

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 86 (National Assembly Bills No. 18)*

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2021**

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**NAIROBI, 5th May, 2021**

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**THE FINANCE BILL, 2021****A Bill for****AN ACT of Parliament to amend the law relating to various taxes and duties; and for matters incidental thereto**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Finance Act, 2021, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

- (a) sections 7, 8, 9, 10, 12, 13(a), 13(b), 13(e), 33, 43, 49, 51, 63, 65, 65 and 66, on the 1st January, 2022; and
- (b) all other sections, on the 1st July, 2021.

**PART II—INCOME TAX**

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

Amendment of section 2 of Cap. 470.

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

“control”, in relation to a person, means—

- (a) that the person, directly or indirectly, holds at least twenty per cent of the voting rights in a company;
- (b) a loan advanced by the person to another person constitutes at least seventy per cent of the book value of the total assets of the other person excluding a loan from a financial institution that is not associated with the person advancing the loan;
- (c) a guarantee by the person for any form of indebtedness of another person constitutes at least seventy per cent of the total indebtedness of the other person excluding a guarantee from a financial institution that is not associated with the guarantor;

- (d) the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;
- (e) the person is the owner of or has the exclusive rights over the know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person;
- (f) the person or a person designated by that person—
  - (i) supplies at least ninety per cent of the supply of the purchases of another person; or
  - (ii) in the opinion of the Commissioner, influences the prices or other conditions relating to the supply of the purchases of another person;
- (g) the person purchases or designates a person—
  - (i) to purchase at least ninety per cent of the sales of another person; or
  - (ii) in the opinion of the Commissioner, influences the price or any other condition of the sales of another person;
- (h) the person has any other relationship, dealing or practice with another person which the Commissioner may deem to constitute control;

“infrastructure bond” means a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, or a communication network;

- (b) by deleting the definition of “permanent establishment” and substituting therefor the following new definition—

“permanent establishment” includes—

- (a) a fixed place of business through which business is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, a warehouse in relation to a person whose business is providing storage facilities to others, a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet;
- (b) a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days:

Provided that for the purpose of determining whether the period specified in this paragraph has been exceeded—

- (i) where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed thirty days but do not exceed one hundred and eighty-three days, and
- (ii) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise,

the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project;

- (c) the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve-month period commencing or ending in the year of income concerned;

- (d) an installation or structure used in the exploration for natural resources:

Provided that the exploration continues for a period of not less than ninety-one days;

- (e) a dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts, or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person,

but excludes the following activities where the activities are of a preparatory or auxiliary character—

- (i) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
- (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
- (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity; and
- (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i) to (v).

**3. Section 3 of the Income Tax Act is amended—**

Amendment of section 3 of Cap. 470.

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

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

- (b) in subsection (3), by deleting paragraph (ba) and substituting therefor the following new paragraph—

- (ba) “digital marketplace” means an online platform which enables users to sell or provide services, goods or other property to other users.

**4. Section 4A of the Income Tax Act is amended in subsection (4) by deleting the definition of the word “control”.**

Amendment of section 4A of Cap. 470.

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

Amendment of section 12E of Cap. 470.

- (a) in subsection (1)—

- (i) by deleting the word “person” and substituting therefor the expression “non-resident person”;

- (ii) by deleting the proviso;
- (b) by deleting subsection (2) and substituting therefor the following new subsection—

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

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

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

**6. Section 15 of the Income Tax Act is amended –**

Amendment of section 15 of Cap. 470.

- (a) in subsection (2), by deleting the words “and in this subparagraph “control” has the meaning assigned to it in paragraph 32 of the Second Schedule” appearing in subparagraph (r)(iv);
- (b) by deleting subsection (4) and substituting therefor the following new subsection—

(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.

**7. Section 16 of the Income Tax Act is amended in subsection (2) by—**

Amendment of section 16 of Cap. 470.

- (a) deleting paragraph (j) and substituting therefor the following new paragraph—

- (j) gross interest paid or payable to related persons and third parties in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

Provided that—



- (i) any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and
  - (ii) this paragraph shall apply to—
    - (A) interest on all loans;
    - (B) payments that are economically equivalent to interest; and
    - (C) expenses incurred in connection with raising the finance.
- (b) inserting the following new paragraph immediately after paragraph (j)—
- Cap. 488. (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.

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

Insertion of new section in Cap. 470.

Returns on activities in other jurisdictions.

**18B.** (1) In this section—

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

“ultimate parent entity” means an entity that—

- (a) is resident in Kenya for tax purposes;
- (b) is not controlled by another entity; and
- (c) owns or controls a multinational enterprise group.

(2) An ultimate parent entity of a multinational enterprise group shall submit to the Commissioner a return describing the group's financial activities in Kenya, where its gross turnover exceeds the prescribed threshold, and in all other jurisdictions where the group has taxable presence, not later than twelve months after the last day of the reporting financial year of the group.

(3) The return submitted under subsection (2) shall contain the prescribed information on 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 in which the group operates.

**9.** Section 31 of the Income Tax Act is amended in subsection (1) by inserting the words "or a contribution made to the National Hospital Insurance Fund" immediately after the expression "2007" appearing in paragraph (v) of the proviso to the subsection.

Amendment of  
section 31 of Cap.  
470.

**10.** Section 39B of the Income Tax Act is amended in subsection (1) by inserting the words “or technical and vocational education and training” immediately after the word “university”.

Amendment of section 39B of Cap. 470.

**11.** Section 41 of the Income Tax Act is amended in subsection (5) by deleting the words “an individual or individuals” appearing immediately after the words “held by” and substituting therefor the words “a person or persons”.

Amendment of section 41 of Cap. 470.

**12.** Paragraph 1 of Second Schedule to the Income Tax Act is amended—

Amendment of the Second Schedule to Cap. 470.

(a) in subparagraph (a), by deleting the words “on reducing balance” wherever they occur and substituting therefor the words “in equal instalments”;

(b) in subparagraph (b)—

(i) by deleting the words “on reducing balance” wherever they occur and substituting therefor the words “in equal instalments”;

(ii) by deleting the words “under a mining right” appearing in subparagraph (xi);

(c) in subparagraph (c), by deleting the words “on reducing balance” and substituting therefor the words “in equal instalments”;

(d) in subparagraph (d), by deleting the words “on reducing balance” and substituting therefor the words “in equal instalments”;

(e) in the proviso—

(i) by deleting the words “through the national grid” appearing immediately after the word “electricity” appearing in subparagraph (f) thereof;

(ii) by adding the following new subparagraph immediately after subparagraph (f)—

(g) civil works include—

(i) roads and parking areas;

(ii) railway lines and related structures;

- (iii) water, industrial effluent and sewerage works;
- (iv) communications and electrical posts and pylons and other electrical supply works; and
- (v) security walls and fencing.

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

Amendment of the Ninth Schedule to Cap. 470.

- (a) in paragraph 4, by deleting subparagraph (3) and substituting therefor the following new subparagraph—

(3) The rate of depreciation for machinery first used to undertake operations under a prospecting right shall be the rate specified in paragraph 1(b)(x) of the Second Schedule.

- (b) in paragraph 9, by deleting subparagraph (3) and substituting therefor the following new subparagraph—

(3) The rate of depreciation for machinery first used to undertake exploration operations shall be the rate specified in paragraph 1(b)(xi) of the Second Schedule.

- (c) in paragraph 15—

- (i) by deleting the expression “5.625%” appearing in item (a) of subparagraph (2) and substituting therefor the expression “ten per cent”.

- (ii) by deleting the expression “5.625%” appearing in item (b) of subparagraph (2) and substituting therefor the expression “ten per cent”.

- (d) in paragraph 16, by deleting the words “twelve and a half per cent” appearing in subparagraph (d) and substituting therefor the expression “ten per cent”.

- (e) by deleting paragraph 18 and substituting therefor the following new paragraph—

Deductibility of interest.

The provisions of section 16(2)(j) shall apply to a contractor or a licensee.

**PART III—VALUE ADDED TAX**

**14.** Section 2 of the Value Added Tax Act, 2013 is amended in subsection (1) by deleting paragraph (c) of the definition of the term “supply of imported services” and substituting therefor the following new paragraph—

Amendment of section 2 of No. 35 of 2013.

