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THE FINANCE BILL, 2025

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, 2025 and shall come into operation as follows—

(a) sections 12 and 56, on the 1st of January, 2026; and

(b) all other sections, on 1st July, 2025.

PART II—INCOME TAX

Amendment of section 2 of Cap. 470.

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

(a) in subsection (1)—

(i) in the definition of "debenture", by deleting the expression "and, for the purposes of paragraphs (d) and (e) of section 7(1) of this Act, includes any loan or loan stock, whether secured or unsecured";

(ii) in the definition of "individual retirement fund", by deleting the words "subject to the Income Tax (Retirement Benefit) Rules";

(iii) in paragraph (b) of the definition of "royalty", by inserting the words "and includes the distribution of software where regular payments are made for the use of the software through the distributor" immediately after the words "support fees";

(iv) by deleting the definition of "compensating tax";

(v) by deleting the definition of "Tribunal";

(vi) by deleting the definition of "venture company";

(vii) by deleting the definition of "related person" and substituting therefor the following new definition—

"related person" means, in the case of two persons, either of the persons who participates directly or indirectly in the management, control or capital of the business of the other person, and in the case of more than the two persons—

(a) any other person who participates directly or indirectly in the management, control or capital of the business of the two persons; or

(b) an individual who—

(i) participates directly or indirectly in the management, control or capital of the business of the two persons;

(ii) is associated with the two persons by marriage, consanguinity or affinity; and

(iii) the two persons participate in the management, control or capital of the business of the individual;

(b) by deleting subsection (2).

Amendment of section 5 of Cap. 470.

3. Section 5 of the Income Tax Act is amended in item (iii) of the proviso to subsection (2)(a), by deleting the words "two thousand shillings" and substituting therefor the words "ten thousand shillings".

Amendment of section 8 of Cap. 470.

4. Section 8 of the Income Tax Act is amended—

(a) in subsection (1), by deleting the word "husband" and substituting therefor the word "spouse";

(b) by deleting subsection (4);

(c) by deleting subsection (5);

(d) by deleting subsection (6);

(e) by deleting subsection (7);

(f) by deleting subsection (9);

(g) by deleting subsection (9A).

Amendment of section 10 of Cap. 470.

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

(l) supply of goods to a public entity;

(m) sale of scrap.

Amendment of section 12E of Cap. 470.

6. Section 12E of the Income Tax Act is amended—

(a) in subsection (1), by inserting the words "the internet or an electronic network including through" immediately after the words "carried out over";

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

Amendment of Section 12G of Cap. 470.

7. Section 12G of the Income Tax Act is amended by inserting the following new subsection immediately after section (3)—

(3A) Minimum top-up tax shall be payable by the end of the fourth month after the end of the year of income.

Amendment of section 15 of Cap. 470.

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

(a) in subsection (2)—

(i) 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;

(ii) by deleting paragraph (i);

(iii) by deleting paragraph (j);

(iv) by deleting paragraph (r);

(v) in paragraph (w), by inserting the words "expenditure incurred in the construction of a public sports facility" immediately after the word "Act";

(vi) by deleting paragraph (z);

(b) in subsection (3)—

(i) in paragraph (b), by inserting the words "construction of" immediately after the words "applied to the";

(ii) by deleting paragraph (f);

(c) in subsection (4), by inserting the word "five" immediately after the word "succeeding";

(d) by deleting subsection (5) that reads—

(5) Notwithstanding subsection (4), the Cabinet Secretary 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.

(e) in subsection (7)(a), by deleting the word "seven".

Amendment of section 16 of Cap. 470.

9. Section 16 of the Income Tax Act is amended—

(a) in subsection (2)(c), by deleting the words "including compensating tax";

(b) by deleting subsection (4).

Amendment of section 18 of Cap. 470.

10. Section 18 of the Income Tax Act is amended by deleting subsection (6).

Amendment of section 18D of Cap. 470.

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

(a) in subsection (8), by deleting the words "as a surrogate parent entity" and substituting therefor the words "to file a country-by-country report and notify the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify";

(b) by deleting subsection (9).

Insertion of a new section 18G to Cap. 470

12. The Income Tax Act is amended by inserting the following new section immediately after section 18F—

Advance pricing agreement.

18G. (1) The Commissioner may enter into an advance pricing agreement with a person who undertakes a transaction contemplated under section 18(3) or section 18A.

(2) The amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length contemplated under section 18(3) or section 18A, shall be determined in accordance with the advance pricing agreement entered into under subsection (1).

(3) The advance pricing agreement entered into under subsection (1) shall be valid for a period not exceeding five consecutive years.

(4) Where the Commissioner determines that the person referred to in subsection (1) entered into the advance pricing agreement through misrepresentation of facts, the Commissioner shall declare the agreement void and issue a notice of the declaration in writing, to the person.

(5) The Cabinet Secretary may make regulations for the better implementation of this section.

Amendment of section 19 of Cap. 470.

13. Section 19 of the Income Tax Act is amended—

(a) in subsection (5)—

(i) in paragraph (a), by deleting the words "life fund" and substituting therefor the words "life insurance fund";

(ii) in paragraph (b), by deleting the words "life fund" and substituting therefor the words "life insurance fund";

(b) in subsection (5A), by deleting the words "life fund" and substituting therefor the words "life insurance fund" wherever it occurs;

(c) in the proviso to subsection (5A), by deleting the words "life fund" and substituting therefor the words "life insurance fund";

(d) in subsection (6), by deleting the words "life fund" appearing in paragraph (b) and substituting therefor the words "life insurance fund";

(e) in subsection (6A), by deleting the words "life fund" and substituting therefor the words "life insurance fund" wherever it occurs;

(f) in the proviso to subsection (6A), by deleting the words "life fund" and substituting therefor the words "life insurance fund".

Amendment of section 21 of Cap. 470.

14. Section 21 of the Income Tax Act is amended in subsection (3), by deleting the definition of "gross investment receipts".

Amendment of section 27 of Cap. 470.

15. Section 27 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1C)—

(1D) Where the Commissioner does not comply with subsection (1C), the application shall be deemed allowed.

Amendment of section 35 of Cap. 470.

16. Section 35 of the Income Tax is amended—

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

(u) gains or profits which are chargeable to tax under section 9(1) derived from the business of a ship owner or charterer;

(b) by deleting subsection (6A);

(c) by deleting subsection (6C);

(d) by deleting subsection (6E).

Amendment of section 37 of Cap. 470.

17. Section 37 of the Income Tax Act is amended—

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

(1A) An employer shall, before computing the tax deductible under subsection (1), grant an employee all applicable deductions, reliefs and exemptions provided under this Act.

(b) in subsection (2), by deleting paragraph (c);

(c) by deleting subsection (5B).

Amendment of section 39 of Cap. 470.

18. Section 39 of the Income Tax Act is amended in subsection (1)(a), by deleting the expression "section 17A (in respect of a person other than an individual)".

Amendment of section 52B of Cap. 470.

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

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

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

(b) by deleting subsection (5).

Repeal of section 54B of Cap. 470.

20. The Income Tax Act is amended by repealing section 54B.

Repeal of section 72B of Cap. 470.

21. The Income Tax Act is amended by repealing section 72B.

Repeal of section 72C of Cap. 470.

22. The Income Tax Act is amended by repealing section 72C.

Amendment of section 104 of Cap. 470.

23. Section 104 of the Income Tax Act is amended by deleting the words "in the manner provided by section 101 of this Act".

Amendment of section 109 of Cap. 470.

24. Section 109 of the Income Tax Act is amended in subsection (1)—

(a) in paragraph (b), by deleting the words "fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or";

(b) by deleting paragraph (c);

(c) by deleting paragraph (f);

(d) by deleting paragraph (h);

(e) by deleting paragraph (j) and substituting therefor the following new paragraph—

(j) fails to supply prescribed certificates as is required by section 37.

Repeal of section 131 of Cap. 470.

25. The Income Tax Act is amended by repealing section 131.

Amendment of the First Schedule to Cap. 470.

26. The First Schedule to the Income Tax Act is amended in Part I—

(a) in subparagraph (B) of the first further proviso to paragraph 10, by deleting the word "sixty" and substituting therefor the word "ninety";

(b) by deleting paragraph 45A and substituting therefor the following new paragraph—

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

No. 16 of 2023.

(c) in the proviso to paragraph 53—

(i) by deleting subparagraph (a) and substituting therefor the following new subparagraph—

(a) payment of gratuity;

(ii) by inserting the following new subparagraph immediately after subparagraph (a)—

(aa) other allowances paid under a public pension scheme;

(d) by deleting paragraph 63;

(e) by deleting paragraph 72 and substituting therefor the following new paragraph—

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

(f) by inserting the following new paragraphs immediately after paragraph 73—

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

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

Amendment of the Second Schedule to Cap. 470.

27. The Second Schedule to the Income Tax Act is amended in paragraph 1—

(a) by deleting subparagraph (1A);

(b) by deleting subparagraph (1B).

Amendment of the Third Schedule to Cap. 470

28. The Third Schedule to the Income Tax Act is amended in Head B—

(a) in paragraph 1, by inserting the words "other than that of the total income comprising fringe benefits and the qualifying interest" immediately after the word "tax";

(b) in paragraph 2—

(i) by deleting subparagraph (g)(ii);

(ii) by deleting subparagraph (i);

(iii) by deleting subparagraph (j);

(iv) by inserting the following new subparagraphs immediately after subparagraph (n)—

(na) in respect of a company certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations and twenty per cent for the subsequent ten years of its operation where—

(i) the company invests at least three billion shillings in Kenya in the first three years of operation;

(ii) the company is a holding company, at least seventy per cent of its

employees in senior management are citizens of Kenya; and

(iii) the regional headquarters of the company is in Kenya, at least sixty per cent of its employees in senior management are citizens of Kenya;

(nb) in the case of a start-up certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first three years and twenty per cent for the succeeding four years;

(c) in paragraph 5—

(i) in subparagraph (e), by inserting the words "which is a final tax" after the word "payable";

(ii) in subparagraph (h), by inserting the following proviso immediately after item (iii)—

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

(d) in paragraph 13, by deleting the words "three per cent" and substituting therefor the words "one point five per cent";

(e) by inserting the following new paragraph immediately after paragraph 14—

15. The rate of tax on fringe benefits provided by an employer shall be the resident corporate rate of tax for that year of income.

Amendment of the Eighth Schedule to Cap. 470.

29. Part I of the Eighth Schedule to the Income Tax Act is amended—

(a) in paragraph 1—

(i) in subparagraph (1), by deleting the definition of "company" and substituting therefor the following new definition—

"company" includes a body of persons which carries on the activities of a members'

club and a trade association that is deemed to be carrying on business under section 21;

(ii) by deleting subparagraph (3);

(b) in paragraph 6(2)(h)(v), by inserting the words "an individual" immediately after the word "where".

PART III—VALUE ADDED TAX

Amendment of section of Cap. 476.

30. Section 2 of the Value Added Tax Act is amended in subsection (1), by inserting the following new definition in proper alphabetical sequence—

"tax invoice" includes an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act. Cap. 469B.

Amendment of section 8 of Cap. 476.

31. Section 8 of the Value Added Tax Act is amended—

(a) in subsection (2)—

(i) by inserting the word "and" after the words "unregistered person";

(ii) by deleting paragraph (c);

(b) in subsection (3), by deleting the words "broadcast television" appearing in paragraph (g) and substituting therefor the words "internet, radio or television broadcasting services".

Amendment of section 17 of Cap. 476.

32. Section 17 of the Value Added Tax Act is amended in subsection (5)—

(a) by deleting paragraph (c);

(b) by deleting paragraph (d) and substituting therefor with the following new paragraph—

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

(c) by deleting paragraph (e).

Amendment of section 31 of Cap. 476.

33. Section 31 of the Value Added Tax Act is amended in subsection (1)—

(a) in paragraph (a), by deleting the words "three years" and substituting therefor the words "two years";

(b) in the proviso—

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

(ca) the amount may be used to offset any other value added tax liability, upon approval by the Commissioner;

(ii) by deleting paragraph (d);

(iii)by deleting paragraph (e).

Amendment of section 42 of Cap. 476.

34. Section 42 of the Value Added Tax Act is amended in subsection (1), by deleting the word "taxable".

Insertion of a new section 66A in Cap. 476.

35. The Value Added Tax Act is amended by inserting the following new section immediately after section 66—

Liability to pay tax for exempt and zero-rated supplies.

66A. Where a person imports or purchases goods or services which are exempt or zero-rated and the person subsequently disposes of, or uses, the goods or services supplied in a manner inconsistent with the purpose for which the goods or services were exempted or zero rated, the person shall be liable to pay tax on the goods or services at the applicable rate at the time of disposal or inconsistent use.

