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29/9/2021

REPUBLIC OF KENYA

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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FIFTH SESSION (2021)


COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE INCOME TAX EXEMPTION ON  
THE SEND-OFF PACKAGE PAYABLE TO EMPLOYEES OF THE KENYA  
AIRWAYS PLC, 2021

(Legal Notice No. 115 of 2021)

SEPTEMBER, 2021

*The Directorate of Audit, Appropriations  
and Other Select Committees  
The National Assembly,  
Parliament Buildings,  
NAIROBI.*

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE:</b> 29 SEP 2021	<b>DAY:</b> Wednesday
<b>TABLED BY:</b>	Vice-chairperson, Committee on Delegated Legislation
<b>CLERK-AT THE-TABLE:</b>	Getwode Chebet



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## ABBREVIATIONS

<b>LN</b>	Legal Notice
<b>SI</b>	Statutory Instruments
<b>SO</b>	Standing Order

## CHAIRPERSON'S FOREWORD

The Cabinet Secretary, National Treasury *vide Legal Notice No. 115 of 2021* seeks to exempt from income tax the send-off package of 187 Kenya Airways PLC, employees who left the company through voluntary retrenchment between January, 2021 and March 2021.

The legal basis for granting a tax exemption is stipulated in section 13(2) of the Income Tax Act (*Cap 470*) which empowers the Cabinet Secretary responsible for the National Treasury, by notice in the Gazette, to provide that any income or class of income which accrued in or was derived from Kenya shall be exempt from tax to the extent specified in such notice and that any such exemption shall cease to have effect either generally or to the extent specified in the notice, and that where the Cabinet Secretary issues such a notice, the notice is to be laid before the National Assembly without unreasonable delay.

The Legal Notice was published on the 15<sup>th</sup> of July, 2021, submitted to the Clerk of the National Assembly on 19<sup>th</sup> August, 2021 and laid before the House on 1<sup>st</sup> September, 2021. It was then referred to the Committee on Delegated legislation for consideration pursuant to section 12 of the Statutory Instruments Act and Standing Order 210 of the National Assembly.

The send-off package includes three months' salary paid in lieu of notice, severance pay and payments for accumulated leave days, payable to the 187 retrenched employees of Kenya Airways PLC and considering that the retrenchment is voluntary, granting the tax exemption on the send off package will encourage staff to take the offer and also provide a reasonable income for them to start off some activities to sustain themselves.

In regard to public participation, the Committee took note that the Cabinet Secretary in publishing and submitting the Legal Notice No 115 of 2021 to the National Assembly was discharging a statutory mandate and conforming to the requirements of section 13 of the Income Tax Act. The Exemption Notice, according to the Committee is therefore not a Statutory Instrument within the meaning of section 2 of the Statutory Instruments Act, 2013 and may therefore not be subject to public participation in the manner contemplated in sections 5 and 5A of the Statutory Instruments Act, 2013.

The Committee further satisfied itself that the Legal Notice had been submitted to the National Assembly without unreasonable delay as contemplated under section 13(2) of the Income Tax Act (*Cap 470*).

Having therefore examined LN No. 115 of 2021 in line with the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*) and section 13(2) of the Income Tax Act, (*Cap 470*), the Committee recommends to the House to **approve the Legal Notice No.115 of 2021, exempting the send-off package of the 187 retrenched employees of Kenya Airways PLC from taxation, in accordance with section 13(2) of the Income Tax Act (*Cap 470*).**

Committee on Delegated Legislation: *Report on the consideration of the Income Tax Exemption on the send-off package paid to employees of the Kenya Airways Limited, 2021 (Legal Notice No. 115 of 2021)*

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.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the consideration of the Income Tax Exemption on the Send-Off Package paid to employees of the Kenya Airways Limited, 2021** (*Legal Notice No. 115 of 2021*)

**HON. WILLIAM KASSAIT KAMKET, M.P.**

## 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 accord 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 –

**The Hon. William Kassait Kamket, M.P. (Chairperson)**

Tiaty Constituency

**KANU**

**The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)**

Mbeere North Constituency

**Jubilee Party**

### COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

**Jubilee Party**

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

**Jubilee Party**

The Hon. William Cheptumo, M.P.