- (c) in the case of a registered person, the person would not have been entitled to a full amount of input tax payable if the services had been acquired by that person in a taxable supply.

**15.** Section 5 of the Value Added Tax Act, 2013 is amended—

Amendment of section 5 of No. 35 of 2013.

- (a) in subsection (7), by inserting the words “over the internet or an electronic network or” immediately after the word “made”;
- (b) by deleting subsection (9) and substituting therefor the following new subsection—

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

**16.** Section 10 of the Value Added Tax Act, 2013 is amended—

Amendment of section 10 of No. 35 of 2013.

- (a) in subsection (1), by deleting the word “registered”;
- (b) in subsection (2), by deleting the expression “a registered person referred to in subsection (1)” and substituting therefor the expression “the person referred to in subsection (1) is a registered person and”;
- (c) in subsection (3), by deleting the words “by any person”.

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

Amendment of section 17 of No. 35 of 2013.

- (a) in subsection (1), by deleting the word “section” appearing immediately after the words “provisions of this” and substituting therefor the word “Act”;

- (b) in subsection (4), by inserting the words “leasing or hiring” immediately after the word “acquisition”.

**18.** Section 19 of the Value Added Tax Act, 2013 is amended in subsection (2) by deleting the word “registered”.

Amendment of section 19 of No. 35 of 2013.

**19.** Section 34 of the Value Added Tax Act, 2013 is amended by deleting subsection (9).

Amendment of section 34 of No. 35 of 2013.

**20.** Section 67 of the Value Added Tax Act, 2013 is amended by deleting subsection (2).

Amendment of section 67 of No. 35 of 2013.

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

Amendment of First Schedule to No. 35 of 2013.

(a) in Part I—

- (i) by deleting paragraph 33;  
(ii) by deleting paragraphs 34;  
(iii) by deleting the following tariff numbers and corresponding descriptions in the table appearing after paragraph 39—

<i>Tariff Number</i>	<i>Description</i>
3001.90.10	Heparin and its salts
3001.90.90	Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
3002.10.00	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes
0402.99.10	Milk, specially prepared for infants
0402.91.10	Other not containing added sugar or other sweetening matters specially prepared for infants
0402.21.10	Other milk in powder, granules, or other solid forms, of a fat content, by weight, exceeding 1.5%

(iv) by adding the following new tariff numbers and corresponding descriptions to the table appearing immediately after paragraph 39 in their proper numerical sequence—

<i>Tariff Number</i>	<i>Description</i>
2106.10.00	Protein concentrates and textured protein substances
2106.90.10	Food preparations specially prepared for infants
2106.90.99	Other - Food preparations not elsewhere specified or included
2936.27.00	Vitamin C and its derivatives
3001.90.00	Other - Heparin and its salts
3001.90.00	Other - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
3002.11.00	Malaria diagnostic test kits
3002.12.00	Antisera and other blood fractions
3002.13.00	Immunological products unmixed, not put up in measured doses or in forms or packings for retail sale
3002.14.00	Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale
3002.15.00	Immunological products put up in measured doses or in forms or packings for retail sale
3002.19.00	Other - Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes
3003.31.00	Insulin
3004.43.00	Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts

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3004.60.00	Other, containing antimalarial active principles described in Subheading Note 2 to this Chapter
2106.90.91	Food supplements
0402.21.00	Milk in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%, not containing added sugar or other sweetening matter
0402.29.00	Other milk in powder granules or other solid forms, of a fat content, by weight, exceeding 1.5%
0402.91.00	Other not containing added sugar or other sweetening matter.
0402.99.00	Other milk
9021.10.00	Orthopaedic or fracture appliances
9021.50.00	Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories
9025.19.00	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments, thermometers and pyrometers, not combined with other instruments: Other
9019.20.00	Airway Guedel and Ambu bags
9018.90.00	Blood giving set and infusion sets

(v) by deleting paragraph 68 and substituting therefor the following new paragraph—

68. Super absorbent polymer (SAP) of tariff number 3906.90.00

(vi) by deleting paragraph 70 and substituting therefor the following new paragraph—



70. IP super soft fluff pulp - for-fluff 310 treated pulp 488\*125mm (cellulose) of tariff number 4703.21.00

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

71. Perforated PE film 15-22 gsm of tariff number 3921.90.00

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

72. Spun bound non-woven 15-25gsm of tariff number 5603.11.00

(ix) by deleting paragraph 73 and substituting therefor the following new paragraph—

73. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 4803.00.00

(x) by deleting paragraph 74 and substituting therefor the following new paragraph—

74. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 4803.00.00

(xi) by deleting paragraph 75;

(xii) by deleting paragraph 76;

(xiii) by deleting paragraph 77 and substituting therefor the following new paragraph—

77. Pressure sensitive adhesive of tariff number 3506.91.00

(xiv) by deleting paragraph 78 and substituting therefor the following new paragraph—

78. Plain polythene film/LPDE of tariff number 3921.19.10

(xv) by deleting paragraph 79 and substituting therefor the following new paragraph—

79. Plain polythene film/PE of tariff number 3921.19.10

(xvi) by deleting paragraph 80 and substituting therefor the following new paragraph—

80. PE white 25-40gsm/release paper of tariff number 4811.49.00

(xvii) by deleting paragraph 81 and substituting therefor the following new paragraph—

81. ADL 25-40gsm of tariff number 5603.11.00

(xviii) by deleting paragraph 82 and substituting therefor the following new paragraph—

82. Elasticized side tape of tariff number 5402.44.00

(xix) by deleting paragraph 83 and substituting therefor the following new paragraph—

83. 12-16 gsm spun bound piyropo nonwoven cover stock/12 gsm spun bound pp non-woven SMS hydrophobic leg cuffs of tariff number 5603.11.00

(xx) by deleting paragraph 84 and substituting therefor the following new paragraph—

84. Polymetric elastic 2/3 strands of tariff number 3919.90.10

(xxi) by deleting paragraph 85;

(xxii) by deleting paragraph 86;

(xxiii) by deleting paragraph 87;

(xxiv) inserting the following new paragraphs immediately after paragraph 111—

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, 2019, production sharing contracts in accordance with the Petroleum Act, 2019, or a mining license in accordance with the Mining Act, 2016, 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.
114. Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax:  
Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy.
115. Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the Cabinet Secretary responsible for matters relating to health.
116. Physiotherapy accessories, treadmills for cardiology therapy and treatment of tariff number 9506.91.00 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.
117. Dexpanthenol of tariff number 3304.99.00 used for medical nappy rash treatment by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.
118. Medicaments of tariff numbers 3003.41.00, 3003.42.00, 3003.43.00, 3003.49.00, 3003.60.00 (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses
119. Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared

diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health.

120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
121. Other instruments and appliances, of tariff number 9018.41.00, used in dental sciences, dental drill engines, whether or not combined on a single base with other dental equipment, upon approval by the Cabinet Secretary responsible for matters relating to health.
122. Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health.
123. Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus upon approval by the Cabinet Secretary responsible for matters relating to health.
124. Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters upon approval by the Cabinet Secretary responsible for matters relating to health.
125. Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
126. Apparatus based on the use of x-rays, whether or not for medical, surgical or dental of tariff numbers 9022.12.00, 9022.13.00, 9022.14.00 and

- 9022.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
127. Apparatus based on the use of alpha, beta or gamma radiations, whether or not for medical, surgical or dental of tariff numbers 9022.21.00, 9022.29.00, 9022.30.00 and 9022.90.00, upon approval by the Cabinet Secretary responsible for matters relating to health.
128. Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health.
129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health.
130. Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
131. Sterilizer Dry Heat (Wgd-001-Grx-05A) Pc, autoclave steam table tops of tariff number 8419.20.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
132. Needle holders and urine bags, of tariff heading 3926
133. Tourniquets of tariff number 3926.90.99 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating

to health.

- (b) in Part II, by adding the following new paragraphs immediately after paragraph 31—
- 32. The exportation of taxable services.
- 33. The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities.
- 22.** The Second Schedule to the Value Added Tax Act, 2013 is amended—
- (a) in paragraph 1 of Part A, by deleting the words “or taxable services”;
- (b) by deleting paragraph 13A.

