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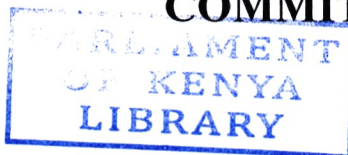
REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FOURTH SESSION (2020)

COMMITTEE ON DELEGATED LEGISLATION



REPORT ON  
THE CONSIDERATION OF THE VALUE ADDED  
TAX (AMENDMENT OF THE RATE OF TAX)  
ORDER, 2020

*(Legal Notice No. 35 of 2020)*

APRIL, 2020

*The Directorate of Committee Services  
The National Assembly,  
Parliament Buildings,  
NAIROBI.*

SNA  
14/4/2020

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## **ABBREVIATIONS**

<b>COVID</b>	Corona Virus Disease
<b>LN</b>	Legal Notice
<b>SI</b>	Statutory Instruments
<b>SO</b>	Standing Order
<b>VAT</b>	Value Added Tax

## CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 6(1) of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning, Hon. (Amb.) Ukur Yatani, EGH published the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 vide Legal Notice No. 35 of 2020 on 26<sup>th</sup> March, 2020. The Order was subsequently submitted to the Clerk on 1<sup>st</sup> April, 2020 for tabling.

The Order seeks to amend paragraph (b) of section 5 (2) of the Value Added Tax, 2013 by reducing the value added tax rate from sixteen per cent (16%) to 14 per cent (14%).

The Order was issued following the Presidential directive of 25<sup>th</sup> March, 2020 to the Cabinet Secretary responsible for the National Treasury to invoke his powers in the Value Added Tax Act, 2013 to reduce the rate of value added tax on imported goods and services to ease the tax burden on the public as a relief on the possible individual citizen's economic hardships that may be occasioned by the Corona virus (COVID-19) pandemic.

Having been seized of the instrument, the Committee examined it against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act, 2013 and made various observations contained in section 3.0 of this Report. The following is a summary of the observations –

- (i) **Statutory Timelines:** The Order was published in the Gazette vide Legal Notice No. 35 of 2020 on 26<sup>th</sup> March, 2020 and was submitted to the Clerk on 1<sup>st</sup> April, 2020, hence is **within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act** and was submitted without unreasonable delay in accordance to section 6 (2) of the VAT Act.
- (ii) **Commencement of the Order:** The Order came into force on 1<sup>st</sup> April, 2020 in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of time stipulated therein.
- (iii) **Consultation / Public participation:** The regulation making authority did not demonstrate the conduct of, or the extent to which public participation was conducted.

To satisfy the requirement for public participation, the Clerk of the National Assembly through a newspaper advertisement appearing in the local dailies on 3<sup>rd</sup> April, 2020 invited interested members of the public to submit written memoranda regarding the Order. By close of business on Monday, 6<sup>th</sup> April, 2020, the office of the Clerk had not received any memoranda relating to the Order.

Pursuant to section 13(q) of the SI Act, **the Committee took cognizance of the fact that the reduction of the rates is for the benefit of the general public and the nature and urgency of the circumstances created by COVID-19 and dispensed with the requirements of public participation contemplated under sections 5 and the Schedule to the Statutory Instruments Act.**

Further, section 5A (2) of the Act contemplates a situation when the regulation-making authority is not able to conduct public participation due to any other reason, in which case the regulation-making authority is required to explain, in their Explanatory Memorandum, their reasons for not conducting public participation.

The Committee satisfied itself that the Order is in accord with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No 23 of 2013) pursuant to which it is made and therefore **recommends that the House approves the said statutory instrument in accordance with section 6(2) of the Value Added Tax Act, 2013.**

Section 6(2) of the Value Added Tax Act, 2013 contemplates and expressly provides that a resolution approving the Order shall be by the House (and not by a Committee of the House).

