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THE NATIONAL TREASURY

Division of Revenue Bill, 2020

A Legislative Proposal for submission to Parliament

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THE DIVISON OF REVENUE BILL, 2020

ARRANGEMENT OF CLAUSES

Clause

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A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in 2020/21 financial year, and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

PART I— PRELIMINARY

Short title.

1. This Act may be cited as the Division of Revenue Act, 2020.

Interpretation.

2. In this Act, unless the context otherwise requires—

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

No. 16 of 2011.

"revenue" has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2011; and

Object and purpose of the Act.

3. The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2020/21 in accordance with Article 203 (2) of the Constitution.

Allocations to national and county governments.

4. Revenue raised by the national government in respect of the financial year 2020/21 shall be divided among the national and county governments as set out in the Schedule to this Act.

Variation in revenue.

5. (1) If the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary.

(2) If the actual revenue raised nationally in the financial year exceeds the projected revenues set out in the Schedule, the excess revenue shall accrue to the national government, and may be used to reduce borrowing or pay debts.

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SCHEDULE (s.4)

Allocation of revenue raised nationally between the national and county governments for the financial year 2020/21.

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2015/16 audited and approved Revenue i.e. Ksh.1,193,619 Million
A. Total Sharable Revenue	**1,856,700,000,000**	
B. National Government*	**1,533,668,000,000**	
Of which:		
1. Leasing of Medical Equipment	6,205,000,000	
2. Compensation for user fees forgone	900,000,000	
3. Level 5 hospitals	4,326,000,000	
4. Supplement for construction of county headquarters	300,000,000	
5. Rehabilitation of Youth Polytechnics	2,000,000,000	
C. Equalization Fund	**6,532,000,000**	**0.55%**
D. County equitable share	**316,500,000,000**	**26.5%**
Memo items		
1. County equitable share	***316,500,000,000***	
2. Additional conditional allocations(National Government share of Revenue) of which;	***13,731,000,000***	
2.1. Leasing of Medical Equipment	6,205,000,000	
2.2 Compensation for user fees forgone	900,000,000	
2.3 Level 5 hospitals	4,326,000,000	
2.4 Supplement for construction of county headquarters	300,000,000	
2.5 Rehabilitation of Youth Polytechnics	2,000,000,000	
3. Allocation from Fuel Levy Fund (15%)	*9,433,265,625*	
4. Conditional allocations (Loans & grants) of which:	***30,204,347,510***	
4.1 IDA-Kenya Devolution Support Program (KDSP) (Level 1)	*2,115,000,000*	
4.2 IDA-Transforming Health Systems for Universal Care Project	4,345,375,741	
4.3 DANIDA-Universal Healthcare For Devolved System Program	900,000,000	

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4.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	4,261,646,438	
4.5 EU-Instruments for Devolution Advice and Support (IDEAS)	216,014,391	
4.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	7,119,726,782	
4.7 World Bank- Kenya Urban Support Program(KUSP)- UDG	6,366,000,000	
4.8 IDA- Water and Sanitation Development Project (WSDP)	3,400,000,000	
4.9 Sweden Agriculture Sector Development Programme II (ASDP II)	652,584,158	
5.0 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	528,000,000	
5.1 Drought Resilience Programme in Northern Kenya	300,000,000	
Total County Allocations= (1+2+3+4)	**369,868,613,135**	**31.0%**

*The National Government share includes Ksh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for free Maternal health care, to be disbursed as a reimbursement to county governments.

MEMORANDUM OF OBJECTS AND REASON

The principal object of this Bill is to provide for the equitable division of revenue raised nationally among the national and county levels of government as required by Article 218 of the Constitution in order to facilitate the proper functioning of county governments and to ensure continuity of county services.

Clauses 1 and 2 of the Bill provide for the short title of the Bill and the interpretation of terms used in the Bill.

Clause 3 of the Bill contains the provisions on the objects and purpose of the Bill.

Clause 4 of the Bill prescribes the allocations for the national government and the county governments from the revenue raised nationally for the financial year 2020/21.

Clause 5 of the Bill deals with mechanisms for adjusting for variations in revenues emanating from revenue performance during the financial year in which this Bill relates to.

Dated the ...5th...February......................., 2020

Hon (Amb). Ukur Yattani, EGH
Cabinet Secretary for
The National Treasury and Planning

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APPENDIX

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL (DoRB), 2020

Background

1. This memorandum has been prepared as an attachment to the Division of Revenue Bill (DoRB), 2020 in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

2. Article 218(2) of the Constitution requires that the Bill be submitted to Parliament every year together with a memorandum explaining:

(a) the proposed revenue allocation set out in the Bill;

(b) the extent to which the Bill has taken into account the provisions of Article 203 (1) of the Constitution; and

(c) any significant deviations from the recommendations of the Commission on Revenue Allocation (CRA).