Amendment of First Schedule to Cap. 476.

36. Section A of Part I of the First Schedule to the Value Added Tax Act is amended—

(a) by deleting paragraph 49;

(b) in paragraph 51, by inserting the words "excluding fuels, lubricants and tyres for vehicles" immediately after the words "funded project";

(c) by deleting paragraph 58;

(d) by deleting paragraph 62:

Provided that an exemption that had been approved pursuant to paragraph 62 before the

deletion of paragraph 62 came into effect shall continue to apply until the 30th June, 2026;

(e) by deleting paragraph 63:

Provided that an exemption that had been approved pursuant to paragraph 63 before the deletion of paragraph 63 came into effect shall continue to apply until the 30th June, 2026;

(f) in paragraph 89, by deleting the words "other aircraft spare" and substituting therefor the word "aircraft";

(g) by deleting paragraph 91;

(h) by deleting paragraph 109:

Provided that an exemption that had been approved pursuant to paragraph 109 before the deletion of paragraph 109 came into effect shall continue to apply until the 30th June, 2026;

(i) by deleting paragraph 112:

Provided that an exemption that had been approved pursuant to paragraph 112 before the deletion of paragraph 112 came into effect shall continue to apply until the 30th June, 2026;

(j) by deleting paragraph 113:

Provided that an exemption that had been approved pursuant to paragraph 113 before the deletion of paragraph 113 came into effect shall continue to apply until the 30th June, 2026;

(k) by deleting paragraph 128:

Provided that an exemption that had been approved pursuant to paragraph 128 before the deletion of paragraph 128 came into effect shall continue to apply until the 30th June, 2026;

(l) by deleting paragraph 129:

Provided that an exemption that had been approved pursuant to paragraph 129 before the deletion of paragraph 129 came into effect shall continue to apply until the 30th June, 2026;

(m)by deleting paragraph 143;

(n) by deleting paragraph 144;

(o) by inserting the following new paragraphs immediately after paragraph 154—

155. 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 for the time being responsible for matters relating to health.

156. Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.

157. Transportation of sugarcane from farms to milling factories.

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

159. The supply of motorcycles of tariff heading 8711.60.00.

160. The supply of electric bicycles.

161. The supply of solar and lithium ion batteries.

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

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

164. Packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture.

Amendment of First Schedule to Cap. 476.

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

(a) by deleting paragraph 11;

(b) by deleting paragraph 21;

(c) by deleting paragraph 29;

(d) by deleting paragraph 30;

(e) by deleting paragraph 31;

(f) by deleting paragraph 32;

(g) by deleting paragraph 33;

(h) by deleting paragraph 34;

(i) by deleting paragraph 35.

PART IV—EXCISE DUTY

38. Section 2 of the Excise Duty Act is amended— Amendment of the section 2 of Cap. 472.

(a) in subsection (1)—

(i) by deleting the definition of "digital lender" and substituting therefor the following new definition—

"digital lender" means a person extending credit through an electronic medium but does not include a bank licenced under the Banking Act, a Sacco society registered under the Co-operative Societies Act or a microfinance institution licensed under the Microfinance Act; Cap. 488. Cap. 490. Cap. 493C.

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

"digital marketplace" means an online platform which enables users to sell goods or provide services to other users;

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

(3) In this Act, goods shall be classified by reference to the tariff codes set out in Annex 1 to the Protocol on the Establishment of the East African Community Customs Union and in interpreting that Annex, the general rules of interpretation set out in the Annex shall apply.

Amendment of the section 5 of Cap. 472.

39. Section 5 of the Excise Duty Act is amended—

(a) in subsection (1), by deleting the words "through a digital platform" and substituting therefor the words "over the internet, an electronic network or through a digital marketplace" appearing in paragraph (d);

(b) by inserting the following new subsection—

(4) For the purposes of this section—

"non-resident person" means a person outside Kenya.

Amendment of the section 13 of Cap. 472.

40. Section 13 of the Excise Duty Act is amended—

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the following new subsection—

(2) If the place of business of the supplier is outside Kenya, the supply of services shall be deemed to be made in Kenya if the services are consumed by a person in Kenya through the internet, an electronic network or a digital marketplace.

Amendment of the section 17 of Cap. 472.

41. Section 17 of the Excise Duty Act is amended in subsection (1), by inserting the following words "within fourteen days of receipt of the required documents" immediately after the words "the Commissioner shall".

Amendment of the First Schedule to Cap. 472.

42. Part 1 of the First Schedule to the Excise Duty Act is amended—

(a) in the second table—

(i) in the description "Coal", by deleting the word "customs" appearing in the corresponding rate of excise duty and substituting therefor the word "excisable";

(ii) by deleting the description "Imported Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and

3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin" and the corresponding rate of Excise Duty;

(iii) in the description "Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7005 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin" by deleting the corresponding rate of Excise Duty and substituting therefor the new rate of Excise Duty "35% of excisable value or KSh.200 per kg, whichever is higher";

(iv) by deleting the description "Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin" and the corresponding rates of Excise Duty, appearing immediately after the description "Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90";

(v) by deleting the description "Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin" and the corresponding rates of Excise Duty, appearing immediately after the description "Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African

Community Partner States that meet the East African Community Rules of Origin";

(vi) by inserting the following new descriptions and corresponding rates of excise duty—

Tariff Description	*Rate of excise duty*
Imported other self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.
Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.
Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.
Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from East African Community	25% of excisable value or Ksh. 200 per Kilogramme, whichever is higher.

Partner States that meet the East African Community Rules of Origin.	
Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher.
Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or Ksh. 200 per Kilogramme, whichever is higher.
Gummed paper and paperboard of tariff number 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or Ksh. 200 per Kilogramme, whichever is higher.
Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages.	Ksh. 500 per litre

PART VII—TAX PROCEDURES

Amendment of section 23A of Cap. 469B.

43. Section 23A of the Tax Procedures Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

(4) The electronic tax invoice referred to in subsection (3) may exclude payments of emoluments, payments for imports, payments of interest, transactions for accounting for investment allowances, airline passenger ticketing, and payments subject to withholding tax that is a final tax.

Amendment of section 31 of Cap. 469B.

44. Section 31 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (8)—

(8A) Where the Commissioner has made an amended assessment, the Commissioner shall include in the notification under subsection (8) the reasons for the amended assessment.

Amendment of section 39A of Cap. 469B.

45. Section 39A of the Tax Procedures Act is amended by—

(a) renumbering the existing provision as subsection (1);

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

(2) Despite subsection (1), a person who does not deduct, withhold or remit tax on a payment shall not be required to pay the principal tax not deducted, withheld or remitted where the recipient of the payment has paid and accounted for the full principal tax and the tax not deducted, withheld or remitted.

Amendment of section 40 of Cap. 469B.

46. Section 40 of the Tax Procedures Act is amended—

(a) in subsection (2), by inserting the words "or stamp duty" immediately after the word "fee";

(b) by deleting the proviso to subsection (5) and substituting therefor the following new proviso—

Provided that—

(a) 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; and

(b) the transfer of the property shall be exempt from stamp duty.

Amendment of section 42 of Cap. 469B.

47. Section 42 of the Tax Procedures Act is amended—

(a) in subsection (1), by inserting the words "or a non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(b) in subsection (2)—

(i) in the opening statement, by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(ii) in paragraph (a), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(iii) in paragraph (b), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(iv) in paragraph (c), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(v) in paragraph (d), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer" wherever it occurs;

(c) in subsection (3), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(d) in subsection (4)(b), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(e) in subsection (5), by deleting the words "taxpayer becomes due to the taxpayer or held on the taxpayer's behalf" and substituting therefor the words "taxpayer or non-resident person who is subject to tax in Kenya, becomes due to the taxpayer or non-resident person who is subject to tax in Kenya, or held on behalf of the taxpayer or non-resident person who is subject to tax in Kenya";

(f) in subsection (6), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(g) in subsection (8), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(h) in subsection (9), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(i) in subsection (10), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer" wherever it occurs;

(j) in subsection (11), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(k) in subsection (12), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer" wherever it occurs;

(l) in subsection (13), by deleting the word "taxpayer" and substituting therefor the expression "agent under subsection (2) or the non-resident person who is subject to tax in Kenya";

(m) in subsection (14)—

(i) in paragraph (a), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(ii) in paragraph (b), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(iii) in paragraph (c), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(iv) in paragraph (d), by inserting the words "or the non-resident person who is subject to tax in Kenya" immediately after the word "taxpayer";

(v) by deleting paragraph (e).

Amendment of section 42A of Cap. 469B.

48. Section 42A of the Tax Procedures Act is amended by deleting subsection (4D).

Repeal of section 42B of Cap. 469B.

49. The Tax Procedures Act is amended by repealing section 42B.

Amendment of section 47 of Cap. 469B.

50. Section 47 of the Tax Procedures Act is amended—

(a) in subsection (1)(a) by deleting the words "and input value added tax";

(b) in subsection (2), by deleting the words "ninety days" and substituting therefor the words "one hundred and twenty days";

(c) in subsection (4A), by deleting the words "one hundred and twenty days" and substituting therefor the words "one hundred and eighty days".

Amendment of section 51 of Cap. 469B.

51. Section 51 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (7A)—

(7B) Where the Commissioner has allowed the application for late objection and the objection has been validly lodged, the period within which the Commissioner may make and objection decision shall be computed on the day the objection is lodged.

Amendment of section 59A of Cap. 469B.

52. Section 59A of the Tax Procedures Act is amended by deleting subsection (1B).

Amendment of section 66 of Cap. 469B.

53. Section 66 of the Tax Procedures Act is amended in subsection (1), by deleting paragraph (a)(iii).

Amendment of section 77 of Cap. 469B.

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

Amendment of section 83 of Cap. 469B.

55. Section 83 of the Tax Procedures Act is amended in subsection (1), by inserting the words "fails to submit a tax return or" immediately after the words "person who".

Amendment of section 89 of Cap. 469B.

56. Section 89 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (5)—

(5A) The Cabinet Secretary may, on the recommendation of the Commissioner, waive the whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest was due to—

(a) an error generated by an electronic tax system;

(b) a delay in the updating of an electronic tax system;

(c) a duplication of a penalty or interest due to a malfunction of an electronic tax system; or

(d) the incorrect registration of the tax obligations of a taxpayer.

PART VI—MISCELLANEOUS FEES AND LEVIES

Amendment of section 9B of Cap 469C.

57. Section 9B of the Miscellaneous Fees and Levies Act is amended—

(a) in the marginal note, by deleting the words "to excess tax refunds";

(b) by deleting the expression "provisions of section 47 of the".

Amendment of the Second Schedule of Cap. 469C.

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

(a) in Part A—

(i) by deleting paragraph (xv);

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

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

(b) in Part B—

(i) by deleting paragraph (xiii);

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

(xvi) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00.

Amendment of the Third Schedule of Cap. 469C.

59. The Third Schedule to the Miscellaneous Fees and Levies Act is amended—

(a) in tariff description "Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness", by deleting the expression "17.5%" appearing in the corresponding export and investment promotion levy rate and substituting therefor the expression "10%";

(b) in tariff description "Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14 mm in diameter of cross section measuring less than 8 mm", by deleting the expression "17.5%" appearing in the corresponding export and investment promotion levy rate and substituting therefor the expression "10%";

(c) in tariff description "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", by deleting the expression "17.5%" appearing in the corresponding tariff number and export and investment promotion levy rate and substituting therefor the expression "10 %".

PART VII- MISCELLANEOUS

Amendment of section 117 of Cap.480.

60. Section 117 of the Stamp Duty Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (q)-

(r) the transfer of property by a company to its shareholders as part of an internal reorganisation:

Provided that—

(a) the property is transferred to the shareholders in proportion to their shareholding in the company immediately before the transfer; and

(b) where the property consists of shares, such shares should be in a subsidiary of the company undertaking the transfer.

MEMORANDUM OF OBJECTS AND REASONS

The Finance Bill, 2025, has been submitted by the Cabinet Secretary for the National Treasury and Economic Planning and formulates proposals relating to revenue raising measures including liability to, and collection of taxes.

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

The Bill also amends the Stamp Duty Act to exempt from stamp duty the transfer of property by a company to its shareholders as part of an internal reorganisation.

Dated the 6th May, 2025.

