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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

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REPORT ON THE CONSIDERATION OF THE FINANCE BILL, 2017

CLERKS CHAMBERS

DIRECTORATE OF COMMITTEE SERVICES

PARLIAMENT BUILDINGS

NAIROBI — **MAY, 2017**

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ABBREVIATIONS

CGT	-	Capital Gains Tax
EAC	-	East African Community
ICPAK	-	Institute of Certified Public Accountants of Kenya
ITA	-	Income Tax Act
KAM	-	Kenya Association of Manufacturers
KEPSA	-	Kenya Private Sector Alliance
KOGA	-	Kenya Oil and Gas Association
KRA	-	Kenya Revenue Authority
NSE	-	Nairobi Securities Exchange
VAT	-	Value Added Tax
O& G	-	Oil and Gas
WHT	-	Withholding Tax
EACCMA	-	East African Community Customs Management Act
WHVAT	-	With Holding VAT
EPZ	-	Export Promotion Zone
SEZ	-	Special Economic Zone

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Finance Bill, 2017, which was committed to the Committee on 5th April 2017 pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 7th April 2017 pursuant to Article 118 of the Constitution. A total of sixteen (16) institutions submitted memoranda for consideration by the Committee in a stakeholder's conference held in Mombasa between 7th and 10th May 2017 in which the Cabinet Secretary for the National Treasury was in attendance to provide his comments pursuant to Article 114 of the Constitution. The Committee will be proposing amendments to be moved during Committee of the Whole House stage.

In considering the Bill, the Committee noted that the Bill seeks to amend:

1. The Betting, lotteries and Gaming Act (Cap.131) to increase the tax rates from the current rates to 50%
2. The Kenya Revenue Authority Act (Cap. 469) to include the Value Added Tax Act, 2013, Tax Procedures Act, 2013, and the Miscellaneous Fees and Levies Act, 2013 to be under the administration of KRA.
3. The Stamp Duty Act (Cap. 480) to provide for the tax neutrality for Islamic financial products to favourably compete with similar conventional products in Kenyan market.
4. Cooperative Societies Act (490) and the Sacco Societies Act (Cap.490B) to provide for Islamic finance in cooperative subsector in Kenya.
5. The Retirement Benefits Act (No. 3 of 1997) to make it an offence for anybody who fails submitting returns to the authority.
6. The Public Finance Management Act (No. 18 of 2012) to provide for equal footing of the Islamic finance bond and the conventional bond.
7. The Public Procurement and Asset Disposal Act (No.33 of 2015) by providing for the composition of the Public Procurement Regulatory Review Board; the composition of the Public Procurement

Review Board and the introduction of specially permitted procurement method as an alternative procurement method.

The Miscellaneous Fees and Levies Act (No.29 of 2016) to amend Part II of the First Schedule to exclude Special Economic Zones from the provisions of Part I of the Schedule. The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury and the stakeholders for their participation in scrutinizing the Bill.

Finally I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report

On behalf of the Departmental Committee on Finance, Planning & Trade and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Finance Bill, 2017

HON. BENJAMIN LANGAT, MP

EXECUTIVE SUMMARY

The Finance Bill, 2017 was published on 3rd April, 2017 and read a First Time on 3rd April 2017 and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Standing Order 127. The finance Bill is one of the revenue raising measures that the Cabinet Secretary for the National Treasury proposes to finance the budget. The Finance Bill, 2017 seeks to·

(a) Discourage betting and lotteries by imposing a heavy 50% of tax on the income from such activities so that youth can engage in productive economic activities;

(b) expand the tax by bringing certain Islamic products such as "sukuk" on board; reduction of food prices by zero rating the supply of maize corn (flour), wheat and ordinary bread;

(c) providing for the composition of the Public Procurement Regulatory Review Board; and

(d) Introduce specially permitted procurement method as an alternative procurement method.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday 7th April 2017 pursuant to Article 118 of the Constitution. By the time the Committee was conducting a stakeholder's conference in Mombasa between 7th and 10th May 2017, sixteen (16) organizations had submitted their memoranda for consideration by the Committee. All their proposals were first discussed with the stakeholders and then had them commented on by the Cabinet Secretary for the National Treasury as per Article 114 of the Constitution. The following entities appeared during the stakeholders conference:

