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REPUBLIC OF KENYA

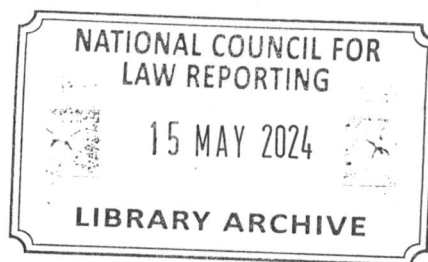
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 9th May, 2024

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THE FINANCE BILL, 2024

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, 2024, and shall come into operation, or be deemed to have come into operation, as follows—

- (a) on the 1st September, 2024, section 42(a)(i)(I),(J) and (K);
- (b) on the 1st January, 2025, sections 8, 12 and 25(b)(v); and
- (c) all other sections, on the 1st July, 2024.

Short title and commencement.

PART II—INCOME TAX

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

- (a) in the definition of “digital content monetisation”, by inserting the following new paragraphs immediately after paragraph (h)—
 - (j) creative works;
 - (k) creating or sharing of the material; or
 - (l) any other material that is not exempt under this Act;
- (b) in the definition of “individual retirement fund”, by deleting the words “and registered individual retirement fund means an individual retirement fund where the trust deed for such a fund has been registered with the Commissioner”;
- (c) in the definition of “pension fund”, by deleting the words “and registered pension fund means one which has been registered with the Commissioner in such manner as may be prescribed”;
- (d) in the definition of “provident fund”, by deleting the words “and registered provident fund means

Amendment of section 2 of Cap. 470.

one which has been registered with the Commissioner in such manner as may be prescribed”;

- (e) by deleting the definition of “wife’s employment income”;
- (f) by deleting the definition of “wife’s professional income”;
- (g) by deleting the definition of “wife’s professional income rate”;
- (h) by deleting the definition of “wife’s self-employment income”;
- (i) by deleting the definition of “wife’s self-employment income rate”;
- (j) by deleting the definition of “related person” and substituting therefor the following new definition—

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

- (a) any other person who participates directly or indirectly in the management, control or capital of the business of the two persons; or
- (b) an individual who—
 - (i) participates directly or indirectly in the management, control or capital of the business of the two persons; and
 - (ii) is associated to the two persons by marriage, consanguinity or affinity and the two persons participate in the management, control or capital of the business of the individual;
- (k) by deleting the definition of “royalty” and substituting therefor the following new definition—

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

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

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

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

“donation” means a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration;

“public entity” means a ministry, state department, state corporation, county department or agency of the national or county Government;

“registered individual retirement fund” means an individual retirement fund where the trust deed for such a fund has been registered with the Retirement Benefits Authority;

“registered pension fund” means a pension fund which has been registered with the Retirement Benefits Authority;

“registered provident fund” means a provident fund which has been registered with the Retirement Benefits Authority.

3. Section 3 of the Income Tax Act is amended in subsection (3), by deleting paragraph (ba) and substituting therefor the following new paragraph—

- (ba) “digital marketplace” means an online or electronic platform which enables a person to sell or provide goods, property or services including—

Amendment of section 3 of Cap 470.

- (a) ride-hailing services;
- (b) food delivery services;
- (c) freelance services;
- (d) professional services;
- (e) rental services;
- (f) task-based services; and
- (g) any other service that is not exempt from tax under this Act.

4. Section 4A of the Income Tax Act is amended in subsection (1)(ii), by deleting the words “five years” and substituting therefor the words “three years”.

Amendment of section 4A of Cap. 470.

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

Insertion of new section 4C to Cap. 470.

Income from supply of goods to public entity.

4C. The payment received by a person from a public entity for the supply of goods shall be deemed to be the income of the person for the year of income in which the payment is received.

6. Section 5 of the Income Tax Act is amended—

Amendment of section 5 of Cap. 470.

(a) in subsection (2)—

- (i) in paragraph (a) (iii), by deleting the words “the first two thousand shillings” and substituting therefor the words “and the employer has a policy on the payment and accounting for subsistence, travelling, entertainment or other allowances, an amount not exceeding five per cent of the monthly gross earnings of the employee”;
- (ii) in paragraph (b), by deleting the words “thirty-six thousand shillings” and substituting therefor the words “forty-eight thousand shillings”;

(b) in subsection (4)—

- (i) in paragraph (f), by deleting the words “forty-eight thousand shillings” and substituting therefor the word “sixty thousand shillings”.

- (ii) by inserting the following new paragraph immediately after paragraph (f)—
- (fa) any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased;
- (iii) in paragraph (g), by deleting the words “two hundred and forty thousand shillings” appearing in paragraph (a) of the proviso and substituting therefor the words “three hundred and sixty thousand shillings”.

7. Section 10 of the Income Tax Act is amended by inserting the following new subsections immediately after subsection (3)—

Amendment of section 10 of Cap. 470.

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

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

8. The Income Tax Act is amended by repealing section 12E and replacing it with the following new section—

Repeal and replacement of section 12E of Cap. 470.

Significant economic presence tax.

12E. (1) Notwithstanding any other provision of this Act, a tax known as significant economic presence tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace.

(2) Subsection (1) shall not apply—

- (a) to a non-resident person who offers the services through a permanent establishment; or
- (b) to an income chargeable under section 9(2) or section 10.

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

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

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

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

Insertion of new sections 12G and 12H of Cap. 470.

Minimum top-up tax.

12G. (1) Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen per cent.

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

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

- (4) This section shall not apply—
- (a) to a public entity that is not engaged in business;
 - (b) to a person whose income is exempt from tax under paragraph 10 of the First Schedule;
 - (c) to a pension fund and the assets of that pension fund;
 - (d) to a real estate investment vehicle that is an ultimate parent entity;
 - (e) to a non-operating investment holding company;
 - (f) to an investment fund that is an ultimate parent entity;
 - (g) to a sovereign wealth fund; or
 - (h) to an intergovernmental or supranational organisation including a wholly owned agency or organ of the intergovernmental or supranational organisation.

(5) In this section—

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

“covered person” means a resident person or a person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated annual turnover of seven hundred and fifty million Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the

four years of income immediately preceding the tested year of income;

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

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

- (a) ten per cent for the employee costs; and
- (b) eight per cent for the net book value of tangible assets.

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

(6) This section shall come into operation on the 1st January, 2025.

Motor vehicle tax.

12H. (1) Notwithstanding any other provision of this Act, a tax known as motor vehicle tax shall be payable to the Commissioner on each motor vehicle at the time of the issuance of an insurance cover.

(2) Motor vehicle tax shall be payable based on the value of the motor vehicle, at the rate specified in the Third Schedule.

Provided that the amount of tax payable—

- (a) shall not be less than five thousand shillings; and
- (b) shall not be more than one hundred thousand shillings.

(3) The value of a motor vehicle shall be determined on the basis of the make, model, engine capacity in cubic centimetres and year of manufacture of the motor vehicle.

(4) An insurer of a motor vehicles shall collect and remit motor vehicle tax within five working days after issuing a motor vehicle insurance cover.

(5) An insurer who fails to collect and remit motor vehicle tax shall be liable to pay—

- (a) a penalty equivalent to fifty per cent of the uncollected tax; and
- (b) the actual amount of the uncollected tax.

(6) Notwithstanding the provisions of this section, motor vehicle tax shall not be payable in respect of an ambulance, or a motor vehicle owned by the national government, county government, Kenya Defence Forces, National Police Service, National Intelligence Service or a person exempt from tax under the Privileges and Immunities Act.

Cap. 179.

(7) The Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining the valuation of a motor vehicle.

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

Amendment of section 15 of Cap. 470.

(a) in subsection (2)—

- (i) in paragraph (ga), by deleting the expression “section 5(b)” and substituting therefor the expression “section 4(2)(b)”;
- (ii) by inserting the following new paragraph immediately after paragraph (ga)—
 - (gb) the amount considered as representing the diminution in value of any implement, utensil or similar article employed in the production of gains or profits, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, at a

rate of one hundred per cent in that year of income;

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

(ac) contributions made to the Social Health Insurance Fund in accordance with section 27(a) and (b) of the Social Health Insurance Act, 2023; No. 16 of 2023.

(ad) in the case of an employee, the amount deducted in accordance with section 5(1)(a) of the Affordable Housing Act, 2024; No. 2 of 2024.

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

(b) in subsection (3)(b), by deleting the words “three hundred thousand shillings” and substituting therefor the words “three hundred and sixty thousand shillings”;

(c) in subsection (7)(a), by deleting the word “seven”.

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

Amendment of section 18 of Cap. 470.

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

Insertion of a new section 18G to Cap. 470

Advance pricing agreement.

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

(2) The arm’s length price for the transaction contemplated under section 18(3) or section 18A shall be determined in accordance with the advance pricing agreement entered into under subsection (1).

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

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

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

Amendment of section 21 of Cap. 470.

14. Section 22A of the Income Tax Act is amended—

Amendment of section 22A of Cap 470.

(a) in subsection (1)(c)—

(i) by deleting the words “two hundred and forty thousand shillings” and substituting therefor the words “three hundred and sixty thousand shillings”;

(ii) by deleting the words “twenty thousand shillings” and substituting therefor the words “thirty thousand shillings”;

(b) in subsection (2)(c)—

(i) by deleting the words “two hundred and forty thousand shillings” and substituting therefor the words “three hundred and sixty thousand shillings”;

(ii) by deleting the words “twenty thousand shillings” and substituting therefor the words “thirty thousand shillings”;

(c) in subsection (3)(c), by deleting the words “two hundred and forty thousand shillings” and substituting therefor the words “three hundred and sixty thousand shillings”.

15. Section 22B of the Income Tax Act is amended in subsection (2)(c)—

Amendment of section 22B of Cap. 470.

(a) by deleting the words “two hundred and forty thousand shillings” and substituting therefor the words “three hundred and sixty thousand shillings”;

- (b) by deleting the words “twenty thousand shillings” and substituting therefor the words “thirty thousand shillings”.

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

Amendment of section 27 of Cap. 470.

(1D) Where the Commissioner fails to make a decision within the period specified in subsection (1C), the application shall be deemed allowed.

17. The Income Tax Act is amended by repealing section 30A.

Repeal of section 30A of Cap. 470.

18. Section 31 of the Income Tax Act is amended by deleting paragraph (v) of the proviso to subsection (1).

Amendment of section 31 of Cap. 470.

19. The Income Tax Act is amended by repealing section 34 and replacing it with the following new section—

Repeal and replacement of section 34 of Cap. 470.

Rates of tax.

34. (1) The tax chargeable on any income specified in this Act shall be at the rate specified in the Third Schedule.

(2) Subject to subsection (1), the transfer of interest in a person shall be charged in accordance with the Ninth Schedule.

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

Amendment of section 35 of Cap. 470.

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

- (r) supply of goods to a public entity;
- (s) making or facilitating payment on a digital marketplace;

(b) in subsection (3), by inserting the following paragraphs immediately after paragraph (l)—

- (m) supply of goods to a public entity;
- (n) making or facilitating payment on a digital marketplace.

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

Repeal of section 72C of Cap. 470.

22. Section 133 of the Income Tax Act is amended by deleting subsection (6).

Amendment of section 133 of Cap. 470.

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

Amendment of the First Schedule to Cap. 470.

- (a) by deleting paragraph 6;
- (b) by deleting paragraph 13;
- (c) in paragraph 51, by inserting the following proviso—

Provided that this exemption shall only apply to interest income accruing from bonds, notes or other similar securities used to raise funds for infrastructure and other social services, listed before the commencement of this proviso.

- (d) by deleting paragraph 53 and substituting therefor the following new paragraph—

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

Provided that this exemption shall also apply where a person—

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

- (e) by deleting paragraph 57 that reads as follows—

57. The income or principal sum of a registered family trust.

- (f) by deleting paragraph 57 that reads as follows—

57. The income of the National Housing Development Fund.

- (g) by deleting paragraph 58 that reads—
58. Any capital gains relating to the transfer of title of immovable property to a family trust.
- (h) by deleting paragraph 58 that reads—
58. Income earned by an individual who is registered under the Ajira Digital Program for three years beginning the 1st January, 2020:
- Provided that—
- (a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and
- (b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to information communication technology, issue Regulations for the better carrying out of this provision.
- (i) by deleting paragraph 59;
- (j) in paragraph 60, by deleting the proviso and substituting therefor the following new proviso—
- Provided that—
- (a) the bond, note or security shall have a maturity of at least three years; and
- (b) this exemption shall only apply to interest income accruing from a bond, note or other similar security used to raise funds for infrastructure and any other social service, project and asset defined under Green Bonds Standards and Guidelines, and any other social service listed before the commencement of this proviso.
- (k) by deleting paragraph 71 and substituting therefor the following paragraph—
71. Income earned by a non-resident contractor, sub-contractor, consultant or an employee involved in the implementation of a project financed through a one hundred per cent grant under an agreement between the Government and a development partner, to the extent

provided for in the Agreement:

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

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

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

24. The Second Schedule to the Income Tax Act is amended in paragraph 1 by deleting sub-paragraph(c) and substituting therefor the following new paragraph—

Amendment of the Second Schedule to Cap. 470.

<i>Capital expenditure incurred</i>	<i>Rate of Investment Allowance</i>
(a) Purchase or acquisition of an indefeasible right to use fibre optic cable or spectrum license by a telecommunication operator:	10% per year, in equal instalments.

Provided that, in the case of the spectrum license purchased or acquired before the 1st July, 2024, the deduction shall be restricted to the unamortized portion over the remaining useful life of the spectrum license.

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

Amendment of the Third Schedule to Cap. 470.

- (a) in Head A—
- (i) by deleting paragraph 3;
- (ii) by deleting paragraph 4;
- (b) in Head B—
- (i) in paragraph 2, by deleting subparagraph (i);
- (ii) in paragraph 3—
- (A) by deleting subparagraph (k) and substituting therefor the following

paragraph—

(k) in respect of gains or profits which are chargeable to tax under section 9(1) from the business of a ship-owner or an air transport operator, where there is no reciprocal arrangement or treaty, three per cent of the gross amount received.