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

Section 2of Cap 470, it is proposed to amend—

"compensating tax" means the addition to tax imposed under section 7A;

"debenture" includes any debenture stock, mortgage, mortgage stock, or any similar instrument acknowledging indebtedness, secured on the assets of the person issuing the debenture; and, for the purposes of paragraphs (d) and (e) of section 7(1) of this Act, includes any loan or loan stock, whether secured or unsecured;

"individual retirement fund" means a fund held in trust by a qualified institution for a resident individual for the purpose of receiving and investing funds in qualifying assets in order to provide pension benefits for such an individual or the surviving dependants of such an individual subject to the Income Tax (Retirement Benefit) Rules;

"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;

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

(a) any copyright of a literary, artistic or scientific work;

(b) any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees;

(c) any cinematograph film, including a film or tape for radio or television broadcasting;

(d) any patent, trademark, design or model, plan, formula or process;

(e) any industrial, commercial or scientific equipment; or

(f) information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty;

"Tribunal" means the tribunal established under section 83;

"venture company" means a company incorporated in Kenya in which a venture capital company has invested and which at the time of first investment by the venture capital company has assets with a market value or annual turnover of less than five hundred million Kenya shillings;

(2) In relation to any year of income in respect of which an order relating to tax or personal reliefs has been made under the Provisional Collection of Taxes and Duties Act (Cap. 415), reference in this Act to rates of tax and personal reliefs shall, so long as the order remains in force,

be construed as references to the rates or reliefs specified in that order; and if, after the order has ceased to have effect, the rates of tax and of personal reliefs in relation to that year of income as specified in this Act as amended are different from those referred to in the order, and assessments have already been made having regard to those rates in the order, then all necessary adjustments shall be made to the assessments to give effect to the rates of tax and of personal reliefs for that year of income as specified in this Act as amended for that year of income.

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

Income from employment, etc.

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

(a) a person who is, or was at the time of the employment or when the services were rendered,a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or

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

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

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

Provided that–

(i) where any such amount is received in respect of a year of income which expired earlier than four years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased, if earlier, it shall be deemed to be income of the year of income which expired five years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased as the case may be; and

(ii) where the Commissioner is satisfied that subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from the employment or services rendered then the calculation of the gains or profits of the recipient shall exclude that allowance or expenditure;

(iii) notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the first 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; and

(iv) notwithstanding the provisions of subparagraph (ii), where such an amount is received by an employee as payment of travelling allowance to perform official duties, the standard mileage rate approved by the Automobile Association of Kenya shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of the employee's gains and profits;

(b) save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than sixty thousand shillings granted in respect of employment or services rendered;

(c) an amount 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;

(f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

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

(i) to a registered or unregistered pension scheme, pension fund, or individual retirement fund; or

(ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.

(fa) club entrance and subscription fees allowed against the employer's income;

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

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

(ii) zero:

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

(b) For the purposes of this subsection–

"employee" means any person who is not a beneficial owner of or able either directly or indirectly or through the medium of other

companies or by any other means to control more than five per cent of the share capital or voting power of that company;

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

"prescribed rate of interest" means the following:

(i) in the year of income commencing on the 1st January, 1990, 6 per cent;

(ii) in the year of income commencing on the 1st January, 1991, 8 per cent;

(iii) in the year of income commencing on the 1st January, 1992, 10 per cent;

(iv) in the year of income commencing on the 1st January, 1993, 12 per cent;

(v) in the year of income commencing on the 1st January, 1994, 15 per cent; and

(vi) in the year of income commencing on or after the 1st January, 1995, 15% or such interest rate based on the market lending rates as the Commissioner may from time to time prescribe, to cover a period of not less than six months but not more than one year, whichever is the lower.

"relative of a director or an employee" means-

(i) his spouse;

(ii) his son, daughter, brother, sister, uncle, aunt, nephew, niece, stepfather, step-mother, step-child, or in the case of an adopted child his adopter or adopters; or

(iii) the spouse of any such relative as is mentioned in subparagraph (ii).

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

(a) such value as the Commissioner may, from time to time, determine; and

(b) the prescribed rate of benefit:

Provided that–

(i) where such vehicle is hired or leased from a third party, the employee shall be deemed to have received a benefit in that year of income equal to the cost of hiring or leasing; or

(ii) where an employee has restricted use of such motor vehicle, the Commissioner shall, if satisfied of that fact upon proof by the employee, determine a lower rate of benefit depending on the usage of the motor vehicle.

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

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

(a) in the 1996 year of income, 1% of the initial capital expenditure on the vehicle by the employer;

(b) in the 1997 year of income, 1.5% of the initial capital expenditure on the vehicle by the employer; and

(c) in 1998 and subsequent years of income, 2% of the initial expenditure on the vehicle by the employer.

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

(a) in the case of a director of a company, other than a whole time service director, an amount equal to the higher of fifteen per centum of his total income excluding the value of those premises and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;

(b) in the case of a whole time service director, an amount equal to the higher of fifteen per centum of the gains or profits from his employment, excluding the value of those premises, and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;

(c) in the case of an agricultural employee required by the terms of employment to reside on a plantation or farm, an amount equal to ten per centum of the gains or profits from his employment:

Provided that for the purposes of this paragraph–

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

(ii) "agricultural employee" shall not include a director other than a whole time service director;

(d) in the case of any other employee, an amount equal to fifteen per centum of the gains or profits from his employment, excluding the value of those premises or the rent paid by the employer if paid under an agreement made at arm's length with a third party, whichever is the higher:

Provided that–

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

(ii) where the premises are owned by the employer, the fair market rental value of the premises in that year

Provided that–

(i) where a person occupies premises for part only of a year of income, the value ascertained under the foregoing provisions shall be reduced by that proportion which is just and reasonable having regard to the period of occupation and the yearly rate of gains or profits from employment;

(ii) where the employee pays rent to his employer for premises, the value ascertained under the foregoing provisions shall be reduced by the amount of rent;

(iii) where part only of any premises is so provided, the Commissioner may reduce the value ascertained under the foregoing provisions to the amount which he considers just and reasonable;

(iv) where the gains or profits from a person's employment, excluding the value of the premises provided by the employer, exceed six hundred thousand shillings in the year, the value of the premises determined under this subsection shall be subject to the limit of-

(a) the rent paid by the employer or the fair market rental value of the premises in that year where the premises are provided under an agreement with a third party which is not at arm's length, whichever is the higher; or

(b) the fair market rental value of the premises in that year where the premises are owned by the employer.

(4) Notwithstanding anything to the contrary in subsection (2) "gains or profits" do not include–

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

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

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

Provided that–

(i) this paragraph shall cease to apply on the 1st July, 2015;

(ii) the period of vacation shall not exceed seven days; and

(iii) the term "employee" shall include the immediate family members of the employee;

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

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

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

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

(i) to an unregistered pension scheme, unregistered provident fund or unregistered individual retirement fund; or

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

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

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

(f) the first sixty thousand shillings on the value of meals served by the employer, whether the meals are supplied by the employer or not, within his premises to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer, whether the meals are supplied in the premises of the employer or the premises of the third party, shall be excluded in the calculation of his gains or profits subject to such conditions as the Commissioner may specify;

(fa) any amount paid or granted to a public officer pursuant to any written law or statutory instrument, with effect from 27th July, 2022, to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased;

(g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that–

(a) this paragraph shall only apply in respect of amounts not exceeding three hundred and sixty thousand shillings for each year of service;

(b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.

(h) For the purposes of this subsection—

(i) "beneficiaries" means the full time employee's spouse and not more than four children whose age shall not exceed twenty-one years; and

(ii) "low income employee" deleted by Act No. 16 of 2014, s. 5(c).

(5) Notwithstanding any other provision of this Act, the value of the benefit (excluding the value of premises as determined under subsection (3) and the value of benefit determined under subsection (2B) for the

purposes of this section, shall be the higher of the cost to the employer or the fair market value of the benefit:

Provided that–

(a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the offer price, per share, at the date the option is granted by the employer, and the market value, per share on the date when the employee exercises the option;

(b) the Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.

(6) For the purposes of paragraph (a) of the proviso to subsection (5)–

(a) the benefits chargeable shall be deemed to have accrued on the date the employee exercises the option;

(b) "offer price" means the price at which an employer's shares are initially offered to an employee under an employee share ownership plan;

(c) "market value", in relation to a share means–

(i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the option was exercised by the employee; or

(ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, when the option is exercised;

(d) "share option" means the offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for at the end of the vesting period;

(e) "vesting period" means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

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

(a) the expiry of five years from the end of the year of the award of the shares;

(b) the disposal of the shares by the employee; or

(c) the date the employee ceases to be an employee of the eligible start-up:

Provided that–

(i) this subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment;

(ii) the benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c);

(iii) the value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or

(iv) where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

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

(a) has an annual turnover of not more than one hundred million shillings;

(b) does not carry on management, professional or training business;

(c) has not been formed as a result of splitting or restructuring of an existing entity; and

(d) has been in existence for a period of not more than five years.

Section 8 of Cap 470, it is proposed to amend-

Income from pensions, etc.

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

(2) For the purposes of this Act any pension or retirement annuity received by a non-resident individual from a pension fund or pension scheme established in Kenya or under an annuity contract made in Kenya shall be deemed to have accrued in or to have been derived from Kenya.

(3) For the purposes of this Act, any pension received in respect of employment by or services rendered to the Community or one of its corporations shall be deemed to have accrued in or to have been derived from Kenya–

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

(4) Notwithstanding section 3(2)(c), the first three hundred thousand shillings of the total pensions and retirement annuities received by a resident individual from a registered fund or the National Social Security Fund in a year of income shall be deemed to be income not charged to tax.

(5) Notwithstanding section 3(2)(c), the following sums shall, subject to such rules as the Commissioner may prescribe, be deemed to be income not chargeable to tax–

(a) in the case of a lump sum commuted from a registered pension or individual retirement fund, the first six hundred thousand shillings; or

(b) in the case of a withdrawal from a registered pension or individual retirement fund upon termination of employment, the lesser of–

(i) the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began, or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; or

(ii) the first six hundred thousand shillings; or

(c) in the case of a lump sum paid out of a registered provident fund (or a defined contribution registered fund deemed by the Commissioner to be a provident fund for the purposes of assessing under this paragraph accumulations for the payment of lump sums other than out of a pension) the total of–

(i) the lesser of the first six hundred thousand shillings or the first sixty thousand shillings per full year of pensionable service with that employer starting on the later of the date the

pensionable service began or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; and

(ii) where the registered fund receives no further contributions after 1990 year of income, or where the accumulated funds based on contributions prior to the 1st January, 1991 and contributions after the 31st December, 1990 are segregated, all lump sum payments based on the contributions made prior to 1st January, 1991, or, in any other case, all benefits based on amounts accumulated in the fund on the 31st December, 1990:Provided that the trustees or provident fund managers shall have informed the Commissioner in writing by 31st December, 1991 of the accumulated balances and the members of the provident funds as of 31st December, 1990, the names of the registered funds, the names and addresses of such members, the name and address of their employer, and whether the registered provident fund has ceased receiving contributions as of 1st January, 1991 or whether the registered provident fund has segregated its funds;

(d) in the case of a benefit paid out of the National Social Security Fund, the first six hundred thousand shillings; and

(e) in the case of a lump sum paid out of a registered home ownership savings plan, the amount used for the purchase of an interest in or for the construction of a permanent house for occupation by the depositor within twelve months immediately following the year of withdrawal;

(f) the total pensions or individual retirement and retirement annuities received by a resident individual from an unregistered pension or individual retirement fund or scheme–

(i) the contributions to which have not been allowed as a deduction under any other provisions of this Act; and

(ii) the income thereof has been taxed.

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

(a) the accumulated funds based on contributions prior to the 1st January 1991 are accounted for separately from contributions after 31st December, 1990; and

(b) the net accumulated funds on each account earn the average rate of return on all the assets in the fund at the accounting date for a year of income; and

(c) the net accumulated funds based on contributions prior to 1st January, 1991, are made up of the accumulated balances as at 31st December, 1990, less any withdrawals from the fund plus any investment income earned on the fund up to the accounting date for a year of income.

(6) Upon the death of an employee who is a member or beneficiary of a registered fund–

(a) the widow, widower or dependants shall qualify as a group for the same tax exempt amounts out of pension income and lump sums as are available under subsections (4) and (5) respectively as if such amounts had been received by the employee; and

(b) where the registered fund provides for no payment of retirement benefits other than the payment of a lump sum to an estate, the first one million four hundred thousand shillings of such a lump sum payment shall be deemed to be income not chargeable to tax as income of the estate or its direct beneficiaries.

