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THE FINANCE BILL, 2023

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

Short title and commencement.

1. This Act may be cited as the Finance Act, 2023, and shall come into operation or be deemed to have come into operation as follows—

(a) on the 1st September, 2023, sections 10, 24(b)(xii), 47, 51, 60, 62 and 72;

(b) on the 1st January, 2024, sections 5(c), 6, 10, 12, 14, 19, 23, 24(a), 24(b)(iii), 24(b)(v), 24(b)(vi), 24(b)(viii), 24(b)(ix), 24(b)(xi), and 25; and

(c) all other sections, on the 1st July, 2023.

PART II—INCOME TAX

Amendment of section 2 of Cap. 470.

2. Section 2 of the Income Tax Act is amended—

(a) by deleting the definition of "winnings" and substituting therefor the following new definition—

"winnings" means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered;

Cap. 131.

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

"digital content monetisation" means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms—

(a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands;

(b) sponsorship where a brand owner pays a content creator for content creation and promotion;

(c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed;

(d) subscription services where the audience pays a periodic fee to access the content and support the content creator;

(e) merchandise sales where physical goods and services are sold featuring a logo, brand or catchphrase to the audience of the content creator, eBooks, courses, or software;

(f) membership programmes for exclusive content including early access;

(g) licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or

(h) crowdfunding for raising funds for specific goals for a content creator or another person;

"immovable property" includes—

(a) land, whether covered by water or not, any estate, rights, interest or easement in or over any 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;

"person" includes—

(a) in the case of an individual, a reference to a relative, as defined in section 26(5), of that person; and

(b) a company.

"related person" means, in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.

3. Section 3(3) of the Income Tax Act is amended in paragraph (c) by deleting subparagraph (i). Amendment of section 3 of Cap. 470.

4. Section 4A of the Income Tax Act is amended— Amendment of section 4A of Cap. 470.

(a) by deleting paragraph (ii) of the proviso to subsection (1) and substituting therefor the following new paragraph—

(ii) the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any year of income;

(b) by deleting subsection (1A).

5. Section 5 of the Income Tax Act is amended— Amendment of section 5 of Cap. 470.

(a) in subsection (2), –

(i) by inserting the following new subparagraph in paragraph (a) immediately after sub paragraph (iii) –

(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:

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

(fa) club entrance and subscription fees disallowed against the employer's income.

(b) in subsection (4) by inserting the following new paragraph immediately after paragraph (f)-

(fa) any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased;

(c) in subsection (6)(c)—

(i) by deleting the words "shares were granted by the employer" appearing in subparagraph (i) and substituting therefor the words "option was exercised by the employee";

(ii) by deleting the words "which shall be agreed upon with the Commissioner before the grant of the options" appearing in subparagraph (ii) and substituting therefor the words "when the option is exercised";

(d) by inserting the following new subsections immediately after subsection (6)—

(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.

Insertion of new section in Cap. 470.

6. The Income Tax Act is amended by inserting the following new section immediately after section 7A—

Repatriated income.

7B. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income.

(2) The repatriated income under subsection (1) shall be computed using the following formula—

$$\mathbf{R=A_1 + (P - T) - A_2}$$

Where—

R is the repatriated profit;

$\mathbf{A_1}$ is the net assets at the beginning of the year;

P is the net profit for the year of income calculated in accordance with generally accepted accounting principles;

T is the tax payable on the chargeable income; and

A_2 is the net assets at the end of the year.

(3) The tax imposed under this section shall be in addition to tax chargeable on the income of the permanent establishment under section 4.

(4) For the purposes this section, "net assets" means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.

Amendment of section 10 of Cap. 470.

7. Section 10 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (2)—

(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.

Amendment of section 11 of Cap. 470.

8. Section 11 of the Income Tax Act is amended by deleting subsection (3A).

Amendment of section 12C of Cap. 470.

9. Section 12C of the Income Tax Act is amended in subsection (1), by deleting the words "one million shillings but does not exceed or is not expected to exceed fifty million shillings" and substituting therefor "five hundred thousand shillings but does not exceed or is not expected to exceed fifteen million shillings".

Insertion of a new section 12F in Cap. 470.

10. The Income Tax Act is amended by inserting the following new section immediately after Section 12E—

Digital asset tax.

12F. (1) Notwithstanding any other provision of this Act, a tax to be known as digital asset tax shall be payable by a person on income derived from the transfer or exchange of digital assets.

(2) The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the

digital asset tax and remit it to the Commissioner.

(3) A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.

(4) A person who is required to deduct the digital asset tax shall, within twenty-four hours after making the deduction, remit the amount so deducted to the Commissioner together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.

(5) For the purposes of this section—

(a) "digital asset" includes—

(i) anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and

(ii) a non-fungible token or any other token of similar nature, by whatever name called; and

(b) "income derived from transfer or exchange of a digital asset" means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.

11. Section 15 of the Income Tax Act is amended—

Amendment of section 15 of Cap. 470.

(a) in subsection (2), by deleting paragraph (g) and substituting therefor the following new paragraph—

(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.

(b) in subsection (3), by deleting the word "five" appearing in paragraph (b) and substituting therefor the word "six";

(c) in subsection (7)(e), by deleting item (iii).

12. Section 16 of the Income Tax Act is amended— Amendment of section 16 of Cap. 470.

(a) in subsection (1), by inserting the following new paragraph immediately after paragraph (b)—

(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, 2015. No. 29 of 2015.

(b) in subsection (2)—

(i) in paragraph (a), by deleting subparagraph (v);

(ii) in paragraph (j), by deleting the words "related persons and third parties" appearing in the opening words and substituting therefor the words "a non-resident";

(iii) in paragraph (ii) of the proviso to paragraph (j)—

(A) by deleting item G;

(B) by deleting item H;

(iv) by inserting the following new paragraphs at the end of the proviso to paragraph (j)—

(iv) any interest in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization shall be an allowable deduction in ascertaining the total income of a person in the subsequent three years of income to the extent that the deduction of interest on loans from non-resident persons does not exceed the thirty percent threshold provided under this section; and

(v) this provision shall not apply where the interest is exempt from tax under this Act.

(c) in the definition of "all loans" appearing in subsection (3), by inserting the words "but shall not include local loans" immediately after the word "premium".

Amendment of section 18 of Cap. 470.

13. Section 18 of the Income Tax Act is amended by deleting subsection (4).

Amendment of section 18A of Cap. 470.

14. Section 18A of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (3)—

(4) For the purposes of this section, qualifying intellectual property income that subject to the preferential tax rate shall be determined using the following formula—

$$I = \left(\frac{Q}{T}\right) \times P$$

Where—

I is income receiving tax benefits;

Q is the research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs;

T is the research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and

P is intellectual property income including royalties, capital gains and any other income

from the sale of an intellectual property asset including embedded intellectual property income calculated under transfer pricing principles:

Provided that for the purposes of this subsection intellectual property losses shall only be deducted against intellectual property income.

15. Section 18D of the Income Tax Act is amended— Amendment of section 18D of Cap. 470.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(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).

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

(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.

(c) in subsection (2), by inserting the words "or a constituent entity" immediately after the words "parent entity";

(d) in subsection (3), by deleting the words "In addition to the provisions in subsection (1)".

Amendment of section 18F of Cap. 470.

16. Section 18F of the Income Tax Act is amended by deleting the definition of "ultimate parent entity" and substituting therefor the following new definition—

"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.

Amendment of section 21 of Cap. 470.

17. Section 21 of the Income Tax Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) A body of persons which carries on the activities of a members' club or trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business.

(b) by deleting subsection (2).

Amendment of section 31 of Cap. 470.

18. Section 31 of the Income Tax Act is amended in subsection (1)—

(a) by deleting the word "his" appearing in paragraph (b) and substituting therefor the words "the individual's";

(b) deleting the words "he, as well as his employer" appearing in paragraph (c) and substituting

therefor the words "the individual and the individual's employer".

Insertion of a new section 31A of Cap. 470.

19. The Income Tax Act is amended by inserting the following new section immediately after section 31—

Post-retirement medical fund relief.

31A. A resident individual who proves that in a year of income the person has contributed to a post-retirement medical fund shall for that year of income be entitled to a personal relief in this Act referred to as the post-retirement medical fund relief.

Amendment of section 35 of Cap. 470.

20. Section 35 of the Income Tax Act is amended—

(a) in subsection (3), by inserting the following paragraphs immediately after paragraph (j)—

(k) sales promotion, marketing and advertising services; and

(l) digital content monetisation.

(b) by inserting the following new subsections immediately after subsection (3A)—

(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 twenty-four hours 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.

(c) in subsection (5), by deleting the words "on or before the twentieth day of the month following

the month in which" and substituting therefor the words "within twenty-four hours after".

Repeal of section 45 of Cap. 470.

21. The Income Tax Act is amended by repealing section 45.

Amendment of the First Schedule to Cap. 470.

22. The First Schedule to the Income Tax Act is amended—

(a) by inserting the following new proviso immediately after the proviso to paragraph 10—

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.

(b) by deleting paragraph 65;

(c) by inserting the following new paragraphs immediately after paragraph 67—

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. Payment in the form of funds transfer from a post-retirement medical fund to a medical insurance cover provider.

Amendment of the Second Schedule to Cap. 470.

23. The Second Schedule to the Income Tax Act is amended—

(a) in paragraph 1 (1) (a) by inserting the following new items immediately after item (vii) —

(viii)	Industrial Building	10%
(ix)	Dock	10% in equal instalments

(b) in the proviso to paragraph 1—

(i) in the definition of "civil works", by inserting the following new item immediately after item (v)—

(vi) earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.

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

(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.

(c) by inserting the following new paragraph immediately after paragraph (1A)—

(1B) Paragraph (1A)—

(a) shall apply to items listed under paragraphs 1(1)(a)(i) and (ii), and (1)(b)(i); and

(b) shall not apply to investments which, due to the nature of their business, have to be located in places which are outside Nairobi City County and Mombasa County.

Amendment of the Third Schedule to Cap. 470.

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

(a) in Head A, by inserting the following new paragraph immediately after paragraph 3—

4. Post-retirement medical fund relief

The amount of post-retirement medical fund relief shall be fifteen per cent of the amount of contribution paid or sixty thousand shillings per annum, whichever is lower.

(b) in Head B—

(i) by deleting paragraph 1 and substituting therefor the following new paragraph—

1. The individual rates of tax shall be—

	Rate in each shilling
On the first Ksh. 288,000	10%
On the next Ksh. 100,000	25%
On the next Ksh. 5,612,000	30%
On all income over Ksh. 6,000,000	35%

(ii) by deleting paragraph 1A;

(iii) in paragraph 2(b), by inserting the following new item immediately after item (vii)—

	Rate in each twenty shillings
(viii) for the year of income 2024 and each subsequent year of income	6.00

(iv) by deleting the proviso to paragraph 2(j) and substituting therefor the following new proviso—

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.

(v) by inserting the following new subparagraph immediately after subparagraph 2(o)—

(p) in respect of a company undertaking the manufacture of human vaccines, ten per cent.

(vi) in paragraph 5(ja), by deleting the word "ten" and substituting therefor the word "seven point five";

(vii) in paragraph 5, by inserting the following new subparagraph immediately after subparagraphs (k)—

(l) in respect of payments for sales promotion, marketing, advertising services, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount; and

(m) in respect of payments relating to digital content monetisation, fifteen per cent.

(viii) in paragraph 8, by deleting subparagraph (a) and substituting therefor the following new subparagraph—

(a) for vans, pick-ups, trucks, prime movers, trailers and lorries, three thousand 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.

(ix) in paragraph 8, by deleting subparagraph (b) and substituting therefor the following new subparagraph—

(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.

(x) in paragraph 9, by deleting the word "one" and substituting therefor the word "three";

(xi) in paragraph 10, by deleting the word "ten" and substituting therefor the word "seven point five";

(xii) by inserting the following new paragraph immediately after paragraph 12—

13. The rate of tax in respect of digital asset tax shall be three per cent of the transfer or exchange value of the digital asset.

Amendment of the Fourth Schedule to Cap. 470.

25. The Fourth Schedule to the Income Tax Act is amended by inserting the following paragraph at the end thereof—

Cap. 491. Mortgage refinance companies licensed under the Central Bank of Kenya Act.

Amendment of the Eighth Schedule to Cap. 470.

26. The Eighth Schedule to the Income Tax Act is amended—

(a) by deleting paragraph 2 and substituting therefor the following new paragraph—

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.

(b) in paragraph 8, by inserting the following new subparagraph immediately after subparagraph (4)—

(4A) Where property is transferred in a transaction that is not subject to capital gains tax, and the property is subsequently transferred in a taxable transaction within a period of less than five years, then the adjusted cost in the subsequent

transfer shall be based on the original adjusted cost as determined in the first transfer.

(c) by deleting paragraph 11A and substituting therefor the following new paragraph—

11A. The due date for tax payable in respect of property transferred under this Part shall be the earlier of—

(a) receipt of the full purchase price by the vendor; or

(b) registration of the transfer.

(d) in paragraph 13, by deleting item (c) and substituting therefor the following new item—

(c) an internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months.

Amendment of the Ninth Schedule to Cap. 470.

27. The Ninth Schedule to the Income Tax Act is amended in paragraph 14, by deleting the words "ten per cent" appearing in subparagraph (1) and substituting therefor the words "twenty per cent".

PART II—VALUE ADDED TAX

Amendment of section 5 of No. 35 of 2013.

28. Section 5 of the Value Added Tax Act, 2013, is amended in subsection (2)—

(a) by deleting paragraph (aa);

(b) by deleting paragraph (ab).

Amendment of section 8 of No. 35 of 2013.

29. Section 8 of the Value Added Tax Act, 2013, is amended in subsection (2), by deleting the words "not a registered person and" and substituting therefor the words "a registered or unregistered person".

Amendment of section 17 of No. 35 of 2013.

30. Section 17 of the Value Added Tax Act, 2013, is amended—

(a) in subsection (2), by deleting the word "or" appearing in paragraph (a) and substituting therefor the word "and";

(b) by inserting the following new subsection immediately after subsection (8)—

(9) Where a *bona fide* owner of taxable supplies, who has deducted input tax under subsection (1), is compensated for the loss of the taxable supplies, the compensation shall be treated as a taxable supply and—

(a) if the compensation includes value added tax, the compensation shall be declared and the value added tax thereon remitted to the Commissioner; or

(b) if the compensation does not include value added tax, the compensation shall be declared and subjected to value added tax and the tax remitted to the Commissioner.

Amendment of section 34 of No. 35 of 2013.

31. Section 34 of the Value Added Tax Act, 2013, is amended in subsection (1), by deleting the proviso and substituting therefor the following new proviso—

Provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings.

Amendment of section 43 of No. 35 of 2013.

32. Section 43 of the Value Added Tax Act, 2013, is amended in subsection (1), by deleting the words "in Kenya".

Amendment of First Schedule to No. 35 of 2013.

33. The First Schedule to the Value Added Tax Act, 2013, is amended—

(a) in Section A of Part I—

(i) by deleting paragraph 20 and substituting therefor the following new paragraph—

20. Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307;

(ii) by inserting the following tariff numbers and corresponding tariff descriptions, in proper sequence, into the table appearing immediately after paragraph 39—

Tariff Number	*Description*
3003.41.00, 3003.42.00, 3003.43.00, and 3003.49.00	Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale
3003.90.00	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale and other medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale
3005.90.11, 3005.90.12, 3005.90.19	White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes

(iii) by deleting the tariff numbers; "0402.29.10", "3002.19.00" and "3003.90.90" and their corresponding tariff description, appearing in the table immediately after paragraph 39;

(iv) by deleting the tariff number "3002.11.00" appearing in the table immediately after paragraph 39 and substituting therefor the tariff number "3822.11.00";

(v) by deleting the tariff number "3002.20.00" appearing in the table immediately after paragraph 39 and substituting therefor the tariff number "3002.41.00";

(vi) by deleting the tariff number "3002.30.00" appearing in the table immediately after paragraph 39 and substituting therefor the tariff number "3002.42.00";

(vii) in the table appearing immediately after paragraph 39 by deleting the tariff

description corresponding to the tariff number "3003.39.00" and substituting therefor the following new tariff description—

Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale.

