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REPUBLIC OF KENYA THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY P O BOX 30007 - 00100 NAIROBI KENYA

VERY URGENT

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Ref. ZZ/TS/GP/30

March 29, 2021

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

Handwritten notes: ODLSP 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 26th 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, [Signature]

Handwritten notes: To register table office to the committee under 10(ii) of 30-3-2021. Cause table, and return of the table. Mwangi 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

Handwritten notes: (P3) prepare a memo to the committee for the resolution of the committee. 30/3/2021

NATIONAL ASSEMBLY RECEIVED 30 MAR 2021 CLERK'S OFFICE P. O. Box 41842, NAIROBI

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(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

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	: 26 th 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.

3.1. 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.

4. 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 loses, also presented it case to the National Treasury demonstrating the need for consideration for exemption from this new tax.

5. Impact

The Regulations are expected to relieve the Kenya Airways Limited which the country's National carrier with government as the majority shareholder from the

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



MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES & COOPERATIVES

OK [Signature]

REQUEST FOR COMMENTS ON THE REGULATORY IMPACT STATEMENT AND THE DRAFT DAIRY INDUSTRY REGULATIONS, 2020

The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Cooperatives is in the process of reviewing the Dairy Industry Regulations, 2020 as provided under Sections 19 of the Dairy Industry Act, Cap 336 of the Laws of Kenya.

In compliance with the provisions of the Statutory Instruments Act, No. 23 of 2013 (s.6), the Ministry announces to the public the availability of the Dairy Industry Regulations, 2020 and the Regulatory Impact Statement on their websites - www.kilimo.go.ke or at www.kdb.go.ke - **for access and perusal.**

The main objective of the Dairy Industry Regulations, 2020 is to ameliorate the challenges to the growth of the dairy industry and improve its productivity, whether from the perspective of the primary producers, dairy business operators, or the government. The Regulatory Impact Statement contains detailed information on the Draft Dairy Industry Regulations, 2020.

The Constitution of Kenya, 2010 and the Statutory Instruments Act, 2013 require the public to participate in the decision making process through submission of comments to the Ministry. It is in this spirit that the Ministry requests for comments through the provided address.

All interested persons should submit written comments on the Draft Dairy Regulations, 2020 and the Regulatory Impact Statement using the prescribed Public/Comments Form, to reach the **undersigned not later than fourteen (14) days from the date of publication of this notice.**

There shall be a public forum to be held on 21st December 2020 at Bomas of Kenya from 9.00am to 1.00pm to discuss and receive stakeholder's comments on the Dairy Industry Regulations, 2020.

The following documents to facilitate discussions and enable stakeholder's feedback are available and can be accessed through the Ministry or Boards' website at www.kilimo.go.ke or at www.kdb.go.ke.

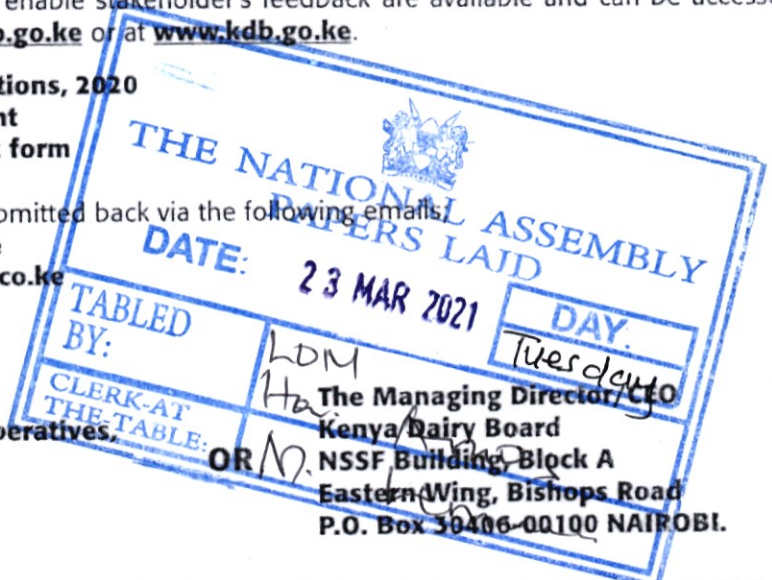
- 1) Draft Dairy Industry Regulations, 2020
- 2) Regulatory Impact Statement
- 3) Public Comments/Feedback form

Duly filled Comments/Feedback Forms may also be submitted back via the following emails:

1. directorpolicy@kilimo.go.ke
2. dairyregulations2020@kdb.co.ke

Or sent by ordinary mail to;

**The Cabinet Secretary,
Ministry of Agriculture, Livestock, Fisheries & Cooperatives,
Cathedral Road,
Kilimo House,
P.O. Box 30028-00100, NAIROBI**



With words under the address reading: **"Public Comments/Feedback on Draft Dairy Industry Regulations, 2020"**.

**HON. PETER MUNYA, M.G.H, E.G.H.
CABINET SECRETARY**