(7) Upon the death of the beneficiary of a registered individual retirement fund or registered home ownership savings plan the balance of funds shall be deemed to have been withdrawn immediately preceding the time of his death and shall be included in his income for that year, except–

(a) where such funds have been bequeathed to the spouse, the ownership of the fund may be transferred to the spouse; or

(b) where funds are bequeathed to his children under the age of eighteen years at the time of his death, such funds shall be included in the income of such children;

(c) where the funds of a depositor under a registered home ownership savings plan are bequeathed to another depositor, the funds may be transferred to that depositor.

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

(9) Where the Commissioner determines that an individual retirement fund no longer complies with the registration rules, the fund shall be deemed to be no longer an individual retirement fund and the balance of the fund shall be included in the income of the beneficiary in the year of income in which the fund ceased to comply with the rules.

(9A) Where the Commissioner withdraws the registration of a home ownership savings plan, then the balance of the funds held in each depositor's account shall be included in that depositor's income with effect from the beginning of the year of income in which the grounds for the withdrawal arose, except where such funds are transferred to a similar plan in an approved institution within twelve months of the withdrawal of the registration with the prior written approval of the Commissioner in which case such funds shall not be included in the depositor's income.

(10) For the purposes of this subsection–

(a) pension and lumpsums paid from a public pension scheme, shall be deemed to be received from a registered pension fund or a registered provident fund, as the case may be;

(b) any surplus funds in respect of a registered pension fund or a registered provident fund withdrawn by or refunded to an employer shall be deemed to be the income of that employer.

(11) In subsection (10), the expression "surplus funds" means surplus funds identified through an actuarial valuation carried out in accordance with this Act or any rules made thereunder.

Section 10, it is proposed to amend-

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

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

(a) a management or professional fee or training fee;

(b) a royalty or natural resource income;

(c) interest and deemed interest;

(d) the use of property;

(e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or

(f) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (e) of this section;

(g) 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.

Section 12E of Cap. 470, it is proposed to amend-

Significant economic presence tax

(1) Notwithstanding any other provision of this Act, a tax known as significant economic presence 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 a digital marketplace.

(2) For purposes of this section, a non-resident person shall be considered to have significant economic presence where the user of the service is located in Kenya.

(3) Subsection (1) shall not apply—

(a) to a non-resident person who offers the services through a permanent establishment;

(b) to an income chargeable under section 9(2) or section 10;

(c) to a non-resident person providing digital services to an airline in which the government of Kenya has at least forty-five per cent shareholding; or

(d) to a non-resident person with an annual turnover of less than five million shillings.

(4) For the purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be ten per cent of the gross turnover.

(5) A person subject to 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 month in which the service was offered.

(6) The Cabinet Secretary may make Regulations for the better implementation of this section.

Section 12G of Cap.470, it is proposed to amend-

Minimum top-up tax

(1) Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen per cent.

(2) The combined effective tax rate for a covered person shall be the sum of all the adjusted covered taxes, divided by the sum of all net income or loss for the year of income, multiplied by a hundred.

(3) The amount of tax payable shall be the difference between fifteen per cent of the net income or loss for the year of income of a covered person, and the combined effective tax rate for the year of income, multiplied by the excess profit of the covered persons.

(4) This section shall not apply—

(a) to a public entity that is not engaged in business;

(b) to a person whose income is exempt from tax under paragraph 10 of the First Schedule;

(c) to a pension fund and the assets of that pension fund;

(d) to a real estate investment vehicle that is an ultimate parent entity;

(e) to a non-operating investment holding company;

(f) to an investment fund that is an ultimate parent entity;

(g) to a sovereign wealth fund; or

(h) to an intergovernmental or supranational organisation including a wholly owned agency or organ of the intergovernmental or supranational organisation.

(5) In this section—

"adjusted covered taxes" means taxes recorded in the financial accounts of a covered person for the income, profits, or share of the income or profits of a covered person where the covered person owns an interest, and includes taxes on distributed profits, deemed profit distributions under this Act subject to such adjustments as may be prescribed;

"covered person" means a resident person or a person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated annual turnover of seven hundred and fifty million Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income;

"net income or loss" means the sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognised accounting standards in Kenya; and

"excess profit" means the net income or loss of a covered person for the year of income less—

(a) ten per cent for the employee costs; and

(b) eight per cent for the net book value of tangible assets:

Provided that the employee cost and book value of tangible assets may be adjusted as prescribed in regulations.

Section 15 of Cap.470, it is proposed to amend-

Deductions allowed

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

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

(a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph;

(b) amounts to be deducted under the Second Schedule in respect of that year of income;

(bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;

(c) any expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;

(d) any expenditure of a capital nature incurred in that year of income by any person on legal costs and stamp duties in connexion with the acquisition of a lease, for a period not in excess of, or expressly capable of extension beyond, ninety-nine years, of premises used or to be used by him for the purposes of his business;

(e) any expenditure, other than expenditure referred to in paragraph (f) of this section, incurred in connection with any business before the date of commencement of that business where such expenditure would have been deductible under this section if incurred after such date, so, however, that the expenditure shall be deemed to have been incurred on the date on which such business commenced;

(f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:

Provided that no deduction shall be made for the cost of an extension to, or replacement of, such premises;

(g) the amount considered 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;

(ga) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5(b) of the Affordable Housing Act, 2024;

(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 Cabinet Secretary, by a person on

the construction of a public school, hospital, road or any similar kind of social infrastructure;

(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports;

(aa) expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President.

(ac) in the case of an employee, the amount deducted in accordance with section 5(1)(a) of the Affordable Housing Act, 2024;

(ad) a contribution to a post-retirement medical fund subject to a limit of fifteen thousand shillings per month;

(ae) contributions made to the Social Health Insurance Fund in accordance with section 27(a) and

(b) of the Social Health Insurance Act, 2023;

(3) Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:

(a) the amount of interest paid in respect of that year of income by the person upon money borrowed by him and where the Commissioner is satisfied that the money so borrowed has been wholly and exclusively employed by him in the production of investment income which is chargeable to tax under this Act:

Provided that –

(i) the amount of interest which may be deducted under this paragraph shall not excee the investment income chargeable to tax for that year of income, and where the amount of that interest paid in that year exceeds the investment income of that year, the excess shall be carried forward to the next succeeding year and deducted only from investment income and, in so far as the interest has not already been so deducted, from investment income of the subsequent years of income; and

(ii) for the purposes of this paragraph, "investment income" means dividends and interest but excludes qualifying dividends and qualifying interest;

(b) the amount of interest not exceeding three hundred and sixty thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first six financial institutions specified in the Fourth Schedule and applied to the 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 Cabinet Secretary 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 yearof income in which he so succeeds in respect of such part of any deficit in the total income of the deceased for his last year of income as is attributable to any losses incurred by the deceased in the business in that year of income or in earlier years of income.

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

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

(b) the amount computed according to the following formula–

A 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;

(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

(vi) 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. 370, it is proposed to amend–

Deductions not allowed

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

(a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;

(b) any capital expenditure, or any loss, diminution or exhaustion of capital;

(c) any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act (Cap. 469B).

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

(a) expenditure incurred by a person in the maintenance of himself, his family or establishment or for any other personal or domestic purpose including the following–

(i) entertainment expenses for personal purposes; or

(ii) hotel, restaurant or catering expenses other than for meals or accommodation expenses incurred on business trips or during training courses or work related conventions or conferences, or meals provided to employees on the employer's premises;

(iii) vacation trip expenses except those customarily made on home leave as provided in the proviso to section 5(4)(a) and (aa); or

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

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

(c) any income tax or tax of a similar nature, 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 a non-resident in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

Provided that–

(i) any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and

(ii) this paragraph shall apply to–

(A) interest on all loans;

(B) payments that are economically equivalent to interest; and

(C) expenses incurred in connection with raising the finance.

(iii) this paragraph shall not apply to-

(A) banks or financial institutions licensed under the Banking Act (Cap. 488);

(B) micro and small enterprises registered under the Micro and Small Enterprises Act (Cap. 493C);

(C) microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act (Cap 493C);

(D) entities licensed under the Hire Purchase Act (Cap. 507);

(E) non-deposit taking institutions involved in lending and leasing business;

(F) companies undertaking the manufacture of human vaccines;

(I) holding companies that are regulated under the Capital Markets Act

(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.

(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 but shall not include local loans;

(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 Cap. 470, it is proposed to amend-

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 the ordinary profits which might be expected to accrue from that business if there had been 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

(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 Cabinet Secretary 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 18D of Cap. 470, it is proposed to amend—

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

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

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

(a) the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;

(b) the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or

(c) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner to the constituent entity resident in Kenya.

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

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

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

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

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

(a) the information relating to the identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity;

(b) the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction where the group has taxable presence; and

(c) any other information as may be required by the Commissioner.

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

(a) a detailed overview of the group;

(b) the group's growth engines;

(c) a description of the supply chain of the key products and services;

(d) the group's research and development policy;

(e) a description of each constituent entity's contribution to value creation;

(f) information about intangible assets and the group intercompany agreements associated with them;

(g) information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;

(h) information about financing activities of the group;

(i) the consolidated financial statements of the group;

(j) tax rulings, if any, made in respect of the group; and

(k) any other information that the Commissioner may require.

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

(a) details and information on the resident constituent entity's activities within the multinational enterprise group;

(b) management structure of the resident constituent entity;

(c) business strategies including structuring, description of the material-controlled transactions, the resident constituent entity's business and competitive environment;

(d) the international transactions and amounts paid to the resident constituent entity or received by the entity; and

(e) any other information that the Commissioner may require.

(8) Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities 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 (Cap. 469B).

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

Ascertainment of income of insurance companies

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

business the surplus from which shall be ascertained in the manner provided for in this section for ascertaining gains or profits and which shall be deemed to be gains or profits which are charged to tax under this Act.

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

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

(a) taking, for such year of income, the sum of–

(i) the amount of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance as relate to such business); and

(ii) the amount of other income from such business, including any commission or expense allowance received or receivable from re-insurers and any income derived from investments held in connexion with that business; and

(b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks referable to that business at the percentage adopted by the company at the end of that year of income and adding thereto the reserve deducted for unexpired risks at the end of the previous year of income:

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

(c) deducting from the figure arrived at under paragraphs (a) and (b) of this subsection–

(i) the amount of the claims admitted in such year of income in connexion with such business (provided that claims incurred but not paid or not reported before the end of the accounting period are estimated on the basis of actuarial principles including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and

(ii) the amount of agency expenses incurred in such year of income in connection with such business; and

(iii) the amount of any other expenses allowable as a deduction (excluding costs and expenses attributable to earning exempt income) as determined by the ratio of exempt investment income to the sum of investment and exempt investment income in that year of income in computing the gains or profits of that business under this Act.

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

(a) taking, for such year of income, the sum of–

(i) the amount received or receivable in Kenya of the gross premiums from such business (less such premiums returned to the insured and such premiums paid on reinsurance, other than to the head office of such company, as relates to such business); and

(ii) the amount of other income from such business, not being income from investments, received or receivable in Kenya including any commission or expense allowance received or receivable from reinsurance, other than from the head office of such company, of risks accepted in Kenya; and

(iii) such amount of income from investments as the Commissioner may determine to be just and reasonable as representing income from investment of the reserves referable to such business done in Kenya; and

(b) deducting from the sum arrived at under paragraph (a) a reserve for unexpired risks outstanding at the end of that year of income in respect of policies for which the premiums are received or receivable in Kenya at the percentage adopted by the company in relation to its insurance business as a whole, other than life insurance, but adding to that sum the reserve deducted for similar unexpired risks at the end of the previous year of income:

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

(c) deducting from the figure arrived at under paragraphs (a) and (b)–

(i) the amount of the claims admitted in that year of income in connection with that business (Provided that claims incurred but not paid or not reported before the endof the accounting period are estimated on the basis of actuarial principles

including the discounting of ultimate costs); less any amount recovered in respect thereof under reinsurance; and

(ii) the amount of agency expenses incurred in such year of income in connexion with such business; and

(iii) an amount being such proportion as the Commissioner may determine to be just and reasonable of those expenses of the head office of that company as would have been allowable as a deduction in that year of income in computing its gains or profits if the company had been a resident company in so far as those amounts relate to policies the premiums in respect of which are received or receivable in Kenya.

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

(a) the amount of actuarial surplus, as determined under the Insurance Act and recommended by the actuary to be transferred from the life fund for the benefit of shareholders;

(b) any other amounts transferred from the life fund for the benefit of shareholders; and

(c) thirty per centum of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act (Cap. 487).

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

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

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

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

(b) the same proportion of any other amounts transferred from the life fund for the benefit of shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and

(c) the same proportion of thirty per cent of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurances Act (Cap. 487) as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business.