(viii) in the table appearing immediately after paragraph 39 by deleting the tariff description corresponding to tariff number "3004.20.00" and substituting therefor the following new tariff description—

Other Medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale.

(ix) in the table appearing immediately after paragraph 39 by deleting the tariff description corresponding to the tariff number "3004.32.00" and substituting therefor the following new tariff description—

Other, medicaments containing hormones or other products of heading 29.37 Containing corticosteroid hormones, their derivatives or structural analogue of tariff.

(x) by deleting the tariff number "3006.20.00" appearing in the table appearing immediately after paragraph 39 and substituting therefor the tariff number "3822.13.00";

(xi) in the table appearing immediately after paragraph 39 by inserting the words "on other products of heading 29.37 or" immediately before the word "spermicides" appearing in the tariff description corresponding to the tariff number "3006.60.00";

(xii) in the table appearing immediately after paragraph 39 by deleting the words "Other

artificial parts of the body" appearing in the tariff description corresponding to the tariff number "9021.50.00";

(xiii) in the table appearing immediately after paragraph 39 by deleting the tariff numbers; "3005.90.10", "3004.90.90", "3003.90.10" and "3003.90.00" and their corresponding tariff description thereof;

(xiv) by deleting paragraph 49 and substituting therefor the following new paragraph—

49. All goods and parts thereof of chapter 88;

(xv) by deleting paragraph 62;

(xvi) by deleting paragraph 63 and substituting therefor the following new paragraph —

63. Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of one hundred, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.

(xvii) by deleting paragraph 66A;

(xviii) by deleting paragraph 71 and substituting therefor the following new paragraph—

71. Printed and unprinted Perforated PE film of other plastics 15-22 gsm of tariff numbers 3921.90.10, and 3921.90.90.

(xix) by deleting paragraph 107;

(xx) by deleting paragraph 108;

(xxi) by deleting paragraph 119 and substituting therefor the following new paragraph—

119. Diagnostic kits or laboratory reagents and their certified reference materials of heading 3822 upon approval by the

Cabinet Secretary responsible for matters relating to health;

(xxii) by deleting paragraph 120 and substituting therefor the following new paragraph—

120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, and other apparatus, Instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

(xxiii) by deleting paragraph 122 and substituting therefor the following new paragraph—

122. Other instruments and appliances, used in dental sciences of tariff 9018.49.00, Other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

(xxiv) by deleting paragraph 125 and substituting therefor the following new paragraph—

125. Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

(xxv) by deleting paragraph 128 and substituting therefor the following new paragraph—

128. Discs, tapes, solid-state non-volatile storage devices, "smartcards" and other media for the recording of sound

or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health.

(xxvi) by deleting paragraph 129 and substituting therefor the following new paragraph—

129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

(xxvii) by deleting paragraph 130;

(xxviii) by inserting the words "or locally purchased" immediately after the word "imported" appearing in paragraph 140;

(xxix) by deleting paragraph 146;

(xxx) by inserting the following new paragraphs immediately after paragraph 146—

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

148. All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture.

149. Agricultural pest control products.

150. Transportation of sugarcane from farms to milling factories.

151. Fertilizers of Chapter 31.

152. Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved by the Cabinet Secretary responsible for matters relating to agriculture.

153. Liquefied petroleum gas.

154. All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs.

(b) in Part II—

(i) by deleting paragraph 26;

(ii) by deleting paragraph 27;

(iii) by inserting the following new paragraph immediately after paragraph 27—

27A. Despite the deletion of paragraph 27, any approval granted by the Cabinet Secretary under the deleted paragraph 27 before the commencement of this paragraph in respect of the supply of taxable services which was in force at such commencement shall continue to apply until the supply of the exempted taxable services is made in full.

(iv) in paragraph 34, by deleting the words "goods, inputs and raw materials" and substituting therefor the word "services"; and

(v) by inserting the following new paragraphs immediately after paragraph 34—

35. The exportation of taxable services.

36. Transfer of business as a going concern.

34. The Second Schedule to the Value Added Tax Act, 2013, is amended—

Amendment of the Second Schedule to No. 35 of 2013.

(a) in Part A —

(i) by deleting paragraph 11;

(ii) by deleting paragraph 16;

(iii) by deleting paragraph 19;

(iv) by deleting paragraph 20 which provides as follows—

20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight:

Provided this paragraph shall be in operation for a period of six months from the date of assent.

(v) by deleting paragraph 21;

(vi) by deleting paragraph 23;

(vii) by deleting paragraph 24;

(viii) by deleting paragraph 25;

(ix) by inserting the following new paragraph immediately after paragraph 25—

26. Inbound international sea freight offered by a registered person.

PART III—TAX APPEALS TRIBUNAL

Amendment of section 13 of No. 40 of 2013.

35. Section 13 of the Tax Appeals Tribunal Act, 2013, is amended—

(a) in subsection (2), by deleting paragraph (c) and substituting therefor the following new paragraphs—

(c) the appealable decision; and

(d) such other documents as may be necessary to enable the Tribunal to make a decision on the appeal.

(b) by inserting the following new subsection immediately after subsection (8)—

No. 29 of 2015.

(9) For the purposes of this section, "appealable decision" has the meaning

assigned to it in section 3(1) of the Tax Procedures Act, 2015.

Amendment of section 13 of No. 40 of 2013.

36. Section 32 of the Tax Appeals Tribunal Act, 2013, is amended—

(a) by inserting the following proviso to subsection (1)—

Provided that where a party is not the Commissioner, that party shall deposit with the Commissioner an amount equivalent to twenty per cent of the disputed tax or security equivalent to twenty per cent of the disputed tax before filing the appeal.

(b) by inserting the following new subsections immediately after subsection (2)—

(3) Where the decision of the High Court is in favour of the party who had deposited the amount or security referred to in subsection (1), the Commissioner shall credit that amount or security to that party within thirty days after the determination of the appeal.

PART IV—EXCISE DUTY

Amendment of section 2 of No. 23 of 2015

37. Section 2 of the Excise Duty Act, 2015, is amended in the definition of "excise control" by deleting the expression "section 23" and substituting therefor the expression "section 24".

Repeal of section 10 of No. 23 of 2015.

38. The Excise Duty Act, 2015, is amended by repealing section 10.

Amendment of section 20 of No. 23 of 2015

39. Section 20 of the Excise Duty Act, 2015, is amended in subsection (5), by inserting the words "being not less than fourteen days" immediately after the words "date specified in the notice" appearing in paragraph (b).

Amendment of section 28 of No. 23 of 2015.

40. Section 28 of the Excise Duty Act, 2015, is amended by inserting the following new subsections immediately after subsection (5)—

(6) A person commits an offence if that person—

(a) defaces or prints over an excise stamp affixed on any excisable goods or package;

(b) is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of this Act or Regulations made under this Act;

(c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner;

(d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;

(e) is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;

(f) is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or

(g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps.

(7) A person who commits an offence under subsection (6) is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or to both.

Insertion of new section in No. 23 of 2015.

41. The Excise Duty Act, 2015, is amended by inserting the following new section immediately after section 36—

Payment of excise duty within twenty-four hours.

36A. (1) Despite the provisions of section 36, excise duty on betting and gaming, offered through a platform or other medium, shall be remitted to the Commissioner by a bookmaker within twenty-four hours from the closure of transactions of the day.

(2) For the purposes of this section, "closure of transactions of the day" means midnight of that day.

(3) The Commissioner may, by notice in the *Gazette*, require taxpayers in any

sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day.

Repeal of section 40 of No. 23 of 2015.

42. The Excise Duty Act, 2015, is amended by repealing section 40.

Amendment of First Schedule to No. 23 of 2015.

43. The First Schedule to the Excise Duty Act, 2015, is amended—

(a) in Part I—

(i) by deleting the tariff number 2709.00.10 appearing in paragraph 1, and the corresponding tariff description and rate of duty;

(ii) by deleting the tariff description "Imported White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00" and substituting therefor the following tariff description—

Imported white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00;

(iii) by inserting the word "Imported" immediately before the tariff description "Articles of plastic of tariff heading 3923.30.00 and 3923.90.90";

(iv) by deleting the word "imported" appearing in the description "Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared" appearing in paragraph 1;

(v) by deleting the word "imported" appearing in the description "Imported sugar confectionary of tariff heading 17.04" appearing in paragraph 1;

(vi) by inserting the following new items at the end of the second table appearing in paragraph 1—

Description	*Rate of excise duty*
Imported fish	Shs. 100,000 per metric tonne or 20%, whichever is higher
Powdered juice	Shs. 25 per kg
Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer	Shs. 5 per kg
Human hair and other products of heading 6703;	5%
Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704;	5%
Artificial nails of tariff no. 3926.90.90	5%
Imported cement	10% of the value or shs. 1.50 per kg, whichever is higher
Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	30%
Imported cellular phones	10%
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	15%
Imported Test liner of heading 4805.24.00	25%
Imported fluting medium of heading 4805.19.00	25%

(b) in Part II—

(i) by deleting the words "twenty percent" appearing in paragraph 1 and substituting therefor the words "fifteen percent";

(ii) by deleting the words "twenty percent"

appearing in paragraph 2 and substituting therefor the words "fifteen percent";

(iii) by deleting the words "shall be twelve percent" appearing in paragraph 3 and substituting therefor the words "or payment service provides licensed under the National Payment System Act, 2011, shall be fifteen percent";

(iv) by deleting the words "seven-point five per cent" appearing in paragraph 4A and substituting therefor the words "twenty per cent";

(v) by deleting the words "seven-point five per cent" appearing in paragraph 4B and substituting therefor the words "twenty per cent";

(vi) by deleting the words "seven-point five per cent" appearing in paragraph 4C and substituting therefor the words "twenty per cent";

(vii)by deleting the words "seven-point five per cent" appearing in paragraph 4D and substituting therefor the words "twenty per cent";

(viii) in paragraph 6 by deleting the word "fees" and substituting therefor the words "any amount charged in respect of lending";

(ix) by deleting paragraph 7;

(x) by inserting the following new paragraph immediately after paragraph 7—

8. Excise duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of fifteen per cent.

(c) in Part III—

(i) by inserting the words "or gaming" immediately after the word "betting"

appearing in the definition of "amount wagered or staked"; and

(ii) by deleting the words "relating to their licensed activities" appearing in the definition of "other fees".

PART VI—TAX PROCEDURES

Amendment of section 3 of No. 29 of 2015.

44. Section 3 of the Tax Procedures Act, 2015, is amended in the definition of "tax decision"—

(a) by deleting item (e);

(b) by inserting the words "or late payment interest" immediately after the word "penalty" appearing in paragraph (g).

Amendment of section 6A of No. 29 of 2015.

45. Section 6A of the Tax Procedures Act, 2015, is amended by inserting the following new subsection immediately after subsection (2)—

(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.

Amendment of section 23 of No. 29 of 2015.

46. Section 23 of the Tax Procedures Act, 2015, is amended by inserting the following new subsection immediately after subsection (3)—

(3A) A trustee resident in Kenya who administers a trust registered in Kenya or outside Kenya shall maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not.

Insertion of a new section to No. 29 of 2015.

47. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 23—

Electronic tax invoices.

23A. (1) The Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept for the purposes of this Act.

(2) A person who carries on business shall—

(a) issue an electronic tax invoice through the system established under subsection (1); and

(b) maintain a record of stocks in the system established under subsection (1).

(3) Where an electronic tax invoice required to ascertain tax liability is issued by a resident person or the permanent establishment of a non-resident person, that invoice shall be generated through the system established under subsection (1).

(4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, and similar payments.

(5) The Commissioner may, by notice in the *Gazette,* exempt a person from the requirements of this section.

Amendment of section 31 of No. 29 of 2015.

48. Section 31 of the Tax Procedures Act, 2015, is amended in the opening words of subsection (6), by deleting the word "original".

Insertion of a new section of No. 29 of 2015.

49. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 32—

Mutual administrative assistance in the recovery or collection tax claims.

32A. (1) The Commissioner may recover or collect a tax claim pursuant to an international tax agreement contemplated in section 6A (3).

(2) The recovery of the tax claim under subsection (1), shall be in response to a request by the competent authority of a party to the international tax agreement.

(3) The request under subsection (2) shall be in respect of a tax claim which forms the subject of the international tax agreement permitting its enforcement in the requesting party and, unless otherwise agreed between the parties, which is not contested:

Provided that where the tax claim is against a person who is not a resident of the requesting state, this section

shall only apply, unless otherwise agreed between the parties to the international tax agreement, where the claim may no longer be contested.

(3) The Commissioner, in respect of a request under subsection (2)—

(a) may apply for an order under section 43(3); and

(b) shall issue to the person who is alleged to be liable to pay the tax a notice requiring that person to state, within the period specified in the notice, whether that person admits liability for the amount or a lesser amount.

(4) The request under subsection (2) shall—

(a) be in the prescribed form;

(b) be accompanied by a tax claim issued by the requesting party in the form provided for by the relevant law of that requesting party;

(c) indicate the amount of the tax due;

(d) indicate whether liability for the amount is contested under the laws of the requesting party;

(e) indicate, where liability for the amount is contested, whether the requesting party believes that the purpose of the dispute is to delay or frustrate the collection of the amount alleged to be due; and

(f) indicate whether there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets.

(5) Where the person who is alleged to be liable to pay the tax due admits liability, the Commissioner may issue a notice requiring that person to pay the amount for which the person has admitted liability, on a date specified in the notice.

(6) Where the person who is alleged to be liable to pay the tax due contests liability, the Commissioner shall, after consulting the requesting party, determine whether—

(a) the liability for the amount due is not disputed in terms of the relevant laws of the requesting state;

(b) despite the liability for the tax due being contested, the purpose of the dispute is to delay or frustrate the collection of the tax due; or

(c) there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets,

and the Commissioner may then issue a notice requiring that person to pay the tax due or amount specified in the notice, on a date specified in the notice.

(7) If the person fails to comply with the notice under subsection (6), the Commissioner may commence proceedings for the recovery of the tax claim.

(8) The steps taken to assist the requesting party shall not affect the right of the person who is alleged to be liable to pay the tax due to have the liability for the tax determined in accordance with the Laws of Kenya.

(9) Where the Commissioner recovers or collects the tax due to the requesting party, the Commissioner shall deposit the amount into a dedicated account in the Central Bank of Kenya after which the amount shall be remitted to an account specified by the requesting party.

Repeal of section 37 of No. 29 of 2015.

50. The Tax Procedures Act, 2015, is amended repealing section 37.

Insertion of a new section to No. 29 of 2015.

51. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 37D—

Commissioner to refrain from recovering interest, penalties or fines.

37E. (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 had paid all the principal tax due before the 31st December, 2022.

(2) Where all the principal tax due had not been paid before the 31st December, 2022, a person 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, 2022;

(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 2024;

(ii) does not incur a further tax debt; and

(iii) signs a commitment letter 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 31st December, 2022, and had been granted an amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June, 2024, shall attract interest and penalties for which no amnesty shall be granted under this section.

Amendment of section 40 of No. 29 of 2015.