1. British American Tobbaco (BAT)
2. Kenya Private Sector Alliance (KEPSA)
3. Ernest Muguku
4. PriceWaterHouseCoopers (PWC)
5. Acumen Communications
6. Kenya Airways (KQ)
7. Association of Agrochemicals of Kenya (AAK)
8. Association of Beverages and Alcoholic Drinks of Kenya (ABAK)
9. Kenya Pipeline
10. Institute of Public Accountants of Kenya (ICPAK)
11. KPMG
12. Ministry of Interior
13. Ministry of Sports

14. Kenya Association of Manufacturers (KAM)
15. VIVA Africa Consulting
16. Association of Pension Administrators of Kenya (APAK)
17. The National Treasury

The Committee concurred with the National Treasury on most of the comments on the proposed amendments to the Bill from the stakeholders. The Committee further adopted amendments to clauses 7, 8, 9, 10, 17, 18, 20, 25, 26, 27, 28, 29, 39, 40, 46, 47, 49, and 51. The adopted amendments were majorly editorial; exemption from VAT of supply of goods and services by the sub contractors within the oil and gas industry (clause 10); maintaining the status quo of twenty days of the preceding month within which VAT deducted should be paid rather than being done within 14days (clause 25); maintaining the status quo on taxation of betting gaming and lotteries (clauses 26-29) and having the proceeds go to sports fund; deletion of a specially permitted procurement method (49); and review of the membership of the public procurement regutory board (47) among others.

1.0 MANDATE OF THE COMMITTEE

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:

(a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;

(b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.

(c) study and review all legislation referred to it;

(d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;

(e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;

(f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and

(g) Reports and makes recommendations to the House as often as possible, including recommendation of proposed legislation.

1.1COMMITTEE MEMBERSHIP

Chairperson The Hon. Benjamin Langat, MP

Vice Chairperson The Hon. Nelson Gaichuhie, MP

The Hon. Dr. Oburu Oginga, MP

The Hon. Eng. Shadrack Manga, MP

The Hon. Jimmy Nuru Angwenyi, MP

The Hon. Ahmed Shakeel Shabbir Ahmed, MP

The Hon. Sammy Mwaita, MP

The Hon. Jones M. Mlolwa, MP

The Hon. Anyanga, Andrew Toboso, MP

The Hon. Joash Olum, MP

The Hon. Patrick Makau King'ola, MP

The Hon. Abdullswamad Sheriff, MP

The Hon. Sumra Irshadali, MP

The Hon. Ogendo Rose Nyamunga, MP

The Hon. Dennis Waweru, MP

The Hon. Tiras N. Ngahu, MP

The Hon. Sakaja Johnson, MP

The Hon. Ronald Tonui, MP

The Hon. Mary Emase, MP

The Hon. Joseph Limo, MP

The Hon. Lati Lelelit, MP

The Hon. Kirwa Stephen Bitok, MP

The Hon. Daniel E Nanok, MP

The Hon. Abdul Rahim Dawood, MP

The Hon. Sakwa John Bunyasi, MP

The Hon. Alfred W. Sambu, MP

The Hon. Sammy Koech, MP

The Hon. Hezron Awiti Bollo, MP

1.2COMMITTEE SECRETARIAT

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Legal Counsel II	Emma Esendi
Research Officer III	Erick Ososi
Research Officer III	Sharon Rotino

beverages of alcoholic strength exceeding 10% This is commensurate with the increased demand and consumption of spirits.

(ii) The clause provides for classification of cigarettes into cigarettes with filters (hinge lid and soft cap) and those without filters (plain cigarettes) and charging of excise duty at the rate of Kshs 2500 per mille and Kshs. 1500 per mille respectively. The amendment is meant to promote equity in taxation of cigarettes thus mitigating concerns of unfairness raised by industry players under the former one tier tax of Kshs.2500 per mille

(iii) The clause proposes to define powdered beer in order to make provide clarity in the taxation of the product.