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

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

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

(7) In this section–

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

"company" includes a body of persons;

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

"investment income" does not include–

(a) dividends chargeable to tax under section 3(2)(a)(i); and

(b) income from the disposal of investment shares traded in any securities exchange operating in Kenya;

"life insurance fund" does not include the annuity fund, if any, nor such part of the life insurance fund as represents the liability of the

company under any registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund;

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

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

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

Section 21of Cap.470, it is proposed to amend-

Members' clubs and trade associations

(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.

(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 27 of Cap. 470, it is proposed to amend-

Accounting periods not coinciding with year of income, etc.

(1) Where any person usually makes up the accounts of his business for a period of twelve months ending on any day other than 31st December, then, for the purpose of ascertaining his total income for any

year of income, the income of any such accounting period ending on such other date shall, subject to such adjustment as the Commissioner may consider appropriate, be taken to be income of the year of income in which the accounting period ends–

(a) in the case of a person other than an individual, as regards all income charged under section 3 of this Act; and

(b) in the case of an individual, as regards all income charged under that section other than gains or profits from any employment or services rendered.

(1A) A person carrying on an incorporated business may subject to the prior written approval of the Commissioner alter the date to which the accounts of the business are made up.

(1B) A person seeking the approval of the Commissioner under subsection (1A) shall apply in writing to the Commissioner at least six months before the date to which the accounts are intended to be made up.

(1C) The Commissioner shall within six months from the date of receipt of the application communicate his decision in writing to the applicant.

(2) Where a person makes up the accounts of his business for a period greater or less than twelve months, the Commissioner may, subject to such adjustments as he may consider appropriate, including the assessment for a year of income which, but for any alteration in the date to which the accounts of the business are made up, would have been assessed for that year of income, treat the income of that accounting period as income of the year of income in which the accounting period ends, and tax shall be charged accordingly.

(3) The accounting period of a person carrying on any unincorporated business shall be the period of twelve months ending on 31st December in each year; and

(4) Any person to whom subsection (3) applies shall not later than 31st December, 1998 change the accounting date to comply with the provisions of that subsection.

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

Deduction of tax from certain income

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

(a) a management or professional fee or training fee except–

(i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or

(ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel;

(b) a royalty or natural resource income;

(c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock:

Provided that–

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

(ii) where a non-resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;

(d) a dividend;

(e) interest and deemed interest;

(f) a pension or retirement annuity:

(g) any appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience;

(h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection,

(i) 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;

(q) digital content monetisation;

(r) supply of goods to a public entity;

(s) making or facilitating payment on a digital marketplace; and

(t) sale of scrap,

which is chargeable to tax, deduct therefrom tax at the appropriate resident withholding tax.

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

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

(a) a dividend;

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

Provided that–

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

(ii) where the resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;

(c) an annuity payment excluding that portion of the payment which represents the capital element;

(d) a commission or fee paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons (except a commission or fee paid or credited to another insurance company);

(e) a pension or a lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund in excess of the tax exempt amounts specified in section 8(4) and (5), or any amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund in excess of the tax exempt amount specified in section 8(5);

(ee) surplus funds withdrawn from or paid out of registered pension or provident funds;

(f) management or professional fee or training fee, the aggregate value of which is twenty-four thousand shillings or more in a month:

Provided that for the purposes of this paragraph, contractual fee within the meaning of "management or professional fee" shall mean payment for work done in respect of building, civil or engineering works;

(g) a royalty or natural resource income;

(h) winnings;

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

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

(l) digital content monetisation;

(m) supply of goods to a public entity;

(n) making or facilitating payment on a digital marketplace; and

(o) sale of scrap,

which is chargeable to tax, deduct therefrom tax at the appropriate resident withholding tax.

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

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

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

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

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

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

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

(a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment the amount of tax deducted, and such other information as the Commissioner may specify; and

(b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.

(5A) The Commissioner shall pay the tax deducted from 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, (Cap 412A).

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

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

Section 37 of Cap.470, it is proposed to amend-

Deductions of tax from emoluments

(1) An employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.

(2) If an employer paying emoluments to an employee fails–

(a) to deduct tax thereon;

(b) to account for tax deducted thereon; or

(c) to supply the Commissioner with a certificate provided by rules prescribing the certificate, the Commissioner may impose a penalty equal to twenty-five per cent of the amount of tax involved or ten thousand shillings whichever is greater, and the provisions of this Act relating to the collection and recovery of such tax shall also apply to the collection and recovery of such penalty as if it were tax due from the employer:

Provided that, instead of the Commissioner imposing a penalty under this subsection, a prosecution may be instituted for an offence under section 109(1)(j).

(4) Any tax deducted under this section from the emoluments of an employee shall be deemed to have been paid by that employee and shall be set-off for the purposes of collection against tax charged on that employee in respect of those emoluments in any assessment for the year of income in which such emoluments are received.

(5) Where a person who is required under this section to deduct tax fails to remit the amount of any deduction to such person as the Commissioner may direct within the time limit specified in rules made under section 130, the provisions of this Act relating to the collection and recovery of tax, and

the payment of interest thereon, shall apply to the collection and recovery of that amount as if it were tax due and payable by that person, the due date for the payment of which is the date specified in rules made under section 130 by which that amount should have been remitted to the payee.

(5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, within thirty days, object to such imposition or decision.

(5B) The provisions of this Act in respect of objections shall, mutatis mutandis, apply to objections under this section.

Section 39 of Cap.470, it is proposed to amend-

Set-off of tax

(1) An amount of tax which–

(a) has been deducted under section 17A (in respect of a person other than an individual), sections 35, 36 or 37;

(b) has been borne by a trustee, executor or administrator in his capacity as such on an amount paid as income to a beneficiary; or

(c) has been paid by a person under section 12A, shall be deemed to have been paid by the person chargeable with that tax and shall be set off for the purposes of collection against the tax charged on that person for the year of income in respect of which it was deducted, and where an assessment is made by the Commissioner on a person for a year of income under section 73 the amount of tax which has already been paid under a provisional assessment on that person for that year of income shall be set off for the purposes of collection against the tax charged in the assessment made under section 73;

(2) If any citizen of Kenya chargeable to tax in Kenya for any year of income on employment income or income in respect of any activity under section 10 (1)(e) of this Act accrued in or derived from another country proves to the satisfaction of the Commissioner that he has paid tax in such other country for such year of income in respect of the same income, he shall be entitled to set-off by way of credit of the same tax against the tax charged in Kenya on such income.

(3) The tax chargeable on the income of any person in respect of which set-off is to be allowed under this section shall be taken to be the amount by which the tax chargeable (before set-off under this section) in respect of his employment income or income specified under section 10 (1)(e) is increased by the inclusion of such income in his employment income or income specified under section 10(1)(e).

(2) Credit under this section shall not exceed the amount of tax payable in Kenya on such employment income or income in respect of any activity under section 10(1)(e).

Section 52B of Cap.470, it is proposed to amend-

Final return with self-assessment

(1) Notwithstanding any other provision of this Act–

(a) every individual chargeable to tax under this Act shall for any year of income commencing with the year of income 1992, furnish to the Commissioner a return of income, including a self-assessment of his tax from all sources of income, not later than the last day of the sixth month following the end of his year of income; and

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

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

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

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

(5) The Commissioner may, where he considers appropriate, send to any person to whom this section applies in respect of any year of income a form or forms to enable that person to furnish the required return; and failure by the Commissioner to send the return form or forms shall not affect the obligation of that person to furnish the required return by the date specified in this section.

Section 54B of Cap.470, it is proposed –

Supply of information upon change in particulars

Every person carrying on a business shall notify the Commissioner of any changes in the following particulars within thirty days of the occurrence of the change–

(a) the place of business, trading name and contact address;

(b) in the case of–

(i) an incorporated person, of the persons with shareholding of ten per cent or more of the issued share capital;

(ii) a nominee ownership, to disclose the beneficial owner of the shareholding;

(iii) a trust, full identity and address details of trustees, settlors and beneficiaries of the trust;

(iv) a partnership, the identity and address of all partners; or

(vi) cessation or sale of business, all relevant information regarding liquidation or details of new ownership.

Section 72B of Cap. 470, it is proposed to amend-

Penalty for the negligence of authorized tax agent

(1) Where the additional tax charged under sections 72 and 72A results from the failure, omission, claim, statement or deduction which arises due to the negligence or disregard of law by a person who is an authorised tax agent, such a person shall be liable to a penalty equal to one half of such additional tax but in any case not less than one thousand shillings and not exceeding fifty thousand shillings with respect to each such return, statement or other document as shall be the subject of such additional tax.

Section 72C of Cap.470, it is proposed to amend-

Penalty on underpayment of instalment tax

(1) Subject to the Twelfth Schedule, a penalty of twenty per cent of the difference between the amount of instalment tax payable in respect of a year of income as specified in section 12, and the instalment tax actually paid multiplied by one hundred and ten per cent shall be payable.

(2) Where the Commissioner is satisfied that the difference referred to in subsection (1) was due to reasonable cause, he may remit the whole or part of the penalty payable under this section, and where for a year of income the difference arises wholly or partly from an estimate of tax to be charged made before any change in any allowance, relief or rate of tax, the Commissioner may remit the interest charged thereon to the extent to which it is attributable to such a change:

Provided that–

(a) the Commissioner may remit up to a maximum of one million five hundred thousand shillings per person per annum of the penalty or interest; and

(b) the Commissioner may remit any amount of penalty or interest in excess of one million five hundred thousand shillings with the prior written approval of the Cabinet Secretary; and

(c) the Commissioner shall make a quarterly report to the Cabinet Secretary of all penalties and interest remitted during that quarter.

Section 104 of Cap. 470, it is proposed amend-

Collection of tax from ship owner, etc.

(1) In addition to any other powers of collection of tax provided in this Act, the Commissioner may, in a case where tax recoverable in the

manner provided by section 101 of this Act has been charged on the income of a person who carries on the business of shipowner, charterer or air transport operator, issue to the proper officer of Customs by whom clearance may be granted a certificate containing the name of that person and the amount of the tax due and payable and on receipt of that certificate the proper officer of Customs shall refuse clearance from any port or airport in Kenya to any ship or aircraft owned by that person until the tax has been paid.

(2) No civil or criminal proceedings shall be instituted or maintained against the proper officer of Customs or any other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to pay harbour or airport dues and charges for the period of detention.

Section 109 of Cap.470, it is proposed to amend-

Failure to comply with notice, etc.

(1) Any person shall be guilty of an offence if he, without reasonable excuse–

(a) fails to furnish a return or give a certificate as required by section 35 (5) of this Act; or

(b) fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or fails to give notice to the Commissioner as required by section 52 (3) of this Act; or

(c) fails to furnish within the required time to the Commissioner or to any other person any document which under this Act, or under a notice served on him under this Act, he is required so to furnish; or

(d) fails to keep records, books or accounts in accordance with the requirements of a notice served on him under section 55(1) of this Act, or fails to keep those records, books or accounts in the language specified in the notice; or

(e) fails to preserve a record, document or book of account in contravention of section 55 (2) of this Act; or

(f) fails to produce a document for the examination of the Commissioner in accordance with the requirements of a notice served on him under this Act; or

(g) destroys, damages or defaces any accounts or other documents in contravention of a notice served on him under section 56 (1) of this Act; or

(h) fails to attend at a time and place in accordance with the requirements of a notice served on him under this Act; or

(i) fails to answer any question lawfully put to him, or to supply any information lawfully required from him, under this Act; or

(j) fails to deduct and account, or fails to account for tax, as provided by section 37 of this Act, or fails to supply prescribed certificates as is required by that section; or

(k) when requested by the Commissioner, fails to furnish the identifying number required under section 132, or fails to include in any return, in a statement or in other documents the identifying number when required to do so.

(2) No prosecution for an offence under this section shall be instituted at any time subsequent to two years after the date of the commission of the offence or, in the case of the contravention of paragraph (d), (e) or (g) of subsection (1) after the date on which the fact of the commission of that offence came to the knowledge of the Commissioner.

Section 131 of Cap. 470, it is proposed to amend-

Exemption from stamp duty

All securities of whatsoever nature over property, movable or immovable, and all transfers of such property in favour of or by the Commissioner shall be exempt from stamp duty.

First Schedule of Cap.470, it is proposed to amend-

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

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

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

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

(a) whose sole or main object is to foster and control any outdoor sport; and

(b) whose members consist only of amateurs or affiliated associations the members of which consist only of amateurs; and

(c) whose memorandum of association or by-laws have provisions defining an amateur or a professional and providing that no person may be or continue to be a member of such association if such person is not an amateur.