52. Section 40 of the Tax Procedures Act, 2015, is amended—

(a) by deleting the proviso to subsection (1);

(b) by inserting the following new subsection immediately after subsection (2)—

(2A) The Commissioner shall, within fourteen days after the date of the registration of the notification by the Registrar under subsection (2), inform, in the manner specified in section 74, the taxpayer and any other person who may have an interest in the property identified in the notification.

Amendment of section 42 of No. 29 of 2015.

53. Section 42 of the Tax Procedures Act, 2015, is amended by deleting subsection (14) and substituting therefor the following new subsection —

(14) The Commissioner shall not issue a notice under this section unless—

(a) the taxpayer has defaulted in paying an instalment under section 33(2);

(b) the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;

(c) the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;

(d) the taxpayer has made a self-assessment 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.

Amendment of section 42A of No. 29 of 2015.

54. Section 42A of the Tax Procedures Act, 2015, is amended—

(a) in the proviso to subsection (1), by deleting the words "and registered manufacturers whose value of investment in the preceding three years from the commencement of this Act is at least three billion";

(b) by deleting subsection (4B) and substituting therefor the following new subsection—

(4B) The tax withheld under this section shall be remitted to the Commissioner within three days after the deduction was made.

Insertion of new section of No. 29 of 2015.

55. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 42B—

Appointment of rental income tax agents.

42C. (1) The Commissioner may appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.

(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.

Amendment of section 47 of No. 29 of 2015.

56. Section 47 of the Tax Procedures Act, 2015, is amended—

(a) in subsection (1), by inserting the words "outstanding tax debts and" immediately after the word "taxpayer's" appearing in paragraph (a);

(b) in subsection (2)—

(i) by inserting the words "outstanding tax debts or" immediately after the word "such" appearing in paragraph (a);

(ii) by deleting the words "two years from the date of application" appearing in paragraph (b) and substituting therefor the words "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";

(c) by inserting the following new subsection immediately after subsection (4)—

(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 twenty days failure to which, the application shall be deemed to have been ascertained and approved.

Amendment of section 51 of No. 29 of 2015.

57. Section 51 of the Tax Procedures Act, 2015, is amended—

(a) in subsection (4), by inserting the words "and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice" immediately after the words "validly lodged";

(b) by inserting the following new subsection immediately after subsection (4)—

(4A) Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after

the date on which the notice of objection was lodged.

Amendment of section 55 of No. 29 of 2015.

58. Section 55 of the Tax Procedures Act, 2015, is amended in subsection (1), by deleting the words "ninety days" and substituting therefor the words "one hundred and twenty days".

Amendment of section 56 of No. 29 of 2015.

59. Section 56 of the Tax Procedures Act, 2015, is amended in subsection (3), by deleting the words "unless the Tribunal or Court allows the person to add new grounds".

Insertion of new section of No. 29 of 2015.

60. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 59—

Data management and reporting system.

59A. (1) The Commissioner may establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents.

(2) The Commissioner shall notify in writing the persons required to submit electronic documents through the system established under subsection (1).

(3) The electronic documents referred to in subsection (2) include electronic invoice returns—

(a) of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;

(b) for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;

(c) for payments for services rendered, or in anticipation of services to be rendered, in connection with the

formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;

(d) for periodical or lump sum payments in respect of a royalty; or

(e) for such other commercial or financial transaction as may be designated by the Commissioner.

(4) For the purposes of this section—

(a) "transactional data" includes—

(i) the names and addresses of each person to whom a payment was made;

(ii) where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;

(iii) where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and

(iv) such other particulars as the Commissioner may specify;

(b) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and

(c) references to the making of payments include references to the giving of any form of valuable

consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

Amendment of section 84 of No. 29 of 2015.

61. Section 84 of the Tax Procedures Act, 2015, is amended in subsection (2)(a) by deleting the words "seventy-five per cent" and substituting therefor the words "double the amount".

Repeal and replacement of section 86 of No. 29 of 2015.

62. The Tax Procedures Act, 2015, is amended by repealing section 86 and substituting therefor the following new section—

Penalty for failing to comply with electronic tax system.

86. (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 one million shillings or an amount equal to ten times the amount of the tax due, whichever is the higher.

Amendment of section 89 of No. 29 of 2015.

63. Section 89 of the Tax Procedures Act, 2015, is amended—

(a) by deleting subsection (6);

(b) by deleting subsection (7);

(c) by deleting subsection (8).

Insertion of new section of No. 29 of 2015.

64. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 97—

Offence of impersonating an authorized officer.

97A. (1) A person who is not an authorised officer commits an offence if that

person assumes the name or designation of an authorised officer and performs or procures the performance of any act which that person is not entitled to do.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding three years.

Amendment of section 104 of No. 29 of 2015.

65. Section 104 of the Tax Procedures Act, 2015, is amended in subsection (1), by deleting the word "and" and substituting therefor the word "or".

Insertion of new section of No. 29 of 2015.

66. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 108—

Concurrent civil and criminal proceedings.

108A. Where any matter under a tax law is in issue in any ongoing criminal case and is also directly or substantially in issue in any pending civil case, that fact shall not be ground for any stay, prohibition or delay of either the criminal or civil case.

PART VII—MISCELLANEOUS FEES AND LEVIES

Amendment section 7 of No. 29 of 2016.

67. Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended—

(a) in subsection (2), by deleting the words "three point five" and substituting therefor the words "two point-five";

(b) by deleting subsection (2A);

(c) in subsection (3), by deleting paragraph (b).

Insertion of new section in No. 29 of 2016.

68. The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new section immediately after section 7—

Export and investment promotion levy.

7A. (1) There shall be paid a levy to be known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use.

(2) The levy shall be at the rates

specified in the Third Schedule and shall be paid by the importer of such goods at the time of entering the goods into the country for home use.

(3) The purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.

(4) The export and investment promotion levy shall not to be charged on goods originating from East African Community Partner States that meet the East African Community Rules of Origin.

(5) The funds collected from the levy shall be paid into a fund established and managed in accordance with the Public Finance Management Act, 2012.

No. 18 of 2012.

Amendment section 8 of No. 29 of 2016.

69. Section 8 of the Miscellaneous Fees and Levies Act, 2016, is amended—

(a) in subsection (2) by deleting the words "two point five" and substituting therefor the words "one point-five";

(b) by deleting subsection (2A).

Amendment of the First Schedule to No. 29 of 2016.

70. The table appearing in Part I of the First Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended by—

(a) deleting the tariff description together with the rates of export levy corresponding to tariff number "4101.20.00" and substituting therefor the following—

Tariff No.	*Tariff Description*	*Export Levy Rate*
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved	50% or USD 0.32 whichever is higher

(b) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4102.21.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(c) by deleting the tariff description together with the rates of export levy corresponding to tariff number "4102.29.00" and substituting therefor the following—

Tariff No.	*Tariff Description*	*Export Levy Rate*
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c) to Chapter 41	50% or USD 0.32 whichever is higher

(d) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4103.20.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(e) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4103.30.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(f) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4103.90.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(g) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4104.19.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(h) by deleting tariff number "4101.40.00" together with the corresponding tariff description and rate of export levy;

(i) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4101.50.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(j) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4101.90.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(k) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4102.10.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(l) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4301.10.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(m) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4301.80.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(n) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4301.90.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(o) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4302.11.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(p) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4302.19.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(q) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4302.20.00 and substituting therefor the expression "50% or USD 0.32 whichever is higher";

(r) by deleting tariff number "8002.00.10" and substituting therefor the tariff number "8002.00.00";

(s) by deleting tariff number "8105.00.00" together with the corresponding tariff description and rate of export levy;

(t) by deleting tariff number "8107.30.00" appearing in the first column and substituting therefor tariff number "8112.61.00";

(u) by deleting tariff number "8109.30.00" together with the corresponding tariff description and rate of export levy;

(v) by deleting tariff number "8110.20.20" appearing in the first column and substituting therefor tariff number "8110.20.00";

(w) by inserting the following new tariff numbers together with corresponding tariff descriptions and rates of export levy in proper sequence—

Tariff no.	*Tariff description*	*Export levy rate*
8106.10.00	Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight	20%

8106.90.00	Other bismuth and articles thereof including waste and scrap	20%
8105	Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap	20%
8109.31.00	Waste and scrap of zirconium containing less than 1 part hafnium to 500 parts zirconium by weight	20%
8109.39.00	Other waste and scrap	20%
1703	Molasses resulting from the extraction or refining of sugar	20% of the customs value

Amendment of the Second Schedule to No. 29 of 2016.

71. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended—

(a) in part A—

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

(x) goods for official use by diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act;

Cap. 179.

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

(xv) All goods and parts thereof of Chapter 88.

(iii) by inserting the words "All goods including material supplies" at the beginning of paragraph (xxv);

(iv) by inserting the following new paragraphs immediately after (xxvi)—

(xxvii) goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and

(xxviii) liquefied petroleum gas.

(b) in part B—

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

(ii) goods imported for official use by diplomatic and consular missions, United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act;

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(ii) deleting paragraph (iii);

(iii) by inserting the words "All goods including material supplies" at the beginning of paragraph (ix);

(iv) inserting the following new paragraphs immediately after paragraph (x)—

(xi) goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;

(xii) liquefied petroleum gas; and

(xiii) all goods and parts thereof of Chapter 88.

Insertion of new Third Schedule to No. 29 of 2016.

72. The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new schedule immediately after the Second Schedule—

THIRD SCHEDULE

[s. 7A(1)]

Tariff No.	*Tariff description*	*Export and investment promotion levy rate*
2523.10.00	Cement Clinkers	10% of the customs value
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular	10% of the customs value

	(including square) cross-section, the width measuring less than twice the thickness	
7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	10% of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	10% of the customs value
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10% of the customs value
4804.21.00	Sack kraft paper; Unbleached	10% of the customs value
4804.31.00	Other kraft paper and paperboard weighing 150 g/m^2 or less: Unbleached	10% of the customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more	10% of the customs value
4819.40.00	Other sacks and bags, including cones	10% of the customs value

PART VIII—MISCELLANEOUS

Insertion of new Third Schedule to No. 29 of 2016.

73. The Betting, Gaming and Lotteries Act is amended by inserting the following new section immediately after section 69A—

Collection of taxes. No. 29 of 2015.

69AA. The taxes under sections 29A, 44A, 55A and 59B shall be collected in accordance with the provisions of the Tax Procedures Act, 2015.

Amendment of section 35 of No. 7 of 1999.

74. The Kenya Roads Board Act,1999 is amended in section 35 by inserting the following subsection immediately after subsection (2)–

(2A) The annual estimates shall be submitted together with a collated annual roads programme as provided for in section 19.

Amendment of section 104 of No. 2 of 1995.

75. Section 5 of the Kenya Revenue Authority Act, 1995, is amended in subsection (2A), by deleting the words "for the better carrying out of its functions" and substituting therefor the words "the staff of the Authority, general public and other jurisdictions".

Insertion of new section of No. 11 of 2007

76. The Employment Act, 2007, is amended by inserting the following new section immediately after section 31A—

Deductions into the National Housing Development Fund. Cap. 117.

31B. (1) An employer shall pay to the National Housing Development Fund established under section 7 of the Housing Act, in respect of each employee—

(a) the employer's contribution at three per centum of the employee's monthly basic salary; and

(b) the employee's contribution at three per centum of the employee's monthly basic salary:

Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month.

(2) The benefits to an employee shall accrue as follows—

(a) for employees who qualify for affordable housing the contributions accrue to the employee and shall be used to finance the purchase of a home under the affordable housing scheme; or

(b) for employees who are not eligible for affordable housing, upon the expiry of seven years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is earlier—

(i) a transfer of their contributions to a retirement benefits scheme or pension scheme registered with the Retirement Benefits Authority;

(ii) a transfer of their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or

(iii) a transfer of their contributions to their spouse or dependent children; or

(iv) to receive their contributions in cash:

Provided that contributions paid out in cash shall be included in the contributor's taxable income for the year and be subjected to tax at the prevailing rates.

(3) All contributions shall get a return based on the return on the Fund.

(4) The employer shall remit both employee and employer contributions to the National Housing Development Fund before

the ninth day of the following month after the deduction was made.

(5) The Cabinet Secretary responsible for matters relating to housing, in consultation with the Cabinet Secretary responsible for matters relating to finance, shall make Regulations prescribing the qualifications to participate in the affordable housing scheme.

(6) This section shall become effective on the date the Regulations made under subsection (5) come into operation.

Amendment of section 28 of No. 40 of 2011.

77. Section 28 of the Unclaimed Financial Assets Act, 2011, is amended in subsection (5), by inserting the words "or such other person as the claimant may designate" immediately after the word "claimant".

Amendment of section 20 No.23 of 2013

78. Section 20 of the Statutory Instruments Act 2013, is amended—

(a) by deleting paragraph (c);

(b) by deleting paragraph (d).

Repeal of section 21 No.23 of 2013

79. The Statutory Instruments Act 2013, is amended by repealing section 21.

Repeal of section 4 of No.8 of 2015.

80. The The Retirement Benefits (Deputy President and State Officers) Act, 2016 is amended by repealing section 4.

Insertion of section 4A and 4B into No.8 of 2015.

81. The Retirement Benefits (Deputy President and State Officers) Act, 2016 is amended by inserting the following new sections immediately after section 4-

Entitlements for person holding appointive or elective position in Government.

4A. (1) A person who—

(a) holds an appointive or elective office in the Government; and

(b) previously held a position to which pension and other benefits accrue under this Act,

shall, upon retirement or ceasing to hold that office entitled under this Act, be paid-

(i) a monthly pension equal to eight per cent of the monthly salary

of the entitled person's last monthly salary while in office; and

(ii) a lumpsum payment on retirement as calculated as a sum equal to one year's salary paid for each term served in office.

(2) In order to avoid duplication of other benefits, an entitled person who holds an appointive or elective position in or under Government shall not be entitled to other benefits under this Act, until they retire or cease to hold that appointive or elective office.

(3) For the purpose of subsection (2), other benefits means the benefits under paragraphs (c), (d) (e), (f) and (g) of sections 5, 5A, 5B, 6 and 7.

Entitlement to parliamentary pension.

4B. A person, who holds an appointive or elective position for which benefits under this Act apply and is entitled to pension under the Parliamentary Pensions Act, shall in addition to the benefits and pension payable under this Act, be paid pension under section 8 of the Parliamentary Pensions Act.

Amendment of section 5 of No.8 of 2015.

82. Section 5 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is amended–

(a) in subsection (1) by deleting the words "and the entitled person's spouse" and substituting therefor the words " ,the entitled person's spouse and the entitled person's child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person;"

(b) by deleting subsection (2).

Amendment of section 13 of No.8 of 2015.

83. Section 13 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is

amended by inserting the following new sub-section immediately after sub-section (1C) —

"(1D) The Clerk of the National Assembly in the case of a retired Speaker of the National Assembly and the Clerk of the Senate in the case of a retired Speaker of the Senate, shall prepare and submit the estimates under subsection (1)(b) to the Parliamentary Service Commission."

Repeal of section 16 of No.8 of 2015.

84. Section 16 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is repealed.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2023/2024 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill amends finance related legislation including the Income Tax Act, the Value Added Tax Act, The Excise Duty Act, the Tax Procedures Act, 2015 and the Miscellaneous Fees and Levies Act, 2016.

The Bill seeks to amend the following laws–

The Betting, Gaming and Lotteries Act (Cap. 131)

The Bill proposes to amend section 131 of the Betting, Gaming and Lotteries Act to provide for the application of the provisions of the Tax Procedures Act, 2015 in the collection of the taxes under the Betting, Gaming and Lotteries Act.

The Kenya Roads Board Act, 1999 (No.7 of 1999)

The Bill proposes to amend section 35 of the Kenya Roads Board Act, 1999 to provide that the Board shall submit a collated annual roads programme together with the annual estimates.