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate. I also want to express my heartfelt gratitude to the Members and staff of the Committee on Delegated Legislation for their commitment to duty especially during this difficult period of the COVID-19 pandemic.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 199 and Section 6(2) of the Value Added Tax Act, 2013; it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 (Legal Notice No. 35 of 2020).**

**HON. GLADYS BOSS SHOLLEI CBS MP**

## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
  - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
  - b) infringes on fundamental rights and freedoms of the public;
  - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
  - d) contains imposition of taxation;
  - e) directly or indirectly bars the jurisdiction of the court;
  - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
  - g) it involves expenditure from the consolidated fund or other public revenues;
  - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
  - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
  - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
  - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
  - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
  - m) inappropriately delegates legislative powers;
  - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
  - o) appears for any reason to infringe on the rule of law;
  - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
  - q) accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

3. The Committee membership comprises –

### Chairperson

Hon. Gladys Boss Shollei CBS MP  
Uasin Gishu County Woman Representative  
**Jubilee Party**

### Vice- Chairperson

Hon. Fatuma Gedi, CBS, MP  
Wajir County Woman Representative  
**Party for Development and Reforms**

### MEMBERS

Hon. Waihenya Ndirangu, MP  
Roysambu Constituency  
**Jubilee Party**

Hon. Alice Wahome, MP,  
Kandara Constituency  
**Jubilee Party**

Hon. Robert Mbui, MP  
Kathiani Constituency  
**Wiper Democratic Movement -Kenya**

Hon. Daniel Maanzo, MP  
Makueni Constituency  
**Wiper Democratic Movement -Kenya**

Hon. Muriuki Njagagua, MP  
Mbeere North Constituency  
**Jubilee Party**

Hon. Timothy Wanyonyi, MP  
Westlands Constituency  
**Orange Democratic Movement**

Hon. Ronald Tonui, MP  
Bomet Central Constituency  
**Jubilee Party**

Hon. William Kamoti, MP  
Rabai Constituency  
**Orange Democratic Movement**

Hon. Martha Wangari, MP  
Gilgil Constituency  
**Jubilee Party**

Hon. Gideon Mulyungi, MP  
Mwingi Constituency  
**Wiper Democratic Movement – Kenya**

Hon. William Kassait Kamket, MP  
Tiaty Constituency  
**KANU**

Hon. (Dr.) Wilberforce Oundo, MP  
Funyula Constituency  
**Orange Democratic Movement**

Hon. George G. Murugara, MP  
Tharaka Constituency  
**Democratic Party**

Hon. Jennifer Shamalla, MP  
Nominated  
**Jubilee Party**

Hon. Munene Wambugu, MP  
Kirinyaga Central Constituency  
**Jubilee Party**

Hon. Muturi Kigano, MP  
Kangema Constituency  
**Jubilee Party**

Hon. Patrick Kariuki Mariru, MP  
Laikipia West Constituency  
**Jubilee Party**

Hon. Sammy Seroney, MP  
Nominated  
**Wiper Democratic Movement – Kenya**

Hon. Tindi Mwale, MP  
Butere Constituency  
**Amani National Congress**

Hon. Alfred W. Sambu, MP  
Webuye East  
**Amani National Congress**

Hon. Abdi Koropu Tepo, MP  
Isiolo South Constituency  
**Kenya Patriots Party**



### **1.3 Committee Secretariat**

#### **4. The secretariat facilitating the Committee comprises -**

**Ms. Susan Maritim**  
*Senior Clerk Assistant (Team Leader)*

**Mr. Jimale Mohamed**  
*Second Clerk Assistant*

**Mr. Wilson Dima Dima**  
*Principal Legal Counsel*

**Mr. Josphat Motonu**  
*Fiscal Analyst I*

**Ms. Winnie Kiziah**  
*Media Relations Officer II*

**Mr. Anthony Wamae**  
*Serjeant at Arms*

**Mr. Charles Ayari**  
*Superintendent of Electronics*

**Ms. Mary Otieno**  
*Office Superintendent*

## **2.0 CONSIDERATION OF THE VALUE ADDED TAX (AMENDMENT OF THE RATE OF TAX) ORDER, 2020**

### **2.1 Introduction and Background Information**

5. In exercise of the powers conferred by section 6(1) of the Value Added Tax Act, 2013, Hon. (Amb.) Ukur Yatani, EGH, the Cabinet Secretary for the National Treasury and Planning published the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 on 26<sup>th</sup> of March, 2020 vide Legal Notice No. 35 of 2020.
6. The Order was submitted to the Clerk of the National Assembly on 1<sup>st</sup> April, 2020 and tabled before the House on Tuesday, 14<sup>th</sup> April, 2020.