(B) by inserting the following proviso at the end of subparagraph (t)—

Provided that the tax so deducted shall be final.

(C) by inserting the following new subparagraphs immediately after subparagraph (t)—

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

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

(iii) in paragraph 5—

(A) in subparagraph (b), by inserting the following new item immediately after item (iii)—

(iv) in respect of interest arising from a bond, note or other similar security that has a maturity of at least three years and used to raise funds for infrastructure and other social services, five per cent.

(B) in subparagraph (d)—

(Aa) by deleting item (i);

(Ab) by deleting the words “fifteen years” and substituting therefor the words “twenty years” appearing in item (i);

(C) in subparagraph (f)(i), by deleting the expression “the aggregate value of which is twenty-four thousand shillings

- in a month or more”;
- (D) in subparagraph (f)(ii), by deleting the words “the aggregate value of which is twenty-four thousand shillings in a month or more”;
 - (E) by deleting subparagraph (jb);
 - (F) by inserting the following new subparagraphs immediately after subparagraph (m)—
 - (n) in respect of a payment made by a public entity for supply of goods to the public entity, three per cent;
 - (o) in respect of income deemed to have accrued in or been derived from a digital marketplace, five per cent.
- (iv) by deleting paragraph 12 and substituting therefor the following new paragraph—
12. The rate of tax in respect of significant economic presence tax charged under section 12E shall be thirty per cent of the deemed taxable profit.
- (v) by inserting the following new paragraphs immediately after paragraph 13—
14. The rate of tax in respect of capital gains charged under section 3(2)(f) shall be fifteen per cent which shall be a final tax:
- Provided that where the Nairobi International Financial Centre Authority certifies that—
- (a) a firm has invested at least three billion shillings in at least one entity incorporated or registered in Kenya within a period of two years; and
 - (b) the transfer of the investment is to be made after five years of the date of the investment,
- the applicable rate shall be five per cent.
15. The rate of tax in respect of motor vehicle tax charged under section 12H shall be two point

five per cent of the value of the motor vehicle.

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

Amendment of the Eighth Schedule to Cap. 470.

(a) in paragraph 1 —

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

“company” includes a body of persons which carries on the activities of a members’ club or trade association that is deemed to be carrying on a business under section 21;

(b) by deleting paragraph (3);

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

27. The Eleventh Schedule to the Income Tax Act is amended in paragraph 4, by deleting the words “and in the event of failure to submit a return or late submission of a return, the enterprise will be liable to a penalty of two thousand shillings per day for each day that the failure continues”.

Amendment of the Eleventh Schedule to Cap. 470.

PART III—VALUE ADDED TAX

28. Section 2 of the Value Added Tax Act is amended by inserting the following new definition in proper alphabetical sequence—

Amendment of section 2 of Cap. 476.

“tax invoice” includes an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act.

Cap. 469B.

29. Section 8 of the Value Added Tax is amended in subsection (2), by inserting the word “and” at the end of the opening sentence.

Amendment of section 8 of Cap. 476.

30. Section 12 of the Value Added Tax Act is amended by inserting the following new subsection immediately after subsection (4)—

Amendment of section 12 of Cap. 476.

(5) The time of supply for exported goods shall be the time when the registered person is in possession of the required export confirmation documents.

31. Section 17 of the Value Added Tax Act is amended—

Amendment of section 17 of Cap. 476.

- (a) in subsection (5)—
 - (i) by deleting paragraph (c);
 - (ii) by deleting paragraph (d);
 - (iii) by deleting paragraph (e);
- (b) by deleting subsection (7);
- (c) by deleting subsection (8).

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

Amendment of section 31 of Cap. 476.

- (a) by deleting paragraph (d);
- (b) by deleting paragraph (e).

33. Section 34 of the Value Added Tax Act is amended in subsection (1)—

Amendment of section 34 of Cap. 476.

- (a) in paragraph (a), by deleting the words “five million shillings” and substituting therefor the words “eight million shillings”;
- (b) in paragraph (b), by deleting the words “five million shillings” and substituting therefor the words “eight million shillings”.

34. The First Schedule to the Value Added Tax Act is amended—

Amendment of the First Schedule to Cap. 476.

- (a) in Part I—
 - (i) in Section A—
 - (A) in the table—
 - (Aa) by deleting tariff number “8802.30.00” and the corresponding description;
 - (Ab) by deleting tariff number “8802.60.00” and the corresponding description;
 - (Ac) by deleting the words “gluten bread” appearing at the end of the table;
 - (Ad) by deleting the words “unleavened bread” appearing at the end of the table;

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

49. Aircraft parts of Chapter 88.
- (C) by deleting paragraph 54;
- (D) in paragraph 57, by inserting the words “National Intelligence Service” immediately after the words “Kenya Defence Forces”;
- (E) by deleting paragraph 58;
- (F) by deleting paragraph 62;
- (G) by deleting paragraph 63;
- (H) by deleting paragraph 77;
- (I) by deleting paragraph 78;
- (J) by deleting paragraph 79;
- (K) by deleting paragraph 80;
- (L) by deleting paragraph 81;
- (M) by deleting paragraph 91;
- (N) by deleting paragraph 107;
- (O) by deleting paragraph 110;
- (P) in paragraph 113, by inserting the words “until the completion of the projects under development” at the end thereof;
- (Q) by deleting paragraph 114;
- (R) in paragraph 144, by inserting the following new definition—

“original equipment manufacturer” means a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies.
- (S) in paragraph 145 by inserting the following proviso—

Provided that this paragraph shall not apply to a special operating framework arrangement entered into by the

Government on or after the 1st of July, 2017.

(T) by deleting paragraph 146;

(U) by inserting the following new paragraphs immediately after paragraph 147—

148. Inputs and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health.

149. Mosquito repellent.

150. Tea packaging material.

151. Micronutrients, foliar feeds and bio-stimulants of Chapter 38.

152. The supply of motorcycles of tariff heading 8711.60.00.

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

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

155. Agricultural pest control products.

(ii) by deleting Section B;

(b) in Part II —

(i) in paragraph 1—

(A) by deleting subparagraph (c);

(B) by deleting subparagraph (e);

(C) by deleting subparagraph (f);

- (D) by deleting subparagraph (g);
- (E) by deleting subparagraph (i);
- (F) by deleting subparagraph (l);
- (G) by deleting subparagraph (m);
- (ii) by deleting paragraph 2 and substituting therefor the following new paragraph—
2. Insurance and reinsurance premium.
- (iii) by deleting paragraph 17;
- (iv) by deleting paragraph 18;
- (v) by deleting paragraph 21;
- (vi) by deleting paragraph 26;
- (vii) by deleting paragraph 27;
- (viii) by inserting the following proviso in paragraph 34—
Provided that this paragraph shall not apply to a special operating framework arrangement entered into by the Government on or after the 1st of July, 2017.
- (ix) by inserting the following new paragraph immediately after paragraph 34—
35. Transfer of a business as a going concern.

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

Amendment of the
Second Schedule
to Cap. 476.

- (a) by deleting paragraph 13A;
- (b) by deleting paragraph 16;
- (c) by deleting paragraph 19;
- (d) by deleting paragraph 21;
- (e) by deleting paragraph 26;
- (f) by deleting paragraph 29;
- (g) by deleting paragraph 30;
- (h) by deleting paragraph 31;
- (i) by deleting paragraph 32;

(j) by deleting paragraph 33;

(k) by deleting paragraph 35.

PART IV—EXCISE DUTY

36. Section 2 of the Excise Duty Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 2 of Cap. 472.

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

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

Amendment of section 5 of Cap. 472.

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

(d) excisable services offered in Kenya by a non-resident through a digital platform;

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (c)—

(d) under subsection (1)(d), shall be payable by the non-resident person offering the service.

38. Section 7 of the Excise Duty Act is amended in subsection (2), by inserting the word “spirit” immediately after the word “beer”.

Amendment of section 7 of Cap. 472.

39. The Excise Duty Act is amended by repealing section 14.

Repeal of section 14 of Cap. 472.

40. Section 17 of the Excise Duty Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 17 of Cap. 472.

(1) Subject to subsection (2), the Commissioner shall, within fourteen days of receipt of all the required valid documents, consider an application made under section 16 and grant or refuse to grant a licence to the applicant.

41. Section 36 of the Excise Duty Act is amended in subsection (1A), by deleting the words “twenty-four hours” and substituting therefor the words “five working days”.

Amendment of section 36 of Cap. 472.

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

Amendment of the
First Schedule to
Cap. 472.

(a) in Part I—

(i) in the second table of paragraph 1—

(A) by deleting the description “Motorcycles of tariff 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles” and the corresponding rate of excise duty and substituting therefor the following new description and corresponding rate of excise duty—

<i>Description</i>	<i>Rate of Excise Duty</i>
Motorcycles of tariff 87.11.60.00 other than motorcycle ambulances and locally assembled motorcycles	10% of the value or shs. 12,952.83 per unit, whichever is higher

(B) in the description of “Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90” by inserting the words “excluding imported cartons, boxes and cases, of corrugated paper or paperboard, folding cartons, skillets labels of paper and paper board, originating from East African Community Partner States that meet the East African Community Rules of Origin” at the end thereof;

(C) in the description of “Imported cement”, by inserting the words “excluding clinkers”;

(D) in the description of “Imported eggs of tariff heading 04.07”, by inserting the words “excluding eggs originating from East African Community Partner States that meet the East African Community Rules of Origin” at the end thereof;

- (E) in the description of “Imported onions of tariff heading 07.03”, by inserting the words “excluding onions originating from East African Community Partner States that meet the East African Community Rules of Origin” at the end thereof;
- (F) in the description of “Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00”, by inserting the words “excluding potatoes, potato crisps and potato chips originating from East African Community Partner States that meet the East African Community Rules of Origin” at the end thereof;
- (G) in the description of “Articles of plastic of tariff heading 3923.30.00 and 3923.90.90”, by deleting the word “imported”;
- (H) in the description “Imported sugar confectionary of tariff heading 17.04”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “Shs. 257.55 per kg”
- (I) in the description of “Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “shs. 22.50 per centilitre of pure alcohol”;
- (J) in the description of “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “shs. 22.50 per centilitre of pure alcohol”;

- (K) in the description of “Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “shs. 16 per centilitre of pure alcohol”;
- (L) in the description of “Cigarette with filters (hinge lid and soft cap)”, by deleting the corresponding rate of Excise Duty and substituting therefor the rate of Excise Duty “Shs. 4,100 per mille”;
- (M) in the description “Cigarettes without filters (plain cigarettes)”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “shs. 4,100 per mille”;
- (N) in the description of “Products containing nicotine or 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”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “shs. 2,000 per kg”;
- (O) in the description of “Liquid nicotine for electronic cigarettes”, by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty “shs. 100 per millilitre”
- (P) by inserting the following new description and corresponding rate of excise duty at the end thereof—

<i>Description</i>	<i>Rate of Excise Duty</i>
Coal	5% of the value or KSh. 27,000 per metric ton whichever is higher
Vegetable oils of tariff codes 1511,1512,1515 and 1517.	25%

(Q) in the third table of paragraph 1 of Part I, by deleting the words “Imported Emulsion - styrene Acrylic” appearing in the second column and substituting therefor the words “Styrene-acrylonitrile (SAN) copolymers”;

(ii) by deleting paragraph 2;

(b) in Part II—

(i) in paragraph 1, by deleting the words “fifteen percent” and substituting therefor the words “twenty percent”;

(ii) in paragraph 2, by deleting the words “fifteen percent” and substituting therefor the words “twenty percent”;

(iii) in paragraph 3, by deleting the words “fifteen percent” and substituting therefor the words “twenty percent”;

(iv) in paragraph 4A, by deleting the words “twelve-point five percent” and substituting therefor the words “twenty percent”;

(v) in paragraph 4B, by deleting the words “twelve-point five percent” and substituting therefor the words “twenty percent”;

(vi) in paragraph 4C, by deleting the words “twelve-point five percent” and substituting therefor the words “twenty percent”;

(vii) in paragraph 4D, by deleting the words “twelve-point five percent” and substituting therefor the words “twenty percent”;

(viii) in paragraph 8, by inserting the words “the internet, social media” immediately after the words “advertisement on”.

43. The Second Schedule to the Excise Duty Act is amended in Part A—

Amendment of
the Second
Schedule to
Cap. 472.

(a) in paragraph 11, by inserting the words “National Intelligence Service” immediately after the words “Kenya Defence Forces”;

- (b) in paragraph 16, by inserting the following new definition—

“original equipment manufacturer” means a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies.

PART V—MISCELLANEOUS FEES AND LEVIES

44. The Miscellaneous Fees and Levies Act is amended in section 7 –

Amendment of section 7 of Cap. 469C.

- (a) by deleting the words “two point five” appearing in subsection (2) and substituting therefor the word “three”;
- (b) by deleting subsection (7) and substituting therefor the following new sub-section—

(7) Ten percent of monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation, while twenty percent will be used for revenue enforcement initiatives or programmes.

45. The Miscellaneous Fees and Levies Act is amended by inserting the following new section immediately after section 7A—

Insertion of new section 7B in Cap. 469C.

Eco levy.

7B. (1) There shall be paid a levy to be known as the eco levy on the goods specified in the Fourth Schedule manufactured in Kenya or imported into Kenya.

(2) The eco levy shall be paid to the Commissioner at the rate specified in the Fourth Schedule—

- (a) in the case of locally manufactured goods, by the manufacturer at the time the goods are removed from the excise stock room; and
- (b) in the case of imported goods, by the importer at the time of entering the goods into the country.

(3) The purpose of the levy shall be to ensure that the manufacturers and importers of the goods specified in the Fourth Schedule pay for the negative environmental impacts of the goods.

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

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

Amendment of the Second Schedule to Cap. 469C.