The Kenya Revenue Authority Act, 1995 (No. 2 of 1995)

The Bill seeks to amend section 5 of the Kenya Revenue Authority Act, 1995 to provide for the capacity building and training offered by the institution to be available to the staff of the Authority, the general public and other jurisdictions.

The Employment Act, 2007 (No. 11 of 2007)

The Bill seeks to amend the Employment Act by inserting a new section 31B to provide for the deductions of payments by employers and employees to the National Housing Development Fund established under the Housing Act. This clause also provides that the benefits of an employee who contributes to that fund. This clause provides for the making of regulations to prescribe the qualifications to participate in the affordable housing scheme which shall commence the operation of the section.

The Unclaimed Financial Assets Act, 2011 (No. 40 of 2011)

The Bill seeks to amend section 28 of the Unclaimed Assets Act, 2011, to provide for the appointment of other persons by the as beneficiaries of a claimant.

The Statutory Instruments Act, 2013 (No. 23 of 2013)

The Bill proposes to amend section 20 and 21 of the Statutory Instruments Act, 2013, to remove the mandatory requirement for the review of subsidiary legislation and the expiration of statutory instruments to and align the Statutory Instruments Act, 2013 with the Revision of Laws Act

The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No.8 of 2015).

The Bill amends the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to repeal section 4 which was declared unconstitutional by the Court. Additionally, the Bill makes provision for payment of pension to entitled persons who hold an appointive or elective position in Government.

Dated the 27th April, 2023.

KURIA KIMANI,
Chairperson,
Departmental Committee on Finance and National Planning.

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

"winnings" includes winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly;

Section 3 of Cap 470 which it is proposed to amend–

3. Charge of tax

(1) Subject to, and in accordance with, this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.

(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of—

(a) gains or profits from—

(i) any business, for whatever period of time carried on;

(ii) any employment or services rendered;

(iii) any right granted to any other person for use or occupation of property;

(b) dividends or interest;

(c) (i) a pension, charge or annuity; and

(ii) any withdrawals from, or payments out of, a registered pension fund or a registered provident fund or a registered individual retirement fund; and

(iii) any withdrawals from a registered home ownership savings plan;

(ca) income accruing from a business carried out over the internet or an electronic network including through a digital marketplace;

(d) deleted by Act No. 14 of 1982, s. 17;

(e) an amount deemed to be the income of any person under this Act or by rules made under this Act;

(f) gains accruing in the circumstances prescribed in, and computed in accordance with, the Eighth Schedule;

(g) subject to section 15(5A), the net gain derived on the disposal of an interest in a person, if the interest derives twenty per cent or more of its value, directly or indirectly, from immovable property in Kenya;

(h) a natural resource income; and

(i) gains from financial derivatives, excluding financial derivatives traded at the Nairobi Securities Exchange.

(2A) The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of subsection (2)(ca).

(3) For the purposes of this section—

(a) "person" does not include a partnership;

(b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend;

(ba) "digital marketplace" means an online or electronic platform which enables users to sell or provide services, goods or other property to other users;

(c) for the purposes of subsection (2)(g) and section 15(5A) —

i) "immovable property" means a mining right, an interest in a petroleum agreement, mining information or petroleum information;

(ii) "net gain" in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest; and

(iii) the terms "consideration", "cost", "disposal", "interest in a person", "mining information", "mining right", "person", "petroleum agreement", and "petroleum information" have the meaning assigned to them in the Ninth Schedule.

Section 4A of Cap.470 which it is proposed to amend–

4A. Income from businesses where foreign exchange loss or gain is realized

1) A foreign exchange gain or loss realized on or after 1st January, 1989 in a business carried on in Kenya shall be taken into account as a trading receipt or deductible expenses in computing the gains and profits of that business for the year of income in which that gain or loss was realized:

Provided that—

(i) no foreign exchange gain or loss shall be taken into account to the extent that taking that foreign exchange gain or loss into account would duplicate the amounts of gain or loss accrued in any prior year of income; and

(ii) the foreign exchange loss shall be deferred (and not taken into account)—

(a) where a foreign exchange loss is realized by a company whose gross interest paid or payable to related persons and third parties exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any financial year; or

(b) to the extent of any foreign exchange gain that would be realized if all foreign currency assets and liabilities of the business were disposed of or satisfied on the last day of the year of income and any foreign exchange loss so deferred shall be deemed realized in the next succeeding year of income.

(1A) For the avoidance of doubt accumulated losses shall be taken into account in computing the amount of revenue reserves.

(2) The amount of foreign exchange gain or loss shall be calculated in accordance with the difference between (a times r1) and (a times r2) where—

"a" is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or liability in the transaction in which the foreign exchange gain or loss is realized

r1 is the applicable rate of exchange for that foreign currency ("a") at the date of the transaction in which the foreign exchange gain or loss is realized;

r2 is the applicable rate of exchange for that foreign currency ("a") at the date on which the foreign currency asset or liability was obtained or established or on the 30th December, 1988, whichever date is the later.
(3) For the purposes of this section, no foreign exchange loss shall be deemed to be realized where a foreign currency asset or liability is disposed of or satisfied and within a period of sixty days a substantially similar foreign currency asset or liability is obtained or established.

(4) For the purposes of this section—

"company" does not include a bank or a financial institution licensed under the Banking Act (Cap. 488), or non-deposit taking microfinance businesses under the Microfinance Act, 2006, entities licensed under the Hire Purchase Act and persons exempt under section 16(2)(j)(iii);

"all loans" shall have the meaning assigned in section 16(3);

"foreign currency asset or liability" means an asset or liability denominated in, or the amount of which is otherwise determined by reference to, a currency other than the Kenya Shilling.

Section 5 of Cap. 470 which it is proposed to amend–

5. 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; and

(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 two 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;

(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 thirty six thousand shillings granted in respect of employment or services rendered;

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

Provided that—

(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 n 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.

(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.

"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 therent 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.

(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 Minister 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 value of meals served 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) where the value of the meal does not exceed the sum of forty-eight thousand shillings per year per employee subject to such conditions as the Commissioner may specify;

(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 two hundred and forty 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 shares were granted by the employer; 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, which shall be agreed upon with the Commissioner before the grant of the options;

(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.

Section 10 of Cap. 470 which it is proposed to amend-

10. 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) winnings;

(j) an insurance or reinsurance premium.

(k) sales promotion, marketing, advertising services, and transportation
of goods (excluding air and shipping transport services; 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.

Section 11 of Cap. 470 which it is proposed to amend–

11. 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.

(3A) In the case of a registered trust, sub-section (3) shall only apply to—

(a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;

(b) income paid to any beneficiary which is collectively below ten million shillings in the year of income;

(c) such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in paragraph 5 of the Third Schedule.

(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 31stDecember, 1990 and up to that time.

Section 12C of Cap. 470 which it is proposed to amend-

12C. Turnover and presumptive tax

(1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business is more than one million shillings but does not exceed or is not expected to exceed fifty million shillings during any year of income.

(2) Despite subsection (1), a person who would otherwise be liable to pay turnover tax under this section may, by notice in writing addressed to the Commissioner, elect not to be subject to the provisions of this section, in which case the other provisions of this Act shall apply to such person.

(3) Notwithstanding subsection (1), turnover tax shall not apply to —

(a) rental income;

(b) management or professional or training fees; or

(d) any income which is subject to a final withholding tax under this Act.

(4) A person subject to turnover tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(7) A person subject to turnover tax under this section shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedures Act, 2015.

(8) For purposes of this section "tax period" means a calendar month.

Section 12E of Cap 470 which it is proposed to amend–

12E. Digital service tax

(1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace:

Provided that this section shall not apply to a non-resident person with a permanent establishment in Kenya.

(2) A person subject to digital service tax shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the month in which the digital service was offered.

(3) Despite subsection (1), digital service tax shall not apply to income chargeable under section 9(2) or section 35.

Section 15 of Cap 470 which it is proposed to amend–

15. 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 by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits;

(i) in the case of gains or profits of the owner of any land from the sale of, or the grant of the right to fell, standing timber which was growing on such land at the time such owner acquired such land—

(i) where such land was acquired for valuable consideration, so much of the consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or

(ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time the owner acquired such land, as is attributable to such timber sold during such year of income;

(j) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year of income;

(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;

(r) an amount equal to one-third of the total gains and profits from employment of an individual who is not a citizen of Kenya and—

(i) whose employer is a non-resident company or partnership trading for profit;

(ii) who is in Kenya solely for the performance of his duties in relation to his employer's regional office, which office has been approved for the purposes of this paragraph by the Commissioner;

(iii) who is absent from Kenya for the performance of those duties for a period or periods amounting in the aggregate to

one hundred and twenty days or more in that year of income; and

(iv) whose gains and profits from that employment are not deductible in ascertaining the total income chargeable to tax under this Act of his employer or of any company or partnership which controls, or is controlled by, that employer;

(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, 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 Minister, 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.

(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

(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 thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first five financial institutions specified in the Fourth Schedule and applied to the 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;

(f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;

(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 years of income.

(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten 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.

(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 x 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 seven 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;

(iii) employment the gains or profits from which is wife's employment income, profession the gains or profits from which
is wife's professional income and wife's self-employment the
gains or profits from which is wife's self-employment income;

(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-

16. 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.

(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 raining 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);

(iv) educational fees of employee's dependants or relatives; or

(v) club fees including entrance and subscription fees, except as provided in section 15(2)(v);

(b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;

(c) any income tax or tax of a similar nature, including compensating tax 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 of 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 related persons and third parties 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;

(B) micro and small enterprises registered under the Micro and Small Enterprises Act, 2012;

(C) microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act, 2006 (No. 19 of 2006);

(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;

(G) companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings;

(H) companies engaged in manufacturing whose cumulative investment is at least five billion shillings: Provided that the investment shall have been made outside Nairobi City County and Mombasa County; and

(I) holding companies that are regulated under the Capital Markets Act (Cap. 485A).

(ja) an amount of deemed interest where the person is controlled by a non-resident person alone or together with not more than four other persons and where the company is not a bank or a financial institution licensed under the Banking Act (Cap. 488).

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

"all loans" means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium;

(4) For the avoidance of doubt, the expression "revenue reserves" under subsection (2) includes accumulated losses.

(5) The Commissioner shall prescribe the form and manner in which the deemed interest shall be computed and the period for which it shall be applicable

Section 18 of Cap470 which it is proposed to amend-

18. Ascertainment of gains or profits of business in relation to certain non- resident persons

(1) Where a non-resident person carries on any business in Kenya which
consists of manufacturing, growing, mining, or producing, or harvesting, whether from the land or from the water, any product or produce, and sells

outside, or for delivery outside Kenya, such product or produce, whether or not the contract of sale is made within or without Kenya,or utilizes that product or produce in any business carried on by him outside Kenya, then the gains or profit from such business carried on in Kenya shall be deemed to be income derived from Kenya and to be gains or profits such amount as would have accrued if such product or produce had been sold wholesale to the best advantage.

(2) Where a bank which is a permanent establishment of a non-resident person holds outside Kenya any deposits, assets or property acquired from its operations in Kenya, the gains or profits accruing from such deposits, assets or other property held outside Kenya shall be deemed to be income accrued in or derived from Kenya.

3) Where a non-resident person carries on business with a related resident. person and the course of such business is such that it produces to the resident person or through its permanent establishment either no profits or less than theordinary profits which might be expected to accrue from that business if there hadbeen no such relationship, then the gains or profits of such resident person or through its permanent establishment from such business shall be deemed to be of such an amount as might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length.

(4) For the purpose of ascertaining the gains or profits of any business carried on in Kenya no deductions shall be allowed in respect of any expenditure incurred outside Kenya by a non-resident person other than expenditure in respect of which the Commissioner determines that adequate consideration has been given; and, in particular, no deduction shall be allowed in respect of expenditure—

(a) on remuneration for services rendered by the non-resident directors (other than whole-time service directors) of a non-resident company the directors whereof have a controlling interest therein, in excess of five per cent of the total income of such company, calculated before the deduction of such expenditure, or of twenty-five thousand shillings, whichever is the greater, so, however, that in no case shall a deduction in excess of one hundred and fifty thousand shillings shall be allowed;

(b) on executive and general administrative expenses expect to the extent that the Commissioner may determine that expenditure to be just and reasonable.

(5) When a non-resident person carries on a business in Kenya through a permanent establishment in Kenya the gains or profits of the permanent establishment shall be ascertained without any deduction in respect of interest, royalties or management or professional fees paid or purported to be paid by the permanent establishment to the non-resident person and by disregarding any foreign exchange loss or gain with respect to net assets or liabilities purportedly established between the permanent establishment in Kenya and the non-resident person.

Provided that for the avoidance of doubt, the expression "non-resident person" shall include both the head office and other offices of the non-resident person.

(6) For the purposes of subsection (3), a person is related to another if—

(a) either person participates directly or indirectly in the management, control or 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.

(8) The Minister may, by rules published in the Gazette—

(a) issue guidelines for the determination of the arm's length value of a transaction for purposes of this section; or

(b) specify such requirements as he may consider necessary for the better carrying out of the provisions of this section.

Section 18A of Cap. 370 which it is proposed to amend-

18A. Ascertainment of gains and profits of business in a preferential tax regime

(1)Where —

(a) a resident person carries on business with a related resident person operating in a preferential tax regime; or

(b) a resident person carries on business with —

(i) a non-resident person located in a preferential tax regime; or

(ii) an associated enterprise of a non-resident person located in a preferential tax regime; or

(iii) a permanent establishment of a non-resident person operating in Kenya where the non-resident person is located in a preferential tax regime, and the business produces no gains or produces less gains than those which would have been expected to accrue from that business if the business activity was not with a party in a preferential tax regime, the gains of that resident person from that business shall be deemed to be the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length, or if none of the parties were located in a preferential tax regime.

(2) For the purposes of this section, "preferential tax regime" means —

(a) any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or

(b) a foreign jurisdiction which—

(i) does not tax income;

(ii) taxes income at a rate that is less than twenty per cent;

(iii) does not have a framework for the exchange of information;

(iv) does not allow access to banking information; or

(v) lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory on supervision

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

18D. Filing of country-by-country report, master file and local file

(1) An ultimate parent entity or a constituent entity of a multinational enterprise group with a gross turnover of ninety-five billion shillings (including extraordinary or investment income) that is resident in Kenya shall file a country-by-country report with the Commissioner of its financial activities in Kenya and for all other jurisdiction where the group has taxable presence.

(2) An ultimate parent 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) In addition to the provisions in subsection (1), 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 as a surrogate parent entity.

(9) A resident surrogate parent 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) the ultimate parent entity is 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 for tax purposes has an international agreement and a competent authority agreement in force; and

(c) the Commissioner has not notified the resident constituent entity in Kenya of a systemic failure, if any.

(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, 2015 (No. 29 of 2015).

Section 18 F of Cap. 470 which it is proposed to amend-

18F. Definitions

For the purposes of sections 18C, 18D and 18E - "competent authority agreement" means an agreement between authorized representatives of jurisdictions which are parties to an international agreement that requires the exchange of country-by-country reports;

"consolidated financial statements" means financial statements of a multinational enterprise group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single enterprise;

"constituent entity" means—

(a) any separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or which would be so included if equity interests in such business unit of a multinational enterprise group were traded on a public securities exchange;

(b) any such business unit that is excluded from the multinational enterprise group's consolidated financial statements solely on size or materiality grounds;

(c) any permanent establishment of any separate business unit of the multinational enterprise group included in paragraphs (a) or

(b) provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

"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 lessthan the amount specified in section 18D(1);

"group" means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public 55 securities exchange and includes a single enterprise with one or more foreign permanent establishments;

"international agreement" means a bilateral or multilateral tax agreement to which Kenya is a party which provides for the exchange of tax information between Kenya and other jurisdictions;

"local file" means a file under section 18D(7) containing material transactions of the local taxpayer;

"master file" means a file under section 18D(6) containing standardized information relevant for all multinational enterprise group members;

"multinational enterprise group" means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction;

"reporting financial year" means an annual accounting period with respect to which the ultimate parent entity of the multinational enterprise group prepares its financial statements;

"surrogate parent entity" means one constituent entity of the multinational enterprise group appointed by such group to file the country-by-country report in that constituent entity's jurisdiction of tax residence, on behalf of the group;

"systemic failure" means failure to comply with the competent authority

agreement for reasons other than those provided in the agreement; "ultimate parent entity" means an entity that —

(a) is resident in Kenya for tax purposes;

(b) is not controlled by another entity; and

(c) owns or controls a multinational enterprise group.