### **2.2 Purpose of the Order**

7. The Order was issued following the executive directive to the Cabinet Secretary responsible for the National Treasury to invoke his powers in the Value Added Tax Act, 2013 to reduce the rate of value added tax on imported goods and services to ease the tax burden on the public as a relief on the possible individual citizen's economic hardships that may be occasioned by the Corona virus (COVID-19) pandemic.

### **2.3 Enabling Provisions**

8. Section 5(2) (b) of the Value Added Tax Act (No. 25. of 2013) deals with Charge to tax and provides that –

*“The rate of tax ...in any other case shall be sixteen per cent [16%] of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services”.*

9. **Section 6(1) of the Value Added Tax Act, 2013** allows the Cabinet Secretary to amend the rate of tax from 16% which is the rate specified in section 5(2)(b), and if he so amends the rate-
  - i) *the amendment of the rate must be done through an order published in the Gazette.*
  - ii) *the amended rate of tax can only increase or decrease by an amount not exceeding twenty-five per cent [25%] of the rate specified in section 5(2)(b).*
  - iii) *the order varying the rate must be laid before the National Assembly without unreasonable delay.*
  - iv) *the National Assembly has a maximum of twenty (calendar) days within which to make a resolution approving or not approving the order.*
  - v) *where the National Assembly passes a resolution disapproving the order within the stipulated time (twenty days of the day on which the National Assembly next sits after the order is laid) the order ceases to have effect but without prejudice to anything previously done thereunder [ i.e. any taxes charged at 14% will not be prejudiced and are presumed to be legitimate hence no refunds or claims may be made therefrom]*

- vi) *where the order is laid in the National Assembly (when the House is in session) and the stipulated time lapses without any resolution from the National Assembly, the order ceases to have effect, implying that the rate of value added tax reverts back to be sixteen percent (16%).*

#### **2.4 Overview of the Instrument**

10. The Order seeks to amend paragraph (b) of section 5 (2) of the Value Added Tax, 2013 by deleting the words “sixteen per cent” and substituting therefor the words “fourteen per cent”.

#### **2.5 Legal Basis for Scrutiny**

11. The Committee examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No. 23 of 2013).
12. With the instrument having been published in the Gazette vide Legal Notice No. 35 of 2020 on 26<sup>th</sup> March, 2020 and submitted to the Clerk of the National Assembly on 1<sup>st</sup> April, 2020, the Committee commenced its consideration immediately by holding the first sitting on Thursday, 2<sup>nd</sup> April, 2020.

#### **3.0 COMMITTEE OBSERVATIONS**

13. Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No. 23 of 2013), the Committee made the following observations –

- (i) **Statutory Timelines:** The Order was published in the Gazette vide Legal Notice No. 35 of 2020 on 26<sup>th</sup> March, 2020 and was submitted to the Clerk on 1<sup>st</sup> April, 2020, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act** and was submitted without unreasonable delay in accordance to section 6 (2) of the VAT Act.
- (ii) **Commencement of the Order:** The Order came into force on 1<sup>st</sup> April, 2020 in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of time stipulated therein.
- (iii) **Approval by the National Assembly:** Sections 17,18 and 19 of the Statutory Instruments Act and Standing Order 210(4)(b) requires the Committee to table a resolution recommending an annulment to the House which the House may or may not adopt. Hence, contrary to SIs which are dealt with in accordance Standing Order 210(4) (a), the VAT Order has to be tabled and the resolution to approve or not approve the variation of the rates has to be arrived at by the House in accordance with Section 6(2) of the Value Added Tax Act, 2013 which contemplates and expressly provides that a **resolution approving the Order shall be by the House** (and not by a Committee of the House).

- (iv) **Consultation / Public participation:** The regulation making authority did not demonstrate the conduct of, or the extent to which public participation was conducted.

To satisfy the requirement for public participation, the Clerk of the National Assembly through a newspaper advertisement appearing in the local dailies on 3<sup>rd</sup> April, 2020 invited interested members of the public to submit written memoranda regarding the Order. By close of business on Monday, 6<sup>th</sup> April, 2020, the office of the Clerk had not received any memoranda relating to the Order.

