70.06, but excluding those from East Africa Community Partner States that meet the East Africa Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

(xxxix) in the description “Imported safety glass of tariff numbers 7007.19.00 and 7007.29.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”, by deleting the words “but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”;

(xxxix) in the description “Imported Multiple-walled insulating units of glass of Tariff Heading 70.08, but excluding those from East Africa Community Partner States that meet the East Africa Community Rules of Origin”, by deleting the words

“but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”.

(xxxiv) in the description “spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages” by deleting the corresponding rate of excise duty and substituting therefor the following new rate of excise duty —

“kshs. 80 per litre”

(xxxv) by adding the following new tariff descriptions and corresponding rates of excise duty—

<i>Tariff Description</i>	<i>Rate of excise duty</i>
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%
Coal	5% of the excisable value
Antique, vintage and classic vehicles	50% of the excisable value
Fruit juices (including grape must) and vegetable juice, unfermented and not containing added spirit.	Ksh. 14.14 per litre
Fruit juices (including grape must) and vegetable juice, unfermented, containing added sugar or other sweetening matter and not containing added spirit	Kshs. 20 per litre

(b) in Part II —

- (i) in paragraph 4A, by deleting the words “into a customer’s betting wallet” appearing immediately after the word “deposited” and substituting therefor the words “for betting purposes”;
  - (ii) by deleting the proviso to paragraph 4A;
  - (iii) in paragraph 4B, by deleting the words “into a customer’s betting wallet” appearing immediately after the word “deposited” and substituting therefor the words “for gambling purposes”;
  - (iv) by inserting the word “service” immediately before the word “providers” appearing in paragraph 9;
- (c) in Part III—
- (i) by deleting the definition of “amount deposited into a customer’s betting wallet”;
  - (ii) by inserting the following new definitions in proper alphabetical sequence—

“amount deposited” means the total value of money or money’s worth paid, transferred, credited, or otherwise made available for betting or gambling purposes to a person who has been issued a licence under the Gambling Control Act, whether provided by a player or the operator, whether in cash or cash equivalents, whether or not such amount is held in an account operated by a player, operator or licensed person, or converted into chips, tokens, tickets, credits, or similar instruments;

“virtual asset” has the meaning assigned to it in section 2 of the Virtual Asset Service Providers Act, 2025;

“virtual asset service provider” has the meaning assigned to it in section 2 of the Virtual Asset Service Providers Act, 2025.

No. 20 of  
2025.No. 20 of  
2025.

## PART V—TAX PROCEDURES

**37.** Section 3 of the Tax Procedures Act is amended in subsection (1)—

Amendment  
of section 3 of  
Cap. 469B.

(a) by deleting the definition of “certificate of origin;

(b) by inserting the following new definition in proper alphabetical sequence—

“virtual asset” has the meaning assigned to it in section 2 of the Virtual Asset Service Providers Act, 2025;

No. 20 of  
2025.No. 20 of  
2025.

“virtual asset service provider” has the meaning assigned to it in section 2 of the Virtual Asset Service Providers Act, 2025.

**38.** The Tax Procedures Act is amended by inserting the following new sections immediately after section 6B—

Insertion of a  
new section 6C  
in Cap. 469B.

Virtual asset  
service providers to  
file information  
returns.

**6C.** (1) Each virtual asset service provider shall file an information return with the Commissioner in respect of all the virtual-asset users with which it maintains a relationship in every calendar year and that are identified as reportable users or as having controlling persons that are reportable persons.

(2) A virtual asset provider shall be required to file the information return under subsection (1) if the virtual asset service provider provides a service that effectuates exchange transactions or making available a trading platform on behalf of a customer, and includes acting as a counterparty, or as an intermediary, to the exchange transactions.

(3) A person who makes a false statement in an information return under subsection (1) commits an offence and shall

be liable on conviction to a fine of one hundred thousand shillings for each false statement, or imprisonment for a term not exceeding three years, or to both.

(4) A person who omits any information required to be included in an information return under subsection (1), shall be liable to a penalty of one hundred thousand shillings for each omission.

(5) A person shall not be liable under subsection (3) or (4) where the information required to be included in an information return under subsection (1) is in respect of another person and a reasonable effort was made by the person to obtain the information from that other person.

(6) A virtual asset service provider that fails to file an information return or a “nil” information return when required under subsection (1) shall be liable to pay a penalty of one million shillings for each failure.

Agreements for the automatic exchange of information with other countries on virtual asset transactions.

**6D.** (1) Kenya may enter into an agreement with another country for the automatic exchange of information relating to transactions involving virtual assets.

(2) An agreement under subsection (1) shall provide for the exchange of information relating to—

- (a) information returns filed under section 6C(1).
- (b) due diligence reporting and record keeping obligations prescribed under this section;
- (c) the virtual asset users with which a virtual asset service provider maintains a relationship in every

calendar year and that are identified as reportable users or as having controlling persons that are reportable persons;

- (d) nil return filings by virtual asset service providers who do not maintain a relationship with virtual asset users that are identified as reportable users or as having controlling persons that are reportable persons; and
- (e) arrangements or practices by virtual asset service providers, the main purpose or one of the main purposes of which can reasonably be considered to be to avoid obligations imposed under this Act.

(5) In this section—

“information return” means a report, setting out prescribed information which a reporting virtual-asset service provider is required to file with the Commissioner.

(6) The Cabinet Secretary may make regulations necessary for the implementation of this section.

**39.** Section 10 of the Tax Procedures Act is amended by inserting the following new subsections immediately after subsection (8)—

Amendment of  
section 10 of  
Cap. 469B.

(9) Where a person who was deregistered under this section qualifies for registration under section 8, the person shall apply to the Commissioner for reinstatement of the registration.

(10) Where the Commissioner is satisfied that the applicant under subsection (9) is liable for tax under a tax law, the Commissioner shall register the person and issue the person the same PIN that had been issued to the person prior to the deregistration.

**40.** Section 12 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (5A)—

Amendment of section 12 of Cap. 469B.

(5B) A non-resident person shall be exempt from the requirement of a PIN when opening an account with an investment bank.

**41.** The Tax Procedures Act is amended by inserting the following new section immediately after section 18—

Insertion of new section 18A to Cap 469B.

Tax avoidance schemes.

**18A.** (1) Where the Commissioner determines in accordance with the information obtained under subsection (2) that—

- (a) a person has entered into or carried out a tax avoidance scheme;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) the purpose of enabling the person referred to in paragraph (b) is to obtain a tax benefit,

the Commissioner may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out.

(2) The Commissioner shall rely on—

Cap. 470. Cap. 470.

- (a) information submitted to the Commissioner under section 35(5) of the Income Tax Act;
- (b) the accounting of tax deducted under section 37(1) of the Income Tax Act;
- (c) information submitted to the Commissioner under section 5A of the Kenya Revenue Authority Act;

Cap. 469. 469.

- (d) information submitted through the electronic system established under section 23A;
- (e) information submitted to the Commissioner under section 24A;
- (f) information obtained from the inspection of goods and records conducted under section 58;
- (g) information obtained from the auditing of the records produced under section 59; or
- (h) information submitted to the data management and reporting system established under section 59A; or
- (i) information submitted to the Commissioner under any other written law, to make a determination under subsection (1).

(3) The Commissioner shall issue to the person referred to in subsection (1) (b) an assessment of the tax liability determined under subsection (1) within five years from the last day of the tax period to which the tax liability relates.

(4) In this section—

“scheme” includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable; and

“tax benefit” means –

- (a) a reduction in the liability of a person to pay tax;

- (b) an increase in the entitlement of a person to a deduction for input tax;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of tax;
- (e) an acceleration of an entitlement to a deduction for input tax;
- (f) any other advantage arising because of a delay in payment of tax or an acceleration of the entitlement to a deduction for input tax;
- (g) anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import, as the case may be; or
- (h) anything that gives rise to a deduction for input tax for an acquisition or import that is used or is intended to be used other than in making taxable supplies.

**42.** The Tax Procedures Act is amended by inserting the following new section immediately after section 29—

Insertion of a new section 29A of Cap. 469B.

Commissioner to issue an assessment.

**29A.** (1) The Commissioner may, in accordance with the information obtained in accordance with subsection (2), issue an assessment on the income of a person as he may deem necessary.

(2) The Commissioner shall rely on—

- (a) the information submitted to the Commissioner under section 35(5);
- (b) the accounting of tax deducted under

section 37(1);

- Cap. 469. (c) the information submitted to the Commissioner under section 5A of the Kenya Revenue Authority Act;
- Cap. 469B. (d) the information submitted to the electronic system established under section 23A of the Tax Procedures Act;
- (e) the information submitted to the Commissioner under section 24A;
- (f) the information obtained from the inspection of goods and records conducted under section 58;
- (g) the information obtained from the auditing of the records produced under section 59;
- (h) the information submitted to the data management and reporting system established under section 59A; or
- (i) the information submitted to the Commissioner under written law,

to issue an assessment under subsection (1).

**43.** Section 37E of the Tax Procedures Act is amended—

Amendment  
of section 37E  
of Cap. 469B.

- (a) in subsection (1), by deleting the expression “31<sup>st</sup> December, 2023” appearing immediately after the words “due before the” and substituting therefor the expression “31<sup>st</sup> December, 2025”;
- (b) in subsection (2), by deleting the expression “31<sup>st</sup> December, 2023” appearing immediately after the words “paid before the” and substituting therefor the expression “31<sup>st</sup> December, 2025”;

(c) in subsection (3)—

- (i) in paragraph (a), by deleting the expression “31<sup>st</sup> December, 2023” appearing immediately after the words “up to the” and substituting therefor the expression “31<sup>st</sup> December, 2025”;
- (ii) in paragraph (b), by deleting the expression “30<sup>th</sup> June, 2025” appearing immediately after the words “later than the” and substituting therefor the expression “31<sup>st</sup> December, 2026”;

(d) in subsection (4)—

- (i) by deleting the expression “31<sup>st</sup> December, 2023” appearing immediately after the words “as on the” and substituting therefor the expression “31<sup>st</sup> December, 2025”;
- (ii) by deleting the expression “30<sup>th</sup> June, 2025” appearing immediately after the words “unpaid on the” and substituting therefor the expression “31<sup>st</sup> December, 2026”.

**44.** Section 39A of the Tax Procedures Act is amended by deleting subsection (2).

Amendment of section 39A of Cap. 469B.

**45.** Section 42 of the Tax Procedures Act is amended in subsection (14), by deleting paragraph (e).

Amendment of section 42 of Cap. 469B.

**46.** The Tax Procedures Act is amended by repealing section 44A.

Repeal of section 44A of Cap. 469B.

**47.** Section 47 of the Tax Procedures Act is amended in subsection (1), by deleting the words “and value added tax payable on imports” appearing in paragraph (a).

Amendment of section 47 to Cap. 469B.

**48.** Section 75 of the Tax Procedures Act is amended by adding the following new section immediately after subsection (2)—

Amendment of section 73 of Cap. 469B.

(3) The Commissioner may use the information technology contemplated under subsection (1) to generate a prepopulated tax return on behalf of a person required to submit or lodge a tax return.

(4) A person required to submit or lodge a tax return may rely on the prepopulated return generated by the Commissioner under subsection (3) to submit or lodge the return.

**49.** Section 77 of the Tax Procedures Act is amended by deleting subsection (2).

Amendment of section 77 of Cap. 469B.

**50.** The Tax Procedures Act is amended by repealing section 86 and replacing it with the following new section—

Repeal and replacement of section 86 of Cap. 469B.

Failure to comply with electronic tax system.

**86.** (1) Where the Commissioner determines that a taxpayer has failed to comply with the requirement under a tax law to issue an electronic tax invoice, submit a tax return in electronic form, or pay tax electronically pursuant to section 75, the Commissioner shall issue a notice in writing to the taxpayer requiring the taxpayer to provide reasons for the non-compliance.

(2) Upon receipt of the response of the taxpayer as required under subsection (1), the Commissioner shall consider whether—

- (a) the failure to comply arose from circumstances beyond the reasonable control of the taxpayer;
- (b) the failure to comply was not due to the wilful neglect or deliberate default of the taxpayer; and
- (c) the taxpayer took reasonable steps to comply with the relevant requirement as soon as practicable.

(3) Where the Commissioner is not satisfied by the reasons given under subsection (2), the taxpayer shall be liable to pay the higher of the following penalties—

- (a) two times the value of the tax due;
- (b) one hundred thousand shillings; or
- (c) in the case of an individual, ten thousand shillings.

**51. Section 89 of the Tax Procedures Act is amended—**

Amendment of section 89 of Cap. 469B.

(a) in subsection (5A)—

(i) in paragraph (c), by deleting the words “due to a malfunction of an electronic tax system” appearing immediately after the word “interest”;

(ii) by inserting the following new paragraph immediately after paragraph (c)—

(ca) a malfunction of an electronic tax system;

(b) by inserting the following new subsection immediately after subsection (5A)—

(5B) Despite subsection (5A), the Commissioner may waive the whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest does not exceed two million shillings and was due to an error generated by an electronic tax system.

**52. Section 112 of the Tax Procedures Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—**

Amendment to section 112 of Cap. 469B.

(ba) the procedure for the submission or lodging of returns based on prepopulated tax returns

generated by the Commissioner.

## **PART VI—MISCELLANEOUS FEES AND LEVIES**

**53.** Section 7 of the Miscellaneous Fees and Levies Act is amended—

Amendment of section 7 of Cap. 469C

- (a) in subsection (6), by deleting the words “twenty percent” appearing immediately after the expression “subsection (2)” and substituting therefor the words “ten percent”;
- (b) in subsection (7), by deleting the words “while ten percent shall be used for revenue enforcement initiatives” appearing immediately after the word “obligation”.

**54.** Section 9 of the Miscellaneous Fees and Levies Act is amended by deleting the words “import declaration fee, railway development levy and export levy” appearing immediately after the words “payment of” and substituting therefor the words “the fees and levies imposed under Part III”.

Amendment of section 9 of Cap. 469C.

**55.** The Second Schedule to the Miscellaneous Fees and Levies Act is amended—

Amendment of the Second Schedule to Cap. 469C

(a) in Part A—

(i) by deleting paragraph (xv) and substituting therefor the following new paragraph—

(xv) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00;

(ii) by inserting the following new paragraph immediately after paragraph (xxxii)—

(xxxiii) imported telephones for cellular networks and other wireless networks;

(b) in Part B—

(i) by deleting paragraph (xiii) and substituting therefor the following new paragraph—

(xiii) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00;

(ii) by inserting the following new paragraph immediately after paragraph (xviii)—

(xix) imported telephones for cellular networks and other wireless networks.

#### **PART VII—STAMP DUTY**

**56.** Section 96A of the Stamp Duty Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (b)—

Amendment to section 96A of Cap. 480.

(c) that the effect thereof is to convey or transfer a beneficial interest in property from a person or persons to the real estate investment trust.

#### **PART VIII—ROAD MAINTENANCE**

**57.** Section 3 of the Road Maintenance Levy Fund Act is amended in subsection (2) by deleting the words “three shillings” and substituting therefor the words “one shilling and fifty cents.

Amendment of section 3 of Cap 427.

**MEMORANDUM OF OBJECTS AND REASONS**

The Finance Bill, 2026, has been submitted by the Cabinet Secretary for the National Treasury and formulates proposals relating to revenue raising measures including liability to, and collection of taxes.

The Bill proposes to amend the Income Tax Act (Cap. 470), the Value Added Tax Act (Cap. 476), the Excise Duty Act (Cap. 472), the Tax Procedures Act (Cap. 469B), the Miscellaneous Fees and Levies Act (Cap. 469C) and the Stamp Duty Act (Cap. 480) .

The Bill also amends the Road Maintenance Levy Fund Act, (Cap. 427) to reduce the amount payable into the Road Annuity Fund from three shillings to one shilling and fifty cents.

Dated the 5th May, 2026.

HON. KURIA KIMANI MP,  
*Chairperson,  
Finance and National Planning Committee.*

*Section 2 of Cap.470 which it is proposed to amend—*

**Interpretation**

“immovable property” includes—

- (a) land, whether covered by water or not, any estate, rights, interest or easement in or over an land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and
- (b) a mining right, an interest in a petroleum agreement, mining information or petroleum information;

“management or professional fee” means any payment made to any person, other than a payment made to an employee by his employer, as consideration for any managerial, technical, agency, contractual, professional or consultancy services however calculated;

“royalty” means a payment made as a consideration for the use or the right to use—

- (a) any copyright of a literary, artistic or scientific work;
- (b) any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees;
- (c) any cinematograph film, including a film or tape for radio or television broadcasting;
- (d) any patent, trademark, design or model, plan, formula or process;
- (e) any industrial, commercial or scientific equipment; or
- (f) information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty;

“withdrawals” means the amount of money withdrawn by a customer from their betting or gaming wallet maintained by a person licensed under the Betting, Lotteries and Gaming Act;

*Section 5 of Cap.470, which it is proposed to amend—*

**Income from employment, etc**

(1) For the purposes of section 3(2)(a)(ii) of this Act, an amount paid to—

- (a) a person who is, or was at the time of the employment or when the services were rendered, a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or
- (b) a non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment in Kenya of an employer who is not so resident, shall be deemed to have accrued in or to have been derived from Kenya.