Baringo North Constituency

**Jubilee Party**

The Hon. William Kamoti, M.P.

Rabai Constituency

**Orange Democratic Movement**

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

**Jubilee Party**

The Hon. Martha Wangari, M.P.

Gilgil Constituency

**Jubilee Party**

The Hon. Alice Wahome, M.P.

Kandara Constituency

**Jubilee Party**

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

**Wiper Democratic Movement – Kenya**

The Hon. Robert Mbui, M.P.

Kathiani Constituency

**Wiper Democratic Movement -Kenya**

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

**Orange Democratic Movement**

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

**Wiper Democratic Movement -Kenya**

The Hon. George G. Murugara, M.P.

Tharaka Constituency

**Democratic Party**

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

**Orange Democratic Movement**

The Hon. Jennifer Shamalla, M.P.

Nominated

**Jubilee Party**



The Hon. Munene Wambugu, M.P.  
Kirinyaga Central Constituency  
**Jubilee Party**

The Hon. Patrick Mariru, M.P.  
Laikipia West Constituency  
**Jubilee Party**

The Hon. Sammy Seroney, M.P.  
Nominated

The Hon. Robert Gichimu, M.P.  
Gichugu Constituency  
**Jubilee Party**

**Wiper Democratic Movement – Kenya**  
The Hon. Tindi Mwale, M.P.  
Butere Constituency  
**Amani National Congress**

The Hon. Edith Nyenze, M.P.  
Kitui West Constituency  
**Wiper Democratic Movement – Kenya**

The Hon. Abdi Koropu Tepo, M.P.  
Isiolo South Constituency  
**Kenya Patriots Party**

### 1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

**Mr. Mohamed Jimale**  
*Clerk Assistant II (Team Leader)*

Ms. Ruth Mwihaki Gakuya  
*Clerk Assistant II*

Mr. Dima Dima  
*Principal Legal Counsel*

Mr. Josphat Motonu  
*Fiscal Analyst I*

Ms. Fiona Musili  
*Research Assitant II*

Ms. Noelle Chelangat  
*Media Relations Officer II*

Mr. Anthony Wamae  
*Serjeant at Arms*

Mr. Charles Ayari  
*Superintendent of Electronics*

Mr. Muriithi Theuri  
*Parliamentary Intern*

## 2.0 CONSIDERATION OF THE EXEMPTION FROM INCOME TAX ON THE SEND-OFF PACKAGE PAID TO EMPLOYEES OF THE KENYA AIRWAYS LIMITED

### 2.1 Introduction

5. The legal basis for granting a tax exemption as contained in Legal Notice No. 115 of 2021 is stipulated in Section 13(2) of the Income Tax Act (Cap 470) which empowers the Cabinet Secretary to exempt certain income or class of income which accrued in or was derived from Kenya from tax.
6. Section 13(2) of the Income Tax Act (*Cap 470*) empowers the Cabinet Secretary responsible for the National Treasury, by notice in the Gazette, to provide that any income or class of income which accrued in or was derived from Kenya shall be exempt from tax to the extent specified in such notice and that any such exemption shall cease to have effect either generally or to the extent specified in the notice, and that where the Cabinet Secretary issues such a notice, the notice is to be laid before the National Assembly without unreasonable delay.
7. *The Act also provides that if a resolution is passed by the National Assembly within twenty days on which it next sits after the notice is so laid that the notice be annulled, it shall henceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.*
8. The House, therefore, has to pronounce itself within the statutory timelines and if the time lapses without the notice being expressly approved or [is not annulled], then it shall be deemed to have been [impliedly] approved by operation of law.
9. The L.N. No. 115 of 2021 was published on 15<sup>th</sup> of July, 2021, submitted to the Clerk of the National Assembly on 19<sup>th</sup> August, 2021 and laid before the House on 1<sup>st</sup> September, 2021 during the special sitting, since the House was on recess between 24<sup>th</sup> August, 2021 and 20<sup>th</sup> September, 2021, and met the statutory timelines set out in section 11(1) of the Statutory Instruments Act, 2013.
10. The notice was therefore laid before the House without **unreasonable delay** as contemplated in section 13 (3) of the Income Tax Act.