Section 21 of Cap. 470 which it is proposed to amend–

21. Members' clubs and trade associations

(1) A body of persons which carries on a members' club shall be deemed to be carrying on a business and the gross receipts on revenue account (including entrance fees and subscriptions) shall be deemed to be income from a business:

Provided that where not less than three-quarters of such gross receipts, other than gross investment receipts, are received from the members of such club, such body of persons shall not be deemed to be carrying on a business and no part of such gross receipts, other than gross investment receipts, shall be income.

(2) A trade association may elect, by notice in writing to the Commissioner, in respect of any year of income to be deemed to carry on a business charged to tax, whereupon its gross receipts on revenue account from transactions with its members (including entrance fees and annual subscriptions) and with other persons shall be deemed to be income from business for that and succeeding years of income.

(3) In this section—

"member" means—

(a) in relation to a members' club, a person who, while he is a member, is entitled to an interest in all the assets of such club in the event of its liquidation;

(b) in relation to a trade association, a person who is entitled to vote at a general meeting of such trade association; "members' club" means a club or similar institution all the assets of which are owned by or held in trust for the members thereof;

"gross investment receipts" means gross receipts in respect of interest, dividends, royalties, rents, other payments for rights granted for use or occupation of property, or gains of a kind referred to in paragraph (f) of subsection (2) of section 3.

Section 31 of Cap. 470 which it is proposed to amend-

31. Insurance relief

(1) A resident individual who proves that in a year of income—

(a) the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual 's spouse or child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payablein Kenya in the lawful currency of Kenya; or

(b) his employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or

(c) he, as well as his employer, has paid a premium for the insurance referred to in paragraph (b), shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief:

Provided that—

(i) no insurance relief shall be granted in respect of that part of a premium for an insurance as secures a benefit which may, at the option of the assured, be withdrawn at any time prior to the determination of the insurance, and in that case the proportion of premiums otherwise eligible for relief, if any, shall be the amount that the Commissioner may determine to be just and reasonable;

(ii) no relief shall be granted in respect of a premium for an insurance unless the person claiming the relief furnishes evidence as to the nature and conditions of the insurance and such other particulars as may be required by the Commissioner;

(iii) an education policy with a maturity period of at least ten years shall qualify for relief; and

(iv) the provisions of this section shall apply only to life or education policies whose term commences on or after 1st January, 2003;

(v) a health policy whose term commences on or after 1st January, 2007 or a contribution made to the National Hospital Insurance Fund, shall qualify for relief;

(vi) where a policy is surrendered before its maturity, all the relief granted to the policyholder shall be recovered from the

surrender value of the policy and remitted to the Commissioner by the insurer.

(2) In this section "child", means any child of the resident individual and includes a step-child, an adopted child and an illegitimate child who was under the age of eighteen years on the date the premium was paid.

Section 35 of Cap. 470 which it is proposed to amend-

35. 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;

(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; or

(h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection, which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate;

(i) winnings;

(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.

(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; or

(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; or

(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); or

(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) winnings;

(j) rent, premium or similar consideration for the use or occupation of immovable property.

(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.

(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, on or before the twentieth day of the month following the month in which 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 winnings 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, (No. 18 of2012).

(6A) Where any person who is required under subsection (3A) to deduct tax—

(a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or

(b) fails to remit the amount of any deduction to the Commissioner on or before the twentieth day of the month following the month in which such deduction was

made or ought to have been made, any Collector of Stamp Duties appointed under section 4 of the Stamp Duty Act (Cap. 480), shall not stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and Registrars of Title or Land Registrars appointed under any written law shall not register the property under any written law, until such tax has been duly accounted for:

Provided that the transferee of chargeable property may pay such tax and be entitled to recover the amount of the tax from any consideration for the transfer in his possession, by action in a court or by any other lawful means at his disposal.

(6C) Subject to subsection (6B), the provisions of this Act relating to appeals to local committees against assessment shall apply mutatis mutandis to appeals under this section.

(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 clays of the date of service of the notice of the imposition.

(6E) The provisions of this Act in respect of objections shall, mutatis mutandis, apply to objections under this section.

(7) The Minister 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 Minister may, by notice in the Gazette, amend or add to the Fourth Schedule in respect of financial institutions resident or having a permanent establishment in Kenya.

Section 45 of Cap 470 which it is proposed to amend-

45. Income of a person assessed on him

(1) executors or administrators, notwithstanding that no assessment has been The income of a married woman living with her husband shall be deemed to be the income of the husband for the purpose of ascertaining his total income, and shall be assessed on, and the tax thereon charged on, the husband; but that part of the total amount of tax charged on the husband as bears the same proportion to the total amount as the amount of the income of the wife bears to the amount of the total income of the husband may, if due and not paid, be collected from the wife or, if she is dead, from her made upon her; and the provisions of this Act relating to

the collection and recovery of tax shall apply to that part of the tax as if it weretax the due date for the payment of which is a date thirty days after the date of a notice served on the wife, or her executors or administrators, as the case maybe, requiring payment:

Provided that the income of a married woman shall not be deemed to be the income of the husband where such married woman opts to file a separate return from that of her husband.

(2) Where a married woman is not living with her husband, then each spouse shall, for the purposes of this Act, be treated as if he or she were unmarried.

(3) For the purposes of this Act, a married woman shall be treated as living with her husband unless—

(a) they are separated under an order of a court of competent jurisdiction or under any written agreement of separation; or

(b) they are separated in such circumstances that the separation is likely to be permanent; or

(c) she is a resident person and her husband is a non-resident person.

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

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 suchpurposes 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 sixty days of the lodging of the application.

65. Income of a company undertaking the manufacture of human vaccines.

Second schedule to Cap. 470 which it is proposed to amend-

SECOND SCHEDULE

[ss. 4, 5 and 15]

INVESTMENT ALLOWANCE

1. 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

(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

(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 an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator 10% per year, in equal instalments

(d) Farm works 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 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; and

(v) security walls and fencing.

(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 worksnecessary for the proper operation of the farm.

(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 two billion shillings:

Provided that where the cumulative value of investment for the preceding three years of income was two 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 two 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.

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 RATES OF PERSONAL RELIEF AND TAX

HEAD A – RESIDENT PERSONAL RELIEF

1. Personal Relief

The amount of the personal relief shall be twenty-eight thousand eight hundred shillings: Provided that for the year of income 1995, all the income over £19,500 shall be charged additional tax at the rate of one-half shilling in each twenty shillings.

2. Insurance Relief

The amount of insurance relief shall be fifteen per cent of the amount of premiums paid but shall not exceed sixty thousand shillings per annum.

3. Affordable housing relief

The amount of affordable housing relief shall be 15% of the employee's contribution but shall not exceed Ksh. 108,000 per annum.

HEAD B – RATES OF TAX

1. The individual rates of tax shall be –

Rate in each shilling	
On the first K Sh.288,000	10%
On the next K Sh.100,000	25%
On all income over K Sh.388,000	30%

1A. The wife's employment, wife's professional and wife's self-employment income rates of tax shall be:

Rate in each shilling	
On the first K Sh. 288,000	10%
On the next K Sh. 100,000	25%
On all income over KSh.388,000	30%

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 7.5

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.

(ii) a gain 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);

(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 percent 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 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;

(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;

(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.

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 all others;

(d) (i) in respect of a payment of a pension or any withdrawal made after the expiry of fifteen years from the date of joining the fund, or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill-health or infirmity of body and mind, 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 and, provided that tax has not been deducted under section 37—

Rate in each shilling

On the first Shs. 400,000 10%

On the next Shs. 400,000 15%

On the next Shs. 400,000 20%

On the next Shs. 400,000 25%

On all income above KSh. 1,600,000 of the amounts in excess of the tax-free amount. 30%

Provided that the tax so deducted shall be final;

(ii) in respect of a withdrawal before the expiry of fifteen years from the date of joinin 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)]section 8(4) and 8(5) in any one year—

Rate in each shilling

On the first K Shs.288,000 10%

On the next K Shs.100,000 25%

On all income over K Shs.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;

(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;

(i) in respect of winnings, twenty percent;

Provided that the tax paid under this subparagraph is final.
(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, ten 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.

(k) deleted by Act No. 14 of 2015, s. 18(c)(iii).

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

(a) for vans, pick-ups, trucks, prime movers, trailers and lorries: one thousand five hundred shillings per ton of load capacity per year or two thousand four hundred shillings per year, whichever is the higher;
Provided that advance tax shall not be imposed on tractors or trailers used for agricultural purposes;

(b) for saloons, station-wagons, mini-buses, buses and coaches: sixty shillings per passenger capacity per month or two thousand four hundred shillings per year, whichever is the higher;

9. The rate of turnover tax shall be one 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 ten percent of the gross rental receipts of a taxable resident person under section 6A

11. The rate of tax in respect of minimum tax under section 12D shall be one per cent of the gross turnover.

12. The rate of tax in respect of digital service tax under section 12E shall be one point five per cent of the gross transaction value.

Fourth schedule to Cap. 470 which it is proposed to amend-

FOURTH SCHEDULE [ss. 15 and 35]

FINANCIAL INSTITUTIONS

A bank or financial institution or mortgage finance company licensed and the Banking Act (Cap. 488).

An insurance company licensed under the Insurance Act (Cap. 487)

The Kenya Reinsurance Corporation established by the Reinsurance Corporation Act.

A building society registered under the Building Societies Act (Cap. 489).

The National Housing Corporation established under the Housing Act (Cap. 117).

A co-operative society registered under the Co-operative Societies Act (Cap. 490).

The Kenya Post Office Savings Bank established by the Kenya Post Office
Savings Bank Act (Cap. 493B).

The Agricultural Finance Corporation established by the Agricultural Finance Corporation Act (Cap. 323).

A person licensed under Part VII of the Hire-purchase Act (Cap. 50)

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 the whole of a gain which accrues to a company or an individual on or after 1st January, 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015.

8. Adjusted cost

(1) Subject to this Schedule, the adjusted cost of any property is—

(a) the amount of or value of the consideration for the acquisition or construction of the property;

(b) the amount of expenditure wholly and exclusively incurred on the property at any time after its acquisition by or on behalf of the transferor for the purpose of enhancing or preserving the value of the property at the time of the transfer;

(c) the amount of expenditure wholly and exclusively incurred at any time after the acquisition of the property by the transferor establishing, preserving or defending the title to, or a right over, the property; and

(d) the incidental costs to the transferor of acquiring the property.

(2) For the purpose of computing the adjusted cost of any property, an amount computed shall be reduced by such amounts as have been allowed as deductions under section 15(2).

(3) Where a company issues to any of its shareholders shares—

(a) that do not constitute a dividend under section 7 (1)(d) or (e), the cost of the shares—

(i) shall be the sum paid for the shares; or

(ii) if no sum is paid for the shares, shall be deemed to be nil, and the shareholder shall allocate, in the manner prescribed, the cost of his existing shares between such old shares and such new shares; or

(b) that constitute, wholly or partly, a dividend under either of those paragraphs, the amount which constitutes a dividend shall be treated as part of the cost of the shares, and the shareholder shall allocate, in the manner prescribed, the cost of the existing shares between such old shares and such new shares.

(4) Where there is a part transfer of property the adjusted cost of the property shall be allocated to the part transferred in accordance with a method approved by the Commissioner.

(5) The Commissioner may make rules for the purposes of subparagraph (3) prescribing the manner of allocation to be prescribed under that subparagraph.

11A. The due date for tax payable in respect of property transferred under this Partshall be on or before the date of application for transfer of the property is made at the relevant Lands Office.

13. Exemption

No gain or loss shall be included in the computation of income under section 3(2)(f) in the case of a transfer of property that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, where such transfer is—

(a) a legal or regulatory requirement;

(b) as a result of a directive or compulsory acquisition by the government;

(c) an internal restructuring within a group which does not involve transfer of property to a third party; or

(d) in the public interest and approved by the Cabinet Secretary

Ninth schedule to Cap .470 which it is proposed to amend-

NINTH SCHEDULE [s. 23]

TAXATION OF EXTRACTIVE INDUSTRIES

14. Indirect transfers of interest

(1) A licensee or a contractor shall immediately notify the Commissioner, in writing, if there is a ten per cent or more change in the underlying ownership of a licensee or contractor.

(2) If the person disposing of the interest to which the notice under subparagraph (1) relates is a non-resident person, the licensee or contractor shall be liable, as agent of the non-resident person, for any tax payable under this Act by the non-resident person in respect of the disposal

Section 5 of No. 35 of 2013 which it is proposed to amend-

Charge to tax

(1) A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on—

(a) a taxable supply made by a registered person in Kenya;

(b) the importation of taxable goods; and

(c) a supply of imported taxable services.

(2) The rate of tax shall be—

(a) in the case of a zero-rated supply, zero per cent;

(aa) in the case of goods listed in section B of Part I of the First Schedule, eight percent of the taxable value, effective from the date of assent;

(ab) in the case of the supply of liquefied petroleum gas including propane, eight percent; or

(b) in any other case, sixteen per cent of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services.

(3) Tax on a taxable supply shall be a liability of the registered person making the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

(4) The amount of tax payable on a taxable supply, if any, shall be recoverable by the registered person from the receiver of the supply, in addition to the consideration.

(5) Tax on the importation of taxable goods shall be charged as if it were duty of customs and shall become due and payable by the importer at the time of importation.

(6) Tax on the supply of imported taxable services shall be a liability of any person receiving the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

7) The provisions of subsection (1) shall be applicable to supplies made over the internet or an electronic network or through a digital marketplace.

(8) The Cabinet Secretary shall make regulations to provide the mechanisms for implementing the provisions of subsection (7).

(9) For the purposes of this section, "digital marketplace" means an online platform which enables users to sell goods or provide services to other users.

Section 8 of No. 35 of 2013 which it is proposed to amend-

8. Place of supply of services

(1) A supply of services is made in Kenya if the place of business of the supplier from which the services are supplied is in Kenya.

(2) If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person and—

(a) the services are physically performed in Kenya by a person who is in Kenya at the time of supply;

(b) the services are directly related to immovable property in Kenya;

(c) the services are radio or television broadcasting services received at an address in Kenya;

(d) the services are electronic services delivered to a person in Kenya at the time of supply; or

(e) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in Kenya.

(3) In this section—

"electronic services" means any of the following services, when provided or delivered on or through a telecommunications network—

(a) websites, web-hosting, or remote maintenance of programs and equipment;

(b) software and the updating of software;

(c) images, text, and information;

(d) access to databases;

(e) self-education packages;

(f) music, films, and games, including games of chance; or

(g) political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.