8. The income of any county government.

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

(a) established in Kenya; or

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

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

(i) such business is carried on in the course of the actual execution of such purposes;

(ii) the work in connexion with such business is mainly carried on by beneficiaries under such purposes; or

(iii) such gains or profits consist of rents (including premiums or any similar consideration in the nature of rent) received from the leasing or letting of land and any chattels leased or let therewith; and provided further that an exemption under this paragraph–

(A) shall be valid for a period of five years but may be revoked by the Commissioner for any just cause; and

(B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.

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

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

12. The income of any registered pension scheme.

13. The income of any registered trust scheme.

14. The income of any registered pension fund.

15. The income of a registered provident fund.

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

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

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

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

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

26. The emoluments–

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

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

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

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

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

Provided that–

(i) in determining whether or not a person has occupied a residence continuously for three years, any period during which he was temporarily absent from the residence shall be ignored;

(ii) references to a private residence include the immediately surrounding land utilized exclusively for personal purposes as an adjunct to the residence and not for the production of income, but does not include any part of the residence and land utilized for business purposes;

(iii) no individual may claim or be taken to have used more than one residence as his residence at the same time for the purposes of this Act;

(iv) no individuals may claim or be taken to have used more than one residence as their residence for the purposes of this Act at any time when they were husband and wife living together;

(v) no individual shall claim or be taken to have used a residence as a residence at any time when he was a dependant of either or both of his parents;

(vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of such property used for residential purposes shall be separately determined from that used for business purposes or for the production of income;

(d) property (being land) transferred by an individual where–

(i) the transfer value is not more than three million shillings; or

(ii) agricultural property having an area of less than fifty acres where such property is situated outside a municipality, gazetted township or an area that is declared by the Cabinet Secretary, by notice in the Gazette, to be an urban area for the purposes of this Act;

(f) property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing:

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

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

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

43. The income of a registered individual retirement fund.

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

45A. The income of the National Hospital Insurance Fund established under the National Hospital Insurance Fund Act, 1998 consisting of –

(a) all contributions and other payments into and out of the Fund; and

(b) monies invested under section 34 of the Act.

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

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

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

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

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

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

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

Provided that this exemption shall also apply to—

(a) payment of gratuity or other allowances paid under a public pension scheme;

(b) payment of a retirement annuity; or

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

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

57. The income of the National Housing Development Fund.

57. The principal sum of a registered family trust.

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

Provided that–

(a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and

(b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

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

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

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

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

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

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

63. Compensating tax accruing to a company undertaking the manufacture of human vaccines.

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

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

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

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

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

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

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

Provided that—

(a) the non-resident contractor, subcontractor, contractor or employee shall maintain this status for the tenure of the agreement;

(b) any other income not directly related to the project earned by that non-resident contractor, subcontractor, consultant or employee shall be subject to tax.

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

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

Second Schedule of Cap. 470, it is proposed to amend-

Part II – SECURITIES, THE INTEREST ON WHICH IS EXEMPT FROM TAX

SECOND SCHEDULE [ss. 4, 5 and 15]

INVESTMENT ALLOWANCE

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

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

Provided that where the cumulative value of investment for the preceding three years of income was one billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative

investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least one billion shillings;

(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or

(c) the person has incurred investment in a special economic zone.

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

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

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

RATES OF PERSONAL RELIEFS AND TAX

HEAD B – RATES OF TAX

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 the next KSh. 3,600,000	32.5%
On all income over 9,600,000	35%

2. The corporate rate of tax shall be–

(a) in the case of a resident company–

Rate in each twenty shillings	
(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1990	9.00
(ii) for the year of income 1990	8.50
(iii) for the year of income 1991	8.00
(iv) for the year of income 1992	7.50
(v) for the year of income 1993 upto and including the year of income 1997	7.00

(vi) for the year of income 1998 up to and including the year of income 1999 6.50

(vii) for the year of income 2000 and each subsequent year of income 6.00

(viii) for the year of income 2020 and each subsequent year of income 5.00

(ix) for the year of income 2021 and each subsequent year of income. 6.00

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

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

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

Rate in each twenty shillings

(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1989 10.50

(ii) for the year of income 1990 10.00

(iii) for the year of income 1991 9.50

(iv) for the year of income 1992 and each subsequent year of Income 9.00

(v) for the year of income 1993 up to and including the year of income 1997 8.50

(vi) for the year of income 1998 up to and including 1999 8.00

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

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

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

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

Provided that for purposes of this subparagraph, "commercial activities" includes trading in, breaking bulk, grading, repacking or relabelling 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–

(i) the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles; and

(ii) in this paragraph, "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

(m) in respect of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax specified in the Agreement shall continue to apply for the unexpired period as provided under the Agreement;

(n) in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations;

(o) in respect of a company operating a shipping business in Kenya, fifteen per cent for the first ten years from the year of commencement of its operations;

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

3. The non-resident tax rates shall be–

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

Provided that–

(i) the rate applicable to any payments made by Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable;

(ii) the rate applicable to the citizen of the East African Community Partner States in respect of consultancy fee shall be fifteen per cent of the gross sum payable;

(b) in respect of a royalty or natural resource income, twenty per cent of the gross amount payable;

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

(c) (i) in respect of a rent premium or similar consideration for the use or occupation of immovable property, thirty per cent of the gross amount payable;

(ii) in respect of a rent, premium or similar consideration for the use of property other than immovable property, fifteen per cent of the gross amount payable;

(d) in respect of a dividend, fifteen per cent of the amount payable:

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

(e) (i) in respect of interest arising from a Government bearer bond of at least two years duration and interest and deemed interest, discount or original issue discount, fifteen per cent of the gross sum payable;

(ia) in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount, seven and a half per cent of the gross sum payable;

(ii) in respect of interest, arising from bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent of the gross amount payable;

(iii) in respect of interest paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident persons, 5% of the gross amount payable.

(f) in respect of a pension or retirement annuity, five per cent of the gross amount payable;

(g) in respect of an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience, twenty per cent of the gross amount payable;

(h) in respect of an activity by way of supporting, assisting or arranging any appearance or performance mentioned in subparagraph (g) of this paragraph, twenty per cent of the gross amount payable;

(i) in respect of winnings, twenty percent;

(ia) in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount, seven and a half per cent of the gross sum payable;

(k) in respect of gains or profits from the business of a ship-owner which is chargeable to tax under section 9(1) of the Act, two and a half per cent of the gross amount received;

(l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre,

television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication which is chargeable to tax under section 9(2), five per cent of the gross amount received;

(n) in the case of a special economic zones enterprise, developer and operator in respect of payments other than dividends made to non-residents at the rate of ten percent;

(p) an insurance or reinsurance premium, five per cent of the gross amount payable;

(q) in the case of sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services twenty percent of the gross amount;

Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens;

(r) in the case of gains from financial derivatives, fifteen per cent of such gains;

(s) in the case of repatriated income under section 7B, fifteen per cent;

(t) in the case of digital content monetisation, twenty percent of the gross amount;

(u) in respect of a payment made by a public entity for supply of goods to the public entity, five per cent;

(v) in respect of income deemed to have accrued in or been derived from a digital marketplace, twenty per cent;

(w) in respect of the sale of scrap, one and a half percent of the gross amount.

5. The resident withholding tax rates shall be–

(a) in respect of a dividend, fifteen per cent of the amount payable;

(b) in respect of interest, discount or original issue discount arising from–

(i) bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent;

(ii) Government Bearer Bond of at least two years duration and other sources, fifteen per cent;

(iii) bearer bonds with a maturity of ten years and above, ten per cent of the gross amount payable, of the gross amount payable;

(c) in respect of a commission or fee, paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons, five per cent of the gross amount payable to brokers, and ten percent of the gross amount payable to brokers, and ten percent pfthe gross amount payable to all others;

(ii) in respect of a withdrawal before the expiry of twenty 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) in any one year–

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

(ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, seven point five percent of the gross amount payable;

(jb) in respect to the disbursement of deemed income to beneficiaries under section 11(3)(c) the rate of twenty five percent;

(l) in respect of payments for sales promotion, marketing, advertising services, five per cent of the gross amount;

(m)in respect of payments relating to digital content monetisation, five per cent;

(n) in respect of a payment made by a public entity for supply of goods to the public entity, zero point five per cent;

(o) in respect of income deemed to have accrued in or been derived from a digital marketplace, five percent;

(p) in respect of sale of scrap, one point five percent of the gross amount.

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

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

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

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

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

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

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

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 significant economic presence tax charged under section 12E shall be thirty per cent of the deemed taxable profit.

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.

14. The rate of tax in respect of capital gains charged under section 3 (2) (f) shall be fifteen per cent which shall be a final tax:

Provided that where the Nairobi International Financial Centre Authority certifies that—

(a) a firm has invested at least three billion shillings in at least one entity incorporated or registered in Kenya within a period of two years; and

(b) the transfer of the investment is to be made after five years of the date of the investment, the applicable rate shall be five per cent.

Eighth Schedule of Cap. 470, 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

Part I

1. Interpretation

(1) In this Part of the Schedule, except where the context otherwise requires–

"adjusted cost" has the meaning assigned thereto in paragraph 8 of this Schedule;

"company" includes–

(a) a members' club deemed under section 21(1) to be carrying on a business;

(b) a trade association that elects under section 21(2) to be deemed to carry on a business;

"consideration" means consideration in money or money's worth;

"individual" includes more than one individual or an unincorporated association or body of individuals

including trustees and partners;

"land" includes–

(a) buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface);

(b) standing timber, trees, crops and other vegetation growing on land; and

(c) land covered by water;

"marketable security" includes a security of such a description as to be capable of being sold and stock as defined in section 2 of the Stamp Duty Act (Cap. 480);

"property"–

(a) in the case of a company has the meaning assigned thereto in the Interpretation and General Provisions Act (Cap. 2), and includes property acquired or held for investment purposes but does not include a road vehicle;

(b) in the case of an individual means–

(i) land situated in Kenya and any right or interest in or over that land; and

(ii) a marketable security situated in Kenya, other than an investment share as defined in Part II of this Schedule;

"transfer" has the meaning assigned thereto in paragraph 6 of this Schedule;

"transfer value" has the meaning assigned thereto in paragraph 7 of this Schedule.

(2) For the purposes of this schedule–

(a) a reference to a transfer of property includes a reference to a part transfer of property; and

(b) there is a part transfer of property where, on a person making a transfer, any description of property derived from the transferred property remains undisposed of.

(3) For the purposes of this Schedule two persons are "related persons" if–

(a) either person participates directly or indirectly in the management, control or capital of the business of the other; or

(b) any third person participates directly or indirectly in the management, control or capital of the business of both.

(4) For the purposes of subparagraph (3) of this paragraph a reference to "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 reference to a company.

(5) For the purposes of this Schedule–

(a) shares or securities being marketable securities issued by a municipal or a Government authority, or by a body created by such an authority, are situated in the country of that authority; and

(b) subject to paragraph (a) of this paragraph, shares or securities (being marketable securities) are situated where they are registered and, if registered in more than one register, where the principal register is situated.

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

3. Income not chargeable

(1) Income is not chargeable to tax under section 3(2)(f) of this Act where, and to the extent that, it is chargeable to tax under any other provision of this Act.

(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1(b) of the Second Schedule is not chargeable to tax under section 3(2)(f).

(3) The gain which is exempted from tax under paragraph 36 of the First Schedule is not chargeable to tax under section 3(2)(f).

4. Computation of gains

(1) The gain which accrues to a person on the transfer of any property is the amount by which the transfer value of the property exceeds the adjusted cost of the property.

(2) Where, in computing the gain accruing to a person on the transfer of any property, it is found that the adjusted cost of the property exceeds the transfer value of the property, the amount of the excess is the loss realized by the person on the transfer of the property.

(3) Any gain or loss realized by a person on the transfer of property shall be deemed to be realized by the person at the time of the transfer, whether or not the consideration is payable by instalments but a payment by way of interest on any part of the consideration not immediately payable shall not be treated as part of the transfer value of the property.

(4) Debts incurred on the transfer of property which the Commissioner considers to have become bad shall be deemed to be a loss for the purposes of section 15(3)(f) and those provisions shall apply accordingly.

(5) Section 15(2)(e) does not apply in relation to a loss realized by a person on the transfer of property.

5. Dealings by nominees, trustees and liquidators, and for the enforcement of securities

(1) In relation to any property held by a person as nominee for another person or as trustee for a person absolutely entitled as against the trustee (or for two or more persons who are so entitled in possession, whether as joint tenants or tenants in common), or as liquidator for any company, this Schedule shall apply as if the property were vested in, and the acts of the nominee, trustee or liquidator in relation to the property were the acts of the person or persons for whom the person is nominee,

trustee or liquidator (transfers between the person or persons and the nominee, trustee or liquidator being disregarded accordingly).