### 2.2 Purpose of the Exemption

11. The Income Tax Exemption (*Legal Notice No. 115*) seeks to exempt from income tax the send-off package of 187 Kenya Airways PLC employees who left the company pursuant to retrenchment between January 2021 and March 2021.

### 2.3 Legislative Context

12. The send-off package, which is sought to be exempted amounts to three months' salary paid in lieu of notice, severance pay and payments for accumulated leave days, due to the 187 retrenched employees of Kenya Airways PLC .

13. The exemption from Income Tax will have an effect on the performance of the Kenya Airways as more staff are likely to be incentivized into voluntary retrenchment following the exemption of Income Tax on their three months' income which in turn would imply a reasonable income to enable them sustain themselves following the retrenchment.
14. On the other hand, the Kenya Airways will reduce its cost of operations which may have an effect on the improved solvency status and the sustained financial performance of the airline.

#### 2.4 Policy Background

15. Kenya Airways PLC has been making losses in recent years due to various factors and this had financially constrained the operations of the airline. In order to mitigate the problem, the Board in 2016 approved the implementation of a turnaround program, which included amongst others, rationalization of staff to reduce operational costs. The staff rationalization program kicked off in 2019.
16. The onset of COVID-19 in Kenya in 2020 and its subsequent impacts on the aviation industry, particularly the suspension of international travel necessitated the fast tracking of the staff rationalization. This in-turn led to the voluntary retrenchment of the staff with the three months' send-off package for those affected.
17. The exemption of the Income Tax on the retrenched staff was therefore given as an incentive to encourage the staff take the offer.
18. The affected staff were represented in the Collective Bargaining Agreement (CBA) where the representatives requested for the improvement of the send-off package where the staff will be exempted from Income Tax in their three months' salary.

#### 2.5 Scrutiny of the Instrument

19. The Committee considered Legal Notice No.115 of 2021 on the exemption from Income Tax on the send-off package paid to employees of the Kenya Airways PLC in a sitting held on 23<sup>rd</sup> September, 2021 where it examined the said Legal notice against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*) and the Income Tax Act, (*Cap 470*), pursuant to which the Exemption is sought.

### 3.0 COMMITTEE OBSERVATIONS

20. Having scrutinized and examined *LN No. 115 of 2021* as required the relevant laws and Standing Order 210 of the National Assembly Standing Orders, the Committee makes the following observations–

#### 3.1 Statutory Timelines

- 1) The Legal Notice No. 115 of 2021 was published on 15<sup>th</sup> July, 2021, submitted to the Clerk, National Assembly on 19<sup>th</sup> August, 2021 and laid before the House on Wednesday, 1<sup>st</sup> September, 2021 during the special sitting, which was done **without unreasonable delay** as contemplated in section 13 (2) of the Income Tax Act as the House was on recess between 24<sup>th</sup> August, 2021 and 20<sup>th</sup> September, 2021.

### 3.2 Public Participation

- 1) The Cabinet Secretary in publishing and submitting the Legal Notice No 115 of 2021 to the National Assembly was discharging a statutory mandate and conforming to the requirements of section 13 of the Income Tax Act. The Exemption Notice is therefore not a statutory instrument within the meaning of section 2 of the Statutory Instruments Act, 2013 and may therefore not be subject to public participation in the manner contemplated in sections 5 and 5A of the Statutory Instruments Act, 2013.
- 2) The Cabinet Secretary, National Treasury and Planning submitted to the National Assembly an Explanatory Memorandum on the Legal Notice detailing the purpose of the Legal Notice, the policy background and the legislative context.
- 3) Section 13(2) of the Income Tax Act, (Cap 470) allows the Cabinet Secretary to exempt certain activities from taxation, save that if he so exempts then the notice must be published in the gazette [for information to the public] and that it must be submitted to the National Assembly without unreasonable delay.