(a) in Part A—

(i) in paragraph (xxv), by inserting the words “National Intelligence Service” immediately after the words “Kenya Defence Forces”;

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

(xxx) inputs, raw materials and machinery used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health;

(b) in Part B—

(i) in paragraph (ix), by inserting the words “National Intelligence Service” immediately after the words “Kenya Defence Forces”;

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

(xvii) inputs, raw materials and machinery used in the manufacture of mosquito repellents on recommendation by the Cabinet Secretary responsible for matters relating to health.

47. The Miscellaneous Fees and Levies Act is amended by deleting the Third Schedule and substituting therefor the following new Schedule—

Amendment of the Third Schedule to Cap. 469C.

THIRD SCHEDULE*(s. 7A (1), (2))***GOODS SUBJECT TO EXPORT AND INVESTMENT PROMOTION LEVY**

1. Articles of leather of Chapter 42, 20% of customs value.
2. Imported footwear of Chapter 64, 20% of the customs value.

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export and investment promotion levy rate</i>
2207.20.00	Denatured ethyl alcohol and other spirits	3% of the customs value
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3% of the customs value
2208.60.00	Vodka	3% of the customs value
2523.10.00	Cement clinker	10% of the customs value
3401.30.00	Organic surface-active products and preparations for washing the skin.	3% of the customs value
4804.11.00	Kraft liner	3% of the customs value
4804.29.00	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03 – Other	3% of the customs value
0401.20.00	Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6%	3% of the customs value

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export and investment promotion levy rate</i>
69.10	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures	3% of the customs value
7207.11.00	Billets	10% of the customs value
7321.12.00	Cooking stoves for liquid fuel	3% of the customs value
8711.10.90	Motorcycles with internal combustion engine not exceeding 50cc	3% of the customs value
8711.20.10	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3% of the customs value
8711.20.90	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3% of the customs value
8711.30.90	Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc	3% of the customs value
8711.40.90	Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc	3% of the customs value

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export and investment promotion levy rate</i>
8711.50.90	Motorcycles with internal combustion engine exceeding 800cc	3% of the customs value
8711.60.00	Electric motorcycles	3% of the customs value
9403.10.00	Metal furniture of a kind used in offices	3% of the customs value
9403.20.00	Other metal furniture	3% of the customs value
9403.30.00	Wooden furniture for office	3% of the customs value
9403.40.00	Wooden furniture for kitchen	3% of the customs value
9403.50.00	Wooden furniture for bedrooms	3% of the customs value
9403.60.00	Other wooden furniture	3% of the customs value
9403.70.00	Furniture of plastics	3% of the customs value
9403.82.00	Furniture of bamboo	3% of the customs value
9403.83.00	Furniture of rattan	3% of the customs value
9403.89.00	Furniture of cane, osier or similar material	3% of the customs value
9403.91.00	Parts of furniture, of wood	3% of the customs value
9403.99.00	Parts of furniture, not of wood	3% of the customs value
9404.10.00	Mattress supports	3% of the customs value

48. The Miscellaneous Fees and Levies Act is amended by inserting the following new Schedule immediately after the Third Schedule—

Insertion of new Fourth Schedule to Cap. 469C.

FOURTH SCHEDULE

(s. 7B(2))

GOODS SUBJECT TO ECO LEVY

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
1. Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other.	8472.90.00	98 per unit
2. Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers – incorporating a printing device.	8470.21.00	225 per unit
3. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – Portable automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display.	8471.30.00	225 per unit
4. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined.	8471.41.00	225 per unit
5. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing	8471.49.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other, presented in the form of systems.		
6. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – processing units other than those of sub-heading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units.	8471.50.00	225 per unit
7. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – input or output units, whether or not containing storage units in the same housing.	8471.60.00	225 per unit
8. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other units of automatic data processing machines.	8471.80.00	225 per unit
9. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other.	8471.90.00	225 per unit
10. Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-	8472.90.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other.		
11. arts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.70 to 84.72. Parts and accessories of automatic data processing machines and units thereof – parts and accessories of the machines of heading 84.71.	8473.30.00	98 per unit
12. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – line telephone sets with cordless handsets.	8517.11.00	225 Per Unit
13. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – smartphones.	8517.13.00	225 per unit
14. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice,	8517.14.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – Other telephones for cellular networks or for other wireless networks.		
15. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other.	8517.18.00	225 per unit
16. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations.	8517.61.00	225 per unit
17. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice,	8517.62.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations: machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.		
18. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations: other.	8517.69.00	225 per unit
19. Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets – microphones and stands therefor	8518.10.00	98 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
20. Sound recording or reproducing apparatus – using magnetic, optical or semiconductor media.	8519.81.00	98 per unit
21. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus for radio-broadcasting or television.	8525.50.00	98 per unit
22. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus incorporating reception apparatus.	8525.60.00	98 per unit
23. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – high-speed goods as specified in Subheading Note 1 to this Chapter.	8525.81.00	98 per unit
24. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – Television cameras, digital cameras and video camera recorders: Other, radiation-hardened or radiation-tolerant goods as specified in Subheading Note 2 to this Chapter.	8525.82.00	98 per unit
25. Transmission apparatus for radio-broadcasting or television,	8525.83.00	98 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – television cameras, digital cameras and video camera recorders: other, night vision goods as specified in Subheading Note 3 to this Chapter.		
26. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – television cameras, digital cameras and video camera recorders: other.	8525.89.00	98 per unit
27. Radar apparatus, radio navigational aid apparatus and radio remote control apparatus – other: radio navigational aid apparatus.	8526.91.00	98 per unit
28. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers capable of operating without an external source of power: pocket-size radio cassette-players.	8527.12.00	225 per unit
29. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers capable of operating without an external source of power: other apparatus combined with sound recording or reproducing apparatus	8527.13.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
30. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers capable of operating without an external source of power: other.	8527.19.00	225 per unit
31. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles: combined with sound recording or reproducing apparatus.	8527.21.00	225 Per Unit
32. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles: other.	8527.29.00	225 per unit
33. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other: combined with sound recording or reproducing apparatus.	8527.91.00	225 per unit
34. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other: not combined with sound recording or reproducing apparatus but combined with a clock.	8527.92.00	225 per unit
35. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other: other.	8527.99.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
36. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: not designed to incorporate a video display or screen.	8528.71.00	1275 per unit
37. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, colour; unassembled.	8528.72.10	1275 per unit
38. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, monochrome; unassembled.	8528.73.10	1275 per unit
39. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording	8528.73.90	1275 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
or reproducing apparatus: other, monochrome; other.		
40. Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: colour.	8540.11.00	1800 per unit
41. Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: monochrome.	8540.12.00	1800 per unit
42. Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes) – television camera tubes, image converter and other photocathode tubes.	8540.20.00	1800 per unit
43. Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers).	9030.40.00	98 per unit
44. Rubber tyres of Chapter 40		1000 per unit
45. Diapers of Chapter 96		150 per kg

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
46. Batteries or dry cells of Chapter 85		750 per kg
47. Plastic packing materials of Chapter 39		150 per kg

PART VI—TAX PROCEDURES

49. Section 19 of the Tax Procedures Act is amended in subsection (3), by inserting the words “established by Regulations prescribed under this Act” immediately after the words “Tax Agents Committee”.

Amendment of section 19 of Cap. 469B.

50. Section 22 of the Tax Procedures Act is amended in subsection (3), by inserting the words “on the recommendation of the Tax Agents Committee established by Regulations prescribed under this Act” immediately after the words “Commissioner shall” appearing in the opening sentence.

Amendment of section 22 of Cap. 469B.

51. Section 23A of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 23A of Cap. 469B.

(2A) An electronic tax invoice issued under subsection (2) shall contain the following information—

- (a) the words “TAX INVOICE”;
- (b) the name, address and PIN of the supplier;
- (c) the name, address and PIN if any, of the purchaser;
- (d) the serial number of the tax invoice;
- (e) the date and time which the tax invoice was issued and the date and time which the supply was made, if it is different from the date the tax invoice was issued;
- (f) the description of the supply including quantity of the goods or the type of services;
- (g) the details of any discount allowed at the time of supply;
- (h) the consideration for the supply;
- (i) the tax rate charged and total tax amount of tax charged; and
- (j) any other prescribed information.

52. The Tax Procedure Act is amended by inserting the following new section immediately after section 37D—

Insertion of new section into Cap.469B.

Relief because of doubt or difficulty in recovery of tax.

37E (1) This section applies where the Commissioner determines that—

- (a) it may be impossible to recover an unpaid tax;
- (b) there is undue difficulty or expense in the recovery of an unpaid tax;
- (c) there is hardship or inequity in relation to the recovery of an unpaid tax; or
- (d) there is any other reason occasioning inability to recover the unpaid tax.

(2) Despite the provision of any tax law, the Commissioner may, with the prior written approval of the Cabinet Secretary, refrain from assessing or recovering an unpaid tax and the liability in relation to the tax shall be deemed to be extinguished or the tax shall be deemed to be abandoned or remitted, as the case may be.

(3) In any case referred to the Cabinet Secretary under subsection (1) and where appropriate, the Cabinet Secretary may direct the Commissioner in writing—

- (a) to take such action as the Cabinet Secretary may deem fit; or
- (b) to obtain the directions of the court in relation to the case.

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

(5) The Cabinet Secretary shall submit to the National Assembly the report under subsection on or before 30th March of the succeeding year.

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

Amendment of section 42 of Cap. 469B.

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

(2A) Subject to subsection (7), the notice issued under subsection (2) shall be valid for a period of one year.

(b) in subsection (13), by deleting the words “taxpayer who without reasonable cause fails to comply with a notice” and substituting therefor the words “person who without reasonable cause fails to comply with a notice issued under subsection (2)”;

(c) in subsection (14), by deleting paragraph (e).

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

Amendment of section 42A of Cap. 469B.

(a) in subsection (1), by deleting the proviso;

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

(4C) A person who is required under this section to withhold tax, and without reasonable cause—

(a) fails to withhold the whole amount of the tax which should have been withheld; or

(b) fails to remit the amount of the withheld tax to the Commissioner by the fifth working day after the deduction was made,

shall be liable to a penalty of ten per cent of the amount not withheld or remitted.

(c) by deleting subsection (4D).

55. Section 47 of the Tax Procedures Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 47 of Cap. 469B.

(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities; or for a refund of the overpaid tax—

- (a) in the case of income tax, within five years from the date on which the tax was overpaid; or
- (b) in the case of any other tax, within six months from the date on which the tax was overpaid.

56. Section 51 of the Tax Procedures Act is amended—

Amendment of section 51 of Cap. 469B.

- (a) in subsection (4A), by deleting the words “the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged” and substituting therefor the new words “the objection shall be deemed disallowed”;
- (b) in subsection (11), by deleting the words “sixty days” and substituting therefor the words “ninety days”.

57. Section 59A of the Tax Procedures Act is amended—

Amendment of section 59A of Cap.469B

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

(1A) The Commissioner may, by notice in writing, require a person to integrate the electronic tax system authorised under section 75 to the system referred in subsection (1) for the purposes of submission of electronic documents including detailed transactional data in a prescribed manner.

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

(5) A person who fails to comply with the notice referred to in subsection (1A) commits an offence and shall be liable, on conviction, to a penalty not exceeding two million shillings for every month or part thereof that the failure continues.

(6) A person who fails to comply with the notice referred to in subsection (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding two million shillings for every month or part thereof that the failure continues.

58. The Tax Procedures Act is amended by repealing section 77 and replacing it with the following new section immediately section 77—

Repeal and replacement of section 77 to Cap 469B.

Computation of time. 77. In computing the period for—

- (a) submitting or lodging a tax return, application, notice, or other document;
- (b) the payment of a tax; or
- (c) taking any other action under a tax law,

the period shall not include Saturdays, Sundays or public holidays.

59. Section 83 of the Tax Procedures Act is amended— Amendment of section 83 of Cap. 469B.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—
“Penalties for late submission and failure to submit returns.”;
- (b) by inserting the following new subsection immediately after subsection (1)—

(1A) An export processing zone enterprise that fails to submit a return as required under paragraph 4 of the Eleventh Schedule to the Income Tax Act shall be liable to a penalty of twenty thousand shillings per month for each month or part thereof that the failure continues.

Cap. 470.

60. The First Schedule to the Tax Procedures Act is amended by inserting the following new paragraph immediately after paragraph 15— Amendment of the First Schedule to Cap. 469B.

(16) Registration of an employee working remotely outside Kenya for an employer in Kenya.

PART VII—MISCELLANEOUS

61. The Affordable Housing Act is amended by deleting section 54. No.2 of 2024

62. Section 5B of the Industrial Training Act is amended in subsection (2) by inserting the words “,Tax Procedures Act (Cap.469B)” immediately before the word “and”. Cap. 237

63. Section 51(2) of the Data Protection Act is amended by inserting the following new paragraph immediately after paragraph (b)— Amendment of section 52 Cap. 411C.

- (ba) disclosure is necessary for the assessment, enforcement or collection of any tax or duty under a written tax law.

64. Section 194 of the Public Finance Management Act is amended—

Amendment of section 194 of Cap. 412A

- (a) in subsection (1) by inserting the following new paragraph immediately after paragraph (g)-
 - (h) prescribe a framework for implementation of accrual accounting in Government; and
 - (i) prescribe a risk management framework.
- (b) by inserting the following new subsection immediately after subsection (5)-

(6) Without prejudice to the generality of subsection (1) (h), the framework for implementation of accrual accounting shall provide for a three-year transition period from the date of commencement of this Act.

65. The First Schedule to the Kenya Revenue Authority Act is amended in Part II by deleting paragraph 4.

Amendment of the First Schedule to Cap. 469.

MEMORANDUM OF OBJECTS AND REASONS

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

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

The Bill also amends other pieces of legislation relating to fees, levies and management of public funds as set out below:

The Affordable Housing Act (No.4 of 2024)

The Bill also amends section 54 of the **Affordable Housing Act**, to clean up the provision following the advisory given by the Attorney General.

The Industrial Training Act (Cap. 237)

The Bill amends the Industrial Training Act to extend the provisions of the Tax Procedures Act, regarding collection of the training levy.