(2) For the purposes of section 3(2)(a)(ii) "gains or profits" includes—

- (a) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered, and any amount so received in respect of employment or services rendered in a year of income other than the year of income in which it is received shall be deemed to be income in respect of that other year of income:

Provided that—

- (i) where any such amount is received in respect of a year of income which expired earlier than four years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased, if earlier, it shall be deemed to be income of the year of income which expired five years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased as the case may be; and
- (ii) where the Commissioner is satisfied that subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from the employment or services rendered then the calculation of the gains or profits of the recipient shall exclude that allowance or expenditure;
- (iii) notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the first ten thousand shillings per day expended by him for the duration of that period shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits; and
- (iv) notwithstanding the provisions of subparagraph (ii), where such an amount is received by an employee as payment of travelling allowance to perform official duties, the standard mileage rate approved by the Automobile Association of Kenya shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of the employee's gains and profits;
- (b) save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than sixty thousand shillings granted in respect of employment or services rendered;

- (c) an amount received as compensation for the termination of a contract of employment or service, whether or not provision is made in the contract for the payment of that compensation:

Provided that, except in the case of a director, other than a whole time service director, of a company the directors whereof have a controlling interest therein –

- (i) where the contract is for a specified term, any amount received as compensation on the termination of the contract shall be deemed to have accrued evenly over the unexpired period of the contract;
  - (ii) where the contract is for an unspecified term and provides for compensation on the termination thereof, the compensation shall be deemed to have accrued in the period immediately following the termination at a rate equal to the rate per annum of the gains or profits from the contract received immediately prior to termination;
  - (iii) where the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination of the contract shall be deemed to have accrued evenly in the three years immediately following such termination;
- (d) any balancing charge under Part II of the Second Schedule;
- (e) the value of premises provided by an employer for occupation by his employee for residential purposes;
- (f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants;

Provided that this paragraph shall not apply where such an amount is paid–

- (i) to a registered or unregistered pension scheme, pension fund, or individual retirement fund; or
  - (ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.
- (fa) club entrance and subscription fees allowed against the employer's income;

(2A) (a) Where an individual is a director or an employee or is a relative of a director or an employee and has received a loan including a loan from an unregistered pension or provident fund by virtue of his position as a director or his employment, or the person to whom he is related, he shall be deemed to have received a benefit in that year of income equal to the greater of–

- (i) the difference between the interest that would have been payable on the loan received if calculated at the prescribed rate of interest and the actual interest paid on the loan; and
- (ii) zero:

Provided that where the term of the loan extends for a period beyond the date of termination of employment, the provisions of this subsection shall continue to apply for as long as the loan remains unpaid.

- (b) For the purposes of this subsection—

"employee" means any person who is not a beneficial owner of or able either directly or indirectly or through the medium of other companies or by any other means to control more than five per cent of the share capital or voting power of that company;

"market lending rates" means the average 91-day treasury bill rate of interest for the previous quarter;

"prescribed rate of interest" means the following:

- (i) in the year of income commencing on the 1st January, 1990, 6 per cent;
- (ii) in the year of income commencing on the 1st January, 1991, 8 per cent;
- (iii) in the year of income commencing on the 1st January, 1992, 10 per cent;
- (iv) in the year of income commencing on the 1st January, 1993, 12 per cent;
- (v) in the year of income commencing on the 1st January, 1994, 15 per cent; and
- (vi) in the year of income commencing on or after the 1st January, 1995, 15% or such interest rate based on the market lending rates as the Commissioner may from time to time prescribe, to cover a period of not less than six months but not more than one year, whichever is the lower.

"relative of a director or an employee" means—

- (i) his spouse;
- (ii) his son, daughter, brother, sister, uncle, aunt, nephew, niece, stepfather, step-mother, step-child, or in the case of an adopted child his adopter or adopters; or
- (iii) the spouse of any such relative as is mentioned in subparagraph (ii).

(2B) Where an employee is provided with a motor vehicle by his employer, he shall be deemed to have received a benefit in that year of income equal to the higher of—

- (a) such value as the Commissioner may, from time to time, determine; and
- (b) the prescribed rate of benefit;

Provided that—

- (i) where such vehicle is hired or leased from a third party, the employee shall be deemed to have received a benefit in that year of income equal to the cost of hiring or leasing; or
- (ii) where an employee has restricted use of such motor vehicle, the Commissioner shall, if satisfied of that fact upon proof by the employee, determine a lower rate of benefit depending on the usage of the motor vehicle.

(2C) For the purposes of subsection (2B)—

"prescribed rate of benefit" means the following rates in respect of each month—

- (a) in the 1996 year of income, 1% of the initial capital expenditure on the vehicle by the employer;
- (b) in the 1997 year of income, 1.5% of the initial capital expenditure on the vehicle by the employer; and
- (c) in 1998 and subsequent years of income, 2% of the initial expenditure on the vehicle by the employer.

(3) For the purposes of subsection (2)(e), the value of premises, excluding the value of any furniture or other contents so provided, shall be deemed to be—

- (a) in the case of a director of a company, other than a whole time service director, an amount equal to the higher of fifteen per centum of his total income excluding the value of those premises and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;
- (b) in the case of a whole time service director, an amount equal to the higher of fifteen per centum of the gains or profits from his employment, excluding the value of those premises, and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;
- (c) in the case of an agricultural employee required by the terms of employment to reside on a plantation or farm, an amount equal to ten per centum of the gains or profits from his employment;

Provided that for the purposes of this paragraph—

- (i) "plantation" shall not include a forest or timber plantation; and

- (ii) "agricultural employee" shall not include a director other than a whole time service director;
- (d) in the case of any other employee, an amount equal to fifteen per centum of the gains or profits from his employment, excluding the value of those premises or the rent paid by the employer if paid under an agreement made at arm's length with a third party, whichever is the higher:

Provided that—

- (i) where the premises are provided under an agreement with a third party which is not at arm's length, the value of the premises determined under this subsection shall be the fair market rental value of the premises in that year, or the rent paid by the employer, whichever is the higher; or
- (ii) where the premises are owned by the employer, the fair market rental value of the premises in that year:

Provided that—

- (i) where a person occupies premises for part only of a year of income, the value ascertained under the foregoing provisions shall be reduced by that proportion which is just and reasonable having regard to the period of occupation and the yearly rate of gains or profits from employment;
  - (ii) where the employee pays rent to his employer for premises, the value ascertained under the foregoing provisions shall be reduced by the amount of rent;
  - (iii) where part only of any premises is so provided, the Commissioner may reduce the value ascertained under the foregoing provisions to the amount which he considers just and reasonable;
  - (iv) where the gains or profits from a person's employment, excluding the value of the premises provided by the employer, exceed six hundred thousand shillings in the year, the value of the premises determined under this subsection shall be subject to the limit of—
    - (a) the rent paid by the employer or the fair market rental value of the premises in that year where the premises are provided under an agreement with a third party which is not at arm's length, whichever is the higher; or
    - (b) the fair market rental value of the premises in that year where the premises are owned by the employer.
- (4) Notwithstanding anything to the contrary in subsection (2) "gains or profits" do not include—

- (a) the expenditure on passages between Kenya and any place outside Kenya borne by employer:

Provided that this paragraph shall not apply to expenditure other than expenditure on the provision of passages for the benefit of an employee recruited or engaged outside Kenya and who is in Kenya solely for the purpose of serving the employer and is not a citizen of Kenya;

- (aa) expenditure on vacation trips to destinations in Kenya paid by the employer on behalf of an employee:

Provided that—

- (i) this paragraph shall cease to apply on the 1st July, 2015;
- (ii) the period of vacation shall not exceed seven days; and
- (iii) the term "employee" shall include the immediate family members of the employee;

- (b) in the case of a full-time employee or his beneficiaries (which expression includes a whole time service director, or a director who controls more than five per cent of the share capital or voting power of a company) the value of any medical services provided by the employer or medical insurance provided by an insurance provider approved by the Commissioner of insurance and paid for by the employer on behalf of a full-time employee or his beneficiaries:

Provided that in the case of a director other than a whole time service director, the value of the services shall be subject to such limit as the Cabinet Secretary may, from time to time, prescribe;

- (c) an amount paid by the employer as a contribution to a registered or unregistered pension fund, provident fund, individual retirement fund or scheme:

Provided that this paragraph shall not apply to any contributions paid by an employer who is not a person chargeable to tax—

- (i) to an unregistered pension scheme, unregistered provident fund or unregistered individual retirement fund; or
- (ii) to a registered pension scheme, a registered provident fund or a registered individual retirement fund in excess of the amount specified in section 22A or 22B;

- (d) educational fees of employee's dependants or relatives disallowed under section 16(2)(a)(iv) which have been taxed in the hands of the employer;

- (e) fringe benefits subject to tax under section 12B;

- (f) the first sixty thousand shillings on the value of meals served by the employer, whether the meals are supplied by the employer or not,

within his premises to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer, whether the meals are supplied in the premises of the employer or the premises of the third party, shall be excluded in the calculation of his gains or profits subject to such conditions as the Commissioner may specify;

- (fa) any amount paid or granted to a public officer pursuant to any written law or statutory instrument, with effect from 27th July, 2022, to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased;
- (g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that—

- (a) this paragraph shall only apply in respect of amounts not exceeding three hundred and sixty thousand shillings for each year of service;
- (b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.
- (h) For the purposes of this subsection—
  - (i) "beneficiaries" means the full time employee's spouse and not more than four children whose age shall not exceed twenty-one years; and

(5) Notwithstanding any other provision of this Act, the value of the benefit (excluding the value of premises as determined under subsection (3) and the value of benefit determined under subsection (2B) for the purposes of this section, shall be the higher of the cost to the employer or the fair market value of the benefit:

Provided that—

- (a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the offer price, per share, at the date the option is granted by the employer, and the market value, per share on the date when the employee exercises the option;
  - (b) the Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.
- (6) For the purposes of paragraph (a) of the proviso to subsection (5)—
- (a) the benefits chargeable shall be deemed to have accrued on the date the employee exercises the option;
  - (b) "offer price" means the price at which an employer's shares are initially offered to an employee under an employee share ownership plan;

- (c) "market value", in relation to a share means—
  - (i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the option was exercised by the employee; or
  - (ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, when the option is exercised;
- (d) "share option" means the offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for at the end of the vesting period;
- (e) "vesting period" means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

(7) Where an employee is offered company shares in lieu of cash emoluments by an eligible start up, the taxation of the benefit from the shares allocated to that person by virtue of employment shall be deferred and taxed within thirty days of the earlier of—

- (a) the expiry of five years from the end of the year of the award of the shares;
- (b) the disposal of the shares by the employee; or
- (c) the date the employee ceases to be an employee of the eligible start-up;

Provided that—

- (i) this subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment;
- (ii) the benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c);
- (iii) the value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or
- (iv) where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

(8) For the purposes of subsection (7), "eligible start-up company" means a business incorporated in Kenya that—

- (a) has an annual turnover of not more than one hundred million shillings;
- (b) does not carry on management, professional or training business;

- (c) has not been formed as a result of splitting or restructuring of an existing entity; and
- (d) has been in existence for a period of not more than five years.

*Section 8 of Cap.470, which it is proposed to amend—*

**Income from pensions, etc**

(1) For the purposes of section 3(2)(c) of this Act, any pension received by a resident individual from a pension fund or pension scheme established outside Kenya shall be deemed to have accrued in or to have been derived from Kenya to the extent to which it relates to employment or services rendered by the individual, or the spouse or parent of the individual, in Kenya and the amount so derived shall be the proportion of the total pension which the length of the employment or services in Kenya, including periods of leave earned thereby, bears to the total length of employment or services in respect of which the pension is paid.

(2) For the purposes of this Act any pension or retirement annuity received by a non-resident individual from a pension fund or pension scheme established in Kenya or under an annuity c (3) For the purposes of this Act, any pension received in respect of employment by or services rendered to the Community or one of its corporations shall be deemed to have accrued in or to have been derived from Kenya—

- (a) if received by a resident individual; or
- (b) if received by a non-resident individual if the person making payment of the pension was resident in Kenya.

(5A) For the purposes of subsection 5(c)(ii), accumulated funds are segregated where—

- (a) the accumulated funds based on contributions prior to the 1st January 1991 are accounted for separately from contributions after 31st December, 1990; and
- (b) the net accumulated funds on each account earn the average rate of return on all the assets in the fund at the accounting date for a year of income; and
- (c) the net accumulated funds based on contributions prior to 1st January, 1991, are made up of the accumulated balances as at 31st December, 1990, less any withdrawals from the fund plus any investment income earned on the fund up to the accounting date for a year of income.

(8) Upon dissolution of the marriage of the beneficiary of a registered individual retirement fund, or registered home ownership savings plan, as part of a written agreement, all or part of the balance of funds of that beneficiary may be transferred to a registered individual retirement fund or registered house ownership savings plan, in the name of the former spouse of that beneficiary.

(10) For the purposes of this subsection—

- (a) pension and lumpsums paid from a public pension scheme, shall be deemed to be received from a registered pension fund or a registered provident fund, as the case may be;
- (b) any surplus funds in respect of a registered pension fund or a registered provident fund withdrawn by or refunded to an employer shall be deemed to be the income of that employer.

(11) In subsection (10), the expression "surplus funds" means surplus funds identified through an actuarial valuation carried out in accordance with this Act or any rules made thereunder contract made in Kenya shall be deemed to have accrued in or to have been derived from Kenya.

*Section 9 of Cap.470, which it is proposed to amend—*

### **Income of certain non-resident persons deemed derived from Kenya**

(1) Where a non-resident person carries on the business of shipowner, charterer or air transport operator and any ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from such business from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya shall be the gross amount received on account of the carriage and those gains or profits shall be deemed to be income derived from Kenya; but this subsection shall not apply to gains or profits from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya solely as a result of transshipment.

Provided that all income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods shall be deemed to be income derived from Kenya.

(2) Where a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication, then the gains or profits from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits shall be deemed to be income derived from Kenya.

(3) Where a resident person enters into a financial derivatives contract with a non-resident person, any gain accruing to the non-resident person from that arrangement shall be subject to tax at the rate specified in the Third Schedule.

(4) The provisions of subsection (3) shall be carried out in accordance with Regulations made by the Cabinet Secretary.

*Section 10 of Cap.470, which it is proposed to amend—*

### **Income from management or professional fees, royalties, interest and rents**

(1) For the purposes of this Act, where a resident person or a person having a permanent establishment in Kenya makes a payment to any other person in respect of—

- (a) a management or professional fee or training fee;
- (b) a royalty or natural resource income;
- (c) interest and deemed interest;
- (d) the use of property;
- (e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (f) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (e) of this section;
- (g) withdrawals;
- (j) an insurance or reinsurance premium;
- (k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services);
- (l) supply of goods to a public entity;
- (m) making or facilitating payment over a digital market place;

the amount thereof shall be deemed to be income which accrued in or was derived from Kenya:

Provided that—

- (i) this subsection shall not apply unless the payment is incurred in the production of income accrued in or derived from Kenya or in connexion with a business carried on or to be carried on, in whole or in part, in Kenya;
- (ii) this subsection shall not apply to any such payment made, or purported to be made, by the permanent establishment in Kenya of a non-resident person to that non-resident person except for deductions provided for by agreements under section 41;
- (iii) for the avoidance of doubt, the expression "non-resident person" shall include both head office and other offices of the non-resident person.

(2) A net gain referred to in section 3(2)(g) is deemed to be income that accrued in or was derived from Kenya.

(3) Where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment.

(4) Where a resident or a non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetisation, property or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya.

(5) In this section, “platform” means a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer.

*Section 11 of Cap.470, which it is proposed—*

**Trust income, etc., deemed income of trustee, beneficiary, etc.**

(1) Any income chargeable to tax under this Act and received by any person in his capacity as a trustee, executor or administrator, shall be deemed to be income of that trustee, executor or administrator as the case may be.

(2) Where an amount included in the income of the trustee, executor or administrator under subsection (1) consists of qualifying dividends or qualifying interest, that amount shall be deemed to be an amount chargeable to tax under section 3(2)(b) and not section 3(2)(e).