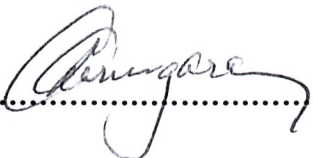
Pursuant to section 13(q) of the Act, **the Committee took cognizance of the fact that the reduction of the rates is for the benefit of the general public and the nature and urgency of the circumstances created by COVID-19 and dispensed with the requirements of public participation contemplated under sections 5 and the Schedule to the Statutory Instruments Act.**

Further, section 5A (2) of the Act contemplates a situation when the regulation-making authority is not able to conduct public participation due to any other reason, in which case the regulation-making authority is required to explain, in their Explanatory Memorandum, their reasons for not conducting public participation.

- (v) **Regulatory Impact Statement:** The Order does not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since the reduction of rates is not likely to impose significant costs on the community. The Order on the other hand has the effect of reducing the rate of value added tax chargeable on goods and services from 16% to 14% hence is to the economic advantage of the general public, and may relieve the public from the economic hardships occasioned by the pandemic of COVID-19 in the country.

#### 4.0 COMMITTEE RECOMMENDATION

14. Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 (*Legal Notice No. 35 of 2020*), against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No 23 of 2013), **the Committee recommends that the House approves the said statutory instrument in accordance with section 6(2) of the Value Added Tax Act, 2013.**

Signed.....

Date.....14.4.2020

 **HON. GLADYS BOSS SHOLLEI, CBS, MP**  
**(CHAIRPERSON)**

## **ANNEXURES**

- 1. Adoption List**
- 2. Paper Laid: Legal Notice No. 35 of 2020 and Explanatory Memorandum**
- 3. Newspaper advertisement dated 3<sup>rd</sup> April, 2020**
- 4. Committee Minutes**


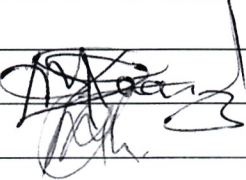
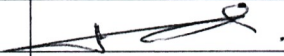
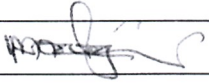
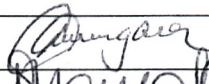
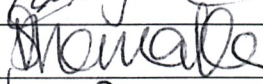
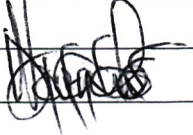
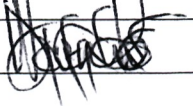
## COMMITTEE ON DELEGATED LEGISLATION

### ADOPTION SCHEDULE

Report on the Consideration of Value Added Tax (Amendment of the Rate of Tax) Order, 2020

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 14 April 2020

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Timothy Wanyonyi, MP	
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. George Gitonga Murugara, MP	
16.	Hon. Jennifer Shamalla, MP	
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	
20.	Hon. Tindi Mwale, MP	
21.	Hon. Gideon Mulyungi, MP	
22.	Hon. Abdi Tepo, MP	
23.	Hon. Alfred Sambu, MP	

**MINUTES OF THE 12<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 2<sup>ND</sup> APRIL, 2020 AT 11.30 A.M. IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS**

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**PRESENT**

1. **The Hon. Fatuma Gedi, CBS, MP** - **Vice Chairperson**
2. The Hon. Timothy Wanyonyi, MP
3. The Hon. Alice Wahome, MP
4. The Hon. George Murugara, MP
5. The Hon. Patrick Mariru, MP
6. The Hon. Jennifer Shamalla, MP

**ABSENT WITH APOLOGY**

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. The Hon. Robert Mbui, MP
3. The Hon. Muriuki Njagagua, MP
4. The Hon. Waihenya Ndirangu, MP
5. The Hon. Daniel Maanzo, MP
6. The Hon. Kamoti Mwamkale, MP
7. The Hon. Martha Wangari, MP
8. The Hon. Ronald Tonui, MP
9. The Hon. (Dr.) Wilberforce Oundo, MP
10. The Hon. Abdi Koropu Tepo, MP
11. The Hon. Gideon Mulyungi, MP
12. The Hon. Kassait Kamket, MP
13. The Hon. Munene Wambugu, MP
14. The Hon. Muturi Kigano, MP
15. The Hon. Sammy Seroney, MP
16. The Hon. Tindi Mwale, MP

**ABSENT**

The Hon. Alfred Sambu, MP

**IN-ATTENDANCE**

**National Assembly Secretariat**

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Dima Dima - Principal Legal Counsel

**MIN.NO. /NA/CDL/2020/062 PRAYER AND PRELIMINARIES**

The meeting commenced with the Prayer at 10am, chaired by Hon. George Murugara, MP pursuant to SO 188 as proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Timothy Wanyonyi, MP.