The Data Protection Act (Cap 411C)

The Bill also seeks to amend section 51 of the **Data Protection Act (Cap. 411C)** to provide for the exemption of the processing of personal data that relates to the assessment, enforcement or collection of any tax or duty from the provisions of the Data Protection Act.

The Public Finance Management Act (Cap.412)

The Bill amends the **Public Finance Management Act** to make provision for implementation of accrual accounting in Government.

The Kenya Revenue Authority Act (Cap.469)

The Bill further proposes to amend the First Schedule to the Kenya Revenue Authority Act to remove the mandate of collecting charges and fees payable under the Civil Aviation Act from the Kenya Revenue Authority following the transfer of the same to the Kenya Civil Aviation Authority.

Dated the 9th May, 2024.

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

Section 2 of Cap.470 it is proposed to amend-

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

- (a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands;
- (b) sponsorship where a brand owner pays a content creator for content creation and promotion;
- (c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed;
- (d) subscription services where the audience pays a periodic fee to access the content and support the content creator;
- (e) offering for use a logo, brand or catchphrase associated with the content creator merchandise sales eBooks, course or software;
- (f) membership programmes for exclusive content including early access;
- (g) licensing the content including photographs, music or other businesses or individuals for use in the user’s own projects; or
- (h) a content creator earns a commission or fees from crowd funding.

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

“pension fund” means any fund for the payment of pensions or other similar benefits to employees on retirement, or to the dependants of employees on the death of such employees and "registered pension fund" means one which has been registered with the Commissioner in such manner as may be prescribed;

“provident fund” includes any fund or scheme for the payment of lump sums and other similar benefits, to employees when they leave employment or to the dependants of employees on the death of those employees but does not include any national provident fund or national

social security fund established by the Government and "registered provident fund" means one which has been registered with the Commissioner in such manner as may be prescribed;

“wife's employment income” means gains or profits from employment arising from a contract of service which is chargeable to tax under section 3(2)(a)(ii) and pensions, lump sums and withdrawals from a registered fund, public pension scheme or registered individual retirement fund which are chargeable to tax under section 3(2)(c), of a woman living with her husband, excepting income derived by her as a trustee or manager of a settlement created by her husband the income of which is deemed under section 25 or 26 to be the income of the settler or income derived by her as an employee of –

- (a) a partnership in which her husband is a partner;
- (b) her husband; or
- (c) a company, the voting power of which is held to the extent of twelve and one-half per cent or more at any time during the year of income by her or by her husband or by both jointly, either directly or through nominees;

"wife's professional income" means the gains or profits of a married woman living with her husband derived from the exercise by her (but not as a partner of a partnership in which her husband is a partner) of one of the professions specified in the Fifth Schedule being also a person who has the qualifications specified in that Schedule relevant to that profession;

wife's professional income rate" means the wife's professional income rate specified in paragraph 1A of Head B of the Third Schedule;

"wife's self-employment income" means gains or profits arising from a business of a married woman living with her husband which are chargeable to tax under section 3(2)(a)(i) and any income chargeable under section 3(2)(a)(iii) or section 3(2)(b), but does not include any income derived from the provision of goods or services by her to a business, partnership or a company owned by or the voting power of which is held to the extent of twelve and one-half per cent, or more at any one time during the year of income by her or her husband either directly or through nominee;

"wife's self-employment income rate" means the wife's self-employment income rate specified in paragraph 1A of Head B of the Third Schedule;

“related person” means, in the case of two persons where a person who

participates directly or indirectly in the management, control or capital of the business of another person;

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

- (a) any copyright of a literary, artistic or scientific work; or
- (b) any cinematograph film, including film or tape for radio or television broadcasting; or
- (c) any patent, trademark, design or model, plan, formula or process; or
- (d) any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty;

Section 3 of Cap 470 it is proposed to amend-

3. (3) For the purposes of this section—

- (a) "person" does not include a partnership;
- (b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend;
 - (ba) "digital marketplace" means an online or electronic platform which enables users to sell or provide services, goods or other property to other users;
- (c) for the purposes of subsection (2)(g) and section 15(5A) —
 - (i) "immovable property" means a mining right, an interest in a petroleum agreement, mining information or petroleum information;
 - (ii) "net gain" in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest; and
 - (iii) the terms "consideration", "cost", "disposal", "interest in a person", "mining information", "mining right", "person", "petroleum agreement", and "petroleum information" have the meaning assigned to them in the Ninth Schedule.

Section 4A of Cap 470, it is proposed to amend-

Income from businesses where foreign exchange loss or gain is realized

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

Provided that—

- (i) no foreign exchange gain or loss shall be taken into account to the extent that taking that foreign exchange gain or loss into account would duplicate the amounts of gain or loss accrued in any prior year of income; and
- (ii) the foreign exchange loss shall be deferred (and not taken into account)—
 - (a) where a foreign exchange loss is realized by a company whose gross interest paid or payable to related persons and third parties exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any financial year; or
 - (b) to the extent of any foreign exchange gain that would be realized if all foreign currency assets and liabilities of the business were disposed of or satisfied on the last day of the year of income and any foreign exchange loss so deferred shall be deemed realized in the next succeeding year of income.

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

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

"a" is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or liability in the transaction in which the foreign exchange gain or loss is realized; r1 is the applicable rate of exchange for that foreign currency ("a") at the date of the transaction in which the foreign exchange gain or loss is realized;

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

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

(4) For the purposes of this section—

"control" deleted by Act No. 8 of 2021, s. 4.;

"company" does not include a bank or a financial institution licensed under the Banking Act (Cap. 488), or non-deposit taking microfinance businesses under the Microfinance Act (Cap. 493C), entities licensed under the Hire Purchase Act (Cap. 507) and persons exempt under section 16(2)(j)(iii);

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

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

Section 5 of Cap.470 it is proposed to amend-

5. Income from employment, etc.

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

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

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

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

Provided that—

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

Provided that—

- (i) where the contract is for a specified term, any amount received as compensation on the termination of the contract shall be deemed to have accrued evenly over the unexpired period of the contract;
- (ii) where the contract is for an unspecified term and provides for compensation on the termination thereof, the compensation shall be deemed to have accrued in the period immediately following the termination at a rate equal to the rate per

annum of the gains or profits from the contract received immediately prior to termination;

- (iii) where the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination of the contract shall be deemed to have accrued evenly in the three years immediately following such termination;
- (d) any balancing charge under Part II of the Second Schedule;
- (e) the value of premises provided by an employer for occupation by his employee for residential purposes;
- (f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

Provided that this paragraph shall not apply where such an amount

is paid—

- (i) to a registered or unregistered pension scheme, pension fund, or individual retirement fund; or
- (ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.

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

the difference between the interest that would have been payable on

the loan received if calculated at the prescribed rate of interest and

the actual interest paid on the loan; and zero:

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

- (b) For the purposes of this subsection—

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

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

"prescribed rate of interest" means the following:

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

"relative of a director or an employee" means-

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

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

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

Provided that—

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

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

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

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

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

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

Provided that for the purposes of this paragraph—

- (i) "plantation" shall not include a forest or timber plantation; and
- (ii) "agricultural employee" shall not include a director other than a whole time service director;

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

Provided that—

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

Provided that—

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

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

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

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

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

Provided that—

- (i) this paragraph shall cease to apply on the 1st July, 2015;
 - (ii) the period of vacation shall not exceed seven days; and
 - (iii) the term "employee" shall include the immediate family members of the employee;
- (b) in the case of a full-time employee or his beneficiaries (which expression includes a whole time service director, or a director who controls more than five per cent of the share capital or voting power of a company) the value of any medical services provided by the employer or medical insurance provided by an insurance provider approved by the Commissioner of Insurance and paid for by the employer on behalf of a full-time employee or his beneficiaries:

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

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

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

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

- (d) educational fees of employee's dependants or relatives disallowed under section 16(2(a)(iv) which have been taxed in the hands of the employer;
- (e) fringe benefits subject to tax under section 12B;
- (f) the value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of forty-eight thousand shillings per year per employee subject to such conditions as the Commissioner may specify;
- (g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that—

- (a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;
- (b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.
- (h) For the purposes of this subsection—
 - (i) "beneficiaries" means the full time employee's spouse and not more than four children whose age shall not exceed twenty-one years; and
 - (ii) "low income employee" deleted by Act No. 16 of 2014, s. 5(c).

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

Provided that—

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

- (b) the Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.
- (6) For the purposes of paragraph (a) of the proviso to subsection (5)—
 - (a) the benefits chargeable shall be deemed to have accrued on the date the employee exercises the option;
 - (b) "offer price" means the price at which an employer's shares are initially offered to an employee under an employee share ownership plan;
 - (c) "market value", in relation to a share means—
 - (i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the shares were granted by the employer; or
 - (ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, which shall be agreed upon with the Commissioner before the grant of the options;
 - (d) "share option" means the offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for at the end of the vesting period;
 - (e) "vesting period" means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

Section 10 of Cap 470 it is proposed to amend

10. Income from management or professional fees, royalties, interest and Rents

- (1) For the purposes of this Act, where a resident person or a person having a permanent establishment in Kenya makes a payment to any other person in respect of—
 - (a) a management or professional fee or training fee;
 - (b) a royalty or natural resource income;
 - (c) interest and deemed interest;
 - (d) the use of property;

- (e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (f) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (e) of this section;
- (g) winnings;
- (h) deleted by Act No. 16 of 2014, s. 6(b);
- (i) deleted by Act No. 23 of 2019, s. 6(a);
- (j) an insurance or reinsurance premium.
- (k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services;

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

Provided that—

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

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

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

12E. Digital service tax

(1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in

Kenya through a business carried out over the internet or an electronic network including through a digital marketplace:

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

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

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

Section 15 of Cap 470 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;

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- (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) Deleted by Act No. 8 of 2020, s. 5;
 - (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, 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 research as is mentioned in subparagraph (iii) of this paragraph;
- (o) any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees throughout Kenya by the provisions of any written law;
- (p) any expenditure on advertising in connexion with any business to the extent that the Commissioner considers just and reasonable; and for this purpose "expenditure on advertising" includes any expenditure intended to advertise or promote, whether directly or indirectly, the sale of the goods or services provided by that business;
- (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;
- (s) Deleted by Act No. 8 of 2020, s. 5;
- (ss) Deleted by Act No. 8 of 2020, s. 5;
- (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) Deleted by Act No. 8 of 2020, s. 5.
- (v) Deleted by Act No. 8 of 2020, s. 5.
- (w) any donation in that year of income to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Cabinet Secretary responsible for matters relating to finance;
- (x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Cabinet Secretary, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure;
- (y) deleted by Act No. 22 of 2022, s. 8.
- (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) deleted by Act No. 2 of 2020, Sch.

(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 five financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:

Provided that—

(i) if any person occupies any premises for residential purposes for part only of a year of income the deduction under this paragraph shall be reduced accordingly; and

(ii) no person may claim a deduction under this paragraph in respect of more than one residence;

(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 succeeding years of income.

(4A) Deleted by Act No. 22 of 2022, s. 8 (b).

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

(5) (a) A person to whom this subsection applies who has succeeded to any business, or to a share therein, either as a beneficiary under the will or on the intestacy of a deceased person who carried on, solely or in partnership, that business shall be entitled to a deduction in the 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—

$A \times B/C$

Where—

A is the amount of the net gain;

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

C is the total value of the interest.

(6) For the purposes of this section—

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

- (i) any scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;
- (ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class;

(b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research.

(7) Notwithstanding anything contained in this Act—

(a) the gains or profits of a person derived from any one of the 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;

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- (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 18 of Cap 470 which it is proposed to amend-

18. Ascertainment of gains or profits of business in relation to certain nonresident persons

(1) Where a non-resident person carries on any business in Kenya which consists of manufacturing, growing, mining, or producing, or harvesting, whether from the land or from the water, any product or produce, and sells outside, or for delivery outside Kenya, such product or produce, whether or not the contract of sale is made within or without Kenya, or utilizes that product or produce in any business carried on by him outside Kenya, then the gains or profit from such business carried on in Kenya shall be deemed to be income derived from Kenya and to be gains or profits such amount as would have accrued if such product or produce had been sold wholesale to the best advantage.

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

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

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

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

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

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

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

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

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

(7) Deleted by Act No. 16 of 2014, s. 9(d).

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

- (a) issue guidelines for the determination of the arm's length value of a transaction for purposes of this section; or
- (b) specify such requirements as he may consider necessary for the better carrying out of the provisions of this section.

Section 21 of Cap 470 it is proposed to amend—

21. Members' clubs and trade associations

(1) A body of persons which carries on a members' club shall be deemed to be carrying on a business and the gross receipts on revenue account (including entrance fees and subscriptions) shall be deemed to be income from a business: Provided that where not less than three-quarters of such gross receipts, other than gross investment receipts, are received

from the members of such club, such body of persons shall not be deemed to be carrying on a business and no part of such gross receipts, other than gross investment receipts, shall be income.

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

(3) In this section—

"member" means—

- (a) in relation to a members' club, a person who, while he is a member, is entitled to an interest in all the assets of such club in the event of its liquidation;
- (b) in relation to a trade association, a person who is entitled to vote at a general meeting of such trade association;

"members' club" means a club or similar institution all the assets of which are owned by or held in trust for the members thereof;

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

Section 21 of cap 470 it is proposed to amend—

21. Members' clubs and trade associations

(1) A body of persons which carries on a members' club shall be deemed to be carrying on a business and the gross receipts on revenue account (including entrance fees and subscriptions) shall be deemed to be income from a business: Provided that where not less than three-quarters of such gross receipts, other than gross investment receipts, are received from the members of such club, such body of persons shall not be deemed to be carrying on a business and no part of such gross receipts, other than gross investment receipts, shall be income.