(3) Any amount, received as income in a year of income by any person beneficially entitled thereto from any trustee in his capacity as such, or paid out of income by the trustee on behalf of such person, shall, subject to this Act, be deemed to be income of such, and to the extent that any such amount is received or so paid out of income chargeable to tax under this Act on that trustee it shall be deemed to be income—

- (a) in any case other than that of an annuity directed to be paid free of tax—
  - (i) of such gross amount as would, after deduction of tax at the rate paid or payable on such income by such trustee, be equal to the amount received or so paid; and
  - (ii) that has borne tax at such rate;
- (b) in the case of an annuity directed to be paid free of tax, of such gross amount as is equal to the amount of such annuity together with the amount of the sums paid by the trustee to the annuitant to meet the liability of the annuitant to tax on such annuity.

(4) The trustee, executor or administrator may designate a part or all of the amounts paid by him to a person that is chargeable to tax under subsection (2) to be qualifying dividends or qualifying interest and, in that case, such designated amount shall be deemed to have been already tax paid.

(5) The cumulative totals, at any time, of the amounts designated up to that time by a trustee under subsection (4) as qualifying dividends or qualifying interest shall not exceed the cumulative totals of qualifying dividends or qualifying interest respectively, received by the trustee, in his capacity as a trustee, after the 31st December, 1990 and up to that time.

*Section 12 of Cap.470, which it is proposed to amend—*

**Imposition of instalment tax**

(1) Notwithstanding any other provisions of this Act, a tax to be known as instalment tax shall be payable for the year of income commencing on or after the 1st January, 1990 by every person chargeable to tax or any person who has paid provisional tax in any year of income in accordance with the provisions of this section, but a taxpayer shall not be required to pay the instalment tax—

- (a) if the minimum tax payable under section 12D is higher than the instalment tax under this section; and
- (b) if he has reasonable ground to believe that the whole of the tax payable by him in respect of those emoluments will be recovered under section 37.

(2) The amount of instalment tax payable by any person for any current year of income shall be the lesser of—

- (a) the amount equal to the tax that would be payable by that person if his total income for the current year was an amount equal to his instalment income; or
- (b) the amount specified in the preceding year assessment multiplied by one hundred and ten per cent.

(3) The amount of tax determined under either subsection (2)(a) or (b) shall be reduced by the aggregate of the tax that has been or will be paid in the current year by way of deduction under section 12A, 17A, 35 or 37.

(4) The amount of instalment tax required to be paid for any year of income shall be the annual amount calculated in accordance with subsections (2) and (3) but subject to the proportions as specified in the Twelfth Schedule.

(5) No instalment tax shall be payable by an individual in any year of income where the total tax payable for that year of income is an amount not exceeding forty thousand shillings.

*Section 15 of Cap. 470, which it is proposed to amend—*

#### **Deductions allowed**

(1) For the purpose of ascertaining the total income of any person for a year of income there shall, subject to section 16 of this Act, be deducted all expenditure incurred in such year of income which is expenditure wholly and exclusively incurred by him in the production of that income, and where under section 27 of this Act any income of an accounting period ending on some day other than the last day of such year of income is, for the purpose of ascertaining total income for any year of income, taken to be income for any year of income, then such expenditure incurred during such period shall be treated as having been incurred during such year of income.

(2) Without prejudice to sub-section (1) of this section, in computing for a year of income the gains or profits chargeable to tax under section 3(2)(a) of this Act, the following amounts shall be deducted:

- (a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph;
- (b) amounts to be deducted under the Second Schedule in respect of that year of income;
- (bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;
- (c) any expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;
- (d) any expenditure of a capital nature incurred in that year of income by any person on legal costs and stamp duties in connexion with the acquisition of a lease, for a period not in excess of, or expressly capable of extension beyond, ninety-nine years, of premises used or to be used by him for the purposes of his business;
- (e) any expenditure, other than expenditure referred to in paragraph (f) of this section, incurred in connection with any business before the date of commencement of that business where such expenditure would have been deductible under this section if incurred after such date, so, however, that the expenditure shall be deemed to have been incurred on the date on which such business commenced;
- (f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:  
Provided that no deduction shall be made for the cost of an extension to, or replacement of, such premises;
- (g) the amount considered as representing the diminution in value of any implement, utensil or similar article, employed in the production of gains or profits, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, at a rate of one hundred per cent in that year of income;
- (ga) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5(b) of the Affordable Housing Act, 2024;
- (l) any expenditure of a capital nature incurred in such year of income by the owner or tenant of any agricultural land, on clearing such land, or on clearing and planting thereon permanent or semi-permanent crops;

- (n) any expenditure incurred by any person for the purposes of a business carried on by him being—
  - (i) expenditure of a capital nature on scientific research; or
  - (ii) expenditure not of a capital nature on scientific research; or
  - (iii) a sum paid to a scientific research association approved for the purposes of this paragraph by the Commissioner as being an association which has as its object the undertaking of scientific research related to the class of business to which such business belongs; or
- (iv) a sum paid to any university, college, research institute or other similar institution approved for the purposes of this paragraph by such Commissioner for the scientific research as is mentioned in subparagraph (iii) of this paragraph;
- (o) any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees throughout Kenya by the provisions of any written law;
- (p) any expenditure on advertising in connexion with any business to the extent that the Commissioner considers just and reasonable; and for this purpose "expenditure on advertising" includes any expenditure intended to advertise or promote, whether directly or indirectly, the sale of the goods or services provided by that business;
- (t) expenditure incurred by the lessee in the case of a lease or similar transaction as determined in accordance with such rules as may be prescribed under this Act;
- (w) any donation in that year of income to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, expenditure incurred in the construction of a sports facility on public grounds, or to any project approved by the Cabinet Secretary responsible for matters relating to finance;
- (x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Cabinet Secretary, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure;
- (z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports;
- (aa) expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President.

- (ac) in the case of an employee, the amount deducted in accordance with section 5(1)(a) of the Affordable Housing Act, 2024;
  - (ad) a contribution to a post-retirement medical fund subject to a limit of fifteen thousand shillings per month;
  - (ae) contributions made to the Social Health Insurance Fund in accordance with section 27(a) and (b) of the Social Health Insurance Act, 2023;
- (3) Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:
- (a) the amount of interest paid in respect of that year of income by the person upon money borrowed by him and where the Commissioner is satisfied that the money so borrowed has been wholly and exclusively employed by him in the production of investment income which is chargeable to tax under this Act:

Provided that—

- (i) the amount of interest which may be deducted under this paragraph shall not exceed the investment income chargeable to tax for that year of income, and where the amount of that interest paid in that year exceeds the investment income of that year, the excess shall be carried forward to the next succeeding year and deducted only from investment income and, in so far as the interest has not already been so deducted, from investment income of the subsequent years of income; and
- (ii) for the purposes of this paragraph, "investment income" means dividends and interest but excludes qualifying dividends and qualifying interest;
- (b) the amount of interest not exceeding three hundred and sixty thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first six financial institutions specified in the Fourth Schedule and applied to the construction of purchase or improvement of premises occupied by him during that year of income for residential purposes:

Provided that—

- (i) if any person occupies any premises for residential purposes for part only of a year of income the deduction under this paragraph shall be reduced accordingly; and
- (ii) no person may claim a deduction under this paragraph in respect of more than one residence;
- (d) in the case of a partner, the amount of the excess, if any, of his share of any loss incurred by the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership, over the sum of any remuneration and

such interest so payable to him less any such interest so payable by him;

- (g) in the case of a business which is a sole proprietorship, the cost of medical expenses or medical insurance cover incurred for the benefit of the proprietor, subject to a limit of one million shillings per year.

(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding five years of income.

(5) Notwithstanding subsection (4), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction beyond five years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.

(5) (a) A person to whom this subsection applies who has succeeded to any business, or to a share therein, either as a beneficiary under the will or on the intestacy of a deceased person who carried on, solely or in partnership, that business shall be entitled to a deduction in the year of income in which he so succeeds in respect of such part of any deficit in the total income of the deceased for his last year of income as is attributable to any losses incurred by the deceased in the business in that year of income or in earlier years of income.

- (b) This subsection applies to a person who is the widow, widower or child, of the deceased person and to a person who was an employee or partner of the deceased person in that business; and, where there are two or more such persons, each such person shall be entitled to a deduction of so much of the whole amount deductible as his share in the business under the will or on the intestacy bears to the sum of the shares of all such persons.

(5A) For the purpose of section 3(2)(g), the amount of the net gain to be included in income chargeable to tax is—

- (b) the amount computed according to the following formula—

$$A \times B/C$$

Where—

A is the amount of the net gain;

B is the value of the interest derived, directly or indirectly, from immovable property in Kenya; and

C is the total value of the interest.

- (6) For the purposes of this section—

- (a) "scientific research" means any activities in the fields of natural or applied science for the extension of human knowledge, and when applied to any particular business includes—

- (i) any scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;
  - (ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class;
- (b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research.
- (7) Notwithstanding anything contained in this Act—
- (a) the gains or profits of a person derived from any one of the sources of income respectively specified in paragraph (e) of this subsection (and in this subsection called "specified sources") shall be computed separately from the gains or profits of that person derived from any other of the specified sources and separately from any other income of that person;
  - (b) where the computation of gains or profits of a person in a year of income derived from a specified source results in a loss, that loss may only be deducted from gains or profits of that person derived from the same specified source in the following year and, in so far as the loss has not already been so deducted, in subsequent years of income;
  - (c) the subparagraphs of paragraph (e) of this section shall be construed so as to be mutually exclusive;
  - (d) gains chargeable to tax under section 3(2)(f) of this Act and losses referred to in subsection (3)(f) of this section shall not be deemed income or losses derived or resulting from specified sources for the purposes of this subsection;
  - (e) the specified sources of income are—
    - (i) rights granted to other persons for the use or occupation of immovable property;
    - (ii) employment (including former employment) of personal services for wages, salary, commissions or similar rewards (not under an independent contract of service), and a self-employed professional vocation;
    - (iv) agricultural, pastoral, horticultural, forestry or similar activities, not falling within subparagraphs (i) and (ii) of this paragraph;
    - (ivA) surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds which are deemed to be the income of the employer under section 8(10);

- (ivB) income of a licensee from one licence area or a contractor from one contract area as determined in accordance with the Ninth Schedule; and
- (v) other sources of income chargeable to tax under section 3(2)(a), not falling within subparagraph (i), (ii), (iii) or (iv) of this paragraph.

*Section 16 of Cap.470, which it is proposed to amend—*

**Deductions not allowed**

(1) Save as otherwise expressly provided, for the purposes of ascertaining the total income of a person for any year of income, no deduction shall be allowed in respect of—

- (a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;
- (b) any capital expenditure, or any loss, diminution or exhaustion of capital;
- (c) any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act (Cap. 469B).

(2) Notwithstanding any other provision of this Act, no deduction shall be allowed in respect of—

- (a) expenditure incurred by a person in the maintenance of himself, his family or establishment or for any other personal or domestic purpose including the following—
  - (i) entertainment expenses for personal purposes; or
  - (ii) hotel, restaurant or catering expenses other than for meals or accommodation expenses incurred on business trips or during training courses or work related conventions or conferences, or meals provided to employees on the employer's premises;
  - (iii) vacation trip expenses except those customarily made on home leave as provided in the proviso to section 5(4)(a) and (aa); or
  - (iv) educational fees of employee's dependants or relatives;
- (b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;
- (c) any income tax or tax of a similar nature paid on income;

Provided that, save in the case of foreign tax in respect of which a claim is made under section 41, a deduction shall be allowed in respect of income tax or tax of a similar nature, including compensation tax paid on income which is charged to tax in a country outside Kenya to the extent to which that tax is payable in respect of

- and is paid out of income deemed to have accrued in or to have been derived from Kenya;
- (d) any sums contributed to a registered or unregistered pension, saving, or provident scheme or fund, except as provided in section 15(2)(o), or any sum paid to another person as a pension;
  - (e) a premium paid under an annuity contract;
  - (f) any expenditure incurred in the production of income deemed under section 10 of this Act to have accrued in or to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;
  - (fa) any expenditure incurred in the production of dividend income deemed under paragraph (a) of subsection (1), of section 7 to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;
  - (h) any loss incurred in any business which, having regard to the nature of the business, to the principal occupation of the owner, partners, shareholders or other persons having a beneficial interest therein, to the relationship between any such persons or to any other relevant factor, the Commissioner considers it reasonable to regard as not being carried on mainly with a view to the realization of profits; and, without prejudice to the generality of the foregoing, a business shall be deemed not to be carried on for any year of income with a view to the realization of profits where more than one quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person;
  - (j) gross interest paid or payable to a non-resident in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

Provided that—

- (i) any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and
- (ii) this paragraph shall apply to—
  - (A) interest on all loans;
  - (B) payments that are economically equivalent to interest; and
  - (C) expenses incurred in connection with raising the finance.

- (iii) this paragraph shall not apply to—
- (A) banks or financial institutions licensed under the Banking Act (Cap. 488);
  - (B) micro and small enterprises registered under the Micro and Small Enterprises Act (Cap. 493C);
  - (C) microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act (Cap 493C);
  - (D) entities licensed under the Hire Purchase Act (Cap. 507);
  - (E) non-deposit taking institutions involved in lending and leasing business;
  - (F) companies undertaking the manufacture of human vaccines;

*Section 18D of Cap.470, which it is proposed to amend—*

**Filing of country-by-country report, master file and local file**

(1) Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (3).

(1A) A constituent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (1B), if one of the following conditions applies—

- (a) the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;
- (b) the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or
- (c) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner to the constituent entity resident in Kenya.

(1B) The provisions of subsections (1) and (1A) shall apply to a multinational enterprise group whose total consolidated group turnover, including extraordinary or investment income, is at least ninety five billion shillings during the financial year immediately preceding the reporting financial year as reflected in its consolidated financial statements for such preceding financial year.

(2) An ultimate parent entity or a constituent entity shall file the country-by-country report referred to under subsection (1) not later than twelve months after the last day of the reporting financial year of the group.

(3) An ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file to the Commissioner in such manner as the Commissioner may specify.

(4) The master file and the local file shall be filed not later than six months after the last day of the reporting financial year of the multinational enterprise group.

(5) A country-by-country report filed under subsection (1) shall consist of—

- (a) the information relating to the identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity;
- (b) the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction where the group has taxable presence; and
- (c) any other information as may be required by the Commissioner.

(6) A master file under subsection (3) shall contain—

- (a) a detailed overview of the group;
- (b) the group's growth engines;
- (c) a description of the supply chain of the key products and services;
- (d) the group's research and development policy;
- (e) a description of each constituent entity's contribution to value creation;
- (f) information about intangible assets and the group intercompany agreements associated with them;
- (g) information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;
- (h) information about financing activities of the group;
- (i) the consolidated financial statements of the group;
- (j) tax rulings, if any, made in respect of the group; and
- (k) any other information that the Commissioner may require.

(7) A local file under subsection (3) shall contain—

- (a) details and information on the resident constituent entity's activities within the multinational enterprise group;
- (b) management structure of the resident constituent entity;

- (c) business strategies including structuring, description of the material-controlled transactions, the resident constituent entity's business and competitive environment;
- (d) the international transactions and amounts paid to the resident constituent entity or received by the entity; and
- (e) any other information that the Commissioner may require.

(8) Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities to file a country-by-country report and notify the Commissioner in such form as the Commissioner may specify.

(10) A resident constituent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if—

- (a) a non-resident surrogate parent entity files the country-by-country report on the group with the competent authority of the tax jurisdiction of the entity;
- (b) the jurisdiction in which the non-resident surrogate parent entity is resident requires the filing of country-by-country reports;
- (c) the competent authority of the jurisdiction in which the non-resident surrogate parent entity is resident and Kenya have a competent authority agreement for the exchange of information;
- (d) the competent authority in the jurisdiction where the non-resident surrogate parent is resident has not notified Kenya of a systemic failure; or
- (e) the non-resident parent entity has notified the competent authority in the jurisdiction of its tax residence that the entity is the designated surrogate parent entity of the group.

(11) The Commissioner shall maintain the confidentiality of the information contained in a return submitted in accordance with section 6(1) and section 6A(2) of the Tax Procedures Act (Cap. 469B).

*Section 18 E of Cap 470, which it is proposed to amend—*

#### **18E. Offences and penalties**

A person who fails to comply with the provisions of sections 18C and 18D commits an offence and shall be subject to the penalties prescribed under the Tax Procedures Act (Cap. 469B).

*Section 18F of Cap. 470, which it is proposed to amend—*

#### **Definitions**

For the purposes of sections 18C, 18D and 18E—

“a country-by-country report” means a report filed under section 18D(1) describing the financial

activities of each constituent entity in all the jurisdictions where the group has taxable presence;

“excluded multinational enterprise group” means, with respect to any financial year of the group, a group having total consolidated group revenue of less than the amount specified in section 18D(1);

“ultimate parent entity” means an entity which—

- (a) is not controlled by another entity; and
- (b) owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.