### 4.0 COMMITTEE RECOMMENDATION

21. Having examined the Legal Notice No. 115 of 2021 against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*) and section 13(2) of the Income Tax Act, (*Cap 470*), the Committee recommends that the House approves the Legal Notice No.115 of 2021, exempting the send-off package of the 187 retrenched employees of Kenya Airways PLC from taxation, in accordance with section 13(2) of the Income Tax Act(*Cap 470*) .

Signed.....

Date..... 29/9/2021

*for*  
**THE HON. WILLIAM KASSAIT KAMKET, M.P.**  
(CHAIRPERSON)

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE: 29 SEP 2021</b>	
<b>DAY:</b>	
<b>TABLED BY:</b>	
<b>CLERK-AT THE-TABLE:</b>	

## ANNEXURES

1. Adoption List
2. Legal Notice No. 115 of 2021 and the Explanatory Memorandum
3. Committee Minutes

**COMMITTEE ON DELEGATED LEGISLATION**

**ADOPTION LIST**

**Adoption of the Report on consideration of the Income Tax Exemption on the Send-Off Package Paid to Employees of the Kenya Airways Limited (Legal Notice No. 115 of 2021)**

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

DATE: 25/09/2021 VENUE: 2<sup>nd</sup> Floor Parliament House

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Cecily Mbarire, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Robert Mbui, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Ronald Kiprotich Tonui, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	
12.	Hon. Gideon Mulyungi, MP	
13.	Hon. George Gitonga Murugara, MP	
14.	Hon. Jennifer Shamalla, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Patrick Kariuki Mariru, MP	
17.	Hon. (Dr.) Wilberforce Oundo, MP	
18.	Hon. Abdi K. Tepo, MP	
19.	Hon. Edith Nyenze, MP	
20.	Hon. Robert Githinji Gichimu, MP	
21.	Hon. Sammy Seroney, MP	
22.	Hon. Tindi Mwale, MP	
23.	Hon. William Cheptumo, M.P	

**MINUTES OF THE 52<sup>ND</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY 23<sup>RD</sup> SEPTEMBER, 2021 AT 10.00 A.M. IN THE COMMITTEE ROOM ON 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS**

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**PRESENT**

- |                                     |   |                             |
|-------------------------------------|---|-----------------------------|
| 1. The Hon. Kassait Kamket, M.P.    | - | Chairperson                 |
| 2. The Hon. Muriuki Njagagua, M.P.  | - | Chairperson                 |
| 3. The Hon. Martha Wangari, M.P.    |   |                             |
| 4. The Hon. Daniel Maanzo, M.P.     |   |                             |
| 5. The Hon. George Murugara, M.P.   |   | <i>(Virtual attendance)</i> |
| 6. The Hon. Robert Mbui, M.P.       |   | <i>(Virtual attendance)</i> |
| 7. The Hon. Timothy Wanyonyi, M.P.  |   | <i>(Virtual attendance)</i> |
| 8. The Hon. Jennifer Shamalla, M.P. |   | <i>(Virtual attendance)</i> |
| 9. The Hon. Sammy Seroney, M.P.     |   | <i>(Virtual attendance)</i> |
| 10. The Hon. Abdi Tepo, M.P.        |   | <i>(Virtual attendance)</i> |
| 11. The Hon. Ronald Tonui, M.P.     |   | <i>(Virtual attendance)</i> |
| 12. The Hon. Robert Gichimu, M.P.   |   | <i>(Virtual attendance)</i> |

**ABSENT WITH APOLOGY**

1. The Hon. Patrick Mariru, M.P.
2. The Hon. Alice Wahome, M.P.
3. The Hon. Edith Nyenze, M.P.
4. The Hon. Kamoti Mwamkale, M.P.
5. The Hon. Cecily Mbarire, MGH, M.P.
6. The Hon. Waihenya Ndirangu, M.P.
7. The Hon. (Dr.) Wilberforce Oundo, M.P.
8. The Hon. Gideon Mulyungi, M.P.
9. The Hon. Munene Wambugu, M.P.
10. The Hon. Nicholas Tindi Mwale, M.P.
11. The Hon. William Cheptumo, M.P.