Clause 5

(a) The Clause proposes to exempt excisable goods imported or purchased locally by the St. John's Ambulance for official use in the provision of relief services in Kenya. This provides St. John's Ambulance with the same tax treatment as other relief agencies such as the Kenya Red Cross.

(b)

(i) The clause allows returning resident or a person changing residence to sell their left hand vehicle and import a right hand drive vehicle whose current retail price does not exceed the value of the previously owned left hand drive vehicle This is meant to provide clarity to the provisions introduced in the Finance Act 2015 which has posed challenges to returning residents.

(ii) The Clause provides for deletion of the requirement that the replacement vehicle in clause (i) above is of similar category with the previously owned left hand drive with regard to make, engine rating and year of manufacture.

(c) The Clause provides for exemption of excisable goods purchased locally for direct use in the manufacture of sanitary towels. The amendment ensures equal treatment of imported and locally manufactured raw materials used in the manufacture of sanitary towels

Clause 6

(a) The Clause proposes to provide definitions of Islamic Finance Arrangement, Islamic Finance Return and Sukuk.

2.0 CONSIDERATION OF THE BILL

2.1 BACKGROUND INFORMATION

The Finance Bill, 2017 was published on 3rd April 2017, read a First Time on 5th April, 2017 and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from stakeholders pursuant to Article 118 of the Constitution of Kenya, 2010. Sixteen (16) institutions responded by sending their memoranda to the Committee for consideration. Between 7th and 10th May 2017, the Committee held a stakeholders conference in Mombasa in which all the memoranda were discussed and their comments received from the Cabinet Secretary for the National Treasury pursuant to Article 118 of the Constitution of Kenya, 2010

2.2 CLAUSE BY CLAUSE ANALYSIS

Clause 1

This clause provides for the effective dates of the amendments contained in the Bill most of which being 3rd April 2017

Clause 2

This Clause proposes to introduce the requirement for licensing or registration by the Commissioner of persons undertaking activities involving the use of illuminating kerosene as a raw material. This allows such persons to be put under a credit system.

Clause 3

This Clause provides for the refund of excise duty paid on imported illuminating kerosene. a critical input used for the manufacture of paint and resin. This amendment is meant to support paint and resin production and by extension the construction industry.

Clause 4

(i) The Clause provides for an increase in the rate of excise duty from Kshs.75 per litre to Kshs. 200 per litre on spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous

(b) The Clause proposes a new subsection to provide that Islamic Finance Return is treated as interest

(c) The Clause proposes that all reference to interest includes a reference to Islamic Finance Return

(These amendments are meant to provide recognition to Islamic financial products in the tax laws, recognize them as new sources of funds and further, to position Kenya as a financial hub)

Clause 7 & 8

a) The Clause proposes to delete and replace with "or" the conjunction "and" This provides clarity on supply of goods occurring in Kenya.

b) The Clause proposes to introduce the word "where" to provide clarity on supply of goods occurring in Kenya.

(These amendments are clean ups that were occasioned by typographic errors)

Clause 9

(a)

(i) Deletes the term "blind" and replaces it with "disabled" in order to recognize that blind people are disabled persons. The amendment is in line with the provisions in the 5th Schedule to EACCMA.

(ii) The Clause proposes to zero rate and therefore remove from the exempt schedule, maize flour, wheat or meslin flour and ordinary bread. This is meant to cushion low income households from high staple prices.

(iii) The Clause seeks to exempt medical equipment and apparatus from VAT in order to ease the cost of healthcare in specialized hospitals. This is an additional to the section which provides for exemption of taxable materials for use in the construction of specialized hospitals.

(b) The Clause seeks to limit VAT exemption for medical equipment and apparatus to specialized hospitals with a capacity of at least 50 beds.

(iv) The Clause provides for inclusion of various goods under the VAT exempt supplies list such as LPG, aircraft spare parts, inputs for pesticide production, revenue stamps, tourist vehicles and inputs for manufacture of LPG cylinders.