#### **PART IV—EXCISE DUTY**

**23.** Section 2 of the Excise Duty Act, 2015 is amended by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of No. 23 of 2015.

Cap. 123. “compound” has the meaning assigned to it in section 2 of the Compounding of Potable Spirits Act.

“possession” means having, owning or controlling any excisable goods including—

- (a) having in one’s possession any excisable goods;
- (b) knowingly having any excisable goods in the actual possession or custody of any other person;
- (c) having any excisable goods in any place, whether belonging to or occupied by oneself or not, for the use or benefit of oneself; or
- (d) having any excisable goods for the use or benefit of another person:

Provided that if there are two or more persons and any of them with the knowledge or consent of the others has any excisable goods in his custody or possession, such goods shall be deemed to be in the custody and possession of all of them.

**24.** Section 14 of the Excise Duty Act, 2015 is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection—

Amendment of section 14 of No. 23 of 2015

(2) Where excise duty has been paid in respect of internet data services by a licensed person who purchases the data in bulk for resale, the excise duty paid shall be offset against the excise duty payable by that person on internet data services supplied to the final consumer.

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

Amendment of the First Schedule to No. 23 of 2015

(a) in paragraph 1 of Part I—

- (i) by deleting the word “imported” appearing in the description “Imported sugar confectionary of tariff heading 17.04”;
- (ii) by deleting the word “imported” appearing in the description “Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00”;
- (iii) by deleting the description “imported glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)” and the corresponding rate of excise duty;
- (iv) by deleting the expression “11,608.23 per unit” appearing against the description “Motorcycles of tariff 87.11 other than motorcycle ambulances and locally assembled motor cycles” and substituting therefor the rate “15%”;
- (v) by inserting the following item at the end of the second table—

<i>Description</i>	<i>Rate of Excise Duty</i>
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	10%
Products containing nicotine	orShs. 5,000 per kg

nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences

(b) in Part II by inserting the following new paragraph immediately after paragraph 4—

4A. Excise duty on betting shall be twenty per cent of the amount wagered or staked.

(c) in Part III, in the definition of “other fees”, by deleting the words “fees or commissions earned in respect of a loan”.

#### **PART V—TAX PROCEDURES**

**26.** Section 3 of the Tax Procedures Act, 2015 is amended in the definition of “tax law” by—

Amendment of section 3 of No. 29 of 2015

No. 29 of 2016. (a) inserting the expression “the Miscellaneous Fees and Levies Act, 2016” immediately after the words “Excise Duty Tax Act, 2015” appearing in paragraph (b);

No. 29 of 2016. (b) inserting the words “the Miscellaneous Fees and Levies Act, 2016” after the words “Excise Duty Act, 2015” appearing in paragraph (c).

**27.** The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 6—

Insertion of new sections in No. 29 of 2015

International tax agreements.

**6A.** (1) Any multilateral agreements and treaties that have been entered into



by or on behalf of the Government of Kenya relating to international tax compliance and prevention of evasion of tax or exchange of information on tax matters shall have effect in the manner stipulated in such agreements or treaties.

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

Common reporting standard obligations.

**6B.** (1) In this section—

“common reporting standard” means the reporting and due diligence standard for the automatic exchange of financial account information;

“financial institution” means a custodial institution, a depository institution, an investment entity or a specified insurance company; and

“Kenyan financial institution” means—

(a) any financial institution that is resident in Kenya but does not mean any branch of that financial institution that is located outside Kenya; or

(b) any branch of a financial institution that is not resident in Kenya, if that branch is located in Kenya.

(2) A reporting financial institution shall comply with the due diligence procedures and record keeping requirements as set out in the common reporting standard Regulations prescribed under subsection (6).

(3) A reporting financial institution shall identify reportable accounts as specified by the common reporting standard Regulations prescribed under subsection (6) and file with the Commissioner—

- (a) an information return on reportable accounts held, managed or administered by that reporting financial institution; or
- (b) a return marked “nil” if no account held, managed or administered by that reporting financial institution is identified as a reportable account.

(4) The date by which and the manner in which an information return or a ‘nil’ return shall be filed with the Commissioner shall be as set out in the common reporting standard Regulations prescribed under subsection (6).

(5) Where a financial institution, intermediary, service provider, or any other person enters into any arrangements or engages in a practice the main purpose or one of the main purposes of which can reasonably be considered to be to avoid an obligation imposed under this section or under Regulations made under this Act, the arrangement or practice shall be deemed not have been entered into or engaged in and this section shall apply as if the arrangement or practice had not been entered into or engaged in.

(6) The Cabinet Secretary may, by Regulations, prescribe common reporting standards for the purposes of this Act.

**28.** Section 23 of the Tax Procedures Act, 2015 is amended—

Amendment of section 23 of No. 29 of 2015

- (a) in subsection (1)(c), by deleting the words “five years” and substituting therefor the words “seven years”;
- (b) by inserting the following new subsections immediately after subsection (2)—

(2A) Despite subsection (2), the unit of currency in books of account, records, paper registers, tax returns or tax invoices in respect of a non-resident person carrying on business through a digital marketplace shall be in convertible foreign currency as may be approved by the Commissioner.

(2B) The provisions of subsection (2) shall not apply to a non-resident person who files returns and makes payments through a resident tax representative or non-resident person with a permanent establishment.

- (c) in subsection (3)(b), by deleting the words “five years” and substituting therefor the words “seven years”.

**29.** Section 31 of the Tax Procedures Act, 2015 is amended—

Amendment of section 31 of No. 29 of 2015

- (a) in subsection (4)(b), by deleting the words “five years” and substituting therefor the words “seven years”;
- (b) in subsection (6)(a), by deleting the words “five years” and substituting therefor the words “seven years”.

**30.** Section 37 of the Tax Procedures Act, 2015 is amended—

Amendment of section 37 of No. 29 of 2015

- (a) in subsection (1), by inserting the following new paragraph immediately after paragraph (c)—
  - (d) there is any other reason occasioning inability to recover the unpaid tax.
- (b) by inserting the following new subsection immediately after subsection (3)—

(4) The Commissioner shall submit a report to the Cabinet Secretary on or before the 30th June and on or before the 31st December of each year containing the details and amounts of taxes abandoned under this section.

**31.** The Tax Procedures Act, 2015 is amended by repealing section 37A.

Repeal of section 37A of No. 29 of 2015

**32.** Section 42A of the Tax Procedures Act, 2015 is amended by deleting subsection (4A).

Amendment of section 42A of No. 29 of 2015

**33.** Section 47 of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (4)—

Amendment of section 47 of No. 29 of 2015

(4A) Where the Commissioner notifies a taxpayer that an application for a refund has been ascertained in accordance with subsection (3), and applies the refund to the payment of an outstanding tax in accordance with subsection (4)(a) or (b), interest or penalties shall not accrue on the amount applied to the payment of the outstanding tax from the date of the notification.

(4B) For the avoidance of doubt, where the Commissioner has applied a refund to the payment of an outstanding tax under subsection (4A), if there is any outstanding tax after such application, the outstanding tax shall accrue interest and penalties in accordance with this Act.

**34.** Section 57 of the Tax Procedures Act, 2015 is amended in paragraph (a) by inserting the expression “section 58” immediately after the words “authorized office under”.

Amendment of section 57 of No. 29 of 2015

**35.** Section 77 of the Tax Procedures Act, 2015 is amended by deleting the proviso and substituting therefor the following new proviso—

Amendment of section 77 of No. 29 of 2015

Provided that where a person who submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.

**36.** The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 88—

Insertion of new sections 88A to No. 29 of 2015

Penalties for non-compliance with common reporting standard obligations.

**88A.** (1) A person who makes a false statement or omits any information required to be included in an information return under section 6B, shall be liable to a penalty of one hundred thousand shillings for each such false statement or omission to imprisonment for a term not exceeding three years or to both unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from that other person.

(2) A reporting financial institution that fails to file an information return or a “nil” return when required under section 6B shall be liable to pay a penalty of one million shillings for each such failure.

(3) A person who fails to comply with a duty or obligation under section 6B shall be liable, where no other penalty is prescribed, to a penalty of twenty thousand shillings, and twenty thousand shillings for each day during which non-compliance continues for a period not exceeding sixty days.