3. In addition to the above requirements, Section 191 of the Public Finance Management Act, 2012 requires that the Bill be submitted to Parliament together with the Medium Term Budget Policy Statement accompanied by a memorandum which explains;

(a) the extent, if any, of deviation from the recommendations of the Intergovernmental Budget and Economic Council; and

(b) any assumptions and formulae used in arriving at the respective allocations proposed in the Bill.

Explanation of the Allocations to the National and County Governments as Proposed in the Bill

4. The DoRB, 2020 proposes to allocate to County Governments Ksh.369.8 billion in the financial year 2020/21, which relative to the financial year 2019/20 allocation, reflects a decrease of Ksh. 8.6 billion or 2.3 % mainly attributed to a significant decrease of donor funded additional conditional allocations compared with the funding in financial year 2019/20.This allocation

comprises of; equitable share of Ksh. 316.5 billion; additional conditional allocations from the share of national government revenue amounting to Ksh. 13.7 billion; additional conditional allocations from proceeds of loans and grants by development partners amounting to Ksh. 30.2 billion; and additional conditional allocation from Roads Maintenance Levy Fund amounting to Ksh. 9.4 billion.

County Governments' Equitable Share

5. The bill proposes to allocate County Governments' an equitable share of revenue raised nationally for the financial year 2020/21 of Ksh. 316.5 billion

6. This proposal for County Governments' equitable revenue share allocation for FY 2020/21 is informed by five (5) factors--- which are detailed in paragraphs 7 to 12--namely:

a) Continued underperformance in ordinary revenue, which forms the base for the annual division of revenue;
b) The fact that the National Government continues to solely bear shortfalls in revenue in any given FY;
c) There being a Ksh 161 billion funding gap in the FY 2019/20 budget;
d) A 10.3% projected contraction in National Government's net spending in FY 2020/21 vis-à-vis FY 2019/20; and,
e) The proposal by National Treasury that the entire incremental revenue in FY 2020/21 be earmarked for CFS, specifically debt repayment and pensions.

7. Although in the Budget Review and Outlook Paper (BROP) 2019 as well as in the draft BPS 2020, the National Treasury had proposed an equitable share of Ksh 317.8 billion to county governments in FY 2020/21, the revised proposal to allocate Ksh. 316.5 billion is informed largely by the underperformance in ordinary revenue witnessed in recent years. According to the draft 2020 BPS, between FY 2013/14 and FY 2018/19, cumulative ordinary revenue shortfalls amounted to Ksh 932 billion.

8. Additionally, and as per respective annual Division of Revenue Acts (DoRA), over the years the National Government has always borne any revenue shortfall. Accordingly, to balance the budget, this has been achieved by downsizing spending by MDAs; however County allocations have never been affected by the shortfalls. For instance, in FY 2017/18 when ordinary revenue grew by 4% against a target of 13% culminating in a Ksh 195 billion shortfall, Counties' allocation grew by 8% (from Ksh 280.3 billion to Ksh 302 billion). In contrast, the National Government's net issues contracted by 7% (from Ksh 1,149 billion in FY 2016/17 to Ksh 1,072 billion). Similarly,

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actual net issues in FY 2018/19 reflects a Ksh 82 billion reduction from what was proposed in the revised budget (II) estimates.

9. In FY 2019/20 the estimated net issues for the National Governments of Ksh. 1,416 billion have a funding gap of Ksh 161 billion; a gap which will occasion further expenditure cuts of a similar magnitude. The scope for these cuts exists only in the development budget and to a small extent in 'other O&M'. Accordingly, the base for the current FY will be adjusted to account for the above funding gap. This means that the National Government's net issues for development and 'other O&M' will drop from Ksh 680 billion to Ksh 519.5 billion.

10. Further, as part of measures to narrow the projected deficit, the National Government has proposed a Ksh 146 billion or 10.3% contraction in the National Government's estimated FY 2020/21 net issues (i.e. from Ksh 1,416 billion in FY 2019/20 to Ksh 1,271 billion).

11. Finally, despite the depressed revised revenue forecasts for FY 2019/20 and 2020/21 vis-à-vis original estimates for both years, collections in FY 2020/21 are now projected to grow by Ksh 89.8 billion (i.e. from Ksh 1766.9 billion to Ksh 1,856.7 billion). The National Treasury proposes that the additional revenue be directed towards Consolidated Fund Services (CFS), specifically debt repayment, pensions and gratuities, and some salaries for Constitutional Offices and Independent Commissions. These are non-discretionary expenditures which take first charge in the public budget.