*Section 19 of Cap.470, which it is proposed to amend—*

#### **Ascertainment of income of insurance companies**

(1) Notwithstanding anything in this Act, this section shall apply for the purpose of computing the gains or profits of insurance companies from insurance business which is chargeable to tax; and for the purposes of this Act a mutual insurance company shall be deemed to carry on an insurance business the surplus from which shall be ascertained in the manner provided for in this section for ascertaining gains or profits and which shall be deemed to be gains or profits which are charged to tax under this Act.

(2) Where an insurance company carries on life insurance business in conjunction with insurance business of any other class, the life insurance business of the company shall be treated as a separate business from any other class of insurance business carried on by the company.

(3) The gains or profits for any year of income from the insurance business, other than life insurance business, of a resident insurance company, whether mutual or proprietary, shall be the amount arrived at after—

- (a) taking, for such year of income, the sum of—
  - (i) the amount of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance as relate to such business); and
  - (ii) the amount of other income from such business, including any commission or expense allowance received or receivable from re-insurers and any income derived from investments held in connexion with that business; and
- (b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks referable to that business at the percentage adopted by the company at the end of that year of income and adding thereto the reserve deducted for unexpired risks at the end of the previous year of income:

Provided that the reserves are estimated on the basis of actuarial principles, including discounting of ultimate costs; and

- (c) deducting from the figure arrived at under paragraphs (a) and (b) of this subsection—
  - (i) the amount of the claims admitted in such year of income in connexion with such business (provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and
  - (ii) the amount of agency expenses incurred in such year of income in connection with such business; and
  - (iii) the amount of any other expenses allowable as a deduction (excluding costs and expenses attributable to earning exempt income) as determined by the ratio of exempt investment income to the sum of investment and exempt investment income in that year of income in computing the gains or profits of that business under this Act.

(4) The gains or profits for any year of income from the insurance business, other than life insurance business, of a non-resident insurance company, whether mutual or proprietary, shall be the amount arrived at after—

- (a) taking, for such year of income, the sum of—
  - (i) the amount received or receivable in Kenya of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance, other than to the head office of such company, as relates to such business); and
  - (ii) the amount of other income from such business, not being income from investments, received or receivable in Kenya including any commission or expense allowance received or receivable from reinsurance, other than from the head office of such company, of risks accepted in Kenya; and
  - (iii) such amount of income from investments as the Commissioner may determine to be just and reasonable as representing income from investment of the reserves referable to such business done in Kenya; and
- (b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks outstanding at the end of that year of income in respect of policies for which the premiums are received or receivable in Kenya at the percentage adopted by the company in relation to its insurance business as a whole, other than life insurance, but adding to that sum the reserve deducted for similar unexpired risks at the end of the previous year of income;

Provided that the reserves are estimated on the basis of actuarial principles, including discounting of ultimate costs; and

- (c) deducting from the figure arrived at under paragraphs (a) and (b)—
  - (i) the amount of the claims admitted in that year of income in connection with that business (Provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and
  - (ii) the amount of agency expenses incurred in such year of income in connexion with such business; and
  - (iii) an amount being such proportion as the Commissioner may determine to be just and reasonable of those expenses of the head office of that company as would have been allowable as a deduction in that year of income in computing its gains or profits if the company had been a resident company in so far as those amounts relate to policies the premiums in respect of which are received or receivable in Kenya.

(5) The gains or profits for a year of income from the long term insurance business of a resident insurance company, whether mutual or proprietary, shall be the sum of the following—

- (a) the amount of actuarial surplus, as determined under the Insurance Act and recommended by the actuary to be transferred from the life insurance fund for the benefit of shareholders;
- (b) any other amounts transferred from the life insurance fund for the benefit of shareholders; and
- (c) thirty per centum of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act (Cap. 487).

(5A) Where the actuarial valuation of the life insurance fund results in a deficit for a year of income and the shareholders are required to inject money into the life insurance fund, the amount of money so transferred shall be treated as a negative transfer for the purposes of subsection (5)(a):

Provided that the amount of negative transfer shall be limited to the actuarial surplus recommended by the actuary to be transferred from the life insurance fund for the benefit of shareholders in previous years of income.

(6) The gains or profits for a year of income from the long term insurance business of a non resident insurance company, whether mutual or proprietary, shall be the sum of the following—

- (a) the same proportion of the amount of actuarial surplus recommended by the actuary to be transferred to the shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears

to the actuarial liability in respect of its total long term insurance business; and

- (b) the same proportion of any other amounts transferred from the life insurance fund for the benefit of shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and
- (c) the same proportion of thirty per cent of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurances Act (Cap. 487) as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business.

(6A) Where the actuarial valuation of the life insurance fund results in a deficit for a year of income and the shareholders are required to inject money into the life insurance fund, the proportionate amount of the money so transferred shall be treated as a negative transfer for the purposes of subsection (6)(a):

Provided that the amount of negative transfers shall be limited to the amount of actuarial surplus recommended by the actuary to be transferred from the life insurance fund for the benefit of the shareholders in previous years on income.

(6B) For the avoidance of doubt, the gains arising from the transfer of property by an insurance company other than property connected to life insurance business shall be taxed in accordance with the provisions of the Eighth Schedule.

(7) In this section—

"annuity fund" means, where an annuity fund is not kept separately from the life insurance fund of the company such part of the life insurance fund as represents the liability of the company under its annuity contracts;

"company" includes a body of persons;

"exempt investment income" means dividends chargeable to tax under section 3(2)(a)(i) plus income from disposal of investment shares traded in any securities exchange operating in Kenya;

"investment income" does not include—

- (a) dividends chargeable to tax under section 3(2)(a)(i); and
- (b) income from the disposal of investment shares traded in any securities exchange operating in Kenya;

"life insurance fund" does not include the annuity fund, if any, nor such part of the life insurance fund as represents the liability of the company under any registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund;

"life insurance premiums" means premiums referable to the life insurance business other than annuity business;

"life insurance expenses" means expenses referable to the life insurance business other than annuity business.

(8) The amount of the gains or profits from insurance business, both from life insurance and from other classes of insurance business, arrived at under this section shall be taken into account together with any other income of the company charged to tax in ascertaining the total income of that company.

*Section 23 of Cap 470, it is proposed to amend—*

#### **Transactions designed to avoid liability to tax**

(1) Where the Commissioner is of the opinion that the main purpose or one of the main purposes for which a transaction was effected (whether before or after the passing of this Act) was the avoidance or reduction of liability to tax for any year of income, or that the main benefit which might have been expected to accrue from the transaction in the three years immediately following the completion thereof was the avoidance or reduction of liability to tax, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he considers appropriate to counteract the avoidance or reduction of liability to tax which could otherwise be effected by the transaction.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, those powers shall extend—

- (a) to the charging to tax of persons who, but for the adjustments, would not be charged to the same extent;
- (b) to the charging of a greater amount of tax than would be charged but for the adjustments.

(3) Any direction of the Commissioner under this section shall specify the transaction or transactions giving rise to the direction and the adjustments as respects liability to tax which the Commissioner considers appropriate.

*Section 24 of Cap. 470, which it is proposed to amend—*

#### **Avoidance of tax liability by non-distribution of dividends**

(1) Where the Commissioner is of the opinion that a private company has not distributed to its shareholders as dividends within a reasonable period, not exceeding twelve months, after the end of its accounting period such part of its income for that period which could be so distributed without prejudice to the requirements of the company's business, he may direct that that part of the income of the company shall be treated for the purposes of this Act as having been distributed as a dividend to the shareholders in accordance with their respective interests and shall be deemed to have been paid on a date twelve months after the end of that accounting period.

*Section 35 of Cap.470, it is proposed to amend—*

**Deduction of tax from certain income**

(1) Every person shall, upon payment of any amount to any non-resident person not having a permanent establishment in Kenya in respect of—

- (a) a management or professional fee or training fee except—
  - (i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or
  - (ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel;
  - (iii) payments made by the national carrier to a non-resident for specialized technical, maintenance, compliance, training, or digital systems support services, where such services are not available in Kenya or the service provider is certified or accredited by an international regulatory, standard-setting, or licensing body.
- (b) a royalty or natural resource income;
- (c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock;

Provided that—

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from a non-resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and
  - (ii) where a non-resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;
- (d) a dividend;
  - (e) interest and deemed interest;
  - (f) a pension or retirement annuity;
  - (g) any appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience;

- (h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection,
- (i) withdrawals;
- (l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9 (2);
- (n) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft;
- (o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services);
- (p) gains from financial derivatives;
- (q) digital content monetisation;
- (r) supply of goods to a public entity;
- (s) making or facilitating payment on a digital marketplace; and
- (u) gains or profits which are chargeable to tax under section 9(1) derived from the business of a ship owner or charterer;

(1A) Subsection (1) shall not apply to payments made by filming agents and filming producers approved by the Kenya Film Commission to actors and crew members approved for purposes of paragraphs (g) and (h).

(3) Subject to subsection (3A), a person shall, upon payment of an amount to a person resident or having a permanent establishment in Kenya in respect of—

- (a) a dividend;
- (b) interest, other than interest paid to a financial institution specified in the Fourth Schedule which is resident or which has a permanent establishment in Kenya, including interest arising from a discount upon final satisfaction or redemption of a debt, bond, loan, claim, obligation or other evidence of indebtedness measured as the original issue discount, other than interest or discounts paid to a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule:

Provided that—

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from the resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and
- (ii) where the resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution

specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;

- (c) an annuity payment excluding that portion of the payment which represents the capital element;
- (d) a commission or fee paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons (except a commission or fee paid or credited to another insurance company);
- (e) a pension or a lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund in excess of the tax exempt amounts specified in section 8(4) and (5), or any amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund in excess of the tax exempt amount specified in section 8(5);
- (ee) surplus funds withdrawn from or paid out of registered pension or provident funds;
- (f) management or professional fee or training fee, the aggregate value of which is twenty-four thousand shillings or more in a month:  

Provided that for the purposes of this paragraph, contractual fee within the meaning of "management or professional fee" shall mean payment for work done in respect of building, civil or engineering works;
- (g) a royalty or natural resource income;
- (h) withdrawals;
- (j) rent, premium or similar consideration for the use or occupation of immovable property;
- (k) sales, promotion, marketing and advertising services;
- (l) digital content monetisation;
- (m) supply of goods to a public entity;
- (n) making or facilitating payment on a digital marketplace; and

(3A) Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.

(3AA) A person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom:

Provided that only a person appointed by the Commissioner in writing for that purpose may deduct tax under this section.

(3AB) A person who deducts rental income tax under this section shall, within five working days after the deduction was made, remit the amount so deducted to the Commissioner together with a return in writing of the tax deducted and such other information as the Commissioner may require.

(3AC) The Commissioner shall, upon receipt of the amount remitted under subsection (3AB), furnish the person from whom the rental income tax was withheld with a certificate stating the amount of the rent and tax deducted therefrom.

(4) No deduction shall be made under subsection (1) or (3) from a payment which is income exempt from tax under this Act, or to which an order made under this Act, or to which an order made under subsection (7) or (8) applies.

(5) Where a person deducts tax under this section he shall, within five working days after the deduction was made—

- (a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment the amount of tax deducted, and such other information as the Commissioner may specify; and
- (b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.

(5A) The Commissioner shall pay the tax deducted from withdrawals under subsection (1)(i) and (3) (h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, (Cap 412A).

(6D) A person aggrieved by the imposition, by the Commissioner, of a penalty under this section may, by notice in writing to the Commissioner, object to the imposition within thirty days of the date of service of the notice of the imposition.

(7) The Cabinet Secretary may, by notice in the Gazette, exempt from the provisions of subsection (3) of this section any payment or class of payments made by any person or class of persons resident or having a permanent establishment in Kenya.

(8) The Cabinet Secretary may, by notice in the Gazette, amend or add to the Fourth Schedule in

*Section 52 of Cap 470, which it is proposed to amend—*

#### **Returns of income and notice of chargeability**

(1) The Commissioner may, by notice in writing, require a person to furnish him within a reasonable time, not being less than thirty days from the date of service of the notice, with a return of income for any year of income containing a full and true statement of the income of such person, including income deemed to be his under this Act, liable to tax and of those particulars that may be required for the purposes of this Act; and such return shall include a

declaration signed by such person, or by the person in whose name he is assessable, that such return is a full and true statement:

Provided that in the case of a person carrying on a business has made a provisional return of income, the return of income under this subsection may be made within a period not exceeding nine months from the date to which he makes up the accounts of such business.

(2) In the case of the executors or administrators of a deceased person, or of the liquidator of a resident company, or of a bankrupt, or of a person whom the Commissioner has reason to believe is about to leave Kenya, the Commissioner may, by notice in writing, require him to furnish a return of income at any time whether before or after the end of the year of income to which such return relates.

(3) Every person chargeable to tax for a year of income who—

- (a) within four months after the end of such year of income; or
- (b) being a person carrying on a business the accounting period for which ends on some day other than 31st December in such year of income, has not made a provisional return of income for that year of income within four months of the end of such accounting period, has not been required to make a return of income for such year of income under subsection (1) shall, within fourteen days after the expiration of the period of four months, give notice in writing to the Commissioner that he is so chargeable:

Provided that an employee shall not be required to give notice—

- (i) if he had no income chargeable to tax for such year of income other than from emoluments; and
- (ii) if the tax payable in respect of those emoluments has been recovered by deduction under section 37 of this Act.

(4) Where any business is carried on by two or more persons in partnership, the Commissioner may, by notice in writing, require the precedent resident partner, that is the partner who, of the resident partners—

- (a) is first named in the agreement of partnership; or
- (b) if there be no agreement, is specified by name or initials singly, or with precedence to the other partners, in the usual name of the partnership; or
- (c) is first named in any statement required for the purposes of registration of the business under any law of Kenya; or
- (d) is the precedent resident active partner if the partner named with precedence is not an active partner, to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of income of the partnership, ascertained under this Act as if the partnership were a person liable to tax, for any year of income prior to that in which the notice is served containing a full

and true statement of the income and of such particulars as may be respect of financial institutions resident or having a permanent establishment in Kenya.

*Section 52 B of Cap. 470, which it is proposed to amend—*

**Final return with self-assessment**

(1) Notwithstanding any other provision of this Act—

- (a) every individual chargeable to tax under this Act shall for any year of income commencing with the year of income 1992, furnish to the Commissioner a return of income, including a self-assessment of his tax from all sources of income, not later than the last day of the sixth month following the end of his year of income; and
- (b) every person, other than an individual chargeable to tax under the Act, shall for any accounting period commencing on or after 1st January, 1992, furnish to the Commissioner a return of income, including a self-assessment of his tax on such income, not later than the last day of the sixth month following the end of the year of income.

(2) The return of income together with the declared self-assessment of tax on the declared income, shall be prepared on such a form or forms as shall be prescribed by the Commissioner.

(3) The declared self-assessment shall be calculated by reference to the appropriate relief and rates of tax in force for the year of income.

(4) Every company liable to tax under this Act shall also include with the self-assessment and return of income, an assessment and return of any dividend distributed out of untaxed gains or profits due with respect to such tax year and the tax so calculated shall be payable at the due date for the self assessment.

*First Schedule to Cap 470, which it is proposed to amend—*

**FIRST SCHEDULE [ss. 13 and 14]**

**EXEMPTIONS**

**Part I – INCOME ACCRUED IN, DERIVED FROM OR RECEIVED IN KENYA WHICH IS EXEMPT FROM TAX**

1. So much of the income of a person as is expressly exempted from income tax by or under the provisions of any Act of Parliament for the time being in force, to the extent provided by such Act.

2. The income of any person who, or organization which, is exempt from income tax by or under any Act of Parliament for the time being in force, to the extent provided by such Act.

6. The income, other than income from investments, of an amateur sporting association, that is to say, an association—

- (a) whose sole or main object is to foster and control any outdoor sport; and
- (b) whose members consist only of amateurs or affiliated associations the members of which consist only of amateurs; and
- (c) whose memorandum of association or by-laws have provisions defining an amateur or a professional and providing that no person may be or continue to be a member of such association if such person is not an amateur.

8. The income of any county government.

10. Subject to section 26, the income of an institution, body of persons or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education—

- (a) established in Kenya; or
- (b) whose regional headquarters is situated in Kenya, in so far as the Commissioner is satisfied that the income is to be expended either in Kenya or in circumstances in which the expenditure of that income is for the purposes which result in the benefit of the residents of Kenya:

Provided that any such income which consists of gains or profits from a business shall not be exempt from tax unless such gains or profits are applied solely to such purposes and either—

- (i) such business is carried on in the course of the actual execution of such purposes;
  - (ii) the work in connexion with such business is mainly carried on by beneficiaries under such purposes; or
  - (iii) such gains or profits consist of rents (including premiums or any similar consideration in the nature of rent) received from the leasing or letting of land and any chattels leased or let therewith; and provided further that an exemption under this paragraph—
- (A) shall be valid for a period of five years but may be revoked by the Commissioner for any just cause; and
  - (B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within ninety days of the lodging of the application.