**IN-ATTENDANCE**

**National Assembly Secretariat**

- |                            |   |                                       |
|----------------------------|---|---------------------------------------|
| 1. Mr. Mohamed Jimale      | - | Clerk Assistant II                    |
| 2. Ms. Ruth M. Gakuya      | - | Clerk Assistant II                    |
| 3. Mr. Wilson Dima Dima    | - | Principal Legal Counsel               |
| 4. Ms. Noelle Chelangat    | - | Media Relations Officer               |
| 5. Mr. Charles Ayari       | - | Superintendent of Electronics (Audio) |
| 6. Mr. George W. Ndenjeshe | - | Fiscal Analyst III                    |
| 7. Ms. Terry A. Ondiko     | - | Fiscal Analyst III                    |



8. Mr. Anthony Wamae - Serjeant-at-Arms  
9. Mr. Mureithi Theuri - Intern

**MIN.NO./NA/CDL/2021/227 PRAYER AND PRELIMINARIES**

The meeting commenced at 10.20 a.m. with the Prayer.

**MIN.NO./NA/CDL/2021/228 CONFIRMATION OF MINUTES**

Minutes of the 51<sup>st</sup> sitting held on Tuesday, 21<sup>st</sup> September, 2021 were confirmed as a true record of the proceedings having been proposed by the Hon. Robert Mbui, M.P. and seconded by the Hon. Abdi Tepo, M.P.

**MIN.NO./NA/CDL/2021/229 MATTERS ARISING**

No matters arose.

**MIN.NO./NA/CDL/2021/230 CONSIDERATION OF THE PETROLEUM DEVELOPMENT LEVY, 2021 (LN. No. 77 of 2021)**

The Committee considered the Petroleum levy (Amendment) Order, 2021, and noted that:-

1. The Petroleum Development Levy (Amendment) Order, 2021 is made by the Cabinet Secretary for Petroleum and Mining pursuant to Sections 3(1) of the Petroleum Development Fund Act, 1991.
2. The Order was published in the gazette *vide LN No. 77 of 2021* on the 13<sup>th</sup> May 2021 and submitted to the Clerk of the National Assembly on 10<sup>th</sup> August, 2021 and tabled on the 17<sup>th</sup> August 2021 by the Leader of Majority Party.
3. The regulatory objective and justification of the statutory instrument is to amend the Petroleum Development Levy Order, 2020 by inserting AGO (Diesel) and the respective rate of levy to the First Schedule of the Petroleum Development Levy Order, 2020, which was published as *LN No. 124 of 2020* which, the Committee scrutinized, considered, and approved for operation on the 17<sup>th</sup> of February 2021
4. The amendment Order seeks to insert in the Schedule, "AGO (Diesel)" with its rate of Levy being Ksh. 5,400 per 1000 litres at 20° C. Section 9 of the Statutory Instruments Act exempts the requirement of a Regulatory impact statement where a proposed legislation provides for an amendment of a statutory instrument that does not fundamentally affect the legislation's application or operation or an amendment of a fee, charge, or tax consistent with announced government policy.