(2) Where a person entitled to property by way of security or to the benefit of a charge or encumbrance on property, deals with the property for the purpose of enforcing or giving effect to the security, charge or encumbrance, his dealings with it shall be treated as if they were done through him as nominee by the person entitled to the property subject to the security, charge or encumbrance, and this subparagraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or encumbrance as receiver and manager as it applies to the dealings of the person so entitled.

6. Meaning of transfer

(1) Subject to this Schedule there is a transfer of property for the purposes of this Schedule–

(a) where property is sold, exchanged, conveyed or otherwise disposed of in any manner whatever (including by way of gift), whether or not for consideration; or

(b) on the occasion of the loss, destruction or extinction of property whether or not a sum by wayof compensation or otherwise, or under a policy of insurance, is received in respect of the loss, destruction or extinction of the property unless such sum is utilized to reinstate the property in essentially the same form and in the same place within one year of the loss, destruction or extinction of the property or within a longer period of time approved by the Commissioner; or

(c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, property, including the surrender of shares or debentures on the dissolution of a company.

(2) There is no transfer of property for the purposes of this Schedule–

(a) in the case of the transfer of property for the purpose only of securing a debt or a loan, or on any transfer by a creditor for the purpose only of returning property used as security for a debt or a loan;

(b) in the case of the issuance by a company of its own shares or debentures;

(c) by the vesting in the personal representative of a deceased person by operation of law of the property of that deceased person;

(d) by the transfer by a personal representative of any property to a person as legatee in the course of the administration of the estate of a deceased person. For this purpose "legatee" includes a person taking under a devise or other testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as a trustee;

(e) by the vesting in the liquidator by an order of a court of the property of a company under section 240 of the Companies Act (Cap. 486);

(f) by the vesting in the official receiver or other trustee in bankruptcy of the property of a bankrupt under section 57 of the Bankruptcy Act (Cap. 53);

(g) by the transfer by a trustee of property, which is shown to the satisfaction of the Commissioner to be subject to a trust, to a beneficiary on his becoming absolutely entitled thereto;

(h) by the transfer of assets–

(i) between spouses;

(ii) between former spouses as part of a divorce settlement or a bona fide separation agreement;

(iii) to immediate family;

(iv) to immediate family as part of a divorce or bona fide separation agreement; or

(v) to a company where spouses or a spouse and immediate family hold 100% shareholding;

(3) For the purposes of this paragraph, "immediate family" means children of the spouses or former spouses.

7. Transfer value

(1) Subject to this Schedule, the transfer value of property shall be computed by reference to such of the following amounts (if any) as are appropriate having regard to the manner of the transfer, namely–

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

(b) sums received in return for the abandonment, forfeiture or surrender of the property;

(c) sums received as consideration for the use of exploitation of the property;

(d) sums received by way of compensation for damage or injury to the property or for the loss of the property;

(e) sums received under a policy of insurance in respect of damage or injury to, or the loss or destruction of, the property;

(f) any amount by which the liability of a person to another person entitled to property by way of security or to the benefit of a charge or encumbrance is reduced as a result of dealings with the property for the purposes of enforcing or giving effect to the security, charge or encumbrance, together with any amount received by the person out of the proceeds of such dealings.

(2) Subject to this Schedule, for the purpose of computing the transfer value of any property there shall be deducted the incidental costs to the transferor of making the transfer.

(3) In any case where no amount is ascertainable under this Schedule as the transfer value of any property the transfer value of the property shall be the market value as determined by the Commissioner.

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.

(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.

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

8A. Notwithstanding any other provision of this Act, the deduction of costs of property shall not apply in the case of securities listed on any securities exchange approved under the Capital Markets Act (Cap. 485A).

9. Market value

(1) Where property is acquired or transferred–

(a) otherwise than by way of a bargain made at arms length;

(b) by way of a gift in whole or in part;

(c) for a consideration that cannot be valued; or

(d) as the result of a transaction between persons who are related then, for the purposes of–

(i) paragraph 7 of this Schedule, the amount of the consideration for the transfer of the property shall be deemed to be equal to the market value of the property at the time of the transfer; and

(ii) paragraph 8 of this Schedule, the amount of the consideration for the acquisition of the property shall be deemed to be equal

to the market value of the property at the time of the acquisition or to the amount of the consideration used in computing stamp duty payable on the transfer by which the property was acquired, whichever is the lesser.

(2) Property is acquired or transferred by way of a bargain at arms length only if the consideration is determined as between an independent willing buyer and an independent willing seller.

(3) The Commissioner may determine the market value of any property, and a reference in this paragraph to the market value of property is a reference to the price which the property would fetch if sold in the open market as so determined.

10. Incidental costs

For the purposes of paragraphs 7(2) and 8(1)(d) of this Schedule, the incidental costs of the acquisition or transfer of property shall consist of expenditure wholly and exclusively incurred by the person acquiring the property or the transferor for the purposes of the acquisition or transfer, as the case may be, of the property being–

(a) fees, commission or remuneration paid for the professional services of any surveyor, valuer, accountant, agent or legal adviser;

(b) costs of transfer (including stamp duty);

(c) in the case of an acquisition, the cost of acquisition (including mortgage costs) and the cost of advertising to find a seller, and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value;

(d) in the case of a transfer, the cost of advertising to find a buyer and costs reasonably incurred for the purposes of this Schedule in making any valuation or in ascertaining market value; and

(e) any other costs which the Commissioner may allow as being just and reasonable.

11. Amounts not allowable in computing transfer value or adjusted cost

No amount shall be allowed–

(a) under paragraph 7(2) of this Schedule as part of the incidental costs of making a transfer; or

(b) under paragraph 8 of this Schedule as part of the adjusted cost of any property, if that amount has been or is otherwise allowed as a

deduction in computing gains or profits chargeable to tax under section 3(2)(a) of this Act.

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.

12. Transfer or acquisition of property with other property

Where property is transferred or acquired together with other property in pursuance of one bargain, then, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property, the Commissioner may determine what part of the adjusted cost or the transfer value is reasonably attributable to each of the properties involved, which determination shall be binding on both the transferor and the transferee of the property.

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 which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months; or

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

Part II - ACCRUAL AND COMPUTATION OF GAINS FROM INVESTMENT SHARES

14. Interpretation

In this Part of this Schedule–

"consideration" means consideration in money or money's worth;

"investment shares" means shares of companies, municipal or Government authorities or a body created by such authorities, as are listed and traded on the Nairobi Stock Exchange;

15. Computation of gains

The gain subject to tax under this Part is the gross consideration payable and shall be subject to the withholding tax rate under paragraph (3) and (5) of the Third Schedule.

18. Collecting of tax

A stockbroker who conducts the transfer of investment shares on behalf of a transferor shall collect and remit tax to the Commissioner in accordance with section 35(5).

Provided that this paragraph shall also apply to shares transferred under Part I of this Schedule.

19. Remittance of tax

The remittance of money by a stockbroker under paragraph 18 of this Schedule shall be a full and final discharge to the stockbroker as against all persons from liability in respect of such money.

20. Failure to collect and remit

A stockbroker who fails to collect and remit as required under paragraph 18 of this Schedule, the amount of income tax out of the proceeds (over which he has control) accruing as a result of the transfer of investment shares is jointly and severally liable with the transferor of the shares for payment of the tax.

21. Exemption

(1) Where the transferor of investment shares is an unincorporated association or body of individuals of a public character which has been exempted from income tax under paragraph 10 of the First Schedule no deduction of income tax shall be made under this Part of this Schedule.

(2) Gains from a transfer of investment shares for or in connexion with a pension fund, trust scheme, or provident fund registered w with the Commissioner shall not be subject to deduction of income tax under this Part of this Schedule.

Section 8 of Cap. 476, it is proposed to be amended-

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 a registered or unregistered person—

(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 Cap.476, it is proposed to amend-

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), and

(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 the Tax Procedures Act (Cap. 469B);

(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

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 1st July 2022.

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

Provided 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 1st July 2022;

(ea) in the case of a taxable supply that is zero-rated or exempted, such excess arose on account of permanent credit position in favour of a registered person due to the difference between the rate applicable on the 1st July, 2022 and a lower rate of tax and that such credit position existed on the date that the taxable supply became zero-rated or exempted:

Provided that notwithstanding the provisions of subsection (5), a registered person who incurred such a credit shall apply to the Commissioner for relief within six months after the commencement of this provision.

(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 BC

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.

(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 nvalue 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.

Section 42 of Cap.476, it is proposed to amend-

Tax invoice

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

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

(a) which is not a taxable supply; or

(b) by a person who is not registered.

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

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

First Schedule to Cap.476, it is proposed to amend-

FIRST SCHEDULE [s. 2(1)]

EXEMPT SUPPLIES

Part I – GOODS

SECTION A

2106.90.91 Food supplements

3003.40.00 Medicaments containing alkaloids or derivative thereof but not containing hormones or other products of heading No. 29.37or antibiotics, not put up in measured doses or in forms or packings for retail sale.

49. All goods and parts thereof of chapter 88;

51. Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury.

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

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

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

Provided that notwithstanding this subparagraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the supply of taxable goods and which is in force at such commencement shall continue to apply until the supply of the exempted taxable goods is made in full.

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

91. Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions—

(i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime;

(ii) the vehicles shall be used exclusively for the transportation of tourists;

(iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and

(iv) any other condition the Commissioner may impose:

Provided that tax shall become payable upon change of use or disposal of the vehicle for other use.

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

112. Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act (Cap. 314), production sharing contracts in accordance with the Petroleum Act (Cap. 308) or a mining license in accordance with the Mining Act (Cap. 306) upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be.

113. Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.

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 heading85.23, 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.

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.

143. Inputs and raw materials used in the manufacture of passenger motor vehicles.

144. Locally Manufactured passenger motor vehicles:

Provided that in this paragraph—

"locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and

"local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Second Schedule to Cap.476, it is proposed to amend-

SECOND SCHEDULE [s. 7(2)]

ZERO-RATING

Part A – ZERO RATED SUPPLIES

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

21. Transportation of sugarcane from farms to milling factories.

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

30. The supply of motorcycles of tariff heading 8711.60.00.

31. The supply of electric bicycles.

32. The supply of solar and lithium ion batteries.

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

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

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

Section 2 of Cap 472, it is proposed to amend-

"digital lender" means person holding a valid digital credit providers licence issued by the Central Bank of Kenya;

Section 5 of Cap.472, it is proposed to amend-

Imposition of excise duty

(1) Subject to this Act, a tax, to be known as excise duty, shall be charged in accordance with the provisions of this Act on—

(a) excisable goods manufactured in Kenya by a licensed manufacturer;

(b) excisable services supplied in Kenya by a licensed person;

(c) excisable goods imported into Kenya; or

(d) excisable services offered in Kenya by a non-resident person through a digital platform.

(2) Excise duty shall be charged at the rate specified in the First Schedule for the excisable goods or services in force at the time the liability arises for excise duty as determined under section 6.

(3) The excise duty payable—

(a) under subsection (1)(a), shall be payable by the licensed manufacturer;

(b) under subsection (1)(b), shall be payable by the licensed person making the supply:

(c) under subsection (1)(c), shall be payable by the importer of the excisable goods; or

(d) under subsection (1)(d), shall be payable by the non-resident person offering the service.

Section 13 of Cap.472, it is proposed to amend-

Place of supply of excisable services

Subject to this section, a supply of excisable services shall be deemed to be made in Kenya if the services are supplied from a place of business of the supplier in Kenya.

Section 17 of Cap.472, it is proposed to amend-

Issue of licence

(1) Subject to subsection (2), the Commissioner shall consider an application under section 16 and may grant or refuse to issue the applicant with a licence.

(2) The Commissioner may refuse an application under section 16 if satisfied that—

(a) the applicant has been convicted of an offence under this Act or the Tax Procedures Act (Cap. 469B);

(b) the applicant has been convicted of an offence involving dishonesty or fraud under any law;

(c) the applicant—

(i) is or has been declared bankrupt or insolvent; or

(ii) is in the process of liquidation or receivership;

(d) in the case of an application to be a manufacturer of excisable goods, the factory, plant or equipment, specified in the application is not adequate to manufacture or secure excisable goods;

(e) the applicant has not kept proper records as required under any tax law or has otherwise failed to comply with its obligations under a tax law; or

(f) paragraphs (a), (b), (c) or (e) apply to a person related to the applicant and the Commissioner is satisfied that the related person is reasonably expected to be involved in the conduct of the activity to which the application relates.