Provided further that in this paragraph, “institution, body of persons or irrevocable trust, of a public character” means an entity established to benefit the public in a transparent and accountable manner without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilises its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.

11. The income of any person from any management or professional fee, royalty or interest when the Cabinet Secretary certifies that it is required to be paid free of tax by the terms of an agreement to which the Government is a party either as principal or guarantor and that it is in the public interest that such income shall be exempt from tax.

12. The income of any registered pension scheme.

13. The income of any registered trust scheme.

14. The income of any registered pension fund.

15. The income of a registered provident fund.

16. The income from the investment of an annuity fund, as defined in section 19 of this Act, of an insurance company.

17. Pensions or gratuities granted in respect of wounds or disabilities caused in war and suffered by the recipients of such pensions or gratuities.

22. That part of the income of any officer of the Government or of the Community accrued in or derived from Kenya which consists of foreign allowances paid to such officer from public funds in respect of his office:

Provided that, where any person to whom such an allowance is paid is granted a deduction under section 15 of this Act in respect of any expenditure incurred in relation to an activity for which the allowance is paid, then the exemption conferred by this paragraph shall not apply to so much of such allowance as is equal to the amount of such deduction.

23. The income of the East African Development Bank and of Corporations established under Article 71 of the Treaty for East African Co-operation together with the income of subsidiary companies wholly owned by that Bank or by any of the said Corporations.

26. The emoluments—

(b) of any person in the public service of the Government of that country in respect of his office under that Government where such person is resident in Kenya solely for the purpose of performing the duties of his office, where such emoluments are payable from the public funds of such country and are subject to income tax in such country.

27. The emoluments payable out of foreign sources in respect of duties performed in Kenya in connexion with a technical assistance or other agreement for developmental services or purpose to which the Government or the Community is a party to any non-resident person or to a person who is resident solely for the purposes of performing those duties, in any case where the agreement provides for the exemption of such emoluments.

35. Interest on a savings account held with the Kenya Post Office Savings Bank.

36. Such part of the income of an individual, chargeable to tax under section 3(2)(f) as consists of a gain derived from the transfer of—

- (c) a private residence if the individual owner has occupied the residence continuously for the three year period immediately prior to the transfer concerned:

Provided that—

- (i) in determining whether or not a person has occupied a residence continuously for three years, any period during which he was temporarily absent from the residence shall be ignored;
  - (ii) references to a private residence include the immediately surrounding land utilized exclusively for personal purposes as an adjunct to the residence and not for the production of income, but does not include any part of the residence and land utilized for business purposes;
  - (iii) no individual may claim or be taken to have used more than one residence as his residence at the same time for the purposes of this Act;
  - (iv) no individuals may claim or be taken to have used more than one residence as their residence for the purposes of this Act at any time when they were husband and wife living together;
  - (v) no individual shall claim or be taken to have used a residence as a residence at any time when he was a dependant of either or both of his parents;
  - (vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of such property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;
- (d) property (being land) transferred by an individual where—
- (i) the transfer value is not more than three million shillings; or
  - (ii) agricultural property having an area of less than fifty acres where such property is situated outside a municipality, gazetted township or an area that is declared by the Cabinet Secretary, by notice in the Gazette, to be an urban area for the purposes of this Act;
- (f) property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing;

Provided that where there is a court case regarding such estate the period of transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.

- (g) property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust.

42. The income of a non-resident person who carries on the business of aircraft owner, charterer or air transport operator, from such business where the country in which such non-resident person is resident extends a similar exemption to aircraft owners, charterers or air transport operators who are not resident in such country but who are resident in Kenya.

43. The income of a registered individual retirement fund.

45. Income of the National Social Security Fund provided that the Fund complies with such conditions as may be prescribed.

45A. All contributions and other payments into and out of the Social Health Insurance Fund established under section 25 of the Social Health Insurance Act, 2023.

48. Gains arising from trade in securities listed on any securities exchange operating in Kenya by any dealer licensed under the Capital Markets Authority Act (Cap. 485A):

Provided that such securities have been held for a period not exceeding twenty-four months from the date of acquisition.

49. Interest income accrued in or derived from Kenya under financial arrangements made or guaranteed by the Export-Import Bank of the United States, an agency of the United States of America.

50. (1) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner.

(2) For the purposes of this paragraph, "pooled fund" has the meaning assigned to it under the Retirement Benefit Act, 1997).

51. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

53. Payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund, public pension scheme or National Social Security Fund, upon attainment of the retirement age determined in accordance with the rules of the fund or the scheme:

Provided that this exemption shall also apply to—

- (a) payment of gratuity;
- (aa) other allowances paid under a pension scheme;
- (b) payment of a retirement annuity; or

- (c) withdrawals from the fund prior to attaining the retirement age due to ill health; or withdraws from the fund after the twenty years from the date of registration as a member of the fund.

54. Interest income on bonds issued by the East African Development Bank.

55. The income of the National Housing Development Fund.

56. The principal sum of a registered family trust.

58. Income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1st January, 2020;

Provided that—

- (a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and
- (b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

58. Any capital gains relating to the transfer of title of immovable property to a family trust.

59. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.

60. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services:

Provided that such bonds, notes or securities shall have a maturity of at least three years.

61. Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.

62. Payments made to non-resident service providers not having a permanent establishment in Kenya in respect of services provided to a company undertaking the manufacture of human vaccines.

64. Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.

66. Dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act (Cap. 517A).

67. Dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person.

68. Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines.

69. Interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines.

70. Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme.

71. Income earned by a non-resident contractor, sub-contractor, consultant or an employee involved in the implementation of a project financed through a one hundred per cent grant under an agreement between the Government and a development partner, to the extent provided for in the Agreement:

Provided that—

- (a) the non-resident contractor, subcontractor, contractor or employee shall maintain this status for the tenure of the agreement;
- (b) any other income not directly related to the project earned by that non-resident contractor, subcontractor, consultant or employee shall be subject to tax.

72. Gains on transfer of property within a special economic zone by a licensed special economic zone developer, enterprise or operator.

73. Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person.

74. Gains on transfer of securities traded on any securities exchange licensed by the Capital Markets Authority is not chargeable to tax under section 3(2)(f).

75. Dividends paid by a company certified by the Nairobi International Financial Centre Authority where the company reinvests at least two hundred and fifty million shillings in Kenya, in that year of income.

*Second Schedule to Cap 470, which it is proposed to amend—*

## **SECOND SCHEDULE [ss. 4, 5 and 15]**

### **INVESTMENT ALLOWANCE**

#### **I. Deduction of investment allowance**

(1) Where a person incurs capital expenditure in respect of an item listed in the first column of the table, an investment allowance may be deducted in computing the gains or profits of that person at the corresponding rate specified in the second column, for each year of income—

Capital expenditure incurred	Rate of Investment Allowance
------------------------------	------------------------------

(a) Buildings

- (i) Hotel building 50% in the first year of use
- (ii) Building used for manufacture 50% in the first year of use

- (iii) Hospital buildings 50% in the first year of use
  - (iv) Petroleum or gas storage facilities 50% in the first year of use
  - (v) Residual value to item (a)(i) to (a)(iv) 25% per year, in equal instalments
  - (vi) Educational buildings including student hostels 10% per year, in equal instalments
  - (vii) Commercial building 10% per year, in equal instalments
  - (viii) Industrial Building 10%
  - (ix) Dock 10% in equal instalments
- (b) Machinery
- (i) Machinery used for manufacture 50% in the first year of use
  - (ii) Hospital equipment 50% in the first year of use
  - (iii) Ships or aircrafts 50% in the first year of use
  - (iv) Residual value items (b)(i) to (b)(iii) 25% per year, in equal instalments
  - (v) Motor vehicles and heavy earth moving Equipment 25% per year, in equal instalments Capital expenditure incurred Rate of Investment Allowance
  - (vi) Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines 25% per year, in equal instalments
  - (vii) Furniture and fittings 10% per year, in equal instalments
  - (viii) Telecommunications equipment 10% per year, in equal instalments
  - (ix) Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming 25% per year, in equal instalments
  - (x) Machinery used to undertake operations under a prospecting right 50% in the first year of use and 25% per year, in equal instalments
  - (xi) Machinery used to undertake exploration operations 50% in the first year of use and 25% per year, in equal instalments
  - (xii) Other machinery 10% per year, in equal instalments
- (c) Purchase or acquisition of an indefeasible right to use fibre optic cable or spectrum license by a telecommunication operator:
- Provided that, in the case of the spectrum license purchased or acquired before the 1st July 2025, the deduction shall be restricted to

the unamortized portion over the remaining useful life of the spectrum license. 10% per year, in equal instalments

- (d) Farmworks 50% in the first year of use and 25% per year, in equal instalments

Provided that—

- (a) in the case of change of user of a building, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate;
- (b) in respect of a hotel, educational or hospital building, the building shall be licensed by the competent authority; and
- (c) "building used for manufacture" includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;
- (d) "commercial building" includes—
  - (i) a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or
  - (ii) civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;
- (e) "machinery used for manufacture" means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes—
  - (i) generation, transformation and distribution of electricity;
  - (ii) clean-up and disposal of effluents and other waste products;
  - (iii) reduction of environmental damage;
  - (iv) water supply or disposal;
  - (v) maintenance of the machinery; or
  - (vi) scientific research and development;
- (f) "manufacture" means the refining or making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy, or the transformation and distribution of electricity, but does not include design, storage, transport, administration or any other ancillary activity;
- (g) civil works include—
  - (i) roads and parking areas;
  - (ii) railway lines and related structures;
  - (iii) water, industrial effluent and sewerage works;

- (iv) communications and electrical posts and pylons and other electrical supply works;
  - (v) security walls and fencing; and
  - (vi) earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures
- (h) "Farm works" means farmhouses, labour quarter, any other immovable building necessary for the proper operation of the farm, fences, dips, drains, water and electricity supply works and other works necessary for the proper operation of the farm.
- (i) "dock" includes a container terminal berth, harbour, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation;
- (j) "industrial building" includes a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking;
- (k) "machinery used for agriculture" means machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting;
- (l) "telecommunications equipment" includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.

(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent where—

- (a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least one billion shillings:

Provided that where the cumulative value of investment for the preceding three years of income was one billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least one billion shillings;

- (b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or
- (c) the person has incurred investment in a special economic zone.

(1B) Paragraph (1A) shall apply to items listed under paragraphs 1(1)(a)(i) and (ii), and 1(b)(i).

## 2. Calculation of written down or residual value

The written down or residual value of each item referred to in paragraph 1 shall be calculated separately, and shall be the balance of capital expenditure taking into account the sale of the item after deducting investment allowance.

## 3. Treatment of excess or deficit of realised amounts

Where the amount realised from the sale of an item referred to in paragraph 1 exceeds the written down or residual value, the excess shall be treated as a trading receipt or, conversely, a trading loss for the year of income.

## 4. Balancing charge or deduction on cessation of business

(1) Where an investment allowance has been deducted under paragraph 1 in computing the gains or profits of a person and that person ceases to carry on business for the purposes of which the item was used and the item ceases to be owned by him, a balancing charge or balancing deduction shall be made or allowed for the year of income in which he ceased to carry on business.

(2) Where the person referred to in subparagraph (1) is a partnership, the person shall be deemed to have ceased to carry on business only when all the partners cease to carry on that business.

(3) Where the items are sold by a liquidator of a company, the balancing charge or balancing deduction shall be made or allowed in the year of income in which the winding up commenced.

(4) Where on cessation of a business, a balancing charge or balancing deduction is to be made or allowed under this paragraph and –

- (a) the consideration received exceeds the residual value at the time of cessation, the balancing charge shall be the excess amount or, where the residual value is nil, the consideration received; or
- (b) a consideration is not received by the person who owns the items, or the residual value at the time of the cessation exceeds the consideration received, the balancing deduction shall be the residual value at the time of cessation, or the excess thereof over the consideration received.

## 5. Determination of market value of items used in a business

Where an item is brought into use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or amount realized shall be deemed to be the market value.

## 6. Restriction on capital expenditure on motor vehicles

(1) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle, other than a commercial vehicle, that capital expenditure shall be restricted to three million shillings.

(2) Where the motor vehicle referred to in subparagraph (1) is sold, the sale price shall be deemed to be the proportion of the proceeds of sale, having regard to the original purchase price and three million shillings.

#### 7. Limitation on capital expenditure on buildings

Capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, land.

#### 8. Ascertainment of capital expenditure on buildings

(1) Where a building is used partly for purposes other than the purposes specified in paragraph 1, the capital expenditure on which the deduction in respect of the building is calculated shall be the expenditure attributable to that portion of the building which is used for those purposes, but where the expenditure attributable exceeds ninety per cent of the total expenditure incurred on the construction of the building the whole building shall be treated as used for the specified purposes.

(2) Where an existing building is extended by further construction, the extension shall be treated as a separate building.

(3) Where capital expenditure is incurred on the construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.

(4) Where a person purchases the building referred to in subparagraph (3), that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the amount paid by him, whichever is lesser.

(5) Where the building referred to in subparagraph (3) is sold more than once before it is used, subparagraph (4) shall apply but only in relation to the last sale.

(6) Where a building referred to in subparagraph (3) is sold by a person carrying on a business of construction for sale, the qualifying capital expenditure shall be the price paid on the sale.

#### 9. Expenditure incurred for a person

Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.

*Third Schedule to Cap.470, which it is proposed to amend—*

### **THIRD SCHEDULE [ss. 29, 30, 31, 32, 33, 34 and 35]**

#### **RATES OF PERSONAL RELIEFS AND TAX**

##### **HEAD B — RATES OF TAX**

2. The corporate rate of tax shall be—

(a) in the case of a resident company—

Rate in each twenty shillings

- (i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1990 9.00
- (ii) for the year of income 1990 8.50
- (iii) for the year of income 1991 8.00
- (iv) for the year of income 1992 7.50
- (v) for the year of income 1993 upto and including the year of income 1997 7.00
- (vi) for the year of income 1998 up to and including the year of income 1999 6.50
- (vii) for the year of income 2000 and each subsequent year of income 6.00
- (viii) for the year of income 2020 and each subsequent year of income 5.00
- (ix) for the year of income 2021 and each subsequent year of income. 6.00

Provided that this provision shall apply to the income earned from the 1st January, 2021.

Provided that for a resident company with an accounting period ending between the 1st July, 1994 and the 30th June, 1995 the corporation rate of tax shall be increased by one-half shilling in each twenty shillings

(b) In the case of a non-resident company having a permanent establishment in Kenya—

Rate in each twenty shillings

- (i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1989 10.50
- (ii) for the year of income 1990 10.00
- (iii) for the year of income 1991 9.50
- (iv) for the year of income 1992 and each subsequent year of Income 9.00
- (v) for the year of income 1993 up to and including the year of income 1997 8.50
- (vi) for the year of income 1998 up to and including 1999 8.00

(vii) for the year of income 2000 and each subsequent year of income 7.50

(viii) for the year of income 2024 and each subsequent year of income 6.00

Provided that for a non-resident company having a permanent establishment in Kenya with an accounting period ending between the 1st July, 1994 and the 30th June, 1995, the corporation rate of tax shall be increased by one-half shilling in each twenty shillings—

- (f) an export processing zone enterprise which does not engage in any commercial activities shall be exempted from paying any corporation tax for a period of ten years commencing with the year in which production, sales or receipts relating to the activities for which that enterprise has been licensed as an export processing zone enterprise commence; but the corporation rate of tax will be twenty-five per cent for the period of ten years commencing immediately thereafter:

Provided that for purposes of this subparagraph, "commercial activities" includes trading in, breaking bulk, grading, repacking or relabeling of goods and industrial raw materials.

- (h) in the case of a special economic zone enterprise, whether the enterprise sells its products to markets within or outside Kenya developer and operator, ten per cent for the first ten years from date of first operation and thereafter fifteen per cent for another ten years;
- (i) in the case of a company that constructed at least four hundred residential units annually, fifteen per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing,

Provided that where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of fifteen per cent shall be applied proportionately to the extent of the turnover arising from the housing activity.