**37.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 96—

Insertion of new section in No. 29 of 2015.

Commissioner may seek intervention from relevant authorities.

**96A.** The Commissioner may seek the intervention of a relevant authority in the collection of tax where a person who provides services over the internet or an

electronic network including through a digital marketplace has not fulfilled the person's tax obligations.

**38.** Section 98 of the Tax Procedures Act, 2015 is amended in subsection (1)—

Amendment to section 98 of No. 29 of 2015

(a) by inserting the following new subparagraphs in paragraph (d)—

(i) the securing of the property or goods; and

(ii) the discovery of proof of the commission of an offence;

(b) by deleting paragraph (e);

(c) by deleting paragraph (f).

**39.** Section 99 of the Tax Procedures Act, 2015 is amended in subsection (1)(b) by deleting the expression “as required under section 59(1)(c)”.

Amendment to section 99 of No. 29 of 2015

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

Insertion of new section in No. 29 of 2015.

Concurrent civil and criminal proceedings.

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

**41.** Section 111 of the Tax Procedures Act, 2015 is amended by inserting the words “in good faith” immediately after the word “committed” appearing in the opening paragraph.

Amendment to section 111 of No. 29 of 2015

**42.** The First Schedule to the Tax Procedures Act, 2015 is amended by adding the following new item immediately after item 13—

Amendment of the First Schedule to No. 29 of 2015

14. Selling goods and services over a digital marketplace.

**PART VI—MISCELLANEOUS FEES AND LEVIES**

**43.** The Miscellaneous Fees and Levies Act, 2016 is amended by inserting a new section immediately after section 9A—

Insertion of new section to No. 29 of 2016.

Application of Tax Procedures Act, 2015 to excess tax refunds.

**9B.** The provisions of section 47 of the Tax Procedures Act, 2015 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 that remain unpaid.

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

Amendment of the Second Schedule to No. 29 of 2016

(a) in Part A, by inserting the following new item immediately after item (xxv)—

(xxvi) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings.

(b) in Part B, by inserting the following new item immediately after item (ix)—

(x) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings

**PART VII—MISCELLANEOUS**

**45.** Section 35A of the Capital Markets Act is amended by deleting subsection (17) and substituting therefor the following new subsection—

Amendment of section 2 of Cap. 487.

(17) The Tribunal shall hear and determine an appeal within ninety days from the date of filing of the appeal.

**46.** Section 2 of Insurance Act is amended by deleting the definition of “broker” and substituting therefor the following new definition—

Amendment of section 2 of Cap. 487.

“broker” means an intermediary involved with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage commission for or on behalf of an insurer, policyholder or proposer for insurance or reinsurance and includes a medical insurance provider.

**47.** Section 20 of the Insurance Act is amended by deleting subsection (3).

Amendment of section 20 of Cap. 487.

**48.** The Insurance Act is amended by inserting the following new section immediately after section 21—

Insertion of new section in Cap. 487.

Closed fund business.

**21A.** (1). In this section, “closed fund business” means the continuance of insurance business for the purpose of maintaining, without renewal, any policy or contract of insurance issued before the appointed date.

(2) Subject to sections 10 and 123(1)(b), an insurer may carry on closed fund business without registration under section 19.

(3) Where the policy or contract of insurance remains unpaid or undischarged, all the provisions of this Act shall apply to that insurer unless the Minister, in writing, specifically exempts the insurer from any of the provisions of this Act.

(4) The Commissioner may, by notice in writing served on the insurer carrying on closed fund business, require the insurer to furnish the Commissioner within a period not exceeding three months the particulars of the insurance business in Kenya as



the Commissioner may specify in the notice.

(5) A person who contravenes the provisions of subsections (2) and (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings and, if the offence is a continuing one, to a further fine of ten thousands shillings for each day during which the offence continues.

(6) The penalty imposed under subsection (5) shall be paid into the Policyholders Compensation Fund.

(7) A person shall not dispose of any assets from a closed fund except with the prior approval of the Commissioner.

**49.** Section 31 of the Insurance Act is amended by adding the following new subsection immediately after subsection (2)—

Amendment of section 31 in Cap. 487.

(3) An insurer issued with a license under this Act shall pay the prescribed annual fee.

**50.** Section 5A of the Kenya Revenue Authority Act, 1995 is amended in subsection (2)—

Amendment of section 5A of No. 2 of 1995

(a) by deleting the words “one hundred thousand” appearing in paragraph (a) and substituting therefor the words “five hundred thousand”;

(b) by deleting the words “two million” appearing in paragraph (b) and substituting therefor the words “five million”.

**51.** Section 2 of the Retirement Benefits Act is amended—

Amendment of section 2 of No. 3 of 1997.

(a) in the definition of “retirement benefits scheme”, by inserting the words “or post-retirement medical cover” immediately after the words “form of payments”;

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

“corporate trustee” means a limited liability company incorporated under the No. 17 of 2015. Companies Act, 2015, which is, for the time being, empowered under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers to mainly undertake trusts, and includes a trust corporation;

“post-retirement medical fund” means a fund established within a scheme into which contributions are made and from which the costs of medical benefits can be met as may be determined in accordance with the medical fund rules.

**52.** Section 22 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 22 of No. 3 of 1997

- (a) in the margin note, by inserting the words “corporate trustees” immediately after the words “managers”;
- (b) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager”;
- (c) in subsection (3), by inserting the words “corporate trustees” immediately after the words “managers”;
- (d) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager”.

**53.** Section 23 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 23 of No. 3 of 1997

- (a) in subsection (1), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (4), by inserting the words

“corporate trustee” immediately after the word “manager” wherever it occurs.

**54.** The Retirement Benefits Act, 1997 is amended by inserting the following new section immediately after section 25B—

Insertion of new section 25C in No. 3 of 1997

Requirements for the registration of corporate trustees.

**25C.** An applicant shall be registered by the Authority as a corporate trustee if that applicant—

- (a) has such minimum paid up share capital as may be prescribed by the Authority;
- (b) is capable of meeting the obligations to members and sponsors as specified in the scheme rules;
- (c) has the professional and technical capacity and adequate operational systems to perform its functions;
- (d) has never been a corporate trustee of any scheme fund which has been deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the corporate trustee;
- (e) has never been involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
- (f) has in its board of directors and senior management such number of persons as may be prescribed who are academically and professionally qualified in

matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds; and

- (g) meets such additional requirements as may be prescribed by the Authority.

**55.** Section 27 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 27 of No. 3 of 1997

- (a) in subsection (1), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**56.** Section 28 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 28 of No. 3 of 1997

- (a) in subsection (3), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**57.** Section 29 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 29 of No. 3 of 1997

- (a) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (3), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (c) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (d) in subsection (5), by inserting the words

“corporate trustee” immediately after the word “manager” wherever it occurs.

**58.** Section 30 of the Retirement Benefits Act, 1997 is amended in subsection (1) by inserting the words “corporate trustee” immediately after the word “manager”.

Amendment of section 30 of No. 3 of 1997

**59.** Section 31 of the Retirement Benefits Act is amended in subsection (1) by inserting the words “corporate trustee” immediately after the word “manager”.

Amendment of section 31 of No. 3 of 1997

**60.** Section 34 of the Retirement Benefits Act, 1997 is amended by inserting the following new subsection immediately after subsection (4E)—

Amendment of section 34 of No. 3 of 1997.

(4F) Despite the provisions of subsection (4)—

(a) the Authority may, on application by the Trustees, extend the time specified in subsection (4) for a period not exceeding three months, if the extension appears justified; and

(b) where an extension of time is granted, the penalty prescribed for late submission shall not apply for the extended period.

**61.** Section 41 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 41 of No. 3 of 1997

(a) in subsection (1), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;

(b) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**62.** Section 42 of the Retirement Benefits Act, 1997 is amended in subsection (1) by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

Amendment of section 42 of No. 3 of 1997

**63.** Section 2 of the Central Depositories Act, 2000 is amended in subsection (1) by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of No. 4 of 2000.

“authorized nominee” means a person appointed in writing by a beneficial owner

or legal owner to open a securities account and transact on behalf of such beneficial owner or legal owner;

No. 17 of  
2015.