Section 17 of No. 35 of 2013 which it is proposed to amend-

17. Credit for input tax against output tax

(1) Subject to the provisions of this Act and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person in a return for the period, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1)—

(a) the person does not hold the documentation referred to in subsection (3), or

(b) the registered supplier has not declared the sales invoice in a return, the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation:

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

(3) The documentation for the purposes of subsection (2) shall be—

(a) an original tax invoice issued for the supply or a certified copy;

(b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;

(c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction; and

(d) a credit note in the case of input tax deducted under section 16(2);

(e) a debit note in the case of input tax deducted under section 16(5); or

(f) in the case of a participant in the Open Tender System for the importation of petroleum products that have been cleared through a non-bonded facility, the custom entry showing the name and PIN of the winner of the tender and the name of the other oil marketing company participating in the tender:

Provided that the input tax that may have been incurred by an oil marketing company participating in the Open Tender System before the coming into force of this provision shall be claimed within twelve months after this provision comes into force.

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition, leasing or hiring of—

(a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or

(b) entertainment, restaurant and accommodation services unless—

(i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or

(ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.
(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

Provided that any such excess shall be paid to the registered person by the Commissioner where –

(a) such excess arises from making zero rated supplies; or

(b) such excess arises from tax withheld by appointed tax withholding agents; and

(c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of theTax Procedures Act, 2015;

(d) the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable; and

(e) such excess arises from input tax under subsection (8):

Provided further that a registered person who, since the commencement of subsection (8) but before the commencement of this provision, has a credit arising from input tax under subsection (8) may apply for the refund of excess tax within twelve months from the commencement of this provision.

Provided further that, notwithstanding section 17(5)(d), a registered person who, within a period of thirty-six months prior to the commencement of section 17(5)(b) and (c), has a credit arising from withholding tax, may make an application for a refund of the excess tax within twelve months from the commencement date.

(6) Subject to this Act, if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows –

(a) full deduction of all the input tax attributable to taxable supplies;

(b) no deduction of any input tax which is directly attributable to other use; and

(c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula: A X B C where –

A is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use;

B is the value of all taxable supplies made by the registered person during the period; and

C is the value of all supplies made by the registered person during the period in Kenya.

(7) If the fraction of the formula in subsection (6) for a tax period—

(a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component A of the formula; or

(b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component A of the formula.

(8) Notwithstanding the provisions of this section, a registered person who is a manufacturer may make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule.

Section 34 of No. 35 of 2013 which it is proposed to amend-

34. Application for registration

(1) A person who in the course of a business—

(a) has made taxable supplies or expects to make taxable supplies, the value of which is five million shillings or more in any period of twelve months; or

(b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months, shall be liable for registration under this Act and shall, within thirty days of becoming so liable, apply to the Commissioner for registration in the prescribed form:

Provided that this section shall not apply to persons supplying imported digital services over the internet or an electronic network or through a digital marketplace in respect to a turnover threshold of five million shillings.

(2) In determining whether a person exceeds the registration threshold for a period, the value of the following taxable supplies shall be excluded—

(a) a taxable supply of a capital asset of the person; and

(b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's business or permanently ceasing to carry on the person's business.

(3) Notwithstanding subsection (1), a person who makes or intends to make taxable supplies may apply, in the prescribed form, to the Commissioner for voluntary registration.

(4) The Commissioner shall register a person who has applied for voluntary registration under subsection (3) if satisfied that—

(a) the person is making, or shall make taxable supplies;

(b) the person has a fixed place from which the person's business is conducted;

(c) if the person has commenced carrying on a business, the person—

(i) has kept proper records of its business; and

(ii) has complied with its obligations under other revenue laws; and (d) there are reasonable grounds to believe that the person shall keep proper records and file regular and reliable tax returns.

(5) The Commissioner shall issue a registered person with a tax registration certificate in the prescribed form.

(6) If the Commissioner is satisfied that a person eligible to apply for registration has not done so within the time limit specified in subsection (1), the Commissioner shall register the person.

(7) The registration of a person under subsection (1) or (6) shall take effect
from the beginning of the first tax period after the person is required to apply for registration, or such later period as may be specified in the person's tax registration certificate.

(8) The registration of a person under subsection (4) shall take effect from the date specified in the person's tax registration certificate.

(9) The Cabinet Secretary may, in regulations, provide for the registration of a group of companies as one registered person for the purposes of the Act.

Section 43 of No. 35 of 2013 which it is proposed to amend-

43. Keeping of records

(1) A person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or

otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

(2) The records to be kept under subsection (1) shall include—

(a) copies of all tax invoices and simplified tax invoices issued in serial number order;

(b) copies of all credit and debit notes issued, in chronological order;

(c) purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received to be filed chronologically either by date of receipt or under each supplier's name;

(d) details of the amounts of tax charged on each supply made or received and in relation to all services to which section 10 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;

(e) tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;

(f) copies of stock records kept periodically as the Commissioner may determine;

(g) details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and

(h) such other accounts or records as may be specified, in writing, by the Commissioner.

(3) Every person required under subsection (1) to keep records shall, at all reasonable times, avail the records to an authorised officer for inspection and shall give the officer every facility necessary to inspect the records.

(4) For the purposes of this section, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register, of such type and description as may be prescribed, for the purpose of accessing information regarding any matter or transaction which may affect the tax liability of the person.

(5) A person who contravenes any of the provisions of this section commits an offence.

First schedule to No. 35 of 2013 which it is proposed to amend–

FIRST SCHEDULE [s. 2]

EXEMPT SUPPLIES

PART I – GOODS

SECTION A

20. Fish and crustaceans, muluscs and other quaticinveterbrates of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307.

39.(1) Subject to paragraphs (2) and (3), materials, articles and equipment, including motor vehicles, which—

(a) are specially designed for the sole use by disabled, blind and physically handicapped persons;

(b) are intended for the educational, scientific or cultural advancement of the disabled for the use of an organisation approved by the national Government for purposes of exemption.

(2) The exemption under paragraph (1) shall only apply—

(a) once in every four years in respect of motor vehicles; and

(b) to a person who has not enjoyed another exemption under the provisions of this Act.

(3) Paragraph (1)(b) does not apply to motor vehicles.

Tariff Number	Description
2106.10.00	Protein concentrates and textured protein substances
2106.90.10	Food preparations specially prepared for infants
2106.90.99	Other - Food preparations not elsewhere specified or included
2106.90.91	Food supplements
2936.27.00	Vitamin C and its derivatives
2941.20.00	Streptomycins and their derivatives; salts thereof.
2941.30.00	Tetracyclines and their derivatives; saltsthereof.
2941.40.00	Chloramphenicol and its derivatives;salts thereof.

2941.50.00 Erythromycin and its derivatives; salts thereof.
2941.90.00 Other antibiotics.

3001.20.00 Extracts of glands or other organs or of their secretions.

3001.90.00 Other - Heparin and its salts

3001.90.00 Other - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included

3002.11.00 Malaria diagnostic test kits

3002.12.00 Antisera and other blood fractions

3002.13.00 Immunological products unmixed, not put up in measured doses or in forms or packings for retail sale

3002.14.00 Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale

3002.15.00 Immunological products put up in measured doses or in forms or packings for retail sale

3002.19.00 Other - Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes

3002.20.00 Vaccines for human medicine.

3002.30.00 Vaccines for veterinary medicine.

3003.10.00 Medicaments containing penicillin or derivatives thereof, with penicillanicacid structure, or streptomycin or their derivatives

3003.20.00 Medicaments containing other antibiotics not put up in measured doses or in forms or packings for retail sale.

3003.31.00 Insulin

3003.39.00 Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.

3003.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.

3003.90.00 Other.

3003.90.10 Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.

3003.90.90 Other medicaments (excluding goods of heading No. 30.02,

30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.

3004.10.00 Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale.

3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.

3004.31.00 Medicaments containing insulin put up in measured doses or in forms or packings for retail sale.

3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.

3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.

3004.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 2937 or antibiotics, put up in measured doses or in forms or packings for retail sale.

3004.41.00 Containing ephedrine or its salts.

3004.42.00 Containing pseudoephedrine (INN) or its salts.

3004.43.00 Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts

3004.49.00 Other.

3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.

3004.60.00 Other, containing antimalarial active principles described in Subheading Note 2 to this Chapter

3004.90.00 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

3004.90.10 Infusion solutions for ingestion other than by mouth put up in measured doses or in forms or packings for retail sale.

3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

3005.10.00 Adhesive dressings and other articles having an adhesive layer impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3005.90.10 White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, ,or put upin forms or packings for retail sale for
medical, surgical, dental or veterinary purposes

3005.90.90 Other wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3006.10.00 Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure, sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics.

3006.20.00 Blood-grouping reagents.

3006.30.00 Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient.

3006.40.00 Dental cements and other dental fillings; bone reconstruction cements.

3006.50.00 First-aid boxes and kits.

3006.60.00 Chemical contraceptive preparations based on hormones or spermicides.

3006.70.00 Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments.

3006.91.00 Appliances identifiable for ostomy use.

3006.92.00 Waste pharmaceuticals.

8802.30.00 Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg.

8802.40.00 Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs.

8802.60.00 Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.

9018.90.00 Blood giving set and infusion sets

9619.00.10 Sanitary towels (pads) and tampons.

9019.20.00 Airway Guedel and Ambu bags

9021.10.00 Orthopaedic or fracture appliances

9021.50.00 Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories

9025.19.00 Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments, thermometers and pyrometers, not combined with other instruments: Other 1006.30.00 Semi-milled or wholly milled rice,whether or not polished or glazed.

0402.21.00 Milk in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%, not containing added sugar or other sweetening matter.

0402.29.00 Other milk in powder granules or other solid forms, of a fat content, by weight, exceeding 1.5%

0402.29.10 Milk, specially prepared for infants.

0402.91.00 Other not containing added sugar or other sweetening matter.

0402.99.00 Other milk

49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801

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

66A. Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)

71. Perforated PE film 15-22 gsm of tariff number 3921.90.00

107. Plant, machinery and equipment used in the construction of a plastics recycling plan

108. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight:

Provided that this paragraph shall, subject to paragraph 20 of the Second Schedule, be suspended for six months from the date of assent.

119. Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health

120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00,

9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

122. Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health.

125. Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

128. Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health

129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon

approval by the Cabinet Secretary responsible for matters relating to health.

130. Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health

140. Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health.

46. Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector:

Provided that the value of such investment is not less than two billion shillings

PART II – SERVICES.

The supply of the following services shall be exempt supplies—

1. The following financial services—

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.

27. Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption.

34. Taxable goods, inputs and raw materials imported or locally purchased by a company which—

(a) is engaged in business under a special operating framework arrangement with the Government; and

(b) is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health

The Second schedule to No. 35 of 2013 which it is proposed to amend-

Section 5 of No. 2 of 1995 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.

16. All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.

19. Agricultural pest control products.

20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight:

Provided this paragraph shall be in operation for a period of six months from the date of assent

21. Transportation of sugarcane from farms to milling factories

23. The exportation of taxable services in respect of business process outsourcing.

24. Fertilizers of chapter 31.

25. Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.

Section 35 of No. 7 of 1999 which it is proposed to amend–

35. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for—

(a) moneys allocated to road agencies under section 19;

(b) the payment of the salaries, allowances and other charges in respect of the staff of the Board;

(c) the payment of pensions, gratuities and other charges in respect of the staff of the Board;

(d) the proper maintenance of the buildings and grounds of the Board; and

(e) the maintenance, repair and replacement of the equipment and other property of the Board.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to Parliament through the Minister for approval and thereafter, the Board shall not increase or decrease the annual estimates.

Section 13 of No. 40 0f 2013 which it is proposed to amend-

13. Procedure for appeal–

(1) A notice of appeal to the Tribunal shall—

(a) be in writing or through electronic means;

(b) be submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner.

(2) The appellant shall, within fourteen days from the date of filing the notice of appeal, submit enough copies, as may be advised by the Tribunal, of—

(a) a memorandum of appeal;

(b) statements of facts; and

(c) the tax decision.

(3) The Tribunal may, upon application in writing or through electronic means, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).

(4) An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the notice of appeal or submitting the documents within the specified period.

(5) An appellant shall serve a copy of the appeal on the Commissioner within two days after giving notice of appeal to the Tribunal.

(6) The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal or documents to which the decision relates.

(7) The Tribunal shall hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal.

Provided that in case the panel is not able to conclude hearing an appeal within ninety days, the panel may through a resolution made by not less than half of its Members, extend the time for hearing and determination of the appeal by not more than thirty days.

(8) The parties to an appeal may apply, in writing, to the Tribunal to settle the dispute out of the Tribunal and in such a case, the time taken to resolve or conclude the settlement out of the Tribunal shall be excluded when calculating the period contemplated in subsection (7).

Section 32 of No. 40 of 2013 which it is proposed to amend-

32. Appeals to the High Court on decisions of the Tribunal

(1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.

(1A) A party that has appealed against the decision of the Tribunal in subsection (1) shall within two days of lodging a notice of appeal, serve a copy of the notice on the other party.

(2) The High Court shall hear appeals made under this section in accordance
with rules set out by the Chief Justice.

Section 2 of No.23 of 2015 which it is proposed to amend-

"excise control" has the meaning assigned to it in section 23;

Section 10 of No. 23 of 2013 which it is proposed to amend-

10. Adjustment for inflation

(1) Despite section 8, the Commissioner may, with the approval of the Cabinet Secretary, by notice in the Gazette, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule,

Provided that the Commissioner may, by notice in the Gazette and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year in respect of such products.

(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.

(3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under subsection (2), consider the notice and make a resolution either to approve or reject the notice.

(4) The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.

Section 20 of No 23 of 2015 which it is proposed to amend-

20. Suspension of licence

(1) Subject to section 23, the Commissioner may suspend a licence issued under this Act if the Commissioner is satisfied that—

(a) any of the matters specified in section 19(2) (a), (b), or (c) apply to the licensed person;

(b) the licensed person has not kept proper records as required under this Act or the Tax Procedures Act, or has otherwise failed to comply with obligations under this Act;

(c) the licensed person has breached a condition of the licence;

(d) the licensed person has made a false or misleading statement to the Commissioner;

(e) for a licensed manufacturer, the factory, or plant or equipment, specified in the licence is no longer adequate to manufacture or secure excisable goods.

(2) Where a licence is suspended under subsection (1), the Commissioner shall serve the licensed person with written notice of the suspension.

(3) The suspension of a licence shall take effect from the date of service of the notice under subsection (2).

(4) A person served with a notice of suspension under subsection (2) may, by notice in writing and within fourteen days of service of the notice, or within such further time as the Commissioner may allow, appeal against the suspension.

(5) Where a licensed person lodges a notice of appeal in accordance with subsection (4), the Commissioner shall, within fourteen days after receipt of the notice, either—

(a) accept the appeal and revoke the suspension of the licence;

(b) provide the licensed person with written notice of the action required to be taken before the date specified in the notice to remedy the deficiencies that led to the suspension of the licence and revoke the suspension if the action is taken within the specified time; or

(c) reject the appeal and cancel the licence under section 21.

(6) If the Commissioner fails to take action under subsection (5) within the time specified in that subsection, the suspension shall stand revoked.

Section 28 of No. 23 of 2015 which it is proposed to amend-

28. Excise stamps and other markings

(1) The Cabinet Secretary may in the regulations specify—

(a) the excisable goods to which excise stamps shall be affixed;

(b) the systems for management of excise stamps and excisable goods, and

(c) the place and time of affixing excise stamps.

(2) The Commissioner shall, by notice in at least two newspapers of national
circulation, specify the types and descriptions of excise stamps to be affixed on goods specified under subsection (1).

(3) If excisable goods are manufactured for export, or for delivery to persons listed in subparagraph (2) or (3) of the Second Schedule, the goods shall be marked with such inscriptions as the Commissioner may specify to facilitate the tracking and tracing of the goods.

(4) A person shall not remove excisable goods specified in subsection (1) from the place designated for affixing stamps unless the goods have been affixed with stamps in accordance with the regulation.