- (j) in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations:

Provided that—

- (i) the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles; and
- (ii) in this paragraph, "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

- (m) in respect of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax specified

in the Agreement shall continue to apply for the unexpired period as provided under the Agreement;

- (n) in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations;
- (na) in respect of a company certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations and twenty per cent for the subsequent ten years of its operation where—
  - (i) the company invests at least three billion shillings in Kenya in the first three years of operation;
  - (ii) the company is a holding company, at least seventy per cent of its employees in senior management are citizens of Kenya; and
  - (iii) the regional headquarters of the company is in Kenya, at least sixty per cent of its employees in senior management are citizens of Kenya;
- (nb) in the case of a start-up certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first three years and twenty per cent for the succeeding four years;
- (o) in respect of a company operating a shipping business in Kenya, fifteen per cent for the first ten years from the year of commencement of its operations;
- (p) in respect of a company undertaking the manufacture of human vaccines, ten per cent.

3. The non-resident tax rates shall be—

- (a) in respect of management or professional fees or training fees, consultancy, agency or contractual fee, twenty per cent of the gross sum payable:

Provided that—

- (i) the rate applicable to any payments made by Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable;
  - (ii) the rate applicable to the citizen of the East African Community Partner States in respect of consultancy fee shall be fifteen per cent of the gross sum payable;
- (b) in respect of a royalty or natural resource income, twenty per cent of the gross amount payable;

Provided that the rate applicable to any royalty paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable;

- (c) (i) in respect of a rent premium or similar consideration for the use or occupation of immovable property, thirty per cent of the gross amount payable;
- (ii) in respect of a rent, premium or similar consideration for the use of property other than immovable property, fifteen per cent of the gross amount payable;
- (d) in respect of a dividend, fifteen per cent of the amount payable;

Provided that the rate applicable to citizens of the East African Community Partner States in respect of dividend shall be five per cent of the gross sum payable;

- (e) (i) in respect of interest arising from a Government bearer bond of at least two years duration and interest and deemed interest, discount or original issue discount, fifteen per cent of the gross sum payable;
- (ia) in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount, seven and a half per cent of the gross sum payable;
- (ii) in respect of interest, arising from bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent of the gross amount payable;
- (iii) in respect of interest paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident persons, 5% of the gross amount payable.
- (f) in respect of a pension or retirement annuity, five per cent of the gross amount payable;
- (g) in respect of an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience, twenty per cent of the gross amount payable;
- (h) in respect of an activity by way of supporting, assisting or arranging any appearance or performance mentioned in subparagraph (g) of this paragraph, twenty per cent of the gross amount payable;
- (i) in respect of withdrawals made by punters, five percent;
- (ia) in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount, seven and a half per cent of the gross sum payable;

- (k) in respect of gains or profits from the business of a ship-owner which is chargeable to tax under section 9(1) of the Act, two and a half per cent of the gross amount received;
- (l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication which is chargeable to tax under section 9(2), five per cent of the gross amount received;
- (n) in the case of a special economic zones enterprise, developer and operator in respect of payments other than dividends made to non-residents at the rate of ten per cent;
- (p) an insurance or reinsurance premium, five per cent of the gross amount payable;
- (q) in the case of sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services) twenty per cent of the gross amount;  
Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens;
- (r) in the case of gains from financial derivatives, fifteen per cent of such gains;
- (s) in the case of repatriated income under section 7B, fifteen per cent;
- (t) in the case of digital content monetisation, twenty per cent of the gross amount;
- (u) in respect of a payment made by a public entity for supply of goods to the public entity, five per cent;
- (v) in respect of income deemed to have accrued in or been derived from a digital marketplace, twenty per cent.

5. The resident withholding tax rates shall be—

- (a) in respect of a dividend, fifteen per cent of the amount payable;
- (b) in respect of interest, discount or original issue discount arising from—
  - (i) bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent;
  - (ii) Government Bearer Bond of at least two years duration and other sources, fifteen per cent;
  - (iii) bearer bonds with a maturity of ten years and above, ten per cent of the gross amount payable, of the gross amount payable;
- (c) in respect of a commission or fee, paid or credited by an insurance company to any person for the provision, whether directly or

indirectly, of an insurance cover to any person or group of persons, five per cent of the gross amount payable to brokers, and ten per cent of the gross amount payable to brokers, and ten per cent of the gross amount payable to all others;

- (ii) in respect of a withdrawal before the expiry of twenty years from the date of joining the fund made from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year—

On all income over KShs. 388,000 30%

- (iii) in respect of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds, thirty per cent of the gross sum payable;
- (e) in respect of a qualifying dividend, five per cent of the amount payable which is a final tax;
- (f)
  - (i) in respect of management or professional fee or training fee, other than contractual fee, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount payable;
  - (ii) in respect of contractual fee the aggregate value of which is twenty-four thousand shillings in a month or more, three per cent of the gross amount payable;
- (g) in respect of a royalty or natural resource income, five per cent of the gross amount payable;
- (h) in respect of qualifying interest—
  - (i) ten per cent of the gross amount payable in the case of housing bonds; and
  - (ii) twenty per cent of the gross amount payable in the case of bearer instrument; and
  - (iii) fifteen per cent of the gross amount payable in any other case;

Provided that the tax paid under this paragraph is a final tax.

- (i) in respect of withdrawals made by punters, five percent;
- (j) deleted by Act No. 38 of 2016, s. 17(e)(ii);
- (ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, seven point five percent of the gross amount payable;
- (jb) in respect to the disbursement of deemed income to beneficiaries under section 11(3)(c) the rate of twenty five percent;

- (l) in respect of payments for sales promotion, marketing, advertising services, five per cent of the gross amount;
- (m) in respect of payments relating to digital content monetisation, five per cent;
- (n) in respect of a payment made by a public entity for supply of goods to the public entity, zero point five per cent;
- (o) in respect of income deemed to have accrued in or been derived from a digital marketplace, five percent.
- (p) deleted by Act No. 9 of 2025, s. 30(d)(iv).

7. The rate of presumptive income tax in respect of agricultural produce under subsection (1) of section 17A shall be two per cent of the gross amount of payment or the gross value of export.

8. The rate of advance tax under section 12A shall be—

- (a) for vans, pick-ups, trucks, prime movers, trailers and lorries, two thousand five hundred shillings per tonne of load capacity per year or five thousand shillings per year, whichever is higher;

Provided that advance tax shall not be imposed on the tractors or trailers used for agricultural purposes;

- (b) for saloons, station-wagons, mini-buses, buses and coaches, one hundred shillings per passenger capacity per month or five thousand shillings per year, whichever is higher;

9. The rate of turnover tax shall be one point five percent of the gross receipts of the business of a taxable person under section 12C.

10. The rate of tax in respect of residential rental income shall be seven point five percent of the gross rental receipts of a taxable resident person under section 6A.

*Eighth Schedule to Cap.470, which it is proposed to amend—*

#### **EIGHTH SCHEDULE [ss. 3 and 15]**

### **ACCRUAL AND COMPUTATION OF GAINS FROM PROPERTY OTHER THAN INVESTMENT SHARES TRANSFERRED BY INDIVIDUALS**

#### **2. Taxation of gains**

Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is—

- (a) the whole of the gains which accrued to a company, an individual or partnership on or after the 1st January, 2015, on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015, or

- (b) gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the three hundred and sixty-five days preceding the alienation, the shares or comparable interests derived more than twenty per cent of their value directly or indirectly from immovable property situated in Kenya, or
- (c) gains, other than those to which subparagraph (a) applies, derived from the alienation of shares of a company resident in Kenya if the alienator, at any time during the three hundred and sixty-five days preceding such alienation, held directly or indirectly at least twenty per cent of the capital of that company:

Provided that for the purposes of this paragraph, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least twenty per cent in the underlying ownership of the property.

*Ninth Schedule to Cap.470, which it is proposed to amend—*

#### **NINTH SCHEDULE [s. 23]**

#### **TAXATION OF EXTRACTIVE INDUSTRIES**

##### **PART II — MINING OPERATIONS**

##### **2. Taxation of licenses**

(1) A licensee is subject to tax in accordance with this Act but subject to the modifications in this Schedule.

(2) Where there is any inconsistency between this Schedule and any other provision of this Act regarding the taxation of a licensee, this Schedule shall prevail.

(3) The corporate rate specified under paragraph 2 of Head B of the Third Schedule shall be the rate of income tax applicable to a licensee that is a company.

##### **7. Taxation of contractors**

(1) A contractor is subject to tax in accordance with this Act but subject to the modifications in this Schedule.

(2) If there is any inconsistency between this Schedule and any other provision the Act, in relation to the taxation of a contractor, this Schedule shall prevail.

(3) The rate of income tax applicable to a contractor is—

- (a) in the case of a resident company, thirty per cent; or
- (b) in the case of a non-resident company, thirty seven and a half per cent.

*Section 2 of Cap.476, which it is proposed to amend—*

#### **Interpretation**

"assessment" means—

- (a) a self-assessment return submitted under section 45;
- (b) an assessment made by the Commissioner under section 45; or
- (c) an amended assessment under section 46;

"information technology" means any equipment or software for use in storing, retrieving, processing or disseminating information;

"tax computerized system" means any software or hardware for use in storing, retrieving, processing or disseminating information relating to tax;

*Section 13 of Cap.476, which it is proposed to amend—*

**Taxable value of supply**

(1) Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be—

- (a) the consideration for the supply; or
- (b) if the supplier and recipient are related, the open market value of the supply.

(3) Subject to subsections (4) to (6), the consideration for a supply, including a supply of imported services, shall be the total of—

- (a) the amount in money paid or payable, directly or indirectly, by any person, for the supply; or
- (b) the open market value at the time of the supply of an amount in kind paid or payable, directly or indirectly, by any person, for the supply; and
- (c) any taxes, duties, levies, fees, and charges (other than value added tax) paid or payable on, or by reason of the supply, reduced by any discounts or rebates allowed and accounted for at the time of the supply.

(4) The consideration for a supply shall include the amount charged for—

- (a) any wrapper, package, box, bottle, or other container in which goods are supplied;
- (b) any other goods contained in or attached to the wrapper, package, box, bottle or other container referred to in paragraph (a); or
- (c) any liability that the purchaser has to pay to the vendor by reason of or in respect of the supply in addition to the amount charged as price.

(5) In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client:

Provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.

(6) The consideration for a supply shall not include—

- (a) in the case of a supply of goods under a hire purchase agreement, any financial charge payable in relation to a supply of credit under the agreement; or
- (b) any interest incurred for the late payment of the consideration for the supply.

(7) The consideration for a supply of accommodation or restaurant services shall not include the Tourism Levy imposed on the supply under the Tourism Act (Cap. 381), any service charge paid in lieu of tips:

Provided that this subsection shall only apply in respect of service charge where—

- (a) the service charge is distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employee; and
- (b) the service charge does not exceed ten per cent of the price of the service, excluding such service charge.

(8) For the purposes of this Act, a person is related to another person if—

- (a) either person participates, directly or indirectly, in the management, control or the capital of the business of the other;
- (b) a third person participates, directly or indirectly, in the management, control or capital of the business of both; or
- (c) an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.

*Section 31 of Cap.476, which it is proposed to amend—*

#### **Refund of tax on bad debts**

(1) Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax on that supply and that person—

- (a) has not received any payment from the person liable to pay the tax, he may, after a period of two years from the date of the supply; or
- (b) the person to whom the supply was made has been placed under statutory management through the appointment of an administrator, receiver, or liquidator, he may apply to the Commissioner for refund of the tax involved:

Provided that—

- (a) no application for a refund shall be made under this section after the expiry of ten years from the date of supply;
- (b) the refund shall be made in compliance with section 47(5) of the Tax Procedures Act
- (c) the amounts may be credited to the taxpayer's record for use against future value added tax liabilities;
- (ca) the amount may be used to offset any other value added tax liability, upon approval by the Commissioner.

(2) Where the tax refunded under subsection (1) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within thirty days of the date of the recovery.

(3) If payment is not made within the time specified under subsection (2), an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable:

Provided that the interest payable shall not exceed one hundred per cent of the refunded amount.

*Section 42 of Cap.476, which it is proposed to amend—*

#### **Tax invoice**

(1) Subject to subsection (2), a registered person who makes a supply shall, at the time of the supply furnish the purchaser with the tax invoice containing the prescribed details for the supply.

(2) No invoice showing an amount which purports to be tax shall be issued on any supply—

- (a) which is not a taxable supply; or
- (b) by a person who is not registered.

(3) Any person who issues an invoice in contravention of this subsection commits an offence and any tax shown thereon shall become due and payable to the Commissioner within seven days of the date of the invoice.

(4) A registered person shall issue only one original tax invoice for a taxable supply, or one original credit note or debit note, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.

*Section 66 of Cap.476, which it is proposed to amend—*

#### **Tax avoidance schemes**

(1) Notwithstanding anything in this Act, if the Commissioner is satisfied that—

- (a) a scheme has been entered into or carried out;

- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit, the Commissioner may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out.

(2) If a determination is made under subsection (1), the Commissioner shall issue an assessment giving effect to the determination.

(3) A determination under subsection (1) shall be made within five years from the last day of the tax period to which the determination relates.

(4) In this section—

"scheme" includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable; and "tax benefit" means—

- (a) a reduction in the liability of a person to pay tax;
- (b) an increase in the entitlement of a person to a deduction for input tax;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of tax;
- (e) an acceleration of an entitlement to a deduction for input tax;
- (f) any other advantage arising because of a delay in payment of tax or an acceleration of the entitlement to a deduction for input tax;
- (g) anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import, as the case may be; or
- (h) anything that gives rise to a deduction for input tax for an acquisition or import that is used or is intended to be used other than in making taxable supplies.

*First Schedule to Cap.476, which it is proposed to amend—*

### **FIRST SCHEDULE [s. 2(1)]**

#### **EXEMPT SUPPLIES**

#### **PART I – GOODS**

#### **SECTION A**

The supply or importation of the following goods shall be exempt supplies

49. All goods and parts thereof of chapter 88;

51. Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects excluding fuels, lubricants and

tyres for vehicles upon approval by the Cabinet Secretary responsible for the National Treasury.

58. Direction-finding compasses, instruments and appliances for aircraft.

62. Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills.

89. Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

99. Goods imported by passengers arriving from places outside Kenya, subject to the limitations and conditions specified as follows—

- (a) the goods shall be —
  - (i) the property of and accompanying the passenger;
  - (ii) for the personal or household use of the passenger in Kenya; and
  - (iii) of such kinds and in such quantities as the proper officer may allow;
- (b) notwithstanding subparagraph (c), the following goods shall not be exempt under this item—
  - (i) alcoholic beverages of all kinds, perfumed spirits and tobacco and manufactures thereof, except as provided in subparagraphs (f) and (g);
  - (ii) fabrics in the piece;
  - (iii) motor vehicles except, as provided in subparagraphs (c) and (d); and
  - (iv) any trade goods, or goods for supply or disposal to other persons;
- (c) subject to subparagraphs (a) and (b), the following goods may be exempted under this item when imported as baggage by a person on first arrival or by a returning resident of Kenya whom the proper officer is satisfied is bona fide changing residence from a place outside Kenya to a place within Kenya—
  - (i) wearing apparel;
  - (ii) personal and household effects of any kind which were in his personal or household use in his former place of residence; and
  - (iii) one motor vehicle, (excluding buses and minibuses of a seating capacity of more than 13 passengers and load-carrying vehicles of a load carrying capacity exceeding two tones) which the passenger has

personally owned and used outside Kenya for at least twelve months (excluding the period of the voyage in the case of shipment);

Provided—

- (i) the person has attained the age of eighteen years; and
- (ii) where the person has previously been granted exemption under this paragraph, any subsequent exemption shall not apply unless such person has used the motor vehicle so imported into Kenya for a period of not less than four years, and tax has been paid for the motor vehicle upon which exemption had previously been granted;
- (iii) where the returning resident has owned and used a left-hand drive vehicle for at least twelve months the person may sell the vehicle and import a right hand drive vehicle of whose current retail selling price does not exceed that of the previously owned lefthand- drive vehicle, subject to the following conditions —
  - (A) the person shall provide proof of ownership and use of the previously owned left-hand-drive vehicle in the country of former residence for a period of at least one year prior to the return;
  - (B) the person shall provide proof of disposal of the previously owned left-handdrive vehicle before changing residence; and
- (iv) subparagraph (iii) shall only apply to residents returning from countries that operate Left Hand Drive motor vehicles;
- (d) subject to subparagraphs (a) and (b) the following goods may be exempted under this item when imported as baggage by a person whom the proper office is satisfied is making a temporary visit not exceeding three months to Kenya—
  - (i) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;
  - (ii) consumable provisions and non-alcoholic beverages, in such quantities and of such kinds as are, in the opinion of the proper officer, consistent with his visit; and
  - (iii) goods imported by a returning resident, being an employee of an international organization the headquarters of which are in Kenya, and who has been recalled for consultations at the organization's headquarters;
- (e) subject to subparagraphs (a) and (b), the following goods may be exempted under this item imported as baggage by a person who the proper officer is satisfied is a resident of Kenya returning from a visit outside Kenya and who is not changing residence in accordance with subparagraphs (c) and (d)—
  - (i) wearing apparel;

- (ii) personal and household effects which have been in his personal or household use.
- (f) subject to subparagraph (a) and (b), tax shall not be levied on the following goods imported by, and in the possession of a passenger—
  - (i) spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
  - (ii) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume; and
  - (iii) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grams in weight:

Provided that the tax free allowance under this subparagraph shall be granted only to passengers who have attained the age of eighteen years;

- (g) subject to subparagraphs (a) and (b)—
  - (i) the exemption granted in accordance with subparagraphs (c), (d) and (e) may be allowed in respect of baggage imported within ninety days of the date, of arrival of the passenger or such further period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow; and
  - (ii) the tax free allowances granted in accordance with subparagraph (f) shall not be allowed in respect of goods specified in the paragraph imported in unaccompanied baggage;
- (h) where any person who has been granted exemption under subparagraphs (c) or (d) changes his residence to a place outside Kenya within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period, not exceeding sixty days from the date he changes such residence to a place outside Kenya, as the Commissioner may allow, otherwise tax shall become due and payable from the date of importation; and
  - (i) subject to paragraphs (1) and (2), goods up to the value of three hundred United States Dollars for each traveller in respect of goods, other than goods referred to in paragraph (9), shall be exempted when imported by the traveller in his or her accompanied baggage, or upon his or her person and declared by him or her to an officer, provided that the person has been outside Kenya for a period in excess of twenty-four hours.

109. Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

153. The supply of denatured ethanol of tariff number 2207.20.00.

## PART II — SERVICES

The supply of the following services shall be exempt supplies —

1. The following financial services—

- (b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;

25. The services of tour operators, excluding in-house supplies.

26. Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

*Second schedule to Cap.476, which it is proposed to amend—*

## SECOND SCHEDULE [s. 7(2)]

### ZERO-RATING

#### PART A – ZERO RATED SUPPLIES

Where the following supplies, excluding hotel accommodation, restaurant or entertainment services where applicable, take place in the course of a registered person's business, they shall be zero rated in accordance with the provisions of section 7—

11. Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.

21. Transportation of sugarcane from farms to milling factories.

29. The supply of locally assembled and manufactured mobile phones.

30. The supply of motorcycles of tariff heading 8711.60.00.

31. The supply of electric bicycles.

32. The supply of solar and lithium-ion batteries.

33. The supply of electric buses of tariff heading 87.02.

34. Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.

35. Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).

*Section 2 of Cap.472, which it is proposed to amend—*

#### Interpretation

(1) In this Act, unless the context otherwise requires—

"import" means to bring or cause goods to be brought into Kenya from a foreign country, a specialeconomic zone or an export processing zone;

*Section 6 of Cap. 472, which it is proposed to amend—*

#### **Timing of liability for excise duty**

(1) The liability of a licensed manufacturer for excise duty on excisable goods manufactured in Kenya shall arise at the time of removal of the goods from the manufacturer's factory.

(2) For the purposes of this Act, excisable goods that are consumed in a licensed manufacturer's factory shall be treated as removed from the factory at the time of consumption.

(3) The liability of a licensed person for excise duty on excisable services shall arise at the time of the supply of the services.

(4) The liability of an importer for excise duty on excisable goods imported into Kenya shall arise—

(a) for petroleum products, at the time of importation or such other time as may be specified by the Cabinet Secretary by notice in the gazette; or

(b) for any other excisable goods, at the time of importation.

(5) A licensed person shall pay the liability for excise duty arising under subsection (1) or (3), as the case may be, in accordance with section 36.

(6) An importer shall discharge the liability for excise duty referred to in subsection (4) in accordance with section 36.

*Section 36 of Cap.472, which it is proposed to amend—*

#### **Payment of excise duty**

(1) The excise duty payable by a licensed manufacturer in respect of excisable goods removed from a manufacturer's factory during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(1A) Despite subsection (1), in the case of a licensed manufacturer of alcoholic beverages, excise duty shall be payable to the Commissioner within by the fifth day of the following month upon removal of the goods from the stockroom.

(2) The excise duty payable by a supplier of excisable services in respect of supplies of excisable services made by the supplier during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(3) The excise duty payable by an importer in respect of the importation of excisable goods into Kenya shall be paid to the Commissioner at the time of importation.

(4) For the purpose of assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African Community Customs Management Act, 2004 shall apply as if excise duty were customs duty:

Provided that—

- (a) the Tax Procedures Act (Cap. 469B), shall apply with regard to imposition of interest and penalties; and
- (b) in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

(5) The Commissioner shall pay into the Sports, Arts and Social Development Fund established under the Public Finance Management Act (Cap. 412A), to support social development including universal health care sixteen percent of the excise duty paid in respect of money transfer by cellular phone service providers.

*First Schedule to Cap. 472, which it is proposed to amend—*

### **FIRST SCHEDULE [s. 5(2)]**

#### **RATES OF EXCISE DUTY**

##### **Part I – EXCISABLE GOODS**

1. Subject to paragraph 2, the rates of excise duty on excisable goods are as set out in the following table:

Imported cellular phones	10%
Fruit juices (including grape must), and vegetable juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Shs. 14.14 per litre
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices.	Shs. 6.41 per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KSh. 22.50 per centilitre of pure alcohol:

Provided that, Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with nonalcoholic beverages and spirituous beverages manufactured by licensed small independent brewers shall be subject to the rate of "KSh 10 per centilitre of pure alcohol;

Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes Shs. 16,260.29 per kg

Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences Shs. 11,382.48 per kg

Imported sugar confectionary of tariff heading 17.04: KSh. 85.82 per kg

Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90 10%

Imported Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of tariff heading 6910 5% of custom value or KSh. 50 per kg

Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin 30%

Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin 25% or KSh. 200 per kilogramme, whichever is higher

Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin 25% or Ksh 200 per kilogramme, whichever is higher

Imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin 15% Imported Ceramic

Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7005 but excluding those imported by a registered processor upon the recommendation by the Cabinet Secretary responsible for matter relating to industry and those originating from East African Community Partner States that meet the East African Community Rules of Origin 35% of excisable value or Ksh 500 per square meter whichever is higher.

Imported other self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.

Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.

Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African

Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher

Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallylesters or other polyesters of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Ksh. 200 per Kilogramme, whichever is higher

Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.

Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Ksh. 200 per Kilogramme, whichever is higher.

Gummed paper and paperboard of tariff number 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 25% of excisable value or Ksh. 200 per Kilogramme, whichever is higher.

Imported Uncoated kraft paper and paperboard, in rolls or sheets; kraftliner; unbleached of tariff number 4804.11.00 but excluding those originating from East

African Community Partner States that meet the East African Community Rules of Origin 25% of excisable value or kshs.50 per kilogramme, whichever is higher.

Imported other kraft paper or paperboard weighing 150g/m<sup>2</sup> or less, in rolls or sheets; unbleached of tariff number 4804.31.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin 25% of excisable value or kshs.50 per Kilogram, whichever is higher

Imported other kraft paper or paperboard weighing more than 150g/m<sup>2</sup> but less than 225g/m<sup>2</sup>, in rolls or sheets; unbleached of tariff number 4804.41.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin 25% of excisable value or kshs.50 per Kilogram, whichever is higher.

Imported Glass of heading 70.03, 70.04 or 70.05, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials of Tariff Heading 70.06, but excluding those from East Africa Community Partner States that meet the East Africa Community Rules of Origin. 35% of excisable value or Kshs. 500 per square metre, whichever is higher

Imported safety glass of tariff numbers 7007.19.00 and 7007.29.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. 35% of excisable value or Kshs. 500 per squaremetre, whichever is higher

Imported Multiple-walled insulating units of glass of Tariff Heading 70.08, but excluding those from East Africa Community Partner States that meet the East Africa Community Rules of Origin 35% of excisable value or Kshs. 500 per squaremetre, whichever is higher

Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages. Ksh. 500 per litre

#### Part II — EXCISABLE SERVICES

4A. Excise duty on betting shall be five percent on the amount deposited into a customer's betting wallet:

Provided that this paragraph shall not apply to horse racing.

4B. Excise duty on gaming shall be five per cent on the amount deposited into a customer's gaming wallet.

9. Excise duty on fees charged on virtual assets transactions by virtual asset providers shall be ten percent of the excisable value.

#### PART III — INTERPRETATION OF SCHEDULE

"amount deposited into a customer's betting wallet" means the amount of money transferred by a customer into the customer wallet maintained by a licensed betting and gaming operator for betting and gaming purposes;

*Second schedule to Cap.472, which it is proposed to amend—*

#### SECOND SCHEDULE [s. 7(1)(a)]

#### EXEMPT EXCISABLE GOODS AND SERVICES

##### PART A — EXEMPT EXCISABLE GOODS

The following excisable goods shall be exempt from excise duty when purchased before clearance through Customs or removal from excise control—

11. All goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces, the Defence Forces Welfare Services and the National Police Service.

*Section 3 of Cap.469B, which it is proposed to amend—*

#### Interpretation

(1) In this Act, except where when the context otherwise requires—

"certificate of origin" means an official document issued by a competent authority of the government of the source country which certifies that the goods being imported into Kenya were manufactured in that particular source country;

*Section 6A of Cap.469B, which it is proposed to amend—*

### **International tax agreements**

(1) Any multilateral agreements and treaties that have been entered into by or on behalf of the Government of Kenya relating to international tax compliance and prevention of evasion of tax or exchange of information on tax matters shall have effect in the manner stipulated in such agreements or treaties.

(2) Notwithstanding any other provision of this Act or any other written law, the information obtained pursuant to agreements specified under subsection (1) shall not be disclosed except in accordance with the conditions specified in the agreements.

(3) Any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.

(4) A provision in any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya, or made pursuant to such agreement or treaty, relating to the imposition of import duty on—

- (a) imported steel billets of tariff heading 7207.11.00; and
- (b) imported wire rods of tariff headings 7213.91.00 and 7213.91.90.

shall not apply for a period of two years from the commencement of this subsection, or for such other longer period as the Cabinet Secretary may, by notice in the Gazette, prescribe.

*Section 10 of Cap. 469B, which it is proposed to amend—*

### **Deregistration**

(1) A person who ceases to be required to be registered for the purposes of a tax law shall apply to the Commissioner for deregistration under that specific tax law.

(2) A registered person shall apply for deregistration under subsection (1)—

- (a) in the prescribed form; and
- (b) within thirty days of ceasing to be required to be registered under that tax law.

(3) Where a tax law requires a registered person to apply for deregistration in addition to the requirement under this section, that person shall also apply for deregistration in accordance with the provision of that tax law.

(4) The Commissioner shall notify in writing a registered person of the deregistration of that person if the Commissioner is satisfied that the person is no longer required to be registered for the purpose of a tax law.

(5) The Commissioner may, on his or her own motion and by notice in writing to a person or a person's tax representative, deregister the person when satisfied that the person is eligible for deregistration, including when the person is a natural person who has died, a company that has been liquidated, or any other person that has otherwise ceased to exist.

(6) A person shall cease to be a registered person on the date of notification by the Commissioner in relation to the deregistration.

(7) Where the Commissioner fails to respond to the application for deregistration within six months, the applicant shall be deemed to be deregistered.

(8) Where the deregistration of a person requires the cancellation of that person's registration or licence under a tax law, that registration or licence shall be cancelled on the effective date of the deregistration.

*Section 12 of Cap. 469B, which it is proposed to amend—*

**Issue of a PIN**

(1) The Commissioner shall issue a PIN to a person registered under section 8.

(2) A registered person shall use a PIN for the purposes of all tax laws and a registered person shall be issued with only one PIN at any time.

(3) A person who has not been registered under section 8 but who requires a PIN for the purposes of a transaction specified in the First Schedule may apply to the Commissioner for a PIN.

(4) An application for a PIN under subsection (3) shall be—

- (a) in the prescribed form; and
- (b) accompanied by documents that the Commissioner may require, including documents of identity or registration.

(5) The Commissioner shall issue a PIN to an applicant under subsection (3) if the Commissioner is satisfied that the applicant requires a PIN for the purposes of a transaction specified in the First Schedule.

(5A) The Commissioner may, upon receipt of an application made by or on behalf of any person or class of persons, exempt such person or class of persons from the requirement for a PIN for any of the transactions specified in the First Schedule.

(6) A PIN is issued to a person when the Commissioner notifies that person in writing of the issuance of the PIN.

*Section 37E of Cap.469B, which it is proposed to amend—*

**Commissioner to refrain from recovering interest, penalties or fines**

(1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest or fines on tax debt where a person shall have paid all the principal tax due before the 31st December, 2023.

(2) Where all the principal tax due shall not have been paid before the 31st December, 2023, the person from whom the tax is due shall apply to the Commissioner for an amnesty of interest, penalties or fines on the unpaid tax, and propose a payment plan for the outstanding amount.

(3) For the purposes of subsection (2)—

- (a) the amnesty shall be on interest, penalties or fines on the unpaid tax that have accrued up to the 31st December, 2023;
- (b) the amnesty shall only be granted once, if the person—
  - (i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th June, 2025;
  - (ii) does not incur a further tax debt; and
  - (iii) gives a written undertaking for the settlement of all outstanding taxes that the person may owe.

(4) Despite subsection (2), where a person has paid part of the principal tax due as on the 31<sup>st</sup> December, 2023, and has been granted amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June, 2025, shall attract interest and penalties for which no amnesty shall be granted.

*Section 39A of Cap.469B, it is proposed to amend—*

#### **Penalty for failure to deduct or withhold tax**

(1) Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

(2) Despite subsection (1), a person who does not deduct, withhold or remit tax on a payment shall not be required to pay the principal tax not deducted, withheld or remitted where the recipient of the payment has paid and accounted for the full principal tax and the tax not deducted, withheld or remitted.

*Section 42 of Cap.469B, which it is proposed to amend—*

#### **Power to collect tax from person owing money to a taxpayer**

(1) This section applies when a taxpayer or a non-resident person who is subject to tax in Kenya is, or will become liable to pay a tax and —

- (a) the tax is unpaid tax; or

- (b) the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for the payment of the tax.

(2) The Commissioner may, in respect of the taxpayer or the non-resident person who is subject to tax in Kenya and by notice in writing, require a person (referred to as the "an agent")—

- (a) who owes or may subsequently owe money to the taxpayer or the non-resident person who is subject to tax in Kenya;
- (b) who holds or may subsequently hold money, for or on account of, the taxpayer or the non-resident person who is subject to tax in Kenya;
- (c) who holds or may subsequently hold money on account of some other person for payment to the taxpayer or the non-resident person who is subject to tax in Kenya; or
- (d) who has authority from some other person to pay money to the taxpayer or the non-resident person who is subject to tax in Kenya, to pay the amount specified in the notice to the Commissioner, being an amount that shall not exceed the amount of the unpaid tax or the amount of tax that the Commissioner believes will not be paid by the taxpayer or the non-resident person who is subject to tax in Kenya by the due date.

(3) When a notice served under subsection (2) requires an agent to deduct a specified amount from a payment of a salary, wages or other similar remuneration payable at fixed intervals to the taxpayer or the non-resident person who is subject to tax in Kenya, the amount required to be deducted by an agent from each payment shall not exceed twenty per cent of the amount of each payment of salary, wages, or other remuneration (after the payment of income tax).

(4) This section shall apply to a joint account when—

- (a) all the holders of the joint account have unpaid tax liabilities; or
- (b) the taxpayer or the non-resident person who is subject to tax in Kenya can withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.

(5) An agent shall pay the amount specified in a notice under subsection (2) by the date specified in the notice, being a date that does not occur before the date that the amount owed by the agent to the taxpayer or non-resident person who is subject to tax in Kenya, becomes due to the taxpayer or non-resident person who is subject to tax in Kenya, or held on behalf of the taxpayer or non-resident person who is subject to tax in Kenya;

(6) When an agent who has been served with a notice under subsection (2) fails to comply with the notice by reason of a lack of monies held by an agent on behalf of, or due by an agent to the taxpayer or the non-resident person who is subject to tax in Kenya, an agent shall notify the Commissioner in writing within

fourteen days of receiving the notice, setting out the reasons for an agent's inability to comply.

(7) When the Commissioner is notified by an agent under subsection (6) that an agent is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to the agent—

- (a) accept the notification and cancel or amend the notice issued under subsection (2); or
- (b) reject the notification.

(8) The Commissioner shall notify the agent in writing of a revocation or amendment of a notice given under subsection (2) where the taxpayer or the non-resident person who is subject to tax in Kenya pays the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner for the payment of the tax.

(9) The Commissioner shall serve the taxpayer or the non-resident person who is subject to tax in Kenya with a copy of a notice under this subsection (2), when serving the agent.