### **Committee Observation:-**

The committee made the following observations –

- 1) **Statutory Timelines:** The Petroleum Development Levy (Amendment), Order, 2021 was published in the Gazette *vide Legal Notice No. 77 of 2021* on 13<sup>th</sup> May, 2021 and submitted to the National Assembly on 10<sup>th</sup> August, 2021 being out of the statutory timelines, hence contravenes section 11(1) and (4) of the Statutory Instruments Act, 2013. The Order ceased to have effect on the 27<sup>th</sup> May, 2021, by operation of law.
- 2) **Public Participation:** Articles 10 and 118 of the Constitution and sections 5, 5A of Statutory Instrument Act requires a mandatory conduct of Public Participation by all regulation making authorities before publication of a statutory instrument. An amendment Order is a Statutory Instrument on its own published under a different legal notice (No.77 of 2021) and with the implications on the rates of levy chargeable on AGO (Diesel) hence the Ministry ought to have conducted public participation as required under the constitution and the relevant laws, and not chosen to ride on public participation conducted for *L.N. No. 124 of 2020* which did not contain AGO (Diesel) in the schedule.
- 3) **Error of Omission -** The Ministry indicated in the submission documents that they inadvertently omitted to include AGO (Diesel) in LN No. 124 of 2020. The error of omission on the record in a statutory instrument ought to have been rectified by a corrigendum and not an amendment Order since an amendment Order invites the Committee to subject it to all the statutory tests set out in the relevant laws.

### **Committee Resolution**

Having examined the Petroleum Development Levy Order, 2021 (*L.N. No. 77 of 2021*) against the Constitution, the Interpretation and General Provisions Act (Cap 2), the Statutory Instrument Act, (No. 23 of 2013), the Petroleum Development Levy Order, 2020, (LN No. 124 of 2020) pursuant to which it is made, the Committee resolved to **annul the Order in entirety** having been proposed by the Hon. Abdi Tepo, M.P and Seconded by the Hon. Martha Wangari, M.P.

MIN.NO./NA/CDL/2021/231

### **CONSIDERATION OF THE INCOME TAX EXEMPTION ON THE SEND-OFF PACKAGE PAID TO EMPLOYEES OF THE KENYA AIRWAYS LIMITED FROM THE NATIONAL TREASURY AND PLANNING (*L.N. No. 115 OF 2021*)**

The Committee considered the Legal Notice No.115 of 2021 on the exemption from Income Tax on the send-off package paid to employees of the Kenya Airways Limited, and noted **THAT:-**

1. Section 13(2) of the Income Tax Act (*Cap 470*) mandates the Cabinet Secretary, by notice in the Gazette, to provide that any income or class of income which accrued in or was derived from Kenya shall be exempt from tax to the extent specified in such notice and that

any such exemption shall cease to have effect either generally or to the extent specified in the notice.

2. Further, that where the Cabinet Secretary issues such a notice, the notice is to be laid before the National Assembly without unreasonable delay.
3. The Act also provides that if a resolution is passed by the National Assembly within twenty days on which it next sits after the notice is so laid that the notice be annulled, it shall henceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.
4. **Statutory Timelines** - the *L.N. No. 115 of 2021* was published on 15<sup>th</sup> July, 2021, submitted to the Clerk of the National Assembly on 19<sup>th</sup> August, 2021 and tabled on 1<sup>st</sup> September, 2021 which was **without reasonable delay** as contemplated in section 13 (2) of the Income Tax Act.
5. The Legal Notice was laid in the House on Wednesday, the 1<sup>st</sup> September 2021 during the special sitting since the House was on recess between 24<sup>th</sup> August, 2021 and 20<sup>th</sup> of September, 2021 hence the twenty - day statutory timeline would lapse on the 9<sup>th</sup> of October, 2021.
6. **Public Participation**
  - i. Section 13(2) of the Income Tax Act, (Cap 470) allows the Cabinet Secretary to exempt certain activities from taxation, save that if he so exempts then the notice must be published in the gazette [for information to the public] and that it must be submitted to the National Assembly without unreasonable delay.
  - ii. The Cabinet Secretary in publishing and submitting the Legal Notice No 115 of 2021 to the National Assembly was discharging a statutory mandate and conforming to the requirements of section 13 of the Income Tax Act.
  - iii. The Exemption is not a Statutory Instrument within the meaning of section 2 of the Statutory Instruments Act, 2013 and may therefore not be subject to public participation in the manner contemplated in sections 5 and 5A of the Statutory Instruments Act, 2013.
  - iv. The Cabinet Secretary, National Treasury and Planning submitted to the National Assembly an Explanatory Memorandum on the Legal Notice detailing the purpose of the Legal Notice, the policy background and the legislative context.