(3) The Commissioner may impose such terms, conditions or restrictions as the Commissioner considers appropriate in relation to a licence issued under this section.

(4) The Commissioner shall give an applicant for a licence under section 16 written notice of the decision on the application and if the application is refused, the notice shall include reasons for the refusal.

(5) A licence shall take effect from the date specified therein by the Commissioner and shall unless earlier suspended, remain in force until cancelled under section 21.

First Schedule to Cap.472, it is proposed to amend-

FIRST SCHEDULE [s. 5(2)]

RATES OF EXCISE DUTY

Part I – EXCISABLE GOODS

Coal	2.5% of the custom value
Imported Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or sh. 75 per Kilogramme, whichever is higher
Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7007	35% of custom value or KSh. 200 per kg
Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or KSh. 150 per kilogramme, whichever is higher

Section 23A of Cap.469B, it is proposed to amend-

Electronic tax invoices

(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).

(2A) An electronic tax invoice issued under subsection (2) shall contain the following information—

(a) the words "TAX INVOICE";

(b) the name, address and Personal Identification Number of the supplier;

(c) the name, address and Personal Identification Number, if any, of the purchaser;

(d) the serial number of the tax invoice;

(e) the date and time which the tax invoice was issued and the date and time which the supply was made, if it is different from the date the tax invoice was issued;

(f) the description of the supply including quantity of the goods or the type of services;

(g) the details of any discount allowed at the time of supply;

(h) the consideration for the supply;

(i) the tax rate charged and total tax amount of tax charged; and

(j) any other prescribed information.

(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).

(3A) Without prejudice to subsection (3), where a supply is received from a small business or a smallscale farmer, whose annual turnover does not exceed five million shillings, the purchaser shall issue a tax invoice for the purpose of ascertaining tax liability.

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

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

Section 31 of Cap.469B, it is proposed to amend-

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 (Cap. 476), 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 theapplication.

(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 selfassessment 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 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 39A of Cap.469B, it is proposed to amend-

Penalty for failure to deduct or withhold tax

Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

Section 40 of Cap.469B , it is proposed to amend-

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 thc 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 subject 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 (Cap. 370);

(c) the Director-General of the Kenya Civil Aviation Authority appointed under section 19 of the Civil Aviation Act (Cap. 394);

(d) the Director-General of the National Transport and Safety Authority appointed under section 15 of the National Transport and Safety Authority Act (Cap. 404); 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 (Cap. 370), Merchant Shipping Act (Cap. 389), Civil Aviation Act (Cap. 394), Land Registration Act (Cap. 300), Land Act (Cap. 280), National Transport and Safety Act (Cap. 404), or any other Act that provides for the registration of property.

Section 42 of 469B it is proposed to amend-

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 the 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 the taxpayer, an agent shall notify the Commissioner in writing within fourteen days of receiving the notice, setting out the reasons for an agent's inability to comply.

(7) When the Commissioner is notified by an agent under subsection (6) that an agent is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to the agent—

(a) accept the notification and cancel or amend the notice issued under subsection (2); or

(b) reject the notification.

(8) The Commissioner shall notify the agent in writing of a revocation or amendment of a notice given under subsection (2) where the taxpayer 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 the agent of any liability to the taxpayer or any other person.

(11) The Commissioner shall credit any amount paid by an agent under this section against the tax owed by the taxpayer.

(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) 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.

Section 42A of Cap.469B, it is proposed to amend-

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 on the 31st December, 2024 is at least two billion shillings.

(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 the Commissioner within five working days after the deduction was made.

(4C) A person who is required under this section to withhold tax and, without reasonable cause—

(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 fifth day of the following month, shall be liable to a penalty of ten per cent of the amount not withheld or remitted.

(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 (Cap. 476) 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 upto the 8th June, 2016.

Section 42B of 469B, it is proposed-

Appointment of digital service tax agent

(1) The Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner.

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

Section 47 of Cap. 469B, it is proposed to amend-

Offset or refund of overpaid tax

(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form—

(a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities including instalment taxes and input value added tax; or

(b) for a refund of the overpaid tax—

(i) in the case of income tax, within five years from the date on which the tax was overpaid; or

(ii) in the case of any other tax, within twelve months from the date on which the tax was overpaid.

(2) The Commissioner shall ascertain and determine an application under subsection (1) within 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 outstanding tax debts or future tax liability; and

(b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of six months from the date of ascertainment and, if the Commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.

(3) Where the Commissioner fails to ascertain and determine an application under subsection (1) within 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.

(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.

(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 Cap.469B, it is proposed to amend-

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 and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.

(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.

(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 59A of Cap.469B, it is proposed to amend-

Data management and reporting system.

(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.

(1A) The Commissioner may, by notice in writing, require a person to integrate the electronic tax system authorised under section 75 to the system referred to in subsection (1) for the purposes of submission of electronic documents including detailed transactional data in the prescribed form.

(1B) The Commissioner shall not require a person to integrate or share data relating to—

(a) trade secrets; and

(b) private or personal data held on behalf of customers or collected in the course of business.

(1C) A notice under subsection (1A) shall be for a reasonable period but not exceeding one year and depending on the nature of the business of that person.

(1D) The provisions of subsection (1A) shall only apply to a business whose turnover exceeds five million shillings.

(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.

(5) A person who fails to comply with the notice given under subsection (1A) commits an offence and shall be liable, on conviction, to a penalty not exceeding one hundred thousand shillings for every month or part thereof that the failure continues.

(6) A person who fails to comply with the notice given under subsection (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding one hundred thousand shillings for every month or part thereof that the failure continues.

Section 66 of Cap.469B, it is proposed to amend-

Refusing an application for a private ruling

(1) The Commissioner may refuse an application for a private ruling if—

(a) the Commissioner has already decided the question that is the subject of the application in—

(i) a notice of an assessment served on the applicant;

(ii) a public ruling made under section 63 that is in existence; or

(iii) a ruling published under section 69 that is in existence;

(b) the application relates to a matter that is the subject of a tax audit in relation to the applicant or an objection lodged by the applicant;

(c) the application is frivolous or vexatious;

(d) the transaction to which the application relates has not been carried out and there are reasonable grounds to believe that the transaction will not be carried out;

(e) the applicant has not provided the Commissioner with sufficient information to make a private ruling;

(f) in the opinion of the Commissioner, it would be unreasonable to make a private ruling in relation to the application, having regard to the resources needed to make the private ruling and any other matter the Commissioner considers relevant; or

(g) the making of the ruling involves the application of a tax avoidance provision.

(2) If the Commissioner decides not to make a private ruling under this section, the Commissioner shall notify the applicant in writing of the decision.

Section 77 of Cap.469B, it is proposed to amend-

Due date for submission and payment

(1) If the date for—

(a) submitting or lodging a tax return, application, notice, or other document;

(b) the payment of a tax; or

(c) taking any other action under a tax law,

falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day:

Provided that where a person who submits a notice of objection in electronic form or a tax returnin electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.

(2) In computing the period for the lodgement of an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays.

Section 83 of Cap.469B, it is proposed to amend-

Penalties for late submission and failure to submit returns

(1) A person who submits a tax return after the due date shall be liable to a penalty—

(a) of twenty five percent of the tax due or ten thousand shillings whichever is higher, if it is in relation to a return required to be submitted on account of employment income;

(b) one thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or

(c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty;

(d) in any other case—

(i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or

(ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual:

Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid andwithholding tax credits.

(1A) An export processing zone enterprise that fails to submit a return as required under paragraph 4 of the Eleventh Schedule to the Income Tax Act shall be liable to a penalty of twenty thousand shillings per month for each month or part thereof that the failure continues.

(2) A person who fails to submit a document, other than a tax return, as required under a tax law by the due date shall be liable to a penalty of one thousand shillings for each day or part day of default but the total penalty shall not exceed fifty thousand shillings.

(3) For the purposes of subsection (2), a person ceases to be in default at the time the document is received by the Commissioner.

Section 89 of Cap.469B, it is proposed to amend-

General provisions relating to penalty

(1) Each penalty shall be calculated separately with respect to each section in this Division.

(2) If the same act or omission imposes more than one penalty under a tax law on a taxpayer, the Commissioner shall determine which penalty applies.

(3) A person shall be liable to a penalty only when the Commissioner notifies in writing that person of a demand for the penalty setting out the amount of the penalty payable and the due date for the payment being a date that is at least 30 days after the date of the notification.

(4) Subsection (3) applies also to a penalty imposed under a tax law other than this Act.

(5) A penalty payable by a person shall be due and payable on the date specified in the notification under subsection (3).

(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 9B of Cap. 469C, it is proposed to amend-

Application of Tax Procedures Act (Cap. 469B) to excess tax refunds

The provisions of section 47 of the Tax Procedures Act (Cap. 469B) shall apply for the purposes of—

(a) an application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error under this Act; or

(b) the determination by the Commissioner of penalties and interests on fees and levies that remain unpaid.

Second Schedule of Cap.469C, it is proposed to amend-

SECOND SCHEDULE [s. 7(3)(a)]

GOODS EXEMPT FROM IMPORT DECLARATION

FEE AND RAILWAY DEVELOPMENT LEVY

Part A – GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

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

(xva) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft

maintenance upon recommendation by the competent authority responsible for civil aviation.

Part B – GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

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

(xvi) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;

Third Schedule of Cap.469C, it is proposed to amend—

THIRD SCHEDULE [s. 7A(1)]

Export and Investment Promotion Levy

7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	17.5 % of the customs value
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	17.5 % of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in	17.5 % of the customs value

	irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	

Section 117 of Cap.480, it is proposed to amend-

Exemptions from stamp duty

(1) There shall be exempt from stamp duty under this Act—

(a) an instrument executed by or on behalf of or in favour of the Government in any case in which, but for this exemption, the Government would be liable to pay the duty;

(b) a bill of exchange, cheque or promissory note drawn or made in Uganda or in Tanzania and accepted and paid or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in Kenya, if the bill of exchange, cheque or promissory note has previously been duly stamped in Uganda or Tanzania;

(c) a power, warrant or letter of attorney granted or to be granted by the Managing Director of the Kenya Posts and Telecommunications Corporation, and a power, warrant or letter of attorney given by any depositor in the post office savings bank established under the provisions of the Kenya Post Office Savings Bank Act (Cap. 493B)(hereinafter referred to as the savings bank) to any other person, authorizing him to make a deposit of a sum of money in the savings bank on behalf of the depositor or to sign any document or instrument required by the rules of the savings bank to be signed on making the deposit or to receive back any sum of money deposited in the savings bank, or the interest arising therefrom; a receipt or an entry in a book of receipts for money deposited in the savings bank, or for any money received by a depositor or his executors or administrators, assigns, attorneys or agents, from the funds thereof; and a draft or order, or an appointment of an agent, or any certificate or other instrument or document whatsoever, required or authorized to be given, issued, signed, made or produced in pursuance of that Act or of any rules made thereunder;

(d) a transfer of shares in the stock or funds of the Government, the Organization, the Authority, the Government of Uganda or the Government of Tanzania;

(e) a conveyance or transfer of any stock or marketable security in any company incorporated in Uganda or Tanzania, if the conveyance or transfer has been duly stamped in accordance with the law of the territory in which the company was incorporated;

(f) an instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of a ship or of any part, interest, share or property of or in a ship;

(g) a bond given by a public officer for the due execution of his duties;

(h) a will, codicil, registered family trust or other testamentary disposition;

(hh) instruments for the sale or transfer of land for the construction or expansion of educational institutions:

Provided that stamp duty shall become payable if such land reverts to any other use;

(i) the instruments generally or specially exempted in the schedule;

(j) the exemption of all instruments with respect to licences of business activities of an export processing zone enterprise licenced under the Export Processing Zones Act (Cap. 517);

(k) the sale conveyance, transfer or issue of shares, preferred shares, stocks, warrants or similar capital market instruments which are listed and transacted on the Nairobi Stock Exchange or other securities exchange approved under the Capital Markets Authority Act (Cap.485A);

(l) an instrument under the Movable Property Security Rights Act (Cap. 499A);

(la) the purchase of a house by a first time home owner under affordable housing scheme;

(m) an instrument executed for purposes of collection and recovery of tax;

(n) an instrument relating to the business activities of special economic zone enterprises, developers and operators licenced under the Special Economic Zones Act (Cap. 517A);

(o) the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation;

(p) fixed duty of one hundred shillings charged on contracts to be chargeable as conveyances on sale under section 49; and

(q) an instrument executed in favour of a mortgage refinance company.

(2) The exemption conferred by this section on the Government shall extend to the Community and to the Corporations within the Community.