(10) A payment made by an agent to the Commissioner in accordance with a notice issued under this section is treated as having been made on behalf of the taxpayer or the non-resident person who is subject to tax in Kenya and shall discharge the agent of any liability to the taxpayer or any other person.

(11) The Commissioner shall credit any amount paid by an agent under this section against the tax owed by the taxpayer or the non-resident person who is subject to tax in Kenya.

(12) The Commissioner may require, in writing, any person, within a period of at least thirty days, to provide a return to the Commissioner showing any monies which may be held by that person for a taxpayer or the non-resident person who is subject to tax in Kenya referred to in subsection (1) or monies held by that person which are due to a taxpayer or the non-resident person who is subject to tax in Kenya referred to in subsection (1).

(13) An agent under subsection (2) or the non-resident person who is subject to tax in Kenya who without reasonable cause fails to comply with a notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the notice or requirement.

(14) The Commissioner shall not issue a notice under this section unless—

- (a) the taxpayer or the non-resident person who is subject to tax in Kenya has defaulted in paying an instalment under section 33 (2);
- (b) the Commissioner has raised an assessment and the taxpayer or the non-resident person who is subject to tax in Kenya has not objected to or challenged the validity of the assessment within the prescribed period;

- (c) the taxpayer or the non-resident person who is subject to tax in Kenya has not appealed against an assessment specified in an objection decision within the prescribed timelines;
- (d) the taxpayer or the non-resident person who is subject to tax in Kenya has made a selfassessment and submitted a return but has not paid the taxes due before the due date lapsed; or
- (e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

*Section 42 of Cap.469B, which it is proposed to amend-*

**Power to collect tax from person owing money to a taxpayer**

(1) This section applies when a taxpayer or a non-resident person who is subject to tax in Kenya is, or will become liable to pay a tax and —

- (a) the tax is unpaid tax; or
- (b) the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for the payment of the tax.

(2) The Commissioner may, in respect of the taxpayer or the non-resident person who is subject to tax in Kenya and by notice in writing, require a person (referred to as the "an agent")—

- (a) who owes or may subsequently owe money to the taxpayer or the non-resident person who is subject to tax in Kenya;
- (b) who holds or may subsequently hold money, for or on account of, the taxpayer or the nonresident person who is subject to tax in Kenya;
- (c) who holds or may subsequently hold money on account of some other person for payment to the taxpayer or the non-resident person who is subject to tax in Kenya; or
- (d) who has authority from some other person to pay money to the taxpayer or the non-resident person who is subject to tax in Kenya, to pay the amount specified in the notice to the Commissioner, being an amount that shall not exceed the amount of the unpaid tax or the amount of tax that the Commissioner believes will not be paid by the taxpayer or the nonresident person who is subject to tax in Kenya by the due date.

(3) When a notice served under subsection (2) requires an agent to deduct a specified amount from a payment of a salary, wages or other similar remuneration payable at fixed intervals to the taxpayer or the non-resident person who is subject to tax in Kenya, the amount required to be deducted by an agent from each payment shall not exceed twenty per cent of the amount of each payment of salary, wages, or other remuneration (after the payment of income tax).

- (4) This section shall apply to a joint account when—

- (a) all the holders of the joint account have unpaid tax liabilities; or
- (b) the taxpayer or the non-resident person who is subject to tax in Kenya can withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.

(5) An agent shall pay the amount specified in a notice under subsection (2) by the date specified in the notice, being a date that does not occur before the date that the amount owed by the agent to the taxpayer or non-resident person who is subject to tax in Kenya, becomes due to the taxpayer or non-resident person who is subject to tax in Kenya, or held on behalf of the taxpayer or nonresident person who is subject to tax in Kenya;

(6) When an agent who has been served with a notice under subsection (2) fails to comply with the notice by reason of a lack of monies held by an agent on behalf of, or due by an agent to the taxpayer or the non-resident person who is subject to tax in Kenya, an agent shall notify the Commissioner in writing within fourteen days of receiving the notice, setting out the reasons for an agent's inability to comply.

(7) When the Commissioner is notified by an agent under subsection (6) that an agent is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to the agent—

- (a) accept the notification and cancel or amend the notice issued under subsection (2); or
- (b) reject the notification.

(8) The Commissioner shall notify the agent in writing of a revocation or amendment of a notice given under subsection (2) where the taxpayer or the non-resident person who is subject to tax in Kenya pays the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner for the payment of the tax.

(9) The Commissioner shall serve the taxpayer or the non-resident person who is subject to tax in Kenya with a copy of a notice under this subsection (2), when serving the agent.

(10) A payment made by an agent to the Commissioner in accordance with a notice issued under this section is treated as having been made on behalf of the taxpayer or the non-resident person who is subject to tax in Kenya and shall discharge the agent of any liability to the taxpayer or any other person.

(11) The Commissioner shall credit any amount paid by an agent under this section against the tax owed by the taxpayer or the non-resident person who is subject to tax in Kenya.

(12) The Commissioner may require, in writing, any person, within a period of at least thirty days, to provide a return to the Commissioner showing any monies which may be held by that person for a taxpayer or the non-resident person who is subject to tax in Kenya referred to in subsection (1) or monies held

by that person which are due to a taxpayer or the non-resident person who is subject to tax in Kenya referred to in subsection (1).

(13) An agent under subsection (2) or the non-resident person who is subject to tax in Kenya who without reasonable cause fails to comply with a notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the notice or requirement.

(14) The Commissioner shall not issue a notice under this section unless —

- (a) the taxpayer or the non-resident person who is subject to tax in Kenya has defaulted in paying an instalment under section 33 (2);
- (b) the Commissioner has raised an assessment and the taxpayer or the non-resident person who is subject to tax in Kenya has not objected to or challenged the validity of the assessment within the prescribed period;
- (c) the taxpayer or the non-resident person who is subject to tax in Kenya has not appealed against an assessment specified in an objection decision within the prescribed timelines;
- (d) the taxpayer or the non-resident person who is subject to tax in Kenya has made a selfassessment and submitted a return but has not paid the taxes due before the due date lapsed; or
- (e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

*Section 44A of Cap 469B, which it is proposed to amend—*

### **Certificate of Origin**

(1) This section applies to all goods imported into Kenya.

(2) No person shall import any goods into Kenya without presenting a valid Certificate of Origin to the Commissioner or an authorised officer.

(3) The Commissioner or an authorized officer shall not process any import entry documentation without a valid Certificate of Origin being presented.

(4) The Commissioner or an authorised officer shall require production of a Certificate of Origin and other supporting documents as proof of origin on goods imported into Kenya prior to their clearance for entry into Kenya.

(5) A Certificate of Origin shall be valid if it discloses the following information—

- (a) name and address of the exporter;
- (b) name and address of the importer;
- (c) port of origin;
- (d) accurate description of the goods;
- (e) quantity of the goods;

- (f) country of origin; and
- (g) country of destination.

(6) Any person who contravenes the provisions of this section commits an offence and shall have their goods seized or forfeited to the Commissioner or an authorised officer in accordance with section 44 of this Act.

*Section 47 of Cap.469B, which it is proposed to amend-*

**Offset or refund of overpaid tax**

(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form —

- (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities including instalment taxes and value added tax payable on imports; or
- (b) for a refund of the overpaid tax —
  - (i) in the case of income tax, within five years from the date on which the tax was overpaid; or
  - (ii) in the case of any other tax, within twelve months from the date on which the tax was overpaid.

(2) The Commissioner shall ascertain and determine an application under subsection (1) within one hundred and twenty days and where the Commissioner ascertains that there was an overpayment of tax —

- (a) in the case of an application under subsection (1)(a), apply the overpaid tax to such outstanding tax debts or future tax liability; and
- (b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of six months from the date of ascertainment and, if the Commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.

(3) Where the Commissioner fails to ascertain and determine an application under subsection (1) within one hundred and twenty days, the same shall be deemed ascertained and approved.

(4) The Commissioner may, for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit.

(4A) Where an application under subsection (1) has been subjected to an audit under subsection (4), the Commissioner shall ascertain and determine the application within one hundred and eighty days failure to which, the application shall be deemed to have been ascertained and approved.

(5) Where the application is for a refund of tax under subsection (1)(b), the Commissioner shall apply the overpayment in the following order —

- (a) in payment of any other tax owing by the taxpayer under the specific tax law;
- (b) in payment of a tax owing by the taxpayer under any other tax law; and
- (c) any remainder shall be refunded to the taxpayer.

(6) Where the Commissioner fails to refund the overpaid tax within the period specified in subsection (2)(b), the amount due shall attract interest of one per cent for each month or part thereof during which the amount remains unpaid.

(7) Where the Commissioner notifies a taxpayer that an application under subsection (1)(a) has been ascertained and applies the overpaid tax liability to offset an outstanding tax in accordance with subsection (2)(a), interest or penalties shall not accrue on the amount applied to offsetting the outstanding tax liability from the date of the notification.

(8) Where the Commissioner has applied the overpaid tax to offset an outstanding tax liability under subsection (2)(a), any outstanding tax after such application shall accrue interest and penalties in accordance with this Act.

(9) Notwithstanding any other provision of this section, where a person overpays an instalment tax due under section 12 of the Income Tax Act (Cap. 470), the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability.

(10) Where, after the application of the overpaid tax under subsection (9), the Commissioner later determines that there was no overpayment of instalment tax, the amount of the tax that was used to offset the taxpayer's future instalment tax liabilities under subsection (9) shall be treated as a tax due to the Commissioner in the subsequent tax period.

(11) The amount due under subsection (10) shall be due from the date that the Commissioner applied that amount to offset an instalment tax liability.

(12) The Commissioner shall notify the taxpayer in writing of the amount due under subsection (10) and specify in the notification—

- (a) the interest on the amount due; and
- (b) any penalties due in respect of the amount due.

(13) A person aggrieved by a decision of the Commissioner under this section may appeal to the Tribunal within thirty days after being notified of the decision.

*Section 75 of Cap.469B, which it is proposed to amend-*

#### **Application of electronic tax system**

(1) The Commissioner may, authorise the following to be carried out through the use of information technology, including computer systems, mobile electronic devices, electronic and mobile communication systems—

- (a) an application for registration under a tax law;

- (b) the submitting or lodging of a tax return or other document under a tax law;
- (c) the payment or repayment of a tax under a tax law; or
- (d) the doing of any other act or thing that is required to be done under a tax law.

(2) A certificate of registration, service of a notice, issuing of any document, or other act or thing that is required to be issued, served, made, or done by the Commissioner under a tax law, may be issued, served, made, or done through a computer system, mobile electronic device or other form of electronic or mobile communication.

*Section 77 of Cap.469B, which it is proposed to amend-*

#### **Due date for submission and payment**

- (1) If the date for—
  - (a) submitting or lodging a tax return, application, notice, or other document;
  - (b) the payment of a tax; or
  - (c) taking any other action under a tax law,

falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day:

Provided that where a person who submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.

(2) In computing the period for the lodgement of an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays.

*Section 86 of Cap.469B, which it is proposed to amend-*

#### **Penalty for failing to comply with electronic tax system**

(1) Where a tax law requires a taxpayer to issue an electronic tax invoice, submit a tax return in electronic form or pay a tax electronically, and the taxpayer fails to comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the non-compliance.

(2) Where the reasons given under subsection (1) do not satisfy the Commissioner, the taxpayer shall be liable to a penalty of two times the tax due.

*Section 89 of Cap.469B, which it is proposed to amend—*

#### **General provisions relating to penalty**

(1) Each penalty shall be calculated separately with respect to each section in this Division.

(2) If the same act or omission imposes more than one penalty under a tax law on a taxpayer, the Commissioner shall determine which penalty applies.

(3) A person shall be liable to a penalty only when the Commissioner notifies in writing that person of a demand for the penalty setting out the amount of the penalty payable and the due date for the payment being a date that is at least 30 days after the date of the notification.

(4) Subsection (3) applies also to a penalty imposed under a tax law other than this Act.

(5) A penalty payable by a person shall be due and payable on the date specified in the notification under subsection (3).

(5A) The Cabinet Secretary may, on the recommendation of the Commissioner, waive the whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest was due to—

- (a) an error generated by an electronic tax system;
- (b) a delay in the updating of an electronic tax system;
- (c) a duplication of a penalty or interest due to a malfunction of an electronic tax system; or
- (d) the incorrect registration of the tax obligations of a taxpayer.

(9) This Act shall not preclude the imposition of penalty under any other tax law and the same act or omission shall not be subject to—

- (a) the imposition of a penalty under more than one provision of that other tax law; or
- (b) both the imposition of a penalty and prosecution for an offence under that other tax law.

*Section 112 of Cap.469B, which it is proposed to amend-*

### **Regulations**

(1) The Cabinet Secretary may make Regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe conditions and procedures for registration;
- (b) provide for the submission of returns and the place at which returns are to be submitted and tax to be paid;
- (c) prescribe offence and penalties thereto;
- (d) provide rules and procedure for collection of unpaid tax by distraint;

- (e) prescribe any other thing required to be prescribed.

*Section 2 of Cap. 469C, which it is proposed to amend—*

**Interpretation**

- (1) In this Act, unless the context otherwise requires—

"East African Community Partner States" means the Republics of Burundi, Rwanda, Uganda and the United Republic of Tanzania;

*Section 7 of Cap. 469C, which it is proposed to amend—*

**Import declaration fee**

(1) There shall be paid a fee to be known as the import declaration fee, on all goods imported into the country for home use.

(2) The fee shall be at the rate of two point-five per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

(3) Despite subsection (1)—

- (a) import declaration fee shall not be charged on the goods specified in Part A of the Second Schedule when imported or purchased before clearance through customs;

(4) An importer of goods other than goods specified in Part A of the Second Schedule shall complete the prescribed import declaration form.

(5) An importer shall present a copy of the import declaration form completed under subsection (4) to the Commissioner at the time of entering the goods for home use.

(6) Out of the fee collected under subsection (2), twenty per cent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act (Cap. 412A)

(7) Ten percent of monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation, while ten percent shall be used for revenue enforcement initiatives.

*Section 9 of Cap. 469C, which it is proposed to amend—*

**Application of East African Community Customs Management Act, 2004**

The provisions of the East African Community Customs Management Act, 2004, relating to the determination of value of imported goods, collection and enforcement of the payment of duty shall apply for the purposes of assessment, collection and enforcement of the payment of import declaration fee, railway development levy and export levy.

*Second Schedule to Cap 469C, which it is proposed to amend—*

**SECOND SCHEDULE [s. 7(3)(a)]**

**GOODS EXEMPT FROM IMPORT DECLARATION  
FEE AND RAILWAY DEVELOPMENT LEVY**

**PART A**

**GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN  
IMPORTED  
OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS**

(xv) All goods and parts thereof of Chapter 88;

**PART B(s. 8(6))**

**GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY  
WHEN  
IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH  
CUSTOMS**

(xiii) all goods and parts thereof of Chapter 88;

*Section 96A of Cap. 480, which it is proposed to amend-*

**Exemption of stamp duty on the transfers relating to real estate investment trust**

(1) This section applies only to real estate investments trusts authorized under the Capital Markets Act (Cap. 485A), in respect of which it is shown to the collector —

- (a) that the effect thereof is to convey or transfer a beneficial interest in property from one trustee to another trustee or to an additional trustee; or
- (b) that the effect thereof is to convey or transfer a beneficial interest in property from a person or persons for the transfer of units in the real estate investment trust.

(2) No Stamp duty shall be chargeable on an instrument relating to the matters referred to in subsection (1).

(3) An instrument to which this section applies shall be deemed to be duly stamped where it has, in accordance with the provisions of section 17, stamped with the particular stamp denoting that it is not chargeable with any duty.

(4) The exemption for instruments to which paragraph (1)(b) applies shall only have effect in respect of instruments executed before the 31st December, 2022.

(5) For the purposes of this section —

"additional trustee" means a new trustee appointed to an existing real estate investment trust.

"trustee" means a person appointed under a trust deed as a trustee of a real estate investment trust or otherwise so appointed by the court or pursuant to regulations made under the Capital Markets.

*Section 3 of Cap. 427, which the Bill proposes to amend—*

### **3. Imposition of levy**

(1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary for the time being responsible for finance, by Order published in the *Gazette*, impose on any or all petroleum fuels entered for home use in Kenya a road maintenance levy (in this Act referred to as "the levy") which may be determined from time to time and in such manner as the Cabinet Secretary may specify in the Order.

(2) Out of the levy collected under subsection (1) there shall be paid an amount of three shillings per litre of petroleum sold into the Road Annuity Fund established under the Public Finance Management Act (Cap. 412A) to fund the construction of roads under the Road Annuity Programme and similar roads approved by the National Assembly.