(5) Notwithstanding subsection (4), the Commissioner may in exceptional circumstances, and with prior approval of the Cabinet Secretary, allow removal of excisable goods from excise control without affixing excise stamps on the goods.

Section 40 of No. 23 of 2015 which it is proposed to amend-

40. Offences relating to excise stamps

Any person who contravenes section 28 commits an offence.

First schedule to No. 23 of 2015 which it is proposed to amend-

RATES OF EXCISE DUTY

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

Part I - EXCISABLE GOODS

Tariff No.	Tariff Description	Rate
2709.00.10	Condensates per 10001@20degC	Shs. 6,225.00
Imported White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00 , 1806.32.00, and 1806.90.00		Shs. 242.29 per kg
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90		10%
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared		20%
Imported sugar confectionary of tariff heading 17.04;		Shs. 40.37 per kg

Part II - EXCISABLE SERVICES

1. Telephone and internet data services shall be charged excise duty at a rate of twenty percent of their excisable value.

2. Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value.

3. Excise duty on fees charged for money transfer services by cellular phone service providers, shall be twelve percent of their excisable value.

4. Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value.

Provided that this paragraph shall not apply to horse racing.

4A. Excise duty on betting shall be seven-point five per cent of the amount wagered or staked.

4B. Excise duty on gaming shall be seven-point five percent of the amount wagered or staked.

4C. Excise duty on prize competition shall be seven-point five percent of the amount paid or charged to participate in a prize competition.

4D. Excise duty on lottery (excluding charitable lotteries) shall be seven-point five percent of the amount paid or charged to buy the lottery ticket.

6. Excise duty on fees charged by digital lenders at a rate of twenty percent.

7. Excise duty on importation of cellular phones, shall be at ten per cent of the excisable value.

Part III - INTERPRETATION OF SCHEDULE

In this Schedule—

"amount wagered or staked" means the amount of money placed by a person for an outcome in a betting transaction;

"other fees" includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder;

Section 3 of No. 29 of 2015 which it is proposed to amend-

"tax decision" means—

(a) an assessment;

(b) a determination under section 17(2) of the amount of tax payable or that will become payable by a taxpayer;

(c) a determination of the amount that a tax representative, appointed person, director or controlling member is liable for under section 15, section 17 and section 18

(d) a decision on an application by a self-assessment taxpayer under section 31(2);

(e) a refund decision;

(f) a decision under section 48 requiring repayment of a refund; or

(g) a demand for a penalty;

Section 6A of No 29 of 2015 which it is proposed to amend-

6A. 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.

Section 23 of No. 29 of 2015 which it is proposed to amend-

23. Record-keeping

(1) A person shall—

(a) maintain any document required under a tax law, in either of the official languages;

(b) maintain any document required under a tax law so as to enable the person's tax liability to be readily ascertained; and

(c) subject to subsection (3), retain the document for a period of five years from the end of the reporting period to which it relates or such shorter period as may be specified in a tax law.

(2) The unit of currency in books of account, records, paper registers, tax returns or tax invoices shall be in Kenya shillings.

(2A) Despite subsection (2), the unit of currency in books of account, records, paper registers, tax returns or tax invoices in respect of a non-resident person carrying on business through a digital marketplace shall be in convertible foreign currency as may be approved by the Commissioner.

(2B) The provisions of subsection (2) shall not apply to a non-resident person who files returns and makes payments through a resident tax representative or non-resident person with a permanent establishment.

(3) When, at the end of the period specified in subsection (1)(c), a document —

(a) relates to an amended assessment, the person shall retain the document until the period specified in section 31(7) has expired; or

(b) is necessary for a proceeding commenced before the end of the five year period, the person shall retain the document until all proceedings have been completed.

(4) When a document referred to subsection (1) is not in an official language, the Commissioner may, by notice in writing, require the person required to keep the document to provide, at the person's expense, a translation into an official language by a translator approved by the Commissioner by the date specified in the notice.

(5) Despite anything in any tax law, the Regulations may provide for a simplified system of record-keeping for small businesses.

Section 31 of No 29 of 2015 which it is proposed to amend-

31. Amendment of assessments

(1) Subject to this section, the Commissioner may amend an assessment (referred to in this section as the "original assessment") by making alterations or additions, from the available information and to the best of the Commissioner's judgement, to the original assessment of a taxpayer for a reporting period to ensure that—

(a) in the case of a deficit carried forward under the Income Tax Act (Cap. 470), the taxpayer is assessed in respect of the correct amount of the deficit carried forward for the reporting period;

(b) in the case of an excess amount of input tax under the Value Added Tax Act, 2013 (No. 35 of 2013), the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the reporting period; or

(c) in any other case, the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.

(2) A taxpayer who has made a self-assessment may apply to the Commissioner, within the period specified in subsection (4)(b)(i), to make an amendment to the taxpayer's self-assessment.

(3) Where an amended self-assessment return has been submitted under subsection (2), the Commissioner may accept or reject the amended self-assessment return and where he rejects, he shall furnish the taxpayer with the reasons for such rejection within thirty days of receiving the application.

(4) The Commissioner may amend an assessment—

(a) in the case of gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, at any time; or

(b) in any other case, within five years of—

(i) for a self-assessment, the date that the self-assessment taxpayer submitted the self-assessment return to which the self-assessment relates; or

(ii) for any other assessment, the date the Commissioner notified the taxpayer of the assessment:

Provided that in the case of value added tax, the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

(5) Despite subsection (4)(b) (i) the Commissioner shall make an amended assessment on an application of a self-assessment taxpayer under subsection (2) if the application was submitted within the time specified in subsection (4)(b)(i).

(6) Where an assessment has been amended, the Commissioner may further amend the original assessment—

(a) five years after—

(i) for a self-assessment, the date the taxpayer submitted the self-assessment return to which the self-assessment relates; or

(ii) for any other assessment, the date the Commissioner served notice of the original assessment on the taxpayer; or

(b) one year after the Commissioner served notice of the amended assessment on the taxpayer, whichever is the later.

(7) In any case to which subsection (6)(b) applies, the Commissioner shall only amend the alterations or additions made in the amended assessment to the original assessment.

(8) When the Commissioner has made an amended assessment, he or she shall notify the taxpayer in writing of the amended assessment and specify—

(a) the amount assessed as tax or the deficit or excess input tax carried forward, as the case may be;

(b) any amount assessed as late payment penalty payable in respect of the tax assessed;

(c) any amount of late payment interest payable in respect of the tax assessed;

(d) the reporting period to which the assessment relates;

(e) the due date for payment of any tax, penalty or interest being a date that is not less than thirty days from the date of the taxpayer received the notice; and (f) the manner of objecting to the assessment.

(9) Despite any notification to a taxpayer under this section, the due date for the payment of the tax payable under assessment (referred to as the "original due date') shall not be altered and the late payment penalty and late payment interest shall also remain payable based on the original due date.

Section 37 of No. 29 of 2015 which it is proposed to amend-

37. Relief because of doubt or difficulty in recovery of tax

(1) This section applies where the Commissioner determines that—

(a) it may be impossible to recover an unpaid tax;

(b) there is undue difficulty or expense in the recovery of an unpaid tax;

(c) there is hardship or inequity in relation to the recovery of an unpaid tax; or

(d) there is any other reason occasioning inability to recover the unpaid tax.

(2) Despite the provision of any tax law, the Commissioner may, with the prior written approval of the Cabinet Secretary, refrain from assessing or recovering an unpaid tax and the liability in relation to the tax shall be deemed to be extinguished or the tax shall be deemed to be abandoned or remitted, as the case may be.

(3) In any case referred to the Cabinet Secretary under subsection (1) and where appropriate, the Cabinet Secretary may direct the Commissioner in writing—

(a) to take such action as the Cabinet Secretary may deem fit; or

(b) to obtain the directions of the court in relation to the case.

(4) The Commissioner shall submit a report to the Cabinet Secretary on or before the 30th June and on or before the 31st December of each year containing the details and amounts of taxes abandoned under this section

Section 40 of No. 29 of 2015 which it is proposed to amend-

40. Security on property for unpaid tax

(1) Where a taxpayer, being the owner of property in Kenya, fails to pay a tax by the due date, the Commissioner may notify the Registrar in writing that the property, to the extent of the taxpayer's interest in the property, shall be the subject of a security for the unpaid tax specified in the notification:

Provided that the Commissioner shall, within seven days from the date of the notification to the Registrar, by notice in writing inform the taxpayer and any other person who may have an interest in the property about the notification.

(2) Where the Registrar has been notified by the Commissioner under subsection (1), the Registrar shall, without levying or charging a fee, register the Commissioner's notification as if it were an instrument of of

restraint on the disposal, mortgage on, or charge, as the case may be, the property specified in the notification.

(3) A registration under subsection (2) shall, subject to any prior restraint on disposal, mortgage or charge, operate as a legal restraint on the disposal, mortgage, or charge on, the property to secure the amount of the unpaid tax, and any prior restraint shall supersede the Commissioner's notification.

(4) The Commissioner shall, upon the payment of the whole of the amount of unpaid tax secured under this section, direct the Registrar in writing to cancel the notification made under subsection (2), and the Registrar shall, without levying or charging a fee, record the cancellation of the notification and the notification shall cease to apply.

(5) Where the taxpayer fails to pay the tax liability described in the notification under subsection (1) within two months after receipt of the notification, the Commissioner or authorised officer may, at the cost of the taxpayer, dispose of the property that is the subject of the restraint on disposal, mortgage or charge, by public auction or private treaty, or as provided for under the relevant Act for the recovery of the tax:

Provided that where a plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan before the notification by the Commissioner is lifted.

(6) Subject to section 34, where the property is subj ect to a prior restraint, that prior restraint shall have priority if the property is disposed of under subsection (5).

(7) For the purpose of this section—

"property" means land or building, aircraft, ship, motor vehicle, or any other
property which the Commissioner may deem sufficient to serve as security for unpaid taxes;

"Registrar" includes—

(a) the Land Registrar defined in section 3 of this Act;

(b) the Registrar of Ships appointed under section 14 of the Kenya Maritime Authority Act, 2006 (No. 5 of 2006);

(c) the Director-General of the Kenya Civil Aviation Authority appointed under sect on 19 of the Civil Aviation Act, 2013 (No. 21 of 2013);

(d) the Director-General of the National Transport and Safety Authority appointed under section 15 of the National Transport and Safety Authority Act, 2012 (No. 33 of 2012); or

(e) any other person who the Commissioner is satisfied has authority to hold property sufficient to serve as security for unpaid taxes; "relevant Act" includes the Kenya Maritime Authority Act, 2006 (No. 5 of 2006), Merchant Shipping Act, 2009 (No. 4 of 2009), Civil Aviation Act, 2013 (No. 21 of 2013), Land Registration Act, 2012 (No. 6 of 2012), Land Act 2012 (No. 3 of 2012), National Transport and Safety Act, 2012 (No. 33 of 2012), or any other Act that provides for the registration of property.

Section 42 of No. 29 of 2015 which it is proposed to amend-

42. Power to collect tax from person owing money to a taxpayer

(1) This section applies when a taxpayer 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 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;

(b) who holds or may subsequently hold money, for or on account of, the taxpayer;

(c) who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or

(d) who has authority from some other person to pay money to the taxpayer, 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 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, 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 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 that does not occur before the date that the amount owed by an agent to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.

(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 an agent, 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 an 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 an agent in writing of a revocation or amendment of a notice given under subsection (2) where the taxpayer 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 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 and shall discharge an 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.

(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 referred to in subsection (1) or monies held by that person which are due to a taxpayer referred to in subsection (1).

(13) A taxpayer 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) No notice shall be issued under this section unless the Commissioner has either confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.

Section 42A of No. 29 of 2015 which it is proposed to amend-

42A. Appointment of Value Added Tax withholding agent

(1) The Commissioner may appoint a person to withhold two per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner:

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the commencement of this Act is at least three billion.

2) The Commissioner may, at any time, revoke the appointment of a tax withholding agent made under subsection (1), if the Commissioner deems it appropriate to do so.

(3) Subsection (1) shall not apply to taxable supplies for official aid-funded projects.

(4) For the avoidance of doubt, the withholding of tax under subsection (1) shall not relieve the supplier of taxable supplies of the obligation to account for tax in accordance with this Act and the regulations.

(4B) The tax withheld under this section shall be remitted to Commissioner on or before the twentieth day of the month following the month in which the deduction is made.

(4C) A person who is required under this section to withhold tax commits an offence if the person—

(a) fails to withhold the whole amount of the tax which should have been withheld; or

(b) fails to remit the amount of the withheld tax to the Commissioner by the twentieth day of the month following that in which the deduction was made.

(4D) A person who commits an offence under subsection (4C) is liable on conviction to a penalty of ten per cent of the amount involved.

(5) A person who, prior to the commencement of this section, was appointed to withhold tax under section 25A of the Value Added Tax Act, 2013 shall, notwithstanding the repeal of that section, be deemed to be a person appointed under subsection (1),

Provided that this provision shall not be construed to impose any penalty whatsoever on any such person who ceased to withhold tax for any period following the repeal of that section up to the 8th June, 2016.

Section 47 of No 29 of 2015 which it is proposed to amend-

47. 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 future tax liabilities; or

(b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid.

(2) The Commissioner shall ascertain and determine an application under subsection (1) within ninety 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 future tax liability; and

(b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of two years from the date of the application.

(3) Where the Commissioner fails to ascertain and determine an application under subsection (1) within ninety 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.

(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 51 of No. 29 of 2015 which it is proposed amend-

51. Objection to tax decision

(1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law.

(2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.

(3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—

(a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;

(b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and

(c) all the relevant documents relating to the objection have been submitted.

(4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged.

(5) Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.

(6) A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.

(7) The Commissioner shall consider and may allow an application under subsection (6) if—

(a) the taxpayer was prevented from lodging the notice of objection within the period specified in subsection (2) because of an absence from Kenya, sickness or other reasonable cause; and

(b) the taxpayer did not unreasonably delay in lodging the notice of objection.

(7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application,

(8) Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an "objection decision".

(9) The Commissioner shall notify in writing the taxpayer of the objection decision and shall take all necessary steps to give effect to the decision, including, in the case of an objection to an assessment, making an amended assessment.

(10) An objection decision shall include a statement of findings on the material facts and the reasons for the decision.

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.

(12) A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.

Section 55 of No. 29 of 2015 which it is proposed to amend-

55. Settlement of dispute out of Court or Tribunal

(1) Where a Court or the Tribunal permits the parties to settle a dispute out of Court or the Tribunal, as the case may be, the settlement shall be made within ninety days from the date the Court or the Tribunal permits the settlement.

(2) Where parties fail to settle the dispute within the period specified in subsection (1), the dispute shall be referred back to the Court or the Tribunal that permitted the settlement.

Section 56 of No. 29 of 2015 which it is proposed to amend-

56. General provisions relating to objections and appeals

(1) In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.

(2) An appeal to the High Court or to the Court of Appeal shall be on a question of law only.

(3) In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.

Section 84 of No. 29 of 2015 which it is proposed to amend-

(1) This section applies to a person—

(a) if that person knowingly makes a statement to an authorised officer that is false or misleading in a material particular or knowingly omits from a statement made to an authorised officer

any matter or thing without which the statement is false or misleading in a material particular; and

(b) if the tax liability of that person or of another person computed on the basis of the statement made by that person is less than it would have been had the statement not been false or misleading (the difference being referred to as the "tax shortfall").

(2) Subject to subsections (3) and (4), a person to whom this section applies shall be liable to a tax shortfall penalty of—

(a) seventy-five per cent of the tax shortfall when the statement or omission was made deliberately.

(3) The amount of a tax shortfall penalty imposed under subsection (2) on a person shall be increased by—

(a) ten percentage points when this is the second application of this section to that person; or

(b) twenty five percentage points when this is the third or a subsequent application of this section to that person.