“beneficial owner” has the mean assigned to it under the Companies Act, 2015;

“legal owner” means a person who holds the titles to securities or assets on behalf of a beneficial owner; and

“omnibus account” means an account held by an authorized nominee on behalf of two or more beneficial owners or legal owners.

**64.** Section 30 of the Central Depositories Act, 2000 is amended by adding the following new subsections immediately after subsection (2)—

Amendment of  
section 30 of  
No. 4 of 2000

(3) A securities account opened with a central depository shall be in the name of the beneficial owner, legal owner or authorized nominee.

(4) A person who opens a securities account shall declare in the manner prescribed in the CDS rules whether the person is the beneficial owner of the deposited securities or the legal owner.

(5) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or both.

**65.** The Central Depositories Act, 2000 is amended by inserting the following new sections immediately after section 30—

Insertion of a  
new section in  
No. 4 of 2000

Appointment of  
authorized  
nominees.

**30A.** (1) A beneficial owner or legal owner may appoint, in writing, a person to be the authorized nominee for the purpose of opening a securities account or, in the case of more than one beneficial or legal owner, an omnibus account in the name of the beneficial or legal owner or owners, as the case may be.

(2) An authorized nominee appointed under subsection (1) may deposit securities in the securities account or omnibus account on behalf of the beneficial or legal owners, as the case may be.

(3) The authorized nominee shall declare in the manner prescribed in the CDS rules the beneficial or legal owner of the securities deposited under subsection (2).

(4) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or both.

Duties of  
authorized  
nominees.

**30B.** (1) An authorized nominee shall keep and maintain records on beneficial owners, legal owners, securities accounts or omnibus accounts in respect of the securities deposited in the securities or omnibus account in the manner prescribed in the CDS rules.

(2) An authorized owner shall, on request, furnish the central depository with such information as may be required on the beneficial owners, legal owners, securities accounts or omnibus accounts in respect of the securities deposited in the securities or omnibus account.

(3) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or both.

**66.** Section 32 of the Central Depositories Act, 2000 is amended by adding the following new paragraph immediately after paragraph (d)—

Amendment of  
section 32 of  
No. 4 of 2000

(e) all purchases and sales of deposited securities and other dealings made in respect thereof, including the charges and credits arising therefrom, the identity of the buyer and seller of each of those deposited securities or, in the case of other dealings, the identity of the persons executing such dealings and the persons in whose favour the dealings are executed.



## **MEMORANDUM OF OBJECTS AND REASONS**

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2021/2022 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws—

### **The Capital Markets Act (Cap. 485A)**

The Bill proposes to amend the Capital Markets Act to enhance the enforcement powers of the Capital Markets Authority by specifying the period within which the Capital Markets Tribunal shall hear and determine an appeal against administrative action of the Authority. This is intended to improve efficiency in the capital markets and ensure fair administrative action by the Authority.

### **The Insurance Act (Cap. 497)**

The Bill seeks to amend the Insurance Act to provide for the regulation of foreign reinsurance brokers in accordance with the current practice and enable the regulation of the brokers by the Authority. The Bill further seeks to provide for an annual fee to be paid by a registered person who is an insurer.

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

The Bill proposes to amend the Kenya Revenue Authority Act, 1995, to increase the maximum reward to informers who provide information provided that leads to identification and recovery of unassessed taxes in order to enhance tax compliance by encouraging informers to provide intelligence information to the Commissioner.

### **The Retirement Benefits Act (No. 2 of 1997)**

The Bill seeks to amend the Retirement Benefits Act, 1997, to provide for the registration and regulation of corporate trustees that provide services to pension schemes and empower the Authority to extend the timeline for the submission of audited accounts during extraordinary times.

### **The Central Depositories Act (No. 2 of 2000)**

The Bill proposes to amend the Central Depositories Act, 2000, to enhance the regulation of investors in the capital markets and for the opening of omnibus account by a person investing on behalf of others in the securities market.

Dated the 4th May, 2021.

GLADYS WANGA,  
*Chairperson, Departmental Committee on  
Finance and National Planning.*

*Section 3 of Cap. 470 which it is proposed to amend—*

**Charge of tax**

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

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

(a) gains or profits from—

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

(ii) any employment or services rendered;

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

(b) dividends or interest;

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

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

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

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

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

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

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

(h) a natural resource income.

(3) For the purposes of this section—

(a) “person” does not include a partnership;

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

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

- (i) "immovable property" means a mining right, an interest in a petroleum agreement, mining information or petroleum information;
- (ii) "net gain" in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest; and
- (iii) the terms "consideration", "cost", "disposal", "interest in a person", "mining information", "mining right", "person", "petroleum agreement", and "petroleum information" have the meaning assigned to them in the Ninth Schedule.

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

- (1) Income from businesses where foreign exchange loss or gain is realized

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

Provided that—

- (i) no foreign exchange gain or loss shall be taken into account to the extent that taking that foreign exchange gain or loss into account would duplicate the amounts of gain or loss accrued in any prior year of income; and
- (ii) the foreign exchange loss shall be deferred (and not taken into account)—

- (a) where the foreign exchange loss is realized by a company with respect to a loan from a person who, alone or together with four or fewer other persons, is in control of that company and the highest amount of all loans by that company outstanding at any time during the year of income is more than three times the sum of the revenue reserves retained earnings and the issued and paid up capital of all classes

of shares of the company; or

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

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

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

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

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

r2 is the applicable rate of exchange for that foreign currency (“a”) at the date on which the foreign currency asset or liability was obtained or established or on the 30th December, 1988, whichever date is the later.

(3) For the purposes of this section, no foreign exchange loss shall be deemed to be realized where a foreign currency asset or liability is disposed of or satisfied and within a period of sixty days a substantially similar foreign currency asset or liability is obtained or established.

(4) For the purposes of this section—

“control” shall have the meaning ascribed to it in paragraph 32(1) of the Second Schedule;

“company” does not include a bank or a financial institution licensed under the Banking Act (Cap. 488);

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

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

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

**12E.** (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from the provision of services is derived from or accrues in Kenya through a digital market place:

Provided that a resident person or a non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income.

(2) The tax payable under subsection (1) shall be due at the time of the transfer of the payment for the service to the service provider.

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

#### 15. Deductions allowed

- (1) For the purpose of ascertaining the total income of any person for a year of income there shall, subject to section 16 of this Act, be deducted all expenditure incurred in such year of income which is expenditure wholly and exclusively incurred by him in the production of that income, and where under section 27 of this Act any income of an accounting period ending on some day other than the last day of such year of income is, for the purpose of ascertaining total income for any year of income, taken to be income for any year of income, then such expenditure incurred during such period shall be treated as having been incurred during such year of income.
- (2) Without prejudice to sub-section (1) of this section, in computing for a year of income the gains or profits chargeable to tax under section 3(2)(a) of this Act, the following amounts shall be deducted:
  - (a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under

this subparagraph;

- (b) amounts to be deducted under the Second Schedule in respect of that year of income;
- (bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;
- (c) any expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;
- (d) any expenditure of a capital nature incurred in that year of income by any person on legal costs and stamp duties in connexion with the acquisition of a lease, for a period not in excess of, or expressly capable of extension beyond, ninety-nine years, of premises used or to be used by him for the purposes of his business;
- (e) any expenditure, other than expenditure referred to in paragraph (f) of this section, incurred in connection with any business before the date of commencement of that business where such expenditure would have been deductible under this section if incurred after such date, so, however, that the expenditure shall be deemed to have been incurred on the date on which such business commenced;
  - (f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:

Provided that no deduction shall be made for the cost of an extension to, or replacement of, such premises;
- (g) the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits;
- (h) any entrance fee or annual subscription paid during that

year of income to a trade association which has made an election under section 21(2) of this Act;