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

(3) In this section—

"member" means—

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

(b) in relation to a trade association, a person who is entitled to vote at a general meeting of such trade association;

"members' club" means a club or similar institution all the assets of which are owned by or held in trust for the members thereof;

"gross investment receipts" means gross receipts in respect of interest,

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

Section 22 of Cap 470 it is proposed to amend-

22. Purchased annuities other than retirement annuities, etc.

(1) Notwithstanding section 3(2)(c) of this Act, where any payment of an annuity to which this section applies is made, that portion of the payment which as represents the capital element thereof, as ascertained under subsection (2) of this section, shall not be deemed to be income.

(2) For the purpose of this section—

(a) an annuity includes any amount payable on a periodic basis, whether payable at intervals longer or shorter than a year;

(b) the portion of each payment of an annuity to which this section applies which represents the capital element thereof shall be that proportion of each such payment which the consideration or purchase price for the contract bears to the total payments—

(i) to be made under the contract, in the case of a contract for a term of years certain; or

(ii) expected at the date of the contract to be made under the contract, in the case of a contract under which the continuation of such payments depends in whole or in part upon the survival of an individual;

(c) where the continuation of such payments depends in whole or in part upon the survival of an individual—

- (i) if any table of mortality has been used as the basis for determining the consideration or purchase price for the contract, that table shall be used in computing the payments expected to be made under the contract, calculations being based upon complete expectation of life;
 - (ii) if no table of mortality has been used as the basis for determining the consideration or purchase price for the contract, such table of mortality as the Commissioner considers appropriate to the case shall be used in computing the payments expected to be made under the contract, calculations being based on complete expectation of life;
 - (iii) the age of that individual at the date of the contract shall be determined by subtracting the calendar year of his birth from the calendar year in which that date falls;
- (d) where the continuation of payments depends upon the survival of an individual and where, in the event of the death of such individual before such payments aggregate a stated sum, the contract provides that the unpaid balance of the stated sum shall be paid either in a lump sum or by instalments, then the contract shall be deemed for the purpose of determining the expected term thereof to provide for the continuance of such payments thereunder for a minimum term certain equal to the nearest complete number of years required to complete the payment of the stated sum;
- (e) where such payments commence on the expiry of a term of years or on the death of any individual, then the consideration or purchase price for the contract shall be taken to be—
- (i) the lump sum, if any, which the individual entitled to those payments is entitled to receive in lieu thereof; or
 - (ii) if there is no lump sum, the sum ascertainable from the contract as the present value of the annuity at the date those payments commence; or
 - (iii) if there is no such sum, the present value of those payments computed as at the date the payments commence on the basis of a rate of interest of four per cent per annum and, where the payments depend upon the survival of an individual, the probabilities of survival of that individual shall be computed according to the table of mortality referred to in paragraph (c).

(3) This section shall apply to annuities, whenever purchased or commencing, payable under a contract but shall not apply—

- (a) to any annuity payable under a registered annuity contract or a registered trust scheme; or
- (b) to any annuity purchased under any direction in a will, or purchased to provide for an annuity payable under a will or settlement out of income of property disposed of by such will or settlement; or
- (c) to any annuity purchased under any pension scheme or pension fund; or
- (d) to any annuity purchased by any person in recognition of the services or past services of another person.

Section 22B of Cap 470 it is proposed to amend-

22B. Deductions in respect of registered individual retirement funds

(1) An individual who is not a member of a registered fund or a public pension scheme at any time in a year of income commencing on or after the 1st January, 1994 shall be eligible to contribute to a registered individual retirement fund up to the amount deductible under subsection (2).

(2) Notwithstanding the provisions of section 16 (2) (d) and (e), the deduction in respect of contributions of an individual to a registered individual retirement fund in a year shall be limited to the lesser of—

- (a) the sum of the contributions made by the individual or by the employer of the individual on his behalf on or before the 31st of December of the year; or
- (b) thirty per cent of pensionable income of the individual in that year; or
- (c) two hundred and forty thousand shillings (or, where the contributions are made on behalf of the individual by his employer in respect of a part year of service of the individual, twenty thousand shillings per month of service) reduced by the amount of the contributions made by the individual or by an employer on behalf of the individual to the National Social Security Fund in that year.

(3) All funds maintained by an individual in a registered individual retirement fund shall be held in one account with a qualified institution.

Section 27 of Cap.470 it is proposed to amend-

27. Accounting periods not coinciding with year of income, etc.

(1) Where any person usually makes up the accounts of his business for a period of twelve months ending on any day other than 31st December, then, for the purpose of ascertaining his total income for any year of income, the income of any such accounting period ending on such other date shall, subject to such adjustment as the Commissioner may consider appropriate, be taken to be income of the year of income in which the accounting period ends—

- (a) in the case of a person other than an individual, as regards all income charged under section 3 of this Act; and
- (b) in the case of an individual, as regards all income charged under that section other than gains or profits from any employment or services rendered.

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

(1B) A person seeking the approval of the Commissioner under subsection

(1A) shall apply in writing to the Commissioner at least six months before the date to which the accounts are intended to be made up.

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

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

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

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

Section 30A of Cap 470 which it is proposed to amend-

30A. Affordable housing relief

(1) A resident individual who satisfies the Commissioner that in a year of income that the person—

- (a) is eligible to make an application under an affordable housing scheme;
- (b) has applied and is awaiting the allocation of a house under an affordable housing scheme; and
- (c) is saving for a purchase under an affordable housing scheme approved by the Cabinet Secretary in charge of housing, shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief.

(2) A person who has been allocated a house under the affordable housing scheme and has been subject to an affordable housing relief under subsection (1) shall not be re-eligible for a subsequent relief.

Section 31 of Cap 470 it is proposed to amend-

31. Insurance relief

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

- (a) the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual's spouse or child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are 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 or a contribution made to the National Hospital Insurance Fund, shall qualify for relief;
- (vi) where a policy is surrendered before its maturity, all the relief granted to the policyholder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

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

Section 34 of Cap 470 it is proposed to amend-

S 34. Rates of tax

- (1) Subject to this section—
 - (a) tax upon the total income of an individual, other than that part of the total income comprising wife's employment income fringe benefits and the qualifying interest, shall be charged for a year of income at the individual rates for that year of income;
 - (b) tax upon that part of the total income which consists of wife's employment income, wife's professional income and wife's selfemployment income other than income arising from fringe benefits shall be charged for a year of income at the wife's employment income rate, wife's professional income rate and wife's self-employment income rate, as the case may be, for that year of income;
 - (c) tax upon that part of the total income of an individual that comprises the qualifying interest shall be charged for a year of income at the qualifying interest rate of tax for that year of income;

- (d) tax upon that part of the total income of a person that comprises the qualifying dividends shall be charged for a year of income at the qualifying dividend rate of tax for that year of income;
- (e) tax upon the total income of a person other than an individual shall be charged at the corporation rate for that year of income;
- (f) tax upon that part of total income that comprises dividends other than qualifying dividends shall be charged in a year of income at the resident withholding rate in respect of a dividend specified in the Third Schedule;
- (g) tax upon the total fringe benefits provided by an employer shall be charged at the resident corporation rate for that year of income;
- (h) tax upon gross receipts of a person chargeable to tax under section 12C shall be charged at the resident rate for that year of income;
- (i) deleted by Act No. 14 of 2015, s. 11;
- (j) tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of fifteen percent and shall not be subject to further taxation:

Provided that in the case of a firm certified by the Nairobi International Financial Centre Authority that—

- (a) invests five billion shillings in Kenya; and
- (b) the transfer of such investment is made after five years, the applicable rate shall be the rate that was prevailing at the time that the investment was made.
- (k) tax upon gross rental receipts of a person chargeable to tax under section 6A shall be charged at the resident rate specified under the Third Schedule for that year of income;
- (l) the transfer of interest in a person shall be charged as per provisions of the Ninth Schedule;
- (m) winnings;
- (n) tax upon the gross turnover of a person whose income is chargeable to tax under section 12D shall be charged at the rate specified in the Third Schedule;
- (o) tax upon the gross transaction value of services chargeable to tax under section 12E shall be charged at the rate specified in the Third Schedule.

(1A) Deleted by Act No. 16 of 2014, s. 10(b).

(1B) Deleted by Act No. 16 of 2014, s. 10(b).

(2) Tax upon the income of a non-resident person not having permanent establishment in Kenya which consists of—

- (a) a management or professional fee;
- (b) a royalty or natural resource income;
- (c) a rent, premium or similar consideration for the use or occupation of property;
- (d) a dividend;
- (e) interest;
- (f) a pension or retirement annuity;
- (g) any payment in respect of any appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (h) any payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g) of this subsection;
- (i) winnings;
- (j) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2);
- (k) deleted by Act No. 14 of 2015, s. 11(b)(i);
- (n) deleted by Act No. 23 of 2019, s. 10;
- (o) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aviation insurance;
- (p) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services; or
- (q) gains from financial derivatives.

shall be charged at the appropriate non-resident rate in force at the date of payment of such income and shall not be charged to tax under subsection (1).

(4) In this section "person" does not include a partnership

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

35. Deduction of tax from certain income

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

- (a) a management or professional fee or training fee except—
 - (i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or
 - (ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel;
- (b) a royalty or natural resource income;
- (c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock:

Provided that—

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

- (h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection,
- (i) winnings;
- (j) deleted by Act No. 38 of 2016, s. 9(a);
- (k) deleted by Act No. 16 of 2014, s. 11;
- (l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9 (2);
- (m) deleted by Act No. 23 of 2019, s. 12(i);
- (n) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft;
- (o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services);
- (p) gains from financial derivatives,
 - which is chargeable to tax, deduct therefrom tax at the appropriate non-resident withholding tax rate;

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

(2) Deleted by Act No. 8 of 1978, s. 9(1)(ii).

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

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

Provided that—

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First

Schedule or a financial institution specified in the Fourth Schedule from the resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and

- (ii) where the resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;
- (c) an annuity payment excluding that portion of the payment which represents the capital element;
- (d) a commission or fee paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons (except a commission or fee paid or credited to another insurance company);
- (e) a pension or a lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund in excess of the tax exempt amounts specified in section 8(4) and (5), or any amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund in excess of the tax exempt amount specified in section 8(5);
- (ee) surplus funds withdrawn from or paid out of registered pension or provident funds;
- (f) management or professional fee or training fee, the aggregate value of which is twenty-four thousand shillings or more in a month:

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

- (g) a royalty or natural resource income;
- (h) winnings; or
- (i) deleted by Act No. 38 of 2016, s. 9 (b)(ii);

- (j) rent, premium or similar consideration for the use or occupation of immovable property, which is chargeable to tax, deduct therefrom tax at the appropriate resident withholding tax.

(3A) Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection. (3B) Deleted by Act No. 16 of 2014, s. 11(c). (3C) Deleted by Act No. 9 of 2007, s. 23. which is income exempt from tax under this Act, or to which an order made under this Act, or to which an order made under subsection (7) or (8) applies.

(5) Where a person deducts tax under this section he shall, on or before the twentieth day of the month following the month in which the deduction was made—

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

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

(6) Deleted by Act No. 38 of 2016, s. 9(d).

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

- (a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or
- (b) fails to remit the amount of any deduction to the Commissioner on or before the twentieth day of the month following the month in which such deduction was made or ought to have been made, any Collector of Stamp Duties appointed under section 4 of the Stamp Duty Act (Cap. 480), shall not stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and Registrars of Title or Land Registrars appointed under any written law shall not register the property under any written law, until such tax has been duly accounted for:

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

(6B) Deleted by Act No. 29 of 2015, 2nd Sch.

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

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

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

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

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

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

72C. Penalty on underpayment of instalment tax

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

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

Provided that—

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

- (b) the Commissioner may remit any amount of penalty or interest in excess of one million five hundred thousand shillings with the prior written approval of the Cabinet Secretary; and
- (c) the Commissioner shall make a quarterly report to the Cabinet Secretary of all penalties and interest remitted during that quarter.

Section 133 of Cap 470 it is proposed to amend-

133. Repeals and transitional

(1) This Act shall have effect notwithstanding any Act of the Community and shall not be construed as being repealed by any Act of the Community enacted hereafter.

(2) Subject to subsection (4) of this section, the East African Income Tax Management Act (E.A. Cap. 24) shall, notwithstanding anything contained in the Treaty for East African Co-operation Act (Cap. 4), cease to have the force of law in Kenya with effect from 1st January, 1974.

(3) Subject to subsection (4) of this section, the Income Tax (Allowances and Rates) (No. 2) Act, 1971 (Act No. 29 of 1971), is repealed.

(4) Notwithstanding subsections (2) and (3) of this section, the East African Income Tax Management Act and the Income Tax (Allowances and Rates) (No. 2) Act, 1971, shall remain in force for all purposes in relation to the year of income 1973 and previous years of income and the Income Tax (Allowances and Rates) (No. 2) Act, 1971, shall be read and construed as if, when enacted, the Second Schedule thereto contained the following additional paragraph—

"3. The non-resident tax rates shall be the rates set out in paragraph 1 of the Third Schedule to this Act and for the purposes of this paragraph such rates shall be charged from 18th June, 1971."

(5) The transitional provisions contained in the Sixth Schedule shall have effect notwithstanding anything contained in this Act.

(6) Notwithstanding the repeal of the Second Schedule, the provisions of paragraph 24 E of the repealed Schedule shall continue to be in force until 31st December, 2023.

(7) Subject to the provisions of section 12 of this Act, any investment allowance on any written down values as at the date of commencement of this Act, shall be claimed on a straight-line basis.

First Schedule to Cap 470 it is proposed to amend-

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

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

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

13. The income of any registered trust scheme.

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

53. Monthly pension granted to a person who is sixty-five years of age or more.

57. The income or principal sum of a registered family trust.

57. The income of the National Housing Development Fund.

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

Provided that—

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

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

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

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

60. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services: Provided that such bonds, notes or securities shall have a maturity of at least three years.

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

Provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant.