**MIN.NO. /NA/CDL/2020/063 ADOPTION OF THE AGENDA**

The Committee unanimously adopted the Agenda as proposed by Hon. Timothy Wanyonyi, MP and seconded by Hon. Jennifer Shamalla, MP.

MIN.NO. /NA/CDL/2020/064

**CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Minutes of the 11<sup>th</sup> Sitting held on 17<sup>th</sup> March, 2020 was deferred to the next sitting.

MIN.NO. /NA/CDL/2020/065

**CONSIDERATION OF THE DRAFT PUBLIC FINANCE MANAGEMENT (COVID- 19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020;**

The Committee was informed that on 27<sup>th</sup> March, 2020, the Cabinet Secretary responsible for the National Treasury submitted the draft Public Finance Management (Covid 19 Emergency Response Fund) Regulations, 2020 for consideration by the National Assembly.

The Regulations are made by the Cabinet Secretary for National Treasury and Planning in exercise of the powers conferred by section 24(4) of the Public Finance Management Act,2012.

**Overview of the draft Regulations**

**PART I** of the Regulations provide for the citation and definitions of terms used in the Regulations including the definition of “COVID 19” to mean an infectious disease caused by coronavirus.

**PART II** of the Regulations provides for establishment of the Fund as an Emergency Response Fund. It further provides for the Objects of the Fund to include, among other purposes –

- (i) Purchase of essential supplies for public hospitals- This should include any other place designated for COVID 19 including any centre, Hotels, Schools etc.
- (ii) Regulation 2(b) provides that the Fund is for programmes emergency relief for the older and poor persons in urban informal settlements- This should also include Rural populations lest it becomes discriminative and infringes on Article 27(4) of the Constitution and section 13 (a) of the Statutory Instruments Act.
- (iii) It also provides for the sources of the Fund to include appropriations by the National Assembly, voluntary contributions, grants, donations, bequests, gifts.

Voluntary contributions include contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.

- (iv) The Part provides generally for uses or expenditure of the Fund being for all payments in respect of any expenses incurred to achieve the objects of the Fund.

**PART III** deals with management of the Fund and establishes a Board of Management comprising twelve persons (12) including the Chairperson and a secretary. The membership of the Board however omits the Health ministry, yet it is a Funds on matters health (the eight persons include cannot include the PS being a public officer unless it is expressly provided for in the Regulations on membership).

Regulation 8 enumerates the functions of the Fund and Regulation 9 provides for the Administrator of the Fund, the functions of the administrator, the mechanisms of accounting for the fund, approvals and the designation of treasury staff (officers) as the secretariat of the Fund.

**PART IV** deals with Financial Provisions including authority to the Administrator to open bank accounts, restriction from overdrawing from the accounts and uses of withdrawals. Conformity to



procurement regulations, preparation of quarterly financial and non-financial reports {To whom should the reports be submitted and by when)

It also provides for accounts including keeping of proper books and records and preparation of Financial statements.

**PART V** deals with the General Provisions including the Presidential declaration on the lapse of the Fund and the procedure for winding up of the Fund upon such a declaration. Should there be a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved?

**Committee Observations**

Having considered the draft Regulations, the Committee resolved as follows –

	ISSUE	COMMITTEE REMARKS
1.	<b>Arrangement of Regulations</b>	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”
2.	<b>Regulation 2</b>	<p>(i) There should be a definition of “<i>COVID 19 isolation centre, quarantine centre etc</i>” to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The Ministry may consider consulting health experts to properly define “COVID19” since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of “vulnerable persons” should include persons with disability (PWDs), widows and widowers.</p>
3.	<b>Regulation 4(2)(a)</b>	The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency

	ISSUE	COMMITTEE REMARKS
		medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.
4.	<b>Regulation 4(2)(b)</b>	Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning... <b>older and poor persons in urban informal setting</b> . This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory Instruments Act. <b>It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.</b>
5.	<b>Regulation 5</b>	Regulation 5(b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.
6.	<b>Regulation 7</b>	The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.
7.	<b>Regulation 9</b>	Regulation 9(g) transmit the financial statements to both Auditor General and the National Assembly.
8.	<b>Regulation 14</b>	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “<b>financial management shall be responsible, and fiscal reporting shall be clear</b>”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the</p>