12. Accordingly, of the above projected additional revenue in FY 2020/21, an estimated Ksh 57.2 billion will be earmarked for debt repayment and the balance (i.e. approximately Ksh 19.7 billion) will be earmarked for retirees' pension payments as well as GoK contribution to civil servants' pension (See Table 1). Clearly, the Ksh 89.8 billion revenue growth will be used to finance the above mentioned CFS items.

Table 1: Allocations towards Consolidated Fund Services (Ksh billions)

Payments	FY 2019/20	FY 2020/21	Variance
Debt repayment (principal)	131.4	174.1	42.7
Debt repayment (interest)	441.5	456.0	14.5
Pensions	108.6	118.7	10.1
Contribution to civil service pension	4.8	14.4	9.6
TOTAL	686.3	763.2	76.9

Source of data: National Treasury

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13. The proposed Equitable Share for FY 2020/21 of Ksh. 316.5 billion is equivalent to 26.5 percent of the last audited accounts (Ksh 1,194 billion for FY 2015/16) as approved by Parliament. The proposed allocation meets the requirement of Article 203(2) of the Constitution.

Additional Conditional Allocations to County Governments

14. Article 202(2) of the Constitution provides for additional allocation to County Governments from the National Government's share of revenue, either conditionally or unconditionally. Pursuant to this Article, the National Government proposes to allocate the following additional conditional allocations to support specific national policy objectives to be implemented by County Governments:

- **Additional Conditional Allocation to facilitate the leasing of medical equipment of Ksh 6.205 billion.** This grant which is in its sixth year of implementation, is proposed to increase from Ksh. 6.200 billion in FY 2019/20 to Ksh. 6.205 billion in FY 2020/21 and is intended to facilitate the payment of lease amounts in respect of modern specialised medical equipment in at least two health facilities in each County Government over the medium term. This will facilitate easy access to specialised health care services and significantly reduce the distance that Kenyans travel in search of such services today.

- **Additional Conditional allocation for level-5 hospitals of Ksh. 4.3 billion.** Level-5 hospitals continue to play a critical role in providing specialised health care services to Kenyans. These hospitals provide specialised health care services to citizens residing within and outside their host County, usually for complicated cases referred from lower level health facilities. In order to compensate them for the costs incurred in rendering services to neighbouring Counties, the national government proposes to allocate Ksh. 4.3 billion in financial year 2020/21 to 11 counties with level 5 hospitals.

- **Additional Conditional allocation of Ksh. 900 million to compensate county health facilities for user fees foregone.** It is the intention of government to sustain the Government policy of not charging user fees in public health facilities. In this regard, and in furtherance of this policy, the National Government has proposed an allocation of Ksh. 900 million in the financial year 2020/21 to compensate county governments for revenue forgone by not charging user fees in the county health facilities. This additional conditional allocation, which is in its sixth year of implementation, will further complement government efforts of not only achieving the Universal Health Coverage, but also sustaining its gains.

- **Additional Conditional Allocation for Rehabilitation of Youth Polytechnics of Ksh. 2 billion:** this additional conditional allocation which is in its fourth year of implementation and implemented through the State Department of Vocational and Technical Training, is meant to support county governments in equipping Technical and Vocational Centres and capitation of student fees. The additional conditional allocation aims at enhancing access to quality and relevant vocational skills training.
- **Additional Conditional allocation to supplement county allocation for the construction of county headquarters of Ksh. 300 Million in five counties:** This conditional allocation is intended to further supplement financing for construction of headquarters by five County Governments that did not inherit adequate offices. The five counties are Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. This marks the fourth year of its implementation whereby the National Government contributes 70 percent of the budget while County Governments contributes 30 percent of the total cost of the projects. This allocation has declined from Ksh. 485 million allocated in FY 2019/20 to a proposed allocation of Ksh. 300 million in FY 2020/21.

- **Additional Conditional Allocation from the Road Maintenance Fuel Levy Fund of Ksh. 9.4 billion.** This conditional allocation which is in its sixth year of allocation is proposed to be Ksh. 9.4 billion in FY 2020/21. This allocation is meant to further enhance County Governments' capacity to repair and maintain county roads and is equivalent to 15 percent of the Road Maintenance Fuel Levy Fund. The allocation has increased significantly from Ksh. 8.98 billion allocated to RMLF in FY 2019/20 to the proposed allocation of Ksh. 9.4 billion in FY 2020/21. This is attributed to higher projected revenues from fuel levy in FY 2020/21 compared to projections in FY 2019/20.

- **Transforming Health Systems for Universal Care Project conditional allocation of Ksh. 4.3 billion (World Bank credit):** - This conditional allocation through the Ministry of Health is meant to improve delivery, utilization and quality of primary health care services with focus on reproductive, maternal, new-born, child and adolescent health (RMNCAH) at the county level. This additional conditional allocation is proposed to increase from Ksh. 2.99 billion in FY 2019/20 to Ksh. 4.3 billion in the