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

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

SECOND SCHEDULE [ss. 4, 5 and 15]

INVESTMENT ALLOWANCE

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

Third Schedule to Cap 470 it is proposed to amend-

THIRD SCHEDULE

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

RATES OF PERSONAL RELIEFS AND TAX

HEAD A – RESIDENT PERSONAL RELIEF

3. Affordable housing relief

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

4. Post-retirement medical fund relief

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

HEAD B – RATES OF TAX

2. The corporate rate of tax shall be–

(i) in the case of a company that constructed at least four hundred residential units annually, fifteen per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing,

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

3. The non-resident tax rates shall be—

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

5. The resident withholding tax rates shall be—

- (b) in respect of interest, discount or original issue discount arising from—
 - (i) bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent;
 - (ii) Government Bearer Bond of at least two years duration and other sources, fifteen per cent;
 - (iii) bearer bonds with a maturity of ten years and above, ten per cent of the gross amount payable, of the gross amount payable;
- (d) (i) in respect of a payment of a pension or any withdrawal made after the expiry of fifteen years from the date of joining the fund, or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill-health or infirmity of body and mind, from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund, in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year and, provided that tax has not been deducted under section 37—
- (f) (i) in respect of management or professional fee or training fee, other than contractual fee, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount payable;
- (f) (ii) (ii) in respect of contractual fee the aggregate value of which is twenty-four thousand shillings in a month or more, three per cent of the gross amount payable;
- (jb) in respect to the disbursement of deemed income to beneficiaries under section 11(3)(c) the rate of twenty five percent.

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

Eighth Schedule to Cap. 470 it is proposed to amend-

EIGHTH SCHEDULE

[ss. 3 and 15]

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

Part I

1. Interpretation

"company" includes—

- (a) a members' club deemed under section 21(1) to be carrying on a business;
- (b) a trade association that elects under section 21(2) to be deemed to carry on a business;
- (3) For the purposes of this Schedule two persons are "related persons" if—
 - (a) either person participates directly or indirectly in the management, control or capital of the business of the other; or
 - (b) any third person participates directly or indirectly in the management, control or capital of the business of both.

6. Meaning of transfer

(2) There is no transfer of property for the purposes of this Schedule—

- (h) by the transfer of assets—
 - (i) between spouses;
 - (ii) between former spouses as part of a divorce settlement or a bona fide separation agreement;
 - (iii) to immediate family;
 - (iv) to immediate family as part of a divorce or bona fide separation agreement; or
 - (v) to a company where spouses or a spouse and immediate family hold 100% shareholding;

Eleventh schedule to Cap.470 it is proposed to amend-

ELEVENTH SCHEDULE

TAXATION OF EXPORT PROCESSING ZONE ENTERPRISES

4. Notwithstanding that an export processing zone enterprise will be exempted from paying any corporation tax for the period specified in subparagraph 2(f) of the Third Schedule, the enterprise will nonetheless be required to comply with Part VIII of the Act and will submit an annual return of income under Section 52 or a return of income, together with a self-assessment of tax under section 52B and business accounts under Section 54 as is the case with all liable enterprises, and in the event of failure to submit a return or late submission of a return, the enterprise will be liable to a penalty of two thousand shillings per day for as long as the failure continues.

Section 8of Cap. 476 it is proposed to amend-

8. Place of supply of services

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

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

- (a) the services are physically performed in Kenya by a person who is in Kenya at the time of supply;
- (b) the services are directly related to immovable property in Kenya;
- (c) the services are radio or television broadcasting services received at an address in Kenya;
- (d) the services are electronic services delivered to a person in Kenya at the time of supply; or
- (e) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in Kenya.

(3) In this section—

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

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

- (c) images, text, and information;
- (d) access to databases;
- (e) self-education packages;
- (f) music, films, and games, including games of chance; or
- (g) political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.

Section 12 of Cap. 476 it is proposed to amend-

12. Time of supply of goods and services

(1) Subject to subsection (3), the time of supply, including a supply of imported services, shall be the earlier of—

- (a) the date on which the goods are delivered or services performed;
- (b) the date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity;
- (c) the date on which the invoice for the supply is issued; or
- (d) the date on which payment for the supply is received, in whole or in part.

(2) The time of supply of goods by means of a vending machine, meter, or other device operated by use of a coin, note, or token shall be on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(3) If—

- (a) goods are supplied under a rental agreement; or
- (b) goods or services are made by metered supplies, or under an agreement or law that provides for periodic payments, the goods or services shall be treated as successively supplied for successive parts of the period of the lease or agreement, or as determined by law, and the time of each successive supply shall be the earlier of the date on which payment for the successive supply is due or received.

(4) The time of supply of imported goods shall be—

- (a) in the case of goods cleared for home use directly at the port of importation, or goods entered for removal to an inland station and there cleared for home use, at the time of customs clearance;

- (b) in the case of goods removed to a licensed warehouse subsequent to importation, at the time of final clearance from the warehouse for home use;
- (c) in the case of goods removed from an export processing zone or a special economic zone, at the time of removal for home use;
- (d) in any other case, at the time the goods are brought into Kenya.

Section 17 of Cap 476 it is proposed-

17. Credit for input tax against output tax

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

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

- (a) the person does not hold the documentation referred to in subsection (3), or
- (b) the registered supplier has not declared the sales invoice in a return, the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation:

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

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

- (a) an original tax invoice issued for the supply or a certified copy;
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction; and
- (d) a credit note in the case of input tax deducted under section 16(2);
- (e) a debit note in the case of input tax deducted under section 16(5); or

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

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

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

- (a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or
- (b) entertainment, restaurant and accommodation services unless—
- (i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or
- (ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.

(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

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

- (a) such excess arises from making zero rated supplies; or
- (b) such excess arises from tax withheld by appointed tax withholding agents; and
- (c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under

this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act (Cap. 469B);

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

Provided further that, notwithstanding section 17(5)(d), a registered person who, within a period of thirty-six months prior to the commencement of section 17(5)(b) and (c), has a credit arising from withholding tax, may make an application for a refund of the excess tax within twelve months from 1st July 2022.

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

Provided that a registered person who, since the commencement of subsection (8) but before the commencement of this provision, has a credit arising from input tax under subsection (8) may apply for the refund of excess tax within twelve months from 1st July 2022.

(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:

$A \times B$

C

where —

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

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

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

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

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

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

Section 31 of Cap 476 it is proposed to amend-

31. Refund of tax on bad debts

(1) Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may refund the tax:

Provided that no application for a refund shall be made under this section after the expiry of four years from the date of the supply.

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

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

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

Section 34 of Cap 476 it is proposed to amend-

34. Application for registration

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

- (a) has made taxable supplies or expects to make taxable supplies, the value of which is five million shillings or more in any period of twelve months; or
- (b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any

period of twelve months, shall be liable for registration under this Act and shall, within thirty days of becoming so liable, apply to the Commissioner for registration in the prescribed form:

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

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

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

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

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

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

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

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

(7) The registration of a person under subsection (1) or (6) shall take effect from the beginning of the first tax period after the person is required

to apply for registration, or such later period as may be specified in the person's tax registration certificate.

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

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

First Schedule to Cap. 476 it is proposed to amend-

FIRST SCHEDULE

[s.2(1)]

EXEMPT SUPPLIES

PART I - GOODS

SECTION A

Tariff Number	Description
8802.30.00	Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000kgs
8802.60.00	Spacecraft (including satellites) and suborbital and spacecraft launch
	Gluten bread.
	Unleavened bread.
	49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801
	54. Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury.
	57. All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service.
	58. Direction-finding compasses, instruments and appliances for aircraft.
	62. Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and

conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

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

63. Deleted by Act No. 22 of 2022, s. 30(a)(ii).

Provided that notwithstanding this subparagraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the supply of taxable goods and which is in force at such commencement shall continue to apply until the supply of the exempted taxable goods is made in full.

77. Pressure sensitive adhesive of tariff number 3506.91.00.

78. Plain polythene film/LPDE of tariff number 3921.19.10

79. Plain polythene film/PE of tariff number 3921.19.10

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

81. ADL 25-40gsm of tariff number 5603.11.00

91. Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions—

- (i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime;
- (ii) the vehicles shall be used exclusively for the transportation of tourists;
- (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and
- (iv) any other condition the Commissioner may impose:

Provided that tax shall become payable upon change of use or disposal of the vehicle for other use.

107. Plant, machinery and equipment used in the construction of a plastics recycling plant.

110. Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.

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.

145. Taxable goods, inputs and raw materials imported or locally purchased by a company which is-

- (a) engaged in business under a special operating framework arrangement with the Government; and
- (b) incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.

146. Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector:

Provided that the value of such investment is not less than two billion shillings.

SECTION B - EXEMPT GOODS ON TRANSITION

(1) The following goods shall be exempt supplies for a period of three years from the commencement of this Act unless the exempt status of the supplies is earlier revoked—

2709.00.00 Petroleum oils and oils obtained from bituminous minerals, crude.

2710.12.10 Motor spirit (gasoline) regular

2710.12.20 Motor spirit (gasoline), premium.

- 2710.12.30 Aviation spirit
 - 2710.12.40 Spirit type jet fuel.
 - 2710.12.50 Special boiling point spirit and white spirit.
 - 2710.12.90 Other light oils and preparations.
 - 2710.19.10 Partly refined (including topped crudes).
 - 2710.19.21 Kerosene type jet fuel.
 - 2710.19.22 Illuminating kerosene (IK)
 - 2710.19.29 Other medium petroleum oils and preparations.
 - 2710.19.31 Gas oil (automotive, light, amber, for high speed engines).
 - 2710.19.39 Other gas oils.
 - 2711.21.00 Natural gas in gaseous state
 - 2711.29.00 Other natural gas in gaseous state.
- (2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1st September, 2016.

PART II - SERVICES

The supply of the following services shall be exempt supplies—

1. The following financial services—
 - (a) the operation of current, deposit or savings accounts, including the provision of account statements;
 - (b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;
 - (c) issuing of credit and debit cards;
 - (d) automated teller machine transactions, excluding the supply of automated teller machines and the software to run it;
 - (e) telegraphic money transfer services;
 - (f) foreign exchange transactions, including the supply of foreign drafts and international money orders;
 - (g) cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques;

- (h) the making of any advances or the granting of any credit;
 - (i) issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
 - (j) the provision of guarantees, letters of credit and acceptance and other forms of documentary credit;
 - (k) the issue, transfer, receipt or any other dealing with bonds, Sukuk, debentures, treasury bills, shares and stocks and other forms of security or secondary security;
 - (l) the assignment of a debt for consideration;
 - (m) The provision of the above financial services on behalf of another on a commission basis.
 - (n) deleted by Act No. 10 of 2018, s. 19(b)(i).
 - (o) any services set out in items (a) to (n) that are structured in conformity with Islamic finance.
2. Insurance and reinsurance services excluding the following—
- (a) management and related insurance consultancy services.
 - (b) actuarial services; and
 - (c) services of insurance assessors and loss adjusters.

Second schedule to Cap.476 it is proposed to amend-

SECOND SCHEDULE

[s. 7(2)]

ZERO-RATING

PART A - ZERO RATED SUPPLIES

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

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

19. Agricultural pest control products.

21. Transportation of sugarcane from farms to milling factories.

26. Inbound international sea freight offered by a registered person.
29. The supply of locally assembled and manufactured mobile phones.
30. The supply of motorcycles of tariff heading 8711.60.00
31. The supply of electric bicycles
32. The supply of solar and lithium ion batteries.
33. The supply of electric buses of tariff heading 87.02.
34. Taxable services imported or locally purchased by a company which-
 - (a) is engaged in business under a special operating framework arrangement with the Government; and
 - (b) is incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.
35. Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).

Section 2 of Cap. 472 it is proposed to amend-

2. Interpretation

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

“approved form” shall have the meaning assigned to it under the Tax Procedures Act (Cap. 469B);

"aircraft" means every description of conveyance by air of human beings or goods;

"arm's length transaction" means a transaction between persons dealing with each other at arm's length;

"authorised officer" means an officer authorised by the Commissioner for the purposes of this Act;

"betting" shall have the meaning assigned to it under the Betting, Lotteries and Gaming Act (Cap. 131);

"bookmaker" shall have the meaning assigned to it under section 2 of the Betting, Lotteries and Gaming Act (Cap. 131);

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Commissioner” means the Commissioner-General appointed under the Kenya Revenue Authority Act (Cap. 469);

"compound" has the meaning assigned to it in section 2 of the Compounding of Potable Spirits Act (Cap. 123);

"concessional loan" means a loan with at least twenty-five percent grant element;

"denature" means to render unfit for human consumption;

“distillery” means a licensed distiller's factory;

“duty of customs” means import duty, countervailing duty, or surtax charged under the East African Community Customs Management Act, 2004;

“ex-factory selling price" has the meaning assigned to it in section 11;

“excisable goods" means the goods specified in Part I of the First Schedule;

“excisable services" means the services specified in Part II of the First Schedule;

“excise control” has the meaning assigned to it in section 23;

“excise duty” means the excise duty imposed under this Act;

“exempt goods” means goods specified in the Second Schedule;

“export” means to take or cause to be taken from Kenya to a foreign country, a special economic zone or to an export processing zone;

“export processing zone” has the meaning assigned to it in section 2 of the Export Processing Zones Act (Cap. 517);

“factory” means any premises at which a licensed manufacturer is licensed to manufacture and store excisable goods, but does not include any part of the premises through which excisable goods are sold to the public;

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

“importer” in relation to goods, means the person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods at the time of importation;

“international traffic”, in relation to an aircraft or vessel, means any operation of the aircraft or vessel, except as between two places in Kenya;

“international organization” shall have the meaning assigned to it under the Tax Procedures Act (Cap. 469B);

“licence” —

(a) in the case of excisable services, means the certificate of registration;

(b) in the case of excisable goods, means the licence issued under section 17; or

(c) in the case of any activity under section 15(1)(e), means the licence

required thereunder;

“licensed distiller” means a distiller licensed under section 17;

“licensed manufacturer” means a person licensed under section 17 to manufacture excisable goods;

“licensed person” means a person licensed or registered under section 17;

“manufacture” includes —

(a) the production of excisable goods;

(b) any intermediate or uncompleted process in the production of excisable goods; or

(c) the distilling, rectifying, compounding, or denaturing of spirits;

“open market value” has the meaning assigned to it in section 3;

"official aid funded project" means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency;

"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;

“prescribed” means prescribed in the Regulations;

“rectify” means to redistill spirits removed from a spirits receiver for the purpose of purifying or inserting flavour;

“special economic zone” shall have the meaning assigned to it under the Special Economic Zones Act (Cap. 517A);

“spirits” means spirits of any description and includes all liquor mixed with spirits and all mixtures and compounds or preparations made with spirits, but does not include denatured spirits;

“still” means a distilling apparatus and includes any part of a still;

“stores” means goods for use or consumption by passengers or crew on an aircraft or ship while in international traffic, and includes goods for sale on board such aircraft or vessel;

“supply”, in relation to services, has the meaning assigned to it under the Value Added Tax Act (Cap. 476);

“tax law” shall have the meaning assigned to it under the Tax Procedures Act (Cap. 469B);

“the Regulations” means regulations made under this Act;

“time of importation” has the meaning assigned to it meaning in section 4(2);

“time of supply”, in relation to excisable services, has the meaning in section 4(1);

“unexcisable goods” means goods that are not excisable goods;

“unexcised goods or services” means excisable goods or services liable for excise duty but, in respect of which, the full amount of excise duty due has not been paid;

“value added tax” means the value added tax imposed under the Value Added Tax Act (Cap. 476);

“vessel” means every description of conveyance by water of human beings or goods.