	ISSUE	COMMITTEE REMARKS
		monthly returns to the National Assembly for purposes of accountability.
9.	<b>Regulation 17</b>	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.
10.	<b>Consultation / Public participation</b>	<p>The regulation making authority published the Regulations both on their website and the Daily Nation and Standard Newspapers of 31<sup>st</sup> March, 2020 which are newspapers of wide circulation and gave a deadline of 1<sup>st</sup> April, 2020 at 5pm for submission of views and memoranda from stakeholders and the public.</p> <p>Given the nature and urgency of the matter in question (COVID-19), the Committee, pursuant to section 13(q) which provides for the latitude of other considerations, was satisfied that the advertisement serves as proof of sufficient consultation and public participation, in case the Ministry provides for and submits to the Committee the reaction of the public on the Regulations.</p> <p>Section 5A (2) of the SI Act contemplates a situation where the regulation-making authority is not able to conduct public participation due to any other reason and hence requires that in an event that they did not conduct public participation, they explain their reasons for not conducting the same in their explanatory memorandum.</p>
11.	<b>Regulatory Statement Impact</b>	The Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are made pursuant to section 24 of Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 which permits the Cabinet Secretary to establish an emergency Fund through Regulations in case of an emergency.

It was resolved that the concerns raised by the Committee be urgently communicated to the regulation making authority for incorporation before publishing of the Regulations.

**MIN.NO. /NA/CDL/2020/067                      CONSIDERATION OF VALUE ADDED TAX  
(AMENDMENT OF THE RATE OF TAX) ORDER, 2020**

The Committee was informed that the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 is made by the Cabinet Secretary for the National Treasury and Planning in exercise of the powers conferred by section 6(1) of the Value Added Tax Act (No. 25. of 2013, Laws of Kenya.).

**Brief background and nature of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020**

The Order was issued following the Executive Directive to the Cabinet Secretary to invoke his powers in the Value Added Tax Act to reduce the rate of value added tax on imported goods and services, to ease the tax burden on the public as a relief on the possible individual citizen's economic hardships that may be occasioned by the Coronavirus (COVID 19) pandemic .

Section 5(2) (b) of the Value Added Tax Act (No. 25. of 2013) deals with Charge to tax and provides that –

*“The rate of tax ...in any other case shall be sixteen per cent [16%] of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services”.*

*Section 6(1) of the Value Added Tax Act allows the Cabinet Secretary to amend the rate of tax from 16% which is the rate specified in section 5(2)(b), and if he so amends the rate-*

- a) the amendment of the rate must be done through an order published in the Gazette.*
- b) the amended rate of tax can only increase or decrease by an amount not exceeding twenty-five per cent [25%] of the rate specified in section 5(2)(b).*
- c) the order varying the rate must be laid before the National Assembly without unreasonable delay.*
- d) the National Assembly has a maximum of twenty (calendar) days within which to make a resolution approving or not approving the order.*
- e) where the National Assembly passes a resolution disapproving the order within the stipulated time ( twenty days of the day on which the National Assembly next sits after the order is laid ) the order ceases to have effect but without prejudice to anything previously done thereunder[ i.e. any taxes charged at 14% will not be prejudiced and are presumed to be legitimate hence no refunds or claims may be made therefrom]*
- f) where the order is laid in the National Assembly (when the House is in session) and the stipulated time lapses without any resolution from the National Assembly, the order ceases to have effect, implying that the rate of value added tax reverts back to be sixteen percent (16%).*

**Observations**

- i) The Order is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act, hence is subject to the requirements of the Statutory Instruments Act.**

- ii) Being a statutory instrument, it comes into force upon publication in the gazette or on the date specified in the order which for the instant was on the 1st of April, 2020.
- iii) Pursuant to Article 259(5) and (6) of the Constitution, if the Order is laid before the National Assembly on Tuesday, 14th of April, 2020 and with the presumption that the House resumes its regular sittings, then the last possible day that the House can make a resolution approving or disapproving the Order is Monday, 4th of May, 2020.