### **Committee Resolution**

Having examined the the *Legal Notice No. 115 of 2021* on Exemption from Income Tax, 2021 against the Constitution, the interpretation and General Provisions Act (Cap 2), the Statutory Instrument Act, (*No. 23 of 2013*), the Income Tax Act, section 13(2) (Cap 470), pursuant to which the Exemption is made, the Committee resolved to **approve the Legal Notice No. 115 of 2021** having been **proposed by the Hon. Jennifer Shamalla, M.P and Seconded by the Hon. Timothy Wanyonyi M.P.**

**1. Scheduling of pending business**

The Committee was informed that the following business is pending before the Committee -

- i. Legal Notice No. 168 relating to the Water Services Regulations, 2021,
- ii. Legal notice No. 169 relating to the Water Harvesting and Storage Regulations, 2021
- iii. Legal Notice No. 170 on the Water Resources Regulations, 2021
- iv. Legal Notice No. 183 of 2021 relating to the National Youth Council (Election Council Members) Regulations, 2021

The Committee resolved to have a retreat with the regulatory making authorities in Mombasa from 14<sup>th</sup> to 18<sup>th</sup> October, 2021 to consider the said statutory instruments.

**2. Breakfast meeting**

The Committee was informed about the invitation of the Breakfast meeting scheduled for 28<sup>th</sup> September 2021 at 9.00am at the Serena hotel, Nairobi to consider the Environmental Management and Coordination Regulations relating to the LN No. 149 and 150 of 2016. The meeting was organized by the Open Forum on Agricultural Biotechnology in Africa (OFAB).

The Committee noted that the objective of the meeting is to bring to the attention of the committee that the publication of the Environmental Regulations, Legal Notice Number 149 of 2021 and the Legal Notice Number 150 of 2021, which were not submitted to the National Assembly and therefore have a number of provisions in breach of the constitution, the statutory Instrument Act, the Environment Management and Coordination Act, the Biosafety Act.

The Committee resolved to attend the breakfast meeting as scheduled.

**MIN.NO. /NA/CDL/2021/233 ADJOURNMENT**

There being no other business the meeting was adjourned at 10.45 a.m. Next meeting will be held on Wednesday 29<sup>th</sup> September, 2021 at 10.00 a.m.

Signed.....

Date..... 29/9/2021

**HON. KASSAIT KAMKET, M.P.  
(CHAIRPERSON)**



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

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August 4, 2021

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

*Handwritten notes:*  
② How, take the...  
to register...  
to personal...  
Committee...  
receipt...  
to...  
DLSP.  
31/8/21

Dear

*Sialai,*

**RE: LEGAL NOTICE NO. 115 OF 2021- INCOME TAX EXEMPTION ON THE SEND-OFF PACKAGE PAID TO EMPLOYEES OF THE KENYA AIRWAYS LIMITED**

The above-mentioned Legal Notice was published on 30<sup>th</sup> July, 2021.

In compliance with Section 11 of the Statutory Instruments Act, 2013, I hereby submit the Legal Notice No.115 of 2021 on exemption of income tax on the send-off package paid to the employees of Kenya Airways Limited and Explanatory Memorandum for the same, for your necessary action.

Yours

*Signature of Ukur Yatani*

*Signature of Ukur Yatani*

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

Stamp: THE NATIONAL ASSEMBLY  
DATE: 01 SEP 2021  
BY: LONP  
S. Kaloma

Encl.