- (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;
- (k) *deleted by Act No. 8 of 1997, s. 32;*
- (l) any expenditure of a capital nature incurred in such year of income by the owner or tenant of any agricultural land, as defined in the Second Schedule, on clearing such land, or on clearing and planting thereon permanent or semi-permanent crops;
- (m) *deleted by Act No. 16 of 2014, s. 7(a);*
- (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 as is research 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;
  - (q) *deleted by Act No. 13 of 1984, s. 19;*
  - (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; and in this subparagraph “control” has the meaning assigned to it in paragraph 32 of the Second Schedule;
- (s) expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to the authorisation and issue of shares, debentures or similar securities offered for purchase by the general public;
- (ss) expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
- (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;
- (u) expenditure of a capital nature incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya;
- (v) club subscriptions paid by an employer on behalf of an employee;
- (w) any cash donation in that year of income to a charitable organization registered or exempt from registration under the Societies Act (Cap. 108) or the Non-governmental Organisations Co-ordination Act, 1990 (Act No. 19 of 1990, First Sch.), and whose income is

exempt from tax

under paragraph 10 of the First Schedule to this Act, or to any project approved by the Minister for finance;

- (x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure;
  - (y) expenditure of a capital nature incurred in the purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator, provided the amount of deduction shall be limited to five per cent per annum;
  - (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;
  - (ab) thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy.
- (3) Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:
- (a) the amount of interest paid in respect of that year of income by the person upon money borrowed by him and where the Commissioner is satisfied that the money so borrowed has been wholly and exclusively employed by him in the production of investment income which is chargeable to tax under this Act:

Provided that—

- (i) the amount of interest which may be deducted under this paragraph shall not exceed the investment income chargeable to tax for that year of income, and where the amount of that interest paid in that year exceeds the investment income of that year, the excess shall be carried forward to the next succeeding year and deducted only from investment income and, in so far as the interest has not already been so deducted, from investment income of the subsequent years of income; and
  - (ii) for the purposes of this paragraph, “investment income” means dividends and interest but excludes qualifying dividends and qualifying interest;
- (b) the amount of interest not exceeding three hundred thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first four 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;

- (c) *deleted by Act No. 14 of 1982, s. 19;*
  - (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;
  - (e) *deleted by Act No. 8 of 1978, s. 9;*
  - (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 next nine succeeding years of income:
- Provided that—
- (i) any deficit for the year of income 1973 shall be regarded for the purposes of this subsection as having arisen entirely in that year of income;
  - (ii) in any case where the income of a married woman is deemed to be the income of her husband, the amount of any deficit in her total income existing at the date of her

marriage shall be an allowable deduction in ascertaining the total income of her husband for that year and, insofar as such deficit has not already been deducted, next succeeding four years of income, to the extent of the amount of her income which is assessed on her husband in such years of income;

- (iii) deleted by Act No. 4 of 2004, s. 48;
  - (iv) Any deficit incurred by a person as at 1st January, 2010 shall be deemed to have been incurred in that year of income.
- (5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.
- (5) (a) A person to whom this subsection applies who has succeeded to any business, or to a share therein, either as a beneficiary under the will or on the intestacy of a deceased person who carried on, solely or in partnership, that business shall be entitled to a deduction in the year of income in which he so succeeds in respect of such part of any deficit in the total income of the deceased for his last year of income as is attributable to any losses incurred by the deceased in the business in that year of income or in earlier years of income.
- (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 —

- (a) *deleted by Act No. 14 of 2015, s. 10(c)(i);*
- (b) the amount computed according to the following formula —  
**A X B/C**  
 Where—  
**A** is the amount of the net gain;  
**B** is the value of the interest derived, directly or indirectly, from immovable property in Kenya; and  
**C** is the total value of the interest.
- (6) For the purposes of this section—
- (a) “scientific research” means any activities in the fields of natural or applied science for the extension of human knowledge, and when applied to any particular business includes—
- (i) any scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;
- (ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class;
- (b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research.
- (7) Notwithstanding anything contained in this Act—
- (a) the gains or profits of a person derived from any one of the seven sources of income respectively specified in

paragraph (e) of this subsection (and in this subsection called “specified sources”) shall be computed separately from the gains or profits of that person derived from any other of the specified sources and separately from any other income of that person;

- (b) where the computation of gains or profits of a person in a year of income derived from a specified source results in a loss, that loss may only be deducted from gains or profits of that person derived from the same specified source in the following year and, in so far as the loss has not already been so deducted, in subsequent years of income;
- (c) the subparagraphs of paragraph (e) of this section shall be construed so as to be mutually exclusive;
- (d) gains chargeable to tax under section 3(2)(f) of this Act and losses referred to in subsection (3)(f) of this section shall not be deemed income or losses derived or resulting from specified sources for the purposes of this subsection;
- (e) the specified sources of income are—
  - (i) rights granted to other persons for the use or occupation of immovable property;
  - (ii) employment (including former employment) of personal services for wages, salary, commissions or similar rewards (not under an independent contract of service), and a self-employed professional vocation;
  - (iii) employment the gains or profits from which is wife’s employment income, profession the gains or profits from which is wife’s professional income and wife’s self-employment the gains or profits from which is wife’s self-employment income;
  - (iv) agricultural, pastoral, horticultural, forestry or similar activities, not falling within subparagraphs (i) and (ii) of this paragraph;

- (ivA) surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds which are deemed to be the income of the employer under section 8(10);
- (ivB) income of a licensee from one licence area or a contractor from one contract area as determined in accordance with the Ninth Schedule; and
- (v) other sources of income chargeable to tax under section 3(2)(a), not falling within subparagraph (i), (ii), (iii) or (iv) of this paragraph.

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

Deductions not allowed

- (1) Save as otherwise expressly provided, for the purposes of ascertaining the total income of a person for any year of income, no deduction shall be allowed in respect of—
  - (a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;
  - (b) any capital expenditure, or any loss, diminution or exhaustion of capital.
- (2) Notwithstanding any other provision of this Act, no deduction shall be allowed in respect of—
  - (a) expenditure incurred by a person in the maintenance of himself, his family or establishment or for any other personal or domestic purpose including the following—
    - (i) entertainment expenses for personal purposes; or
    - (ii) hotel, restaurant or catering expenses other than for meals or accommodation expenses incurred on business trips or during 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);
- (iv) educational fees of employee's dependants or relatives; or club fees including entrance and subscription fees,
- (v) except as provided in section 15(2)(v);
- (b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;
- (c) any income tax or tax of a similar nature 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;
- (g) *deleted by Act No. 8 of 1978, s. 9;*
- (h) any loss incurred in any business which, having regard to the nature of the business, to the principal occupation of the owner,

partners, shareholders or other persons having a beneficial interest therein, to the relationship between any such persons or to any other relevant factor, the Commissioner considers it reasonable to regard as not being carried on mainly with a view to the realization of profits; and,

without prejudice to the generality of the foregoing, a business shall be deemed not to be carried on for any year of income with a view to the realization of profits where more than one quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person;

- (i) *deleted by Act No. 10 of 2006, s. 22;*
- (j) interest payments in proportion to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of—
  - (i) three times the sum of the revenue reserves and the issued and paid up capital of all classes of shares of the company; or
  - (ii) the sum of all loans acquired by the company prior to the 16th June, 1988 and still outstanding in that year,

or an amount of deemed interest where the company is in the control of a non-resident person alone or together with four or fewer other persons and where the company is not a bank or a financial institution licensed under the Banking Act (Cap. 488); and for the purposes of this paragraph “**control**” shall have the meaning ascribed to it in paragraph 32(1) of the Second Schedule:

Provided that this paragraph shall also apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company;

- (k) *deleted by Act No. 8 of 1997, s. 33;*

(l) *deleted by Act No. 8 of 2009, s. 23.*

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

- (3) **“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;  
**“deemed interest”** *deleted by Act No. 38 of 2016, s. 7.*
- (4) For the avoidance of doubt, the expression **“revenue reserves”** under subsection (2) includes accumulated losses.

The Commissioner shall prescribe the form and manner in which the

(5) deemed interest shall be computed and the period for which it shall be applicable.