If the National Assembly approves the Order within the stipulated time, the Order remains in force as published hence the rate of tax shall be 14% until it is varied by another Order made by the Cabinet Secretary.

**iv) Resolution approving or not approving the Order to be made by the House (National Assembly) [and not a Committee of the House]**

Section 6(2) of the Value Added Tax Act (No. 25. of 2013) contemplates and expressly provides that a resolution approving the Order shall be by the House [and not by a committee of the House]

There are statutory instruments, resolutions of which are subject only to Committee approvals in accordance with Standing Order 210(4)(a) which provides that *“If the committee ...resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department. [The House does not need to ratify the approval].”*

Sections 17, 18 and 19 of the Statutory Instruments Act and Standing Order 210(4)(b) requires the Committee to table a resolution recommending an annulment to the House which the House may or may not adopt. Hence, contrary to SIs which are dealt with in accordance Standing Order 210(4) (a), the VAT Order has to be tabled and the resolution to approve or not approve the variation of the rates has to be arrived at by the House.

**Statutory Timelines**

- v) The Order was published in the Gazette vide Legal Notice No. 35 of 2020 on the 26th of March, 2020 and was submitted to the Clerk on 1<sup>st</sup> April, 2020, hence is within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act and was submitted without unreasonable delay in accordance to section 6 (2) of the VAT Act.
- vi) The Order is yet to be tabled before the House as contemplated under sections 28(2) and (3) of the Statutory Instruments Act since the House is on recess. If the Order is laid on the 14<sup>th</sup> of April, 2020 and on the presumption that the House proceeds with its regular sittings, then the last possible day that the House can make a resolution approving or disapproving the Order is Monday, 4th of May, 2020.

**Commencement/ Coming into force of the Order**

- vii) The Order came into force on the 1<sup>st</sup> of April, 2020 in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of time stipulated therein.

**Consultation / Public participation**

- viii) **The Ministry did not demonstrate the conduct of, or the extent to which public participation was conducted.** Section 13(q) of the Statutory Instruments Act gives the

Committee a latitude to consider whether the Statutory Instrument accords to any other reason (other than the ones specified in section 13) that the Committee considers fit to examine.

- ix) Pursuant to section 13(q) of the Act, the Committee took cognizance of the fact that the reduction of the rates is for the benefit of the general public and the nature and urgency of the circumstances created by COVID 19 and dispensed with the requirements of public participation contemplated under sections 5 and the Schedule to the Statutory Instruments Act.

Further, section 5A (2) of the Act contemplates a situation when the regulation-making authority is not able to conduct public participation due to any other reason, in which case the regulation-making authority is required to explain, in their Explanatory Memorandum, their reasons for not conducting public participation.

### Regulatory Impact Statement

- x) The Order does not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since the reduction of rates is not likely to impose significant costs on the community. The Order on the other hand has the effect of reducing the rate of value added tax chargeable on goods and services from 16% to 14% hence is to the economic advantage of the general public, and may relieve the public from the economic hardships occasioned by the pandemic of COVID 19 in the country.

### Way Forward

Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020, the Committee satisfied itself that the Order is in accord with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (*No 23 of 2013*) pursuant to which is made and therefore resolved to **recommend to the House its approval**.

The approval was proposed by Hon. Patrick Mariru, MP and seconded by Hon. Fatuma Gedi, MP.

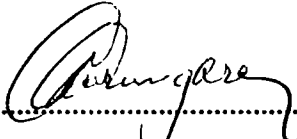
In accordance with the section 6(2) of the VAT Act, 2013, the Committee is expected to table a Report on the consideration of the Order for approval by the Whole House. It was therefore resolved that the next meeting be held on Tuesday, 7<sup>th</sup> April, 2020 at 10.00am to consider and adopt the Report.

**MIN.NO. /NA/CDL/2020/067 ANY OTHER BUSINESS**

No other business arose.

**MIN.NO. /NA/CDL/2020/068 ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.05 p.m. until further notice.

Signed:  .....

Date: 14. 4. 2020 .....