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

Stamp: NATIONAL ASSEMBLY  
RECEIVED  
19 AUG 2021  
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P.O. BOX 41842, NAIROBI



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8

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

## LEGAL NOTICE NO. 115 of 2021

### PART I

**Name of Statutory Instrument** : The Income Tax Exemption  
**Name of Parent Act** : Income Tax Act, Cap 470  
**Enacted Pursuant to** : Section 13(2) of the Income Tax Act  
**Name of the Ministry** : The National Treasury and Planning  
**Gazetted on** : 30<sup>th</sup> July 2021

### PART II

#### 1. Purpose of the Statutory Instrument


The objective of the Legal Notice is to exempt from income tax the send-off package of 187 employees of Kenya Airways PLC who exited the service between January and March 2021.

#### 2. Legislative Context

The Legal Notice seeks to exempt from income tax the send-off package, which is three months' salary paid in lieu of notice, severance pay and pay for accumulated leave days, paid to the 187 retrenched employees of Kenya Airways PLC in accordance with the provisions of Section 13(2) of the Income Tax Act.

#### 3. Policy Background

3.1 Kenya Airways PLC has been implementing a turn-around program since 2019. As you may be aware, the company has been making losses in the recent years due to various factors and this has financially constrained the operations of the Airline. To mitigate the problem, the Board in 2016 approved the implementation of a turn-around program, which among others includes the rationalization of staff to reduce the cost of operations. The rationalization of staff started in 2019. Due to the impact of COVID-19 on the aviation industry since 2020, where

 THE NATIONAL ASSEMBLY	
DATE: 31 SEP 2021	
DAV	
TABLED BY:	Leader of Majority Party
CLERK-AT THE TABLE:	Samuel Kobus

most of the international travels were suspended, fast-tracking the rationalization of staff became absolutely necessary.

- 3.2 Considering that the retrenchment is voluntary, the tax exemption and especially during the COVID-19 pandemic will encourage staff to take the offer and also provide reasonable income to start off some activities to sustain themselves.

#### **4. Public Participation**

Internationally, the effects of COVID-19 pandemic have been worse on airlines to the extent that some airlines may not re-open operations after the pandemic hence job losses. Kenya Airways PLC has been reporting losses for a long period and now the situation is worse, this has led to the retrenchment of some staff under a turn-around program to sustain the airline. However, the representatives of the affected staff requested for improvement of the send-off package that was agreed through the Collective Bargaining Agreement (CBA).

In view of the above, the Kenya Airways PLC sought the intervention of the National Treasury to exempt the staff from income tax on the send-off package as one of the ways to improve the send-off package.

#### **5. Impact**

The exemption is expected to facilitate the Kenya Airways Limited reduce the cost of sustaining redundant staff following the reduced business occasioned by the COVID-19 pandemic among other factors.

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

The implementation of the exemption will be monitored by the Kenya Revenue Authority.

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

The National Assembly is invited to:

- a) note the contents of this Memorandum and
- b) accede to the Legal Notice No. 115 of 2021.

#### **8. Contact**

Cabinet Secretary,  
National Treasury & Planning,  
**NAIROBI**



(Legislative Supplement No. 55)

CORRIGENDUM

On Page 708—

In the first column of the sixth row, *delete* the expression “LA99FRV62MILAT002” and *insert* the expression “LA99FRW62MILAT002”.

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LEGAL NOTICE NO. 115

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 three-months salary paid in lieu of notice, the severance pay and payments for the accumulated leave days to the one hundred and eighty-seven employees of Kenya Airways Limited who were retrenched and left services between January, 2021 and March, 2021, shall be exempt from the provisions of the Act.

Provided that—

- (a) The exemption shall not apply to other pension benefits paid to the employees;
- (b) The retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;
- (c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner; and
- (d) Kenya Airways Limited shall furnish the Commissioner with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter to the employees confirming the retrenchment.

Dated the 7th July, 2021.

UKUR YATANI,

*Cabinet Secretary for the National Treasury and Planning.*



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