

REPUBLIC OF KENYA  
THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY  
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NAIROBI  
KENYA



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Ref. ZZ/TS/GP/30

March 29, 2021

Michael Sialai, EBS  
Clerk of the National Assembly  
Parliament Building  
NAIROBI

*ODLP  
to table.  
CNA  
25/3/2021*

Dear *Sialai,*

**RE: LEGAL NOTICE NO.27 OF 2021- EXEMPTION FROM INCOME TAX**

The above-mentioned Legal Notice was published on 26<sup>th</sup> March 2021.

In compliance with Section 11 of the Statutory Instruments Act, 2013, I hereby submit the Legal Notice No.27 of 2020 on exemption of income tax and Explanatory Memorandum for the same, for tabling in the National Assembly.

Yours *Sincerely,*

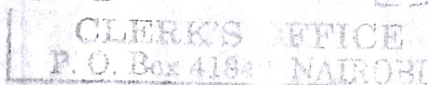
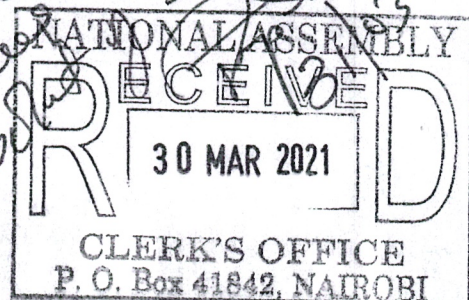
*To register office to the committee under 10(ii) of 50.3.2021, and cause tabling upon the table.  
Moses 31/3/21*

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

Encl.

Copy to: **Justice (Rtd) P. Kihara Kariuki, EGH**  
The Attorney General  
State Law Office  
NAIROBI

*prepare a memo select to a committee of the house  
25/3/2021*



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# THE KENYA GAZETTE

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Kenya Gazette Supplement No. 37

17th March, 2021

(Legislative Supplement No. 13)

LEGAL NOTICE NO. 27

THE INCOME TAX ACT

(Cap. 470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Planning directs that the income derived from or accrued in Kenya by an airline in which the Government of Kenya owns at least forty-five per cent of its shares, and the subsidiaries of that airline, shall be exempt from the provisions of section 12D of the Act.

Dated the 15th March, 2021.

UKUR YATANI,  
*Cabinet Secretary for National Treasury and Planning.*

LEGAL NOTICE NO. 28

THE STAMP DUTY ACT

(Cap. 480)

EXEMPTION

IN EXERCISE of the powers conferred by section 106 (1) of the Stamp Duty Act, the Cabinet Secretary for the National Treasury and planning, on recommendation of the Cabinet Secretary for Lands and Physical Planning, directs that the instruments executed in respect of the transfer of land parcel L.R. No. 37/760, situate in Nairobi, from St. Patrick's Missionary Society Registered Trustees, of P.O. Box 25084-00603, Nairobi, to the Salesians of Don Bosco Registered Trustees Kenya, of P.O. Box 62322-00200, Nairobi, shall be exempt from the provisions of the Act.

Dated the 5th March, 2021.

UKUR YATTANI,  
*Cabinet Secretary for the National Treasury and Planning.*

**EXPLANATORY MEMORANDUM TO THE LEGAL NOTICE ON THE  
INCOME TAX EXEMPTION**

**LEGAL NOTICE NO. 27 of 2021**

**PART I**

<b>Name of Statutory Instrument</b>	: The Income Tax Exemption
<b>Name of Parent Act</b>	: Income Tax Act, Cap 470
<b>Enacted Pursuant to</b>	: Section 13(2) of the Income Tax Act
<b>Name of the Ministry</b>	: The National Treasury and Planning
<b>Gazetted on</b>	: 26 <sup>th</sup> March 2021

**PART II**

**1. Purpose of the Statutory Instrument**

The objective of the Legal Notice is to exempt from income tax an airline including its subsidiaries where the Government owns at least forty-five percent of its shares, from the provision of the section 12 D of the Income Tax Act.

**2. Legislative Context**

The Legal Notice exempt from income tax the income derived from or accrued in Kenya from the provision of the section 12 D of the Income Tax Act. Section 12D of the Income Tax Act introduces minimum tax payable by all entities regardless of whether they are in profit making position or not.

**3. Policy Background**

3.1 The Finance Act, 2020 amended the Income Tax Act to introduced minimum tax to be charged on all business enterprises whether they are in profit position or not. This is meant to discourage tax planning, where some companies perpetually declare losses to avoid paying tax in Kenya, where other may not be paying the collect amount of tax. These companies benefit from services such a security, roads, hospitals among others. In addition, they employ

Kenyans who are educated in schools supported by the Government through tax revenue paid by other business entities.

1. The Kenya Airways Limited requested to be exempted from paying minimum tax citing the following grounds:
  - a) The Covid-19 pandemic crippled affected operation of airlines and thus worsened its financial position of the already ailing company which has been making losses over the recent years.
  - b) Considering its financial operation, the minimum tax will render the company's operation unsustainable.
  - c) The airline continued to pay lease expenses even during the suspension of all international operation occasioned by the covid19 pandemic, this is in addition to other costs such as regular inspections of aircrafts in compliance with international regulations thus increasing likelihood of making losses.
  - d) The Kenya Airways Limited as the national carrier plays a pivotal role in the economy through marketing Kenya as a tourism destination, trade facilitation, job creation among others. It is because of its important role in the economy that the Government, as the majority shareholder, has continued to provide tax incentives and bail out to finance its operations despite making losses over time. It was therefore considered prudent to grant the exemption from minimum tax to help the company continues its operations up to the time it is back to profitability.

### **Public Participation**

After the enactment of the Finance Act, 2020 that introduced minimum tax, the National Treasury received various presentation from stakeholders on the impact of this new tax on several class of business including public entities that are facing financial challenges. Kenya Airways Limited which was seriously affected by covid-19 pandemic and of recent years the company has been declaring losses, also presented case to the National Treasury demonstrating the need for consideration for exemption from this new tax.

### **Impact**

liability of paying minimum tax. This is meant to allow the company to recover back to profitability.

#### **6. Monitoring and review**

The implementation of the exemption will be monitored by the Kenya Revenue Authority and may be reviewed as the institution targeted improved their profitability.

#### **7. Request to the National Assembly**

The National Assembly is invited to:

- a) note the contents of this Memorandum and
- b) adopt the Legal Notice No. 27 of 2021.

#### **8. Contact**

Cabinet Secretary,  
National Treasury & Planning,  
NAIROBI