(2) Except when the context otherwise requires, the terms "approved form", "international organisation", "person", "related person", and "tax law" have the meanings assigned to them under the Tax Procedures Act (Cap. 469B).

Section 5 of Cap. 472 it is proposed to amend

5. Imposition of excise duty

(1) Subject to this Act, a tax, to be known as excise duty, shall be charged in accordance with the provisions of this Act on—

- (a) excisable goods manufactured in Kenya by a licensed manufacturer;
- (b) excisable services supplied in Kenya by a licensed person; or
- (c) excisable goods imported into Kenya.

(2) Excise duty shall be charged at the rate specified in the First Schedule for the excisable goods or services in force at the time the liability arises for excise duty as determined under section 6.

(3) The excise duty payable—

- (a) under subsection (1)(a), shall be payable by the licensed manufacturer;
- (b) under subsection (1)(b), shall be payable by the licensed person making the supply; or
- (c) under subsection (1)(c), shall be payable by the importer of the excisable goods.

Section 7 of Cap. 472 it is proposed to amend-

7. Goods and services not liable to excise duty

(1) Subject to this section, no excise duty shall be charged on the following—

- (a) exempt goods which meet the conditions set out in the Second Schedule;
- (b) excisable goods exported under customs control, including as stores;

- (c) excisable services exported from Kenya;
- (d) excisable goods that the manufacturer has destroyed, with the prior written permission of the Commissioner, under the supervision of an authorised officer prior to their removal from the factory in which they were manufactured;
- (e) denatured spirits for use in the manufacture of gasohol or as a heating fuel;
- (f) excisable goods that have been lost or destroyed by accident or other unavoidable cause—
 - (i) in the course of removal of the goods by the manufacturer from the manufacturer's factory including when loading or unloading the goods;
 - (ii) in the factory of the manufacturer in which the goods were manufactured before removal from the factory; or
 - (iii) on board an aircraft or vessel prior to importation into Kenya.

(2) The Cabinet Secretary may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products (excluding barley), grown in Kenya.

(3) The Gazette notice issued under subsection (2), shall specify the products and conditions to be met for the remissions to be granted.

(3A) A notice under subsection (2) of this section shall be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within twenty-one days on which it next sits after the notice is so laid, that the notice—

- (a) be approved; or
 - (b) be annulled and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.
- (4) Excisable services shall be considered to be exported from Kenya if the services are supplied from a place of business in Kenya for use or consumption outside Kenya.

(5) An exemption granted under this section shall apply if the Commissioner is satisfied that—

- (a) the goods referred to in subsection (1)(a) have been received and consumed by the exempt person; and

(b) excisable goods or services for export under subsections (1)(b) and

(c) have not been, and shall not be consumed in Kenya.

(6) Subsection (1)(f) (i) and (ii) shall not apply if the licensed manufacturer has been compensated for the loss of the excisable goods and the compensation includes the excise duty payable on the goods, as a consequence of any of the following—

(a) an insurance policy, indemnity, or other agreement;

(b) a settlement; or

(c) a judicial decision.

Section 14 of Cap 472 it is proposed to amend-

14. Relief for raw materials

(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.

(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.

Section 17 of Cap.472 it is proposed to amend-

17. Issue of licence

(1) Subject to subsection (2), the Commissioner shall consider an application under section 16 and may grant or refuse to issue the applicant with a licence.

(2) The Commissioner may refuse an application under section 16 if satisfied that—

(a) the applicant has been convicted of an offence under this Act or the Tax Procedures Act (Cap. 469B);

(b) the applicant has been convicted of an offence involving dishonesty or fraud under any law;

(c) the applicant—

(i) is or has been declared bankrupt or insolvent; or

- (ii) is in the process of liquidation or receivership;
- (d) in the case of an application to be a manufacturer of excisable goods, the factory, plant or equipment, specified in the application is not adequate to manufacture or secure excisable goods;
- (e) the applicant has not kept proper records as required under any tax law or has otherwise failed to comply with its obligations under a tax law; or
- (f) paragraphs (a), (b), (c) or (e) apply to a person related to the applicant and the Commissioner is satisfied that the related person is reasonably expected to be involved in the conduct of the activity to which the application relates.

(3) The Commissioner may impose such terms, conditions or restrictions as the Commissioner considers appropriate in relation to a licence issued under this section.

(4) The Commissioner shall give an applicant for a licence under section 16 written notice of the decision on the application and if the application is refused, the notice shall include reasons for the refusal.

(5) A licence shall take effect from the date specified therein by the Commissioner and shall unless earlier suspended, remain in force until cancelled under section 21.

Section 36 of Cap. 472 it is proposed to amend-

36. Payment of excise duty

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

(1A) Despite subsection (1), in the case of a licensed manufacturer of alcoholic beverages, excise duty shall be payable to the Commissioner within twenty-four hours upon removal of the goods from the stockroom.

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

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

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

Provided that—

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

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

First Schedule to Cap.472 it is proposed to amend-

FIRST SCHEDULE

[s. 5(2)]

RATES OF EXCISE DUTY

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

Part I - EXCISABLE GOODS

Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	KSh. 12,952.83 per unit
Imported cement	10% of the value or shs. 1.50 per kg, whichever is higher
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90;	25%
Imported onions of tariff heading 07.03	25%

Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00	25%
Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%
Imported sugar confectionary of tariff heading 17.04	KSh. 42.91 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KSh. 243.43 per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KSh. 142.44 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KSh. 356.42 per litre
Cigarette with filters (hinge lid and soft cap)	KSh. 4,067.03 per mille
Cigarettes without filters (plain cigarettes)	KSh. 2,926.41 per Mille
Products containing nicotine or 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	KSh. 1,595.00 per mille

manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences

Liquid nicotine for electronic cigarettes KSh. 70 per millilitre

Commodity	Code	Raw	Excise duty
Materials			
3903.20.00 Imported Emulsion - styrene Acrylic			10%

2.(1) The specific rates of excise duty on excisable goods specified in this Schedule shall be adjusted for inflation at the beginning of every financial year in accordance with this paragraph. (2) Each rate of excise duty specified in the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula—

$$A(1+B)$$

where—

A is the rate of excise duty on the day immediately before the adjustment day; and

B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.

Part II - EXCISABLE SERVICES

1. Telephone and internet data services shall be charged excise duty at a rate of fifteen percent of their excisable value.

2. Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be fifteen percent of their excisable value.

3. Excise duty on fees charged for money transfer services by cellular phone service providers, shall be fifteen percent of their excisable value.

4. Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value.

4A. Excise duty on betting shall be twelve-point five per cent of the amount wagered or staked.

Provided that this paragraph shall not apply to horse racing.

4B. Excise duty on gaming shall be twelve-point five percent of the amount wagered or staked.

4C. Excise duty on prize competition shall be twelve-point five percent of the amount paid or charged to participate in a prize competition.

4D. Excise duty on lottery (excluding charitable lotteries) shall be twelve-point five percent of the amount paid or charged to buy the lottery ticket.

5. Deleted by Act No. 8 of 2020, s. 17(b).

6. Excise duty on fees charged by digital lenders at a rate of twenty percent.

7. Excise duty on importation of cellular phones, shall be at ten per cent of the excisable value.

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

Second schedule to Cap.472 it is proposed to amend-

PART A — EXEMPT EXCISABLE GOODS

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

16. Locally manufactured passenger motor vehicles:

Provided that in this paragraph,

"locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content;

"local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Section 7 of Cap.469C it is proposed to amend-

Import declaration fee

(1) There shall be paid a fee to be known as the import declaration fee, on all goods imported into the country for home use.

(2) The fee shall be at the rate of two point five per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

(3) Despite subsection (1)—

(a) import declaration fee shall not be charged on the goods specified in Part A of the Second Schedule when imported or purchased before clearance through customs; or

(4) An importer of goods other than goods specified in Part A of the Second Schedule shall complete the prescribed import declaration form.

(5) An importer shall present a copy of the import declaration form completed under subsection (4) to the Commissioner at the time of entering the goods for home use.

(6) Out of the fee collected under subsection (2), ten per cent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act, (No.18 of 2012).

(7) The monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organization to which Kenya has a financial obligation.

Second schedule to Cap. 469C it is proposed to amend-

SECOND SCHEDULE

[s. 7(3)(a)]

GOODS EXEMPT FROM IMPORT DECLARATION

FEE AND RAILWAY DEVELOPMENT LEVY

PART A

GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN IMPORTED OR

PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

The following goods are exempt from payment of import declaration fee when imported or purchased before clearance through customs—

(xxv) All goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service;

PART B (s. 8(6))

**GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY
WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE
THROUGH CUSTOMS**

The railway development levy shall not apply to goods imported or purchased before clearance through customs—

- (ix) All goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service;

Third schedule to Cap.496C it is proposed to amend-

THIRD SCHEDULE

[s. 7(3)(a)]

**GOODS EXEMPT FROM IMPORT DECLARATION
FEE AND RAILWAY DEVELOPMENT LEVY**

Tariff No.	Tariff Description Export and investment promotion levy	Rate
2523.10.00	Cement Clinkers	17.5 % of the customs value
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	17.5 % of the customs value
7213.91.10	Bars and rods of iron or non-alloy steel, hot rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	17.5 % of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hotrolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	17.5 % of the customs value

Tariff No.	Tariff Description Export and investment promotion levy	Rate
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10 % of the customs value
4804.21.00	Sack kraft paper; Unbleached	10 % of the customs value
4804.31.00	Other kraft paper and paperboard weighing 150 g/m ² or less: Unbleached	10 % of the customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more.	10 % of the customs value
4819.40.00	Other sacks and bags, including cones.	10 % of the customs value

Section 19 of Cap. 469B it is proposed to amend-

19. Application for tax agent licence

(1) An individual or a partnership may apply to the Commissioner for a licence as a tax agent.

(2) An application under subsection (1) shall be in the prescribed form and accompanied by the prescribed fee.

(3) An applicant shall, in addition to the requirements set out in subsections (1) and (2), be required to be recommended for registration by the Tax Agents Committee.

Section 22 of Cap. 469 B it is proposed to amend-

22. Cancellation of tax agent's licence

(1) A tax agent who ceases to carry on business as a tax agent shall notify the Commissioner in writing at least seven days before ceasing to carry on business as a tax agent.

(2) A tax agent may apply in writing to the Commissioner to cancel the licence.

(3) The Commissioner shall cancel the licence of a tax agent if—

- (a) a tax return prepared and filed by the tax agent is false in any material particular, unless the tax agent satisfies the Commissioner that the falsification was not due to any wilful or negligent conduct of the tax agent;
 - (b) the tax agent ceases to satisfy the conditions for licensing as a tax agent;
 - (c) the tax agent has ceased to carry on business as a tax agent.
- (4) The Commissioner shall notify a tax agent in writing of the cancellation of the licence.
- (5) The cancellation of the licence of a tax agent shall take effect on—
- (a) the date the tax agent ceases to carry on business as a tax agent; or
 - (b) sixty days after the tax agent has been notified by the Commissioner of the cancellation of the tax agent's licence, whichever is the earlier.

Section 23A of Cap 469B it is proposed to amend-

23A Electronic tax invoice

- (1) The Commissioner may establish an electronic system through which electronic tax invoices may be issued, and records of stocks kept for the purposes of this Act.
- (2) A person who carries on business shall—
- (a) Issue an electronic tax invoice through the system established under subsection (1); and
 - (b) Maintain a record of stocks in the system established under subsection (1).
- (3) Where an electronic tax invoice required to ascertain tax liability is issued by a resident person or the permanent establishment of a non-resident person, that invoice shall be generated through the system established under subsection (1).
- (4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments.
- (5) The Commissioner may, by notice in the Gazette, exempt a person from the requirements of this section.