**HON. GLADYS BOSS SHOLLEI CBS MP  
(CHAIRPERSON)**

**URGENT**



**REPUBLIC OF KENYA  
THE NATIONAL TREASURY AND PLANNING**

Telegraphic Address: 22921  
Finance – Nairobi  
Fax No. 315779  
Telephone: 2252299

THE NATIONAL TREASURY  
P O BOX 30007 – 00100  
NAIROBI  
KENYA

When Replying Please Quote

*② How, take OMC  
for tabling.  
DLs - Mr. Doina to  
advise  
1/3/20*

**Ref. ZZ/TS/GP/30**

**March 30, 2020**

**Mr. Michael Sialai, CBS**  
Clerk of the National Assembly  
National Assembly  
Parliament Buildings  
**NAIROBI**

*① DLBP  
Pse deal. We  
should seek  
public participation.  
CNA  
1/4/2020*

Dear *Sialai*

**RE: LEGAL NOTICE NO. 35 OF 2020 ON THE REDUCTION OF THE VAT RATE  
FROM 16% TO 14%**

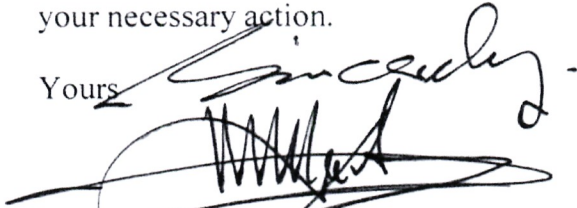
H.E. The President, on 25th March 2020, directed the National Treasury and Planning to reduce the rate for Value Added Tax from 16% to 14% effective 1<sup>st</sup> April, 2020.

In order to implement the Directive, The National Treasury and Planning issued the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 via Legal Notice number 35 published on 26<sup>th</sup> March, 2020 in accordance with Section 6 of the Value Added Tax Act, 2013. The Legal Notice seeks to amend Section 5 of the Act to reduce the value added tax rate from 16% to 14%.

RECEIVED  
01 APR 2020  
P. O. BOX 41842, NAIROBI

In order to comply with the provisions of the Statutory Instruments Act, 2013, we hereby submit the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 for your necessary action.

Yours



**HON. (AMB.) UKUR YATANI, E.G.H**  
**CABINET SECRETARY/THE NATIONAL TREASURY AND PLANNING**

**Copy to: Hon. Gladys Boss Shollei**  
Chair Committee on Delegated Legislation  
National Assembly  
**NAIROBI**

**Justice (Rtd.) P. Kihara Kariuki, E.G.H**  
Attorney General  
State Law Office  
**NAIROBI**

**Mr. Kennedy Ogeto, EBS**  
Solicitor General  
State Law Office  
**NAIROBI.**

Principal Secretary  
**The National Treasury**



**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 30*

521

*26th March, 2020*

*(Legislative Supplement No. 18)*

LEGAL NOTICE No. 35

THE VALUE ADDED TAX ACT, 2013

*(No. 35 of 2013)*

IN EXERCISE of the powers conferred by Section 6(1) of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Order: —

THE VALUE ADDED TAX (AMENDMENT OF THE RATE OF TAX) ORDER, 2020

1. This Order may be cited as the Value Added Tax (Amendment of the Rate of Tax) Order, 2020.

2. Section 5(2) of the Value Added Tax Act, 2013 is amended in paragraph (b) by deleting the words "sixteen per cent" and substituting therefor the words "fourteen per cent".

3. This Order shall become effective on the 1st April, 2020.

Made on the 25th March, 2020

UKUR YATANI,

*Cabinet Secretary for the National Treasury and Planning.*

LEGAL NOTICE No. 36

THE PUBLIC ORDER ACT

*(Cap. 56)*

THE PUBLIC ORDER (STATE CURFEW) ORDER, 2020

IN EXERCISE of the powers conferred by section 8 (1) of the Public Order Act, the Cabinet Secretary for Interior and Co-ordination of National Government makes the following Order: —

THE PUBLIC ORDER (STATE CURFEW) ORDER, 2020

1. This Order may be cited as the Public Order (State Curfew) Order, 2020. Citation.

2. This Order shall apply to the entire territory of the Republic of Kenya. Application.

3. This Order shall apply during the hours of darkness between seven o'clock in the evening and five o'clock in the morning with effect from the 27th March, 2020. Curfew period.

4. Under this Order, there shall be no public gatherings, processions or movement either alone or as a group during the period of the curfew. Restrictions.