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

#### **Insurance relief**

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

- (a) he has paid a premium for an insurance made by him on his life, or on the life of his wife or of his child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya; or
- (b) his employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or
- (c) he, as well as his employer, has paid a premium for the insurance referred to in paragraph (b), shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief:

Provided that—

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

- (ii) no relief shall be granted in respect of a premium for an insurance unless the person claiming the relief furnishes evidence as to the nature and conditions of the insurance and such other particulars as may be required by the Commissioner;
- (iii) an education policy with a maturity period of at least ten years shall qualify for relief; and
- (iv) the provisions of this section shall apply only to life or education policies whose term commences on or after 1st January, 2003;
- (v) a health policy whose term commences on or after 1st January, 2007 shall qualify for relief;
- (vi) where a policy is surrendered before its maturity, all the relief granted to the policyholder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

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

*Section 39B of Cap. 470 which it is proposed to amend—*

#### **Set-off tax rebate for apprenticeships**

**39B.** (1) Any employer who engages at least ten university graduates as apprentices for a period of six to twelve months during any year of income shall be eligible for tax rebate in the year subsequent to the year of such engagement.

(2) The Cabinet Secretary may by notice in the Gazette make regulations for the better carrying out of the provisions of this section

*Section 41 of Cap 470 which it is proposed to amend—*

#### **Special arrangements for relief from double taxation**

**41.** (1) The Minister may from time to time by notice declare that arrangements, specified in the notice and being arrangements that have been made with the Government of any country outside of the Republic of Kenya with a view to affording relief from double taxation in relation to income tax and any taxes of a similar character imposed by the laws of that country, shall, subject to subsection (5) but notwithstanding any other provision to the contrary in this Act or in any other written law, have effect in relation to income tax, and every such notice shall, subject to the provisions of this section, have effect according to its tenor.

(2) Any such arrangements in the notice may include provisions for relief from tax for periods before the commencement of this Act or before the making of the arrangements.

(3) Any notice under this section may be at any time amended or revoked by a subsequent notice and an amending or revoking notice may contain such transitional provisions or termination date as appear to the Minister to be necessary or expedient.

(4) The Minister shall cause a copy of every notice made under subsection (1) of this section and of every subsequent notice made under subsection (3) of this section to be laid, without delay, before the Parliament.

(5) Subject to subsection (6), where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting state for the purposes of the agreement.

(6) Subsection (5) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state

(7) In this section, the terms "person" and "underlying ownership" have the meaning assigned to them in the Ninth Schedule.

*Section 2 of No.35 of 2013 which it is proposed to amend—*

“supply of imported services” means a supply of services that satisfies the following conditions—

- (a) the supply is made by a person who is not a registered person to any person;
- (b) the supply would have been a taxable supply if it had been made in Kenya; and
- (c) the registered person would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply;

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

**Charge to tax**

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

- (a) a taxable supply made by a registered person in Kenya;
- (b) the importation of taxable goods; and
- (c) a supply of imported taxable services.

(2) The rate of tax shall be—

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

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

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

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

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

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

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

(7) The provisions of subsection (1) shall be applicable to supplies made through a digital marketplace.

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

(9) For the purpose of this section, "digital marketplace" means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

*Section 10 of No. 35 of 2013 which it is proposed to amend—*

#### **Treatment of imported services**

**35.** (1) If a supply of imported taxable services is made to any person, the registered person shall be deemed to have made a taxable supply to himself.

(2) If a registered person referred to in subsection (1) is entitled to—

- (a) a credit for part of the amount of input tax payable, the value of the taxable supply under subsection (1) shall be reduced by an amount equal to the supply that is entitled for the input tax credit; or
- (b) a full input tax credit payable on the imported taxable services under subsection (1), the value of the taxable services shall be reduced to zero.

(3) The output tax in respect of a deemed taxable supply under subsection (1) shall be payable by any person at the time of the supply.

(4) For the purposes of this section, if a registered person carries on a business, both in and outside Kenya, the part of the business carried on outside Kenya shall be treated as if it were carried out by a person separate from the registered person.

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

**Credit for input tax against output tax**

**17.** (1) Subject to the provisions of this section 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, 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), the person does not hold the documentation referred to in subsection (3), 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;
- (d) a credit note in the case of input tax deducted under section 16(2);  
or
- (e) a debit note in the case of input tax deducted under section 16(5).

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition 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, 2015; and

- (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.

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

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

- (a) full deduction of all the input tax attributable to taxable supplies;
- (b) no deduction of any input tax which is directly attributable to other use; and
- (c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula:  $A \times \frac{B}{C}$   
Where—A is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use; B is the value of all taxable supplies made by the registered person during the period; and C is the value of all supplies made by the registered person during the period in Kenya.

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

- (a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component A of the formula; or
- (b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component A of the formula.

*Section 19 of No.35 of 2013 which it is proposed to amend—*

**When tax is due**

19. (1) Tax shall be due and payable at the time of supply.

(2) Notwithstanding the provision of subsection (1), a registered person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due.

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

**Application for registration**

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

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

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

- (a) a taxable supply of a capital asset of the person; and
- (b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's business or permanently ceasing to carry on the person's business.

(3) Notwithstanding subsection (1), a person who makes or intends to make taxable supplies may apply, in the prescribed form, to the Commissioner for voluntary registration.

(4) The Commissioner shall register a person who has applied for voluntary registration under subsection (3) if satisfied that—

- (a) the person is making, or shall make taxable supplies;
- (b) the person has a fixed place from which the person's business is conducted;
- (c) if the person has commenced carrying on a business, the person—
  - (i) has kept proper records of its business; and
  - (ii) has complied with its obligations under other revenue laws; and
- (d) there are reasonable grounds to believe that the person shall keep proper records and file regular and reliable tax returns.

(5) The Commissioner shall issue a registered person with a tax registration certificate in the prescribed form.

(6) If the Commissioner is satisfied that a person eligible to apply for registration has not done so within the time limit specified in subsection (1), the Commissioner shall register the person.

(7) The registration of a person under subsection (1) or (6) shall take effect from the beginning of the first tax period after the person is required to apply for registration, or such later period as may be specified in the person's tax registration certificate.

(8) The registration of a person under subsection (4) shall take effect from the date specified in the person's tax registration certificate.

(9) The Cabinet Secretary may, in regulations, provide for the registration of a group of companies as one registered person for the purposes of the Act.

*Section 67 of No. 35 of 2013 which it is proposed to amend—*

### **Regulations**

**35.** (1) The Cabinet Secretary may make regulations for the better carrying of the provisions of this Act, and without prejudice to the generality of the foregoing, the regulations may—

- (a) prescribe conditions and procedures for the registration of registered persons;
- (b) provide for the submission of returns and the place at which returns are to be submitted and tax is to be paid;
- (c) prescribe the form of notices, returns or other forms required for the purposes of this Act;
- (d) prescribe offence and penalties thereto;
- (e) prescribe rules for particular types of supplies and in relation to input tax credits; or
- (f) prescribe any other thing required to be prescribed for the purposes of any provision of this Act.

(2) Regulations made under this section shall be tabled before the National Assembly for approval before they take effect.

*Section 14 of No. 23 of 2015 which it is proposed to amend—*

**Relief for raw materials**

**14.** (1) Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.

*Section 35A of Cap. 485A which it is proposed to amend—*

**Establishment of the Capital Markets Tribunal**

**35A.** (17) Upon any appeal to the Tribunal under this section the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

*Section 2 of Cap 487 which it is proposed to amend—*

**2.** "broker" means an intermediary concerned with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage, commission, for or on behalf of an insurer, policy-holder or proposer for insurance or reinsurance and includes a health management organisation; but does not include a person who canvasses and secures reinsurance business from or to an insurer or broker in Kenya so long as that person does not undertake direct insurance business and does not have a place of business, or a resident representative, in Kenya

*Section 20 of Cap. 487 which it is proposed to amend—*

**Placing of risks with insurers and reinsurers not registered under this Act**

**20.** (3) Paragraph (a) of subsection (2) shall be deemed to have been complied with in respect of any reinsurance treaty or contract in force on the appointed date or the date of the renewal of the treaty or contract, whichever is earlier, if the treaty or contract is certified by the Kenya Reinsurance Corporation Limited as having been approved by that company.

*Section 5A of No. 2 of 1995 which it is proposed to amend—*

**Rewards**

**5A.** (2) The reward payable under subsection (1) shall be—

- (a) in the case of information leading to the identification of unassessed duties or taxes, one per centum of the duties or taxes so identified or one hundred thousand shillings, whichever is the less;
- (b) in the case of information leading to the recovery of unassessed duties or taxes, five per centum of the taxes or duties so recovered or two million shillings, whichever is the less; and (c) in the case of information not specified in paragraph (a) and (b) leading to the enforcement of the tax laws, five hundred thousand shillings.