Section 42 of Cap. 469B it is proposed to amend-

42. Power to collect tax from person owing money to a taxpayer

- (1) This section applies when a taxpayer is, or will become liable to pay a tax and-

- (a) the tax is unpaid tax; or
 - (b) the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for the payment of the tax.
- (2) The Commissioner may, in respect of the taxpayer and by notice in writing, require a person (referred to as the "an agent")—
- (a) who owes or may subsequently owe money to the taxpayer;
 - (b) who holds or may subsequently hold money, for or on account of, the taxpayer;
 - (c) who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
 - (d) who has authority from some other person to pay money to the taxpayer, to pay the amount specified in the notice to the Commissioner, being an amount that shall not exceed the amount of the unpaid tax or the amount of tax that the Commissioner believes will not be paid by the taxpayer by the due date.
- (3) When a notice served under subsection (2) requires an agent to deduct a specified amount from a payment of a salary, wages or other similar remuneration payable at fixed intervals to the taxpayer, the amount required to be deducted by the agent from each payment shall not exceed twenty per cent of the amount of each payment of salary, wages, or other remuneration (after the payment of income tax).
- (4) This section shall apply to a joint account when—
- (a) all the holders of the joint account have unpaid tax liabilities; or
 - (b) the taxpayer can withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.
- (5) An agent shall pay the amount specified in a notice under subsection (2) by the date specified in the notice, being a date that that does not occur before the date that the amount owed by an agent to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.
- (6) When an agent who has been served with a notice under subsection (2) fails to comply with the notice by reason of a lack of monies held by the agent on behalf of, or due by the agent to the taxpayer, the agent shall notify the Commissioner in writing within fourteen days of receiving the notice, setting out the reasons for the agent's inability to comply.

(7) When the Commissioner is notified by an agent under subsection (6) that the agent is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to an agent—

- (a) accept the notification and cancel or amend the notice issued under subsection (2); or
- (b) reject the notification.

(8) The Commissioner shall notify an agent in writing of a revocation or amendment of a notice given under subsection (2) where the taxpayer pays the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner for the payment of the tax.

(9) The Commissioner shall serve the taxpayer with a copy of a notice under this subsection (2), when serving the agent.

(10) A payment made by an agent to the Commissioner in accordance with a notice issued under this section is treated as having been made on behalf of the taxpayer and shall discharge an agent of any liability to the taxpayer or any other person.

(11) The Commissioner shall credit any amount paid by an agent under this section against the tax owed by the taxpayer.

(12) The Commissioner may require, in writing, any person, within a period of at least thirty days, to provide a return to the Commissioner showing any monies which may be held by that person for a taxpayer referred to in subsection (1) or monies held by that person which are due to a taxpayer referred to in subsection (1).

(13) A taxpayer who without reasonable cause fails to comply with a notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the notice or requirement.

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

- a) The taxpayer has defaulted in paying an instalment under section 33(2);
- b) The Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;
- c) The taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;
- d) The taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or

- e) The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

Section 42A of Cap.469 it is proposed to amend-

42A Appointment of Value Added Tax withholding agent

(1) The Commissioner may appoint a person to withhold two per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner.

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from 1st July, 2022 is at least three billion.

(2) The Commissioner may, at any time, revoke the appointment of a tax withholding agent made under subsection (1), if the Commissioner deems it appropriate to do so.

(3) Subsection (1) shall not apply to taxable supplies for official aid-funded projects.

(4) For the avoidance of doubt, the withholding of tax under subsection (1) shall not relieve the supplier of taxable supplies of the obligation to account for tax in accordance with this Act and the regulations.

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

(4C) A person who is required under this section to withhold tax commits an offence if the person —

- (a) fails to withhold the whole amount of the tax which should have been withheld; or
- (b) fails to remit the amount of the withheld tax to the Commissioner by the fifth working day after the deduction was made.

(4D) A person who commits an offence under subsection (4C) is liable on conviction to a penalty of ten per cent of the amount involved.

(5) A person who, prior to the commencement of this section, was appointed to withhold tax under section 25A of the Value Added Tax Act (Cap. 476) shall, notwithstanding the repeal of that section, be deemed to be a person appointed under subsection (1), provided that this provision shall not be construed to impose any penalty whatsoever on any such person who ceased to withhold tax for any period following the repeal of that section up to the 8th June, 2016.

Section 47 of Cap. 469B it is proposed to amend-

47. Offset or refund of overpaid tax

(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form—

- (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities; or
- (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid.

(2) The Commissioner shall ascertain and determine an application under subsection (1) within ninety days and where the Commissioner ascertains that there was an overpayment of tax—

- (a) in the case of an application under subsection (1)(a), apply the overpaid tax to such outstanding tax debts or future tax liability; and
- (b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of six months from the date of ascertainment and, if the Commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.

(3) Where the Commissioner fails to ascertain and determine an application under subsection (1) within ninety days, the same shall be deemed ascertained and approved.

(4) The Commissioner may for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit.

(4A) Where an application under subsection (1) has been subjected to an audit under subsection (4), the Commissioner shall ascertain and determine the application within one hundred- and twenty-days failure to which, the application shall be deemed to have been ascertained and approved.

(5) Where the application is for a refund of tax under subsection (1)(b), the Commissioner shall apply the overpayment in the following order—

- (a) in payment of any other tax owing by the taxpayer under the specific tax law;
- (b) in payment of a tax owing by the taxpayer under any other tax law; and

(c) any remainder shall be refunded to the taxpayer.

(6) Where the Commissioner fails to refund the overpaid tax within the period specified in subsection (2)(b), the amount due shall attract interest of one per cent for each month or part thereof during which the amount remains unpaid.

(7) Where the Commissioner notifies a taxpayer that an application under subsection (1)(a) has been ascertained and applies the overpaid tax liability to offset an outstanding tax in accordance with subsection (2)(a), interest or penalties shall not accrue on the amount applied to offsetting the outstanding tax liability from the date of the notification.

(8) Where the Commissioner has applied the overpaid tax to offset an outstanding tax liability under subsection (2)(a), any outstanding tax after such application shall accrue interest and penalties in accordance with this Act.

(9) Notwithstanding any other provision of this section, where a person overpays an instalment tax due under section 12 of the Income Tax Act (Cap. 470), the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability.

(10) Where, after the application of the overpaid tax under subsection (9), the Commissioner later determines that there was no overpayment of instalment tax, the amount of the tax that was used to offset the taxpayer's future instalment tax liabilities under subsection (9) shall be treated as a tax due to the Commissioner in the subsequent tax period.

(11) The amount due under subsection (10) shall be due from the date that the Commissioner applied that amount to offset an instalment tax liability.

(12) The Commissioner shall notify the taxpayer in writing of the amount due under subsection (10) and specify in the notification—

(a) the interest on the amount due; and

(b) any penalties due in respect of the amount due.

(13) A person aggrieved by a decision of the Commissioner under this section may appeal to the Tribunal within thirty days after being notified of the decision.

Section 51 of Cap. 469B it is proposed to amend-

51. Objection to tax decision

(1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law.

(2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.

(3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—

- (a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
- (b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute, or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
- (c) all the relevant documents relating to the objection have been submitted

(4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.

(4A) Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged.

(5) Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.

(6) A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.

(7) The Commissioner shall consider and may allow an application under subsection (6) if —

- (a) the taxpayer was prevented from lodging the notice of objection within the period specified in subsection (2) because of an absence from Kenya, sickness or other reasonable cause; and
- (b) the taxpayer did not unreasonably delay in lodging the notice of objection.

(7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application.

(8) Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an "objection decision".

(9) The Commissioner shall notify in writing the taxpayer of the objection decision and shall take all necessary steps to give effect to the decision, including, in the case of an objection to an assessment, making an amended assessment.

(10) An objection decision shall include a statement of findings on the material facts and the reasons for the decision.

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.

(12) A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.

Section 59A of Cap. 469B it is proposed to amend-

59A. Data management and reporting system

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

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

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

- (a) of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;
- (b) For payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;
- (c) For payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition,

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

- (d) For periodical or lump sum payments in respect of a royalty; or
 - (e) For such other commercial or financial transaction as may be designated by the Commissioner.
- (4) For the purposes of this section—
- (a) “transactional data” includes—
 - (i) The names and addresses of each person to whom a payment was made;
 - (ii) where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;
 - (iii) Where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and
 - (iv) Such other particulars as the Commissioner may specify;
 - (b) References to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and
 - (c) references to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

Section 77 of Cap. 469 B it is proposed to amend-

77. Due date for submission and payment

If the date for—

- (a) submitting or lodging a tax return, application, notice, or other document;
- (b) the payment of a tax; or
- (c) taking any other action under a tax law,

falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day:

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

Section 83 of Cap.469B it is proposed to amend-

83. Late submission penalty

(1) A person who submits a tax return after the due date shall be liable to a penalty—

- (a) of twenty-five percent of the tax due or ten thousand shillings whichever is higher, if it is in relation to a return required to be submitted on account of employment income;
- (b) one thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or
- (c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty;
- (d) in any other case-
 - (i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or
 - (ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual.

Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits.

First schedule to Cap.469B it is proposed to amend-

FIRST SCHEDULE

TRANSACTIONS FOR WHICH A PIN IS REQUIRED

- (1) Registration of titles and stamping of instruments.
- (2) Approval of development plans and payment of water deposits.
- (3) Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles.
- (4) Registration of business names.

- (5) Registration of companies.
- (6) Underwriting of insurance policies.
- (7) Trade licensing.
- (8) Importation of goods and customs clearing and forwarding.
- (9) Payment of deposits for power connections.
- (10) All contracts for the supply of goods and services to Government Ministries and public bodies.
- (11) Opening accounts with financial institutions and investment banks.
- (12) Registration and renewal of membership by professional bodies and other licensing agencies.
- (13) Registration of mobile cellular pay bill and till numbers by telecommunication operators.
- 14. Carrying out business over the internet or an electronic network including through a digital marketplace.
- 15. Registration of a trust.

Section 54 of No. 4 of 2024 it is proposed to amend-

54. Restrictions to owners of affordable housing unit

Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

Section 5B of Cap.237 it is proposed to amend-

5B. Training levies

(1) The Commissioner-General of the body responsible for the assessment and collection of revenue shall be responsible for collecting training levies from employers.

(2) For purposes of this Act, the Commissioner-General shall have all the powers conferred on the Commissioner-General by the Kenya Revenue Authority Act (Cap. 469) and Income Tax Act (Cap. 470).

(3) An employer shall pay the training levy to the Commissioner-General at the time when an employee's salary is payable and shall be remitted to the Commissioner-General not later than the fifth day of the month following the month in which the levy becomes due.

(4) The training levy collected under this section shall be paid into the Training Levy Fund.

(5) A training levy shall not be deducted from the emoluments of an employee.

(6) Subject to the provisions of this Act, the Income Tax Act (Cap. 470) and the Kenya Revenue Authority Act (Cap. 469) shall apply in this Act including in respect of—

- (a) the payment and recovery of the levies and penalties;
- (b) assessment of levy payable;
- (c) filing of returns;
- (d) the furnishing of information and production of documents; and
- (e) keeping of records.

Section 51 of Cap 411C it is proposed to amend-

51. General exemptions

(1) Nothing in this Part shall exempt any data controller or data processor from complying with data protection principles relating to lawful processing, minimisation of collection, data quality, and adopting security safeguards to protect personal data.

(2) The processing of personal data is exempt from the provisions of this Act if—

- (a) it relates to processing of personal data by an individual in the course of a purely personal or household activity;
- (b) if it is necessary for national security or public interest; or
- (c) disclosure is required by or under any written law or by an order of the court.

Section 194 of Cap 412A it is proposed to amend-

194. Functions of the Board

(1) The Accounting Standards Board shall provide frameworks and set generally accepted standards for the development and management of accounting and financial systems by all State organs and public entities, and shall in particular perform the following functions—

- (a) set generally accepted accounting and financial standards;
- (b) prescribe the minimum standards of maintenance of proper books of account for all levels of Government;

- (c) prescribe internal audit procedures which comply with this Act;
- (d) prescribe formats for financial statements and reporting by all state organs and public entities;
- (e) publish and publicise the accounting and financial standards and any directives and guidelines prescribed by the Board;
- (f) in consultation with the Cabinet Secretary on the effective dates of implementation of these standards, Gazette the dates for application of the standards and guidelines; and
- (g) perform any other functions related to advancing financial and accounting systems management and reporting in the public sector.

(2) In setting the standards under subsection (1), the Board shall take into account any relevant factors including—

- (a) best international accounting practices; and
- (b) the capacity of the relevant entity to comply with the standards.

(3) The Board may set different standards for different categories of entities to which these standards apply including to develop content, structure and format of county frameworks and accounting and financial guidelines which are in line with the setting of county standards.

(4) The Board shall monitor the adherence to the standards by all State organs and public entities.

(5) The standards set by the Board shall promote transparency and other Constitutional values and principles in effective, prudence and efficient management of revenue, expenditure, assets and liabilities of the institutions to Which these standards apply.

First Schedule to Cap. 469 it is proposed to amend-

FIRST SCHEDULE

[s. 2 & 5]

WRITTEN LAWS RELATING TO REVENUE

PART I

1. The Income Tax Act (Cap. 470).
2. Spent.
3. The Value Added Tax Act (Cap. 476).
4. The Road Maintenance Levy Fund Act (Cap. 427).

5. The Air Passenger Service Charge Act (Cap. 475).
6. The Entertainment Tax Act (Cap. 479).
7. The East African Community Customs Management Act, 2004.
8. The Annexes to the Protocol on the Establishment of the East African Community Customs Union.
9. Spent.
10. Excise Duty Act (Cap. 472).
11. Tax Procedures Act (Cap. 469B).
12. Miscellaneous Fees and Levies Act (Cap. 469C)
13. The Alcoholic Drinks Act (Cap. 121).

PART II

1. The Traffic Act (Cap. 403).
2. Spent.
3. The Second-Hand Motor Vehicles Purchase Tax Act (Cap. 484).
4. The Civil Aviation Act (Cap. 394).
5. The Widows' and Children's Pensions Act (Cap. 195).
6. The Parliamentary Pensions Act (Cap. 196).
7. The Betting, Lotteries and Gaming Act (Cap. 131).
8. The Stamp Duty Act (Cap. 480).
9. The Horticultural Crops Development Authority (Imposition of Fees and Charges) Order, 1995 (L.N. 225 of 1995).
10. The Standards Levy Order, 1990 (L.N. 267 of 1990).
- 10A. The Industrial Training Act (Cap. 237).
11. The Government Lands Act (Cap. 280).
12. The Sugar Act (No. 10 of 2001) (Repealed).
13. The National Social Security Fund Act (Cap. 258).
14. Public Finance Management Act (Cap. 412A).
15. The Affordable Housing Act, 2024.