(4) The amount of a tax shortfall penalty imposed under subsection (2) on a person shall be reduced by ten percentage points when that person voluntarily discloses to the Commissioner the statement or omission to which the section applies prior to—

(a) discovery by the Commissioner of the tax shortfall; or (b) the commencement of an audit of the tax affairs of the person to whom the statement relates, whichever is the earlier.

(5) A tax shortfall penalty shall not be payable under subsection (2) when—

(a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;

(b) the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in submitting a self-assessment return; or

(c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.

(6) A position taken by a taxpayer in making a self-assessment shall not be regarded as a reasonably arguable position for the purposes of

subsection (5)(b) if it contradicts any of the following where they are in force at the time the self-assessment is made—

(a) a public ruling; or

(b) a private ruling issued by the Commissioner to the taxpayer.

(7) Despite subsection (5), the Commissioner or authorised officer may imposea late payment interest in respect of a tax shortfall when the tax is not paid by the due date for payment.

(8) For the purposes of this section, a statement made to an authorised officer includes a statement made, in writing or orally—

(a) in an application, certificate, declaration, notification, return, objection, or other document submitted or lodged under a tax law;

(b) in information required to be provided under a tax law;

(c) in a document provided to an authorised officer;

(d) in an answer to a question asked of a person by an authorised officer; or

(e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to an authorized officer.

Section 86 of No. 29 of 2015 which it is proposed to amend-

86. Penalty for failing to comply with electronic tax system

(1) When a taxpayer is required under a tax law or by the Commissioner to submit a tax return in electronic form or to pay a tax electronically and fails to do so, the Commissioner shall by notice in writing request the reasons for the failure.

(2) A taxpayer who fails to satisfy the Commissioner within fourteen days of the notice under subsection (1) shall be liable to a penalty of one hundred thousand shillings.

Section 89 of No. 29 of 2015 which it is proposed to amend-

89. 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).

(6) A person liable to a penalty or interest may apply in writing to the Commissioner for the remission of the penalty or interest payable and such application shall include the reasons for the application.

(7) The Commissioner may, upon an application under subsection (6) or on his own motion, remit in whole or in part, any penalty or interest payable by a person, except a penalty imposed under section 85, if satisfied that the remission is by reason of—

(a) consideration of hardship or equity; or

(b) impossibility or undue difficulty or expense, of recovery of the tax:

Provided that the Commissioner shall—

(i) where the amount of the penalty or interest exceeds one million five hundred thousand shillings, seek prior approval of the Cabinet Secretary; and

(ii) make quarterly reports to the Cabinet Secretary on the remissions granted under this section.

(8) The Commissioner shall maintain a public record of each remission together with the reasons for the remission and the record of remissions shall be reported to the Auditor-General once in every three months.

(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 104 of No. 29 of 2015 which it is proposed to amend-

104. Sanctions for offences

(1) Subject to subsection (2) or (3), a person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings and to imprisonment for a term not exceeding three years, or to both.

(2) A person convicted of an offence under section 98(1) or section 102(1) is liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(3) A person convicted of an offence under section 97 shall be liable to a fine not exceeding ten million shillings or double the tax evaded, whichever is higher or to imprisonment for a term not exceeding ten years, or to both.

(4) A person convicted of an offence under section 92 shall liable to a fine equal to double the tax evaded or to a fine not exceeding five million shillings whichever is higher or to imprisonment for a term not exceeding five years, or to both.

Section 7 of No. 29 of 2016 which it is proposed to amend-

7. 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 three 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.

(2A) Without prejudice to the provisions of subsection (2), the fee at a rate of one point five per cent shall be charged on the custom value of —

(a) deleted by No. 2 of 2020, Sch.;

(b) raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry;

(c) input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.

(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; or

(b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee at a rate of one point five per cent of the customs value.

(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), ten per cent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act, 2012.

(7) The 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.

Section 8 of No. 29 of 2016 which it is proposed to amend-

8. Railway development levy.

(1) There shall be paid a levy to be known as the railway development levy, on all goods imported into the country for home use.

(2) The levy shall be at the rate of two 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 into the country for home use.

(2A) Without prejudice to the provisions of subsection (2), the levy at a rate of one point five per cent shall be charged on the customs value of —

(a) raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry; and

(b) input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.

(3) The purpose of the levy shall be to provide funds for the construction and operation of a standard gauge railway network in order to facilitate the transportation of goods.

(4) The Cabinet Secretary shall, by regulations, establish a railway development levy fund into which all the proceeds of the levy shall be paid.

(5) The fund referred to in subsection (4) shall be established, managed, administered or wound up in accordance with section 24 of the Public Finance Management Act, 2012 (No. 18 of 2012) and the regulations made under that Act.

(6) No levy shall be charged in respect of the goods specified in Part B of the Second Schedule when imported or purchased before clearance through customs.

FIRST SCHEDULE

[s. 5(1)]

GOODS SUBJECT TO EXPORT LEVY

[Act No. 15 of 2017, s. 58, Act No. 22 of 2022, s. 50]

PART I

Tariff No.	*Tariff Description*	*Export Levy Rate*
2601	Iron ores and concentrates, including roasted iron pyrites	USD 175 per tonne
4101.20.00	Whole hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry-salted, or 16 kg. when fresh, wet-salted or otherwise preserved.	80% or USD 0.52 per kg.
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note (c) to Chapter 41.	80% or USD 0.52 per kg.
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD 0.52 per kg.

Tariff No.	*Tariff Description*	*Export Levy Rate*
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD 0.52 per kg.
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.	80% or USD 0.52 per kg.
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD 0.52 per kg.
4301.60.00	Raw furskins of fox, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4101.40.00	Hides and skins of equine animals.	80% or USD 0.52 per kg.
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or USD 0.52 per kg.
4101.90.00	Other, including butts, bends and bellies.	80% or USD 0.52 per kg.
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301.30.00	Raw furskins of lamb, the following: Astrkhan, broadtail, Caracul, Persian and similar lamb, Indian, Chinese,	80% or USD 0.52 per kg.

Tariff No.	*Tariff Description*	*Export Levy Rate*
	Mongolian or Tibetan lamb, whole, with or without head, tail or paws.	
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301.90.00	Heads, tail, paws,and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg.
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg.
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg.
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.	80% or USD 0.52 per kg.
4302.30.00	Whole skins and pieces or cuttings thereof, assembled.	80% or USD 0.52 per kg.
7112.30.00	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of ash containing precious metal or precious metal compounds.	20%
7112.91.00	Other waste and scrap of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of gold including metal clad with gold.	20%
7112.92.00	Other waste and scraps of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of platinum, including metal clad with platinum.	20%
7112.99.00	Other waste and scrap of precious metal or metal clad with precious	20%

Tariff No.	*Tariff Description*	*Export Levy Rate*
	metal, other waste and scrap containing precious metal compounds, of a kind used principally for the recovery of precious metal.	
7204.10.00	Waste and scrap of cast of iron.	20%
7204.29.00	Waste and scrap of other alloy or steel.	20%
7204.30.00	Waste and scrap of tinned iron steel.	20%
7204.41.00	Turnings, shavings, chips, milling waste, sawdust, fillings, trimmings and stampings, whether or not in bundles, or iron or steel.	20%
7204.49.00	Other waste and scrap or iron or steel	20%
7204.50.00	Remelting scrap ingots	20%
7205.10.00	Granules of pig iron, spiegeleisen, iron or steel.	20%
7902.00.00	Zinc waste and scrap.	20%
8002.00.10	Tin waste and scrap.	20%
8102.94.00	Unwrought molybdenum including bars and rods obtained simply by sintering; waste and scrap.	20%
8102.97.00	Waste and scrap of molybdenum	20%
8103.30.00	Waste and scrap of tantalum	20%
8104.20.00	Waste of scrap of magnesium	20%
8105.00.00	Bismuth and articles thereof including waste and scrap.	20%
8105.30.00	Waste and scrap of cobalt matters.	20%
8107.30.00	Waste and scrap of cadmium.	20%
8108.30.00	Waste and scrap of titanium.	20%

Tariff No.	*Tariff Description*	*Export Levy Rate*
8109.30.00	Waste and scrap of zirconium.	20%
8110.20.20	Waste and scrap of antimony.	20%
8112.13.00	Waste and scrap of beryllium.	20%
8112.22.00	Waste and scrap of chromium.	20%
8112.52.00	Waste and scrap of thallium.	20%
8112.92.00	Unwrought waste and scrap; powders.	

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

The following goods are exempt from payment of import declaration fee when imported or purchased before clearance through customs—

x) gifts and supplies for diplomatic and consular missions and to the United Nations Missions;

xv) aircraft, excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00;

PART B [s. 8(6)]

GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

The railway development levy shall not apply to goods imported or purchased before clearance through customs—

(ii) for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act (Cap. 179);

(iii) by the United Nations or its agencies;

(ix) equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service; and

Section 5 of No.2 of 1995 which it is intended to amend-

5. Functions of the Authority

(1) The Authority shall, under the general supervision of the Minister, be an agency of the Government for the collection and receipt of all revenue.

(2) In the performance of its functions under subsection (1), the Authority shall —

(a) administer and enforce—

(i) all provisions of the written laws set out in Part I of the First Schedule and for that purpose, to assess, collect and account for all revenues in accordance with those laws;

(ii) the provisions of the written laws set out in Part II of the First Schedule relating to revenue and for that purpose to assess, collect and account for all revenues in accordance with those laws;

(b) advise the Government on all matters relating to the administration of, and the collection of revenue under the written laws or the specified provisions of the written laws set out in the First Schedule; and

(c) perform such other functions in relation to revenue as the Minister may direct.

(2A) The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions.

3) The Minister may, by notice in the Gazette, amend the First Schedule.

Section 28 of No 40 of 2011 which it is proposed to amend-

28. Claims on assets

(1) A person claiming an interest in any assets paid or delivered to the Authority under this Act, may file with the Authority a claim on such form as may be prescribed for that purpose by the Authority.

(2) The Authority shall consider each claim referred to subsection (1) within ninety days after it is filed and shall give written notice to the claimant of its decision.

(3) The notice under subsection (2) may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent.

(4) Where no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim.

(5) Where a claim is allowed, the Authority shall pay over or deliver to the claimant the assets or the amount the Authority actually received or the net proceeds if it has been sold by the Authority.

Section 20 of No. 23 of 2013 which it is proposed to amend-

20. Purposes of Part

The purpose of this Part is to—

(a) reduce substantially the regulatory burden on the people of Kenya without compromising law and order and essential economic, environmental and social objectives;

(b) ensure subordinate legislation is relevant to the economic, social and general wellbeing of the people of Kenya;

(c) ensure the part of the Kenya statute book consisting of statutory instruments is of the highest standard;

(d) ensure continuous review of statutory instruments by the various regulation making authorities and the agencies under them.

Section 21 of No.23 of 2013 which it is proposed to amend-

21. Automatic revocation of statutory instruments

(1) Subject to subsection (3), a statutory instrument is by virtue of this section revoked on the day which is ten years after the making of the statutory instrument unless—

(a) it is sooner repealed or expires; or

(b) a regulation is made exempting it from expiry.

(2) The responsible Cabinet Secretary may in consultation with the Committee, make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by virtue of this section for a period as is specified in the regulation not exceeding twelve months.

(3) Only one extension of the operation of a statutory rule can be made under subsection (2).

(4) The automatic revocation period for statutory instruments issued under the Income Tax Act (Cap. 470), the Stamp Duty Act (Cap. 480), the

Value Added Tax Act, No. 35 of 2013, Tax Appeal Tribunal Act, No. 40 of 2013, Excise Duty Act, No. 23 of 2015 and Tax Procedure Act, No. 29 of 2015, is hereby extended for a period of twenty-four months with effect from the twenty fifth day of January, 2023.

Section 4 of No.8 of 2015 which it is proposed to amend-

4. Circumstances under which benefits may not be paid

(1) Despite the provisions of section 3, the National Assembly may, on a motion supported by the votes of not less than half of the members thereof, resolve that an entitled person, surviving spouse or children, as the case may be, shall not receive any benefits conferred by this Act, on the grounds that such person—

(a) ceased to hold office on account of having acted in willful violation of the Constitution;

(b) was guilty of gross misconduct;

(c) has, since ceasing to hold office been convicted of an offence and sentenced to imprisonment for a term of three years or more, without the option of a fine; or

(d) has, since ceasing to hold office, held office in, or actively engaged in the activities of, any political party:

Provided that this provision shall come into operation on the date of commencement of this Act.

(2) Where an entitled person holds any appointive or elective post in or under the Government to which there is attached a rate of pay, other than a nominal rate, the benefits to which he is entitled shall be reduced by the amount of such pay.

Section 5 of No.8 of 2015 which it is proposed to amend-

5. Pension and other benefits of an entitled person

(1) A retired Speaker of the National Assembly or the Senate shall, during his or her lifetime, be entitled to—

(a) a monthly pension equal to eighty per cent of the monthly salary of the entitled person's last monthly salary while in office;

(b) a lump sum payment on retirement, calculated as a sum equal to one year's salary paid for each term served in office;

(c) one saloon vehicle of an engine capacity not exceeding 2000 cc which shall be replaceable once every four years;

(d) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years;

(e) a fuel allowance equal to fifteen per cent of current monthly salary of the office holder;

(f) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse;

(g) the additional benefits set out in the First Schedule.

(2) Despite the provisions of this section, an entitled person who serves in office for less than a term, shall not be entitled to the benefits set out in this section butmshall be entitled to—

(a) gratuity paid at the end of the entitled person's service at the rate of thirty-one per cent of the entitled person's salary while in office;

(b) one armed security guards who shall be provided on request by the entitled person;

(c) diplomatic passports for the entitled person and his spouse; and

(d) access to the V.I.P. lounge at all airports within Kenya.

(3) Where an entitled person dies in service after the commencement of this Act, a lumpsum payment on death calculated as a sum equal to five times his annual salary shall become payable to his legal personal representatives.

Section 13 of No. 8 of 2015 which it is proposed to amend-

13. Funds for expenses

(1) The benefits granted to an entitled person, or his or her surviving spouse, as the case may be, under this Act, shall be administered—

(a) in the case of a retired Deputy President, retired Prime Minister or retired Vice President, by the Office of the President, and shall be provided for in the estimates of the national government referred to in Article 221(1) of the Constitution;

(b) in the case of a retired Speaker of the National Assembly or the Senate, by the Parliamentary Service Commission, and shall be provided for in the estimates of the parliamentary service prepared pursuant to Article 127(6)(c) of the Constitution; and

(c) in the case of a retired Chief Justice or retired Deputy Chief Justice, by the Judicial Service Commission, and shall be

provided for in the estimates of the Judiciary prepared pursuant to Article 173(3) of the Constitution.

(1A) For purposes of this section, "benefits" means the benefits granted to an entitled person under the First Schedule, Second Schedule or the Third Schedule to this Act.

(1B) For the avoidance of doubt, subsection (1) shall not apply to the pension, lump sum payment upon retirement, and gratuity provided for in this Act.

(1C) The respective entities under subsection (1), shall formulate administrative guidelines for the administration of this section including on matters relating to the computation of benefits due to an entitled person under this section.

(2) Upon approval of the estimates submitted under subsection (1), all monies, from time to time, required in respect of the benefits conferred on an entitled person or his surviving spouse by this Act shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

(3) All other expenses incurred in the administration of the provisions of this Act shall be met out of monies appropriated by the National Assembly for that purpose.

Section 16 of No. 8 of 2015 which it is proposed to amend-

16. Computation of benefits

In computing the benefits due to a person entitled to benefits under this section,the benefits already received by that person under any other law or policy shall beset-off against the benefits due under this Act.