*Section 2 of No. 3 of 1997 which it is proposed to amend—*

“retirement benefits scheme” means any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument;

“trust corporation” means a company incorporated under the Companies Act (Cap. 486) having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts:

Provided that such company does not, by any prospectus, circular, advertisements, or other documents issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of the company when acting as an executor or administrator;

*Section 22 of No. 3 of 1997 which it is proposed to amend—*

**Retirement benefits schemes, managers, custodians and administrators to be registered**

**22.** (2) No person shall act as a manager, custodian or administrator unless such person is registered under this Act and holds a valid certificate of registration issued pursuant to the provisions of this Act.

(3) The Authority shall, in consultation with the Minister, by notice in the Gazette and by public advertisement in at least one daily newspaper of wide circulation, publish a list of all registered managers, custodians and administrators at least once in every calendar year.

(4) A person who—

- (a) establishes a retirement benefits scheme; or
- (b) acts as a manager or custodian, contrary to the provisions of this section commits an offence and shall be liable on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

*Section 23 of No. 3 of 1997 which it is proposed to amend—*

### **Registration**

**23.** (1) A person proposing to establish a retirement benefits scheme or to act as a manager, a custodian or an administrator shall apply to the Authority for, and obtain, a certificate of registration before establishing the scheme or commencing the performance of any of the functions of a manager, a custodian or an administrator.

(2) An application under subsection (1) shall be—

- (a) addressed to the Chief Executive Officer;
- (b) in the prescribed form; and (c) accompanied by the prescribed fee.

(3) In considering an application under this section, the Authority may request the applicant to supply such additional information as it considers necessary in determining the application.

(4) The Authority may, subject to the provisions of this Act and on payment of the prescribed fee, register the applicant and issue to the applicant a certificate of registration in the prescribed form, authorising the applicant to establish a retirement benefits scheme, or to act as a manager, a custodian or an administrator as the case may be.

(5) A certificate issued under this section shall be subject to such conditions as the Authority may, in consultation with Minister, impose.

*Section 26 of No. 3 of 1997 which it is proposed to amend—*

### **Requirements with regard to trustees**

**26.** (2) No person shall be a trustee of any scheme fund if such person—

- (a) has been sentenced to imprisonment by a court of competent jurisdiction for a period of six months or more;
- (b) is adjudged bankrupt;

*Section 27 of No. 3 of 1997 which it is proposed to amend—*

### **Refusal of registration**

27. (1) The Authority may refuse to register any scheme, manager, custodian or administrator under section 23 if satisfied that—

- (a) the information contained in the application for registration is false or untrue in any material particular; or
- (b) the applicant does not meet the requirements for registration.

(2) Where the Authority refuses to register any scheme, manager, or custodian, it shall forthwith notify the applicant in the prescribed form, specifying the reasons for such refusal.

*Section 28 of No. 3 of 1997 which it is proposed to amend—*

### **Deregistration**

28. (1) Subject to subsection (2), the Authority may deregister a scheme if—

- (a) it discovers after registration that a statement was made in connection with the application therefore which the applicant knew to be false or untrue in any material particular; or
- (b) the scheme is wound up or is otherwise dissolved; or
- (c) the scheme does not conform to the provisions of this Act or any regulations made or directions issued under this Act or any condition of the certificate of registration.

(2) The Authority shall, before deregistering a scheme, give the trustees, sponsors and members of the scheme at least twenty-eight days notice of its intention and shall consider any representations made to it in writing by the trustees, sponsors or members within that period before deregistering the scheme.

(3) Subject to subsection (4), the Authority may deregister a manager, custodian or administrator if—

- (a) it discovers after registration that the manager, custodian or administrator made a statement in or in connection with the application therefor which was false or untrue in any material particular; or
- (b) any event occurs which renders the manager, custodian or administrator ineligible to manage or provide custodial services to a scheme fund, as the case may be;
- (c) the manager's, custodian's or administrator's business is wound up or is otherwise dissolved;

- (d) the manager, custodian or administrator is in breach of any condition attached to the certificate of registration;
- (e) the manager, custodian or administrator does not comply with any of provisions of this Act, or with any regulations made or directions issued thereunder.

(4) The Authority shall, before deregistering a manager or custodian, give the manager or custodian and the sponsors or trustees of the scheme at least twenty-eight notice of its intention, and shall consider any representations made to it in writing by the manager or custodian within that period before deregistering the manager or custodian.

(5) Every notice under subsections (2) and (4) shall be in the prescribed form and shall specify the reasons for the intended deregistration.

(6) The deregistration of a scheme shall not in any way prejudice the claims of members under the scheme.

(7) Where the assets of a deregistered scheme are insufficient to fully discharge its obligations to its members, the Chief Executive Officer may, subject to the approval of the Board, take over the distribution or transfer of the assets and the supervision of the scheme in order to protect the interests of members.

*Section 29 of No. 3 of 1997 which it is proposed to amend—*

#### **Duration and renewal of certificates**

**29.** (1) Subject to this Act, a certificate of registration issued in respect of a scheme shall be valid from the date of issue and shall remain in force until the scheme is deregistered or wound up in accordance with the scheme rules or the provisions of the written law under which the scheme is established.

(2) A certificate of registration issued to a manager, custodian or administrator shall be valid from the date of issue and shall, unless suspended or revoked, remain valid.

(3) A manager, custodian or administrator shall pay such annual fee as may be prescribed by the Authority.

(4) A manager, custodian or administrator shall submit current audited financial statements, a list of the directors and top management, any changes in clientele and such further information as the Authority may request by the 30th September of every year.



(5) A manager, custodian or administrator shall communicate to the Authority any changes in shareholding, directorship or top management within thirty days after the change has occurred.

*Section 31 of No. 3 of 1997 which it is proposed to amend—*

#### **Use of register in evidence**

**31.** (1) For the purposes of ascertaining the facts concerning the registration of a scheme, manager, custodian or administrator, entries made in the register shall be prima facie evidence as to the facts specified in the register.

*Section 41 of No. 3 of 1997 which it is proposed to amend—*

#### **Inspection**

**41.** (1) The Chief Executive Officer may, at any time and from time to time, and shall, if so directed by the Board, cause an inspection to be made by an inspector authorized by him in writing, of any scheme or of the business of any manager, custodian or administrator registered under this Act, and of its books, accounts and records.

(2) When an inspection is made under subsection (1), the manager, custodian or administrator of the scheme concerned and every officer, trustee or employee thereof shall make available to the inspector all the books, accounts records and other documents of the scheme and such correspondence, statements and information relating to the scheme as the inspector may require, within seven days or such longer period as the inspector may direct in writing.

(3) Any failure to produce any books, accounts, records, documents, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) constitutes an offence: Provided that—

- (a) the books, accounts and other documents shall not, in the course of inspection, be removed from the premises at which they are produced;
- (b) the inspector may make copies of any books, accounts and other documents required for the purposes of his report; and
- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act.

*Section 42 of No. 3 of 1997 which it is proposed to amend—*

#### **Powers of the inspector**

**42.** (1) An inspector may, by notice in writing, require any person who is or has at any time been a trustee, manager, custodian or administrator of the scheme being inspected, or an officer, employee, agent, accountant, auditor or actuary appointed by such trustee, manager, custodian or administrator to—

- (a) give to the inspector all reasonable assistance in connection with the inspection; or
- (b) appear before the inspector for examination concerning matters relevant to the inspection; or
- (c) produce any books or documents relating to the affairs of the scheme being inspected.

(2) A person who—

- (a) refuses or fails to comply with a requirement of an inspector which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders an inspector in the exercise of his powers under this Act; or
- (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or
- (d) when appearing before an inspector for examination, makes a statement which he knows to be false or misleading in any material particular, commits an offence.

(3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or, in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.

(4) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a further fine of one thousand shillings for every day during which the offence continues.

(5) Where the person convicted under this section is a body corporate, the Authority may, notwithstanding any other penalty imposed under this Act, apply to court for the winding up of such body corporate.