(These amendments are meant to inter alia, promote local assembly of tourism hence creating employment opportunities, include other aircraft spare parts left out in earlier amendments, ease production of pesticides and LPG cylinders and recognize revenue stamps as goods having a face value but are non tradable).

(c) The Clause proposes to exempt "sukuk" from VAT. This is meant to provide equal tax measure to similar financial instruments

(d) The Clause proposes to exempt asset transfers and other transactions related to the transfer of assets into REITS and ABS

(e) The Clause proposes to exempt from VAT any financial services that are structured in conformity with Islamic finance.

Clause 10

(a) The Clauses propose to zero rate maize flour, wheat or meslin flour and ordinary bread in order to **cushion poor households from high cost of regular food items** and also proposes zero rating of taxable goods supplied to marine fisheries and fish processors in order to **stimulate the blue economy**.

(b) (i) The Clause proposes to allow privileged returning residents or persons changing residence to sell their left hand vehicle and import, at zero rate, right hand drive vehicle whose current retail price does not exceed the value of the previously owned left hand drive vehicle.

(ii) The Clause proposes to zero rate services imported to Kenya by a person whom the proper office is satisfied is making a temporary visit not exceeding three months

(iii) The Clause proposes to include in the zero rate list, services and taxable goods supplied or imported for official use in the provision of relief service by the National Red Cross Society and St. John Ambulance. **This is in line with the intended spirit of the law.**

(c) The Clause proposes to zero rate medicaments containing penicillin or derivatives thereof, with penicillianic acid structure or streptomycin or other derivatives among others.

Clause 11

(a) The Clause introduces definitions of Islamic Finance Arrangement, Islamic Finance Return and Sukuk.

(b) The Clause provides for inclusion and usage of Islamic finance return which is the equivalent of interest as used conventionally

Clause 12

The Clause proposes to introduce a new paragraph regarding ascertainment of total incomes for the purpose of deducting expenditures incurred on donations to institutions responsible for the management of national disasters. *(This is meant to address the challenges of drought and famine)*

Clause 13

The Clause proposes to introduce a provision on ascertainment of gains or profits of a business in a non preferential tax regime. The amendment seeks to introduce transfer pricing adjustment to transactions between an entity in a preferential tax regime e.g. EPZ and SEZ and a related resident entity outside the preferential tax regime.

Clause 14

The Clause proposes to repeal section 108 of the Income Tax Act since it refers to additional penalties applicable to sections 72 and 72A which are captured under the Tax Procedures Act. **This is a clean up.**

Clause 15

The Clause proposes to exempt from income tax dividends paid by SEZ enterprises, developers and operators to a non-resident person This amendment is meant to attract foreign direct investments

Clause 16

The Clause proposes to allow for deductions in respect of capital expenditure for building and machinery used in Special Economic Zones. This is meant to allow the licensed entrepreneurs to recover the investment costs just like those in EPZ

Clause 17

(a) The Clause proposes to increase resident personal relief to sixteen thousand eight hundred and ninety six. This meant to expand the tax bands and increase disposable incomes of the low income earners.

(b) (i) The Clause proposes to revise the tax bands or rates of tax for individuals and wife's incomes (ii)(a) The Clause proposes to provide equal tax treatment to SEZ enterprises, developers and operators whether they export or sell their products locally.

(b)The Clause proposes to charge15% corporate tax down from 30% for local assemblers of motor vehicles during the first five years after commencement of operations. This is in line with government policy to encourage foreign direct investments and job creation in the country.

(c) (i)The Clause proposes to review the rate of tax to 5% on payments made to non residents persons by SEZ operators, enterprises or developers.

(ii) The Clause proposes to review the rate of tax paid on royalties to 5% paid to non resident persons by SEZ operators, developers and enterprises

(iii) The Clause proposes to review the rate of tax paid on interest to 5% paid to non resident persons by SEZ operators, developers and enterprises. These amendments are meant to enable these enterprises.

(The amendments (i-iii) are meant to attract less costly finances and technical and professional services to enhance their growth.)

(iv)The Clause proposes to harmonize the rate of taxation on pension withdrawals with that of individual taxes.

Clause 18 is a clean up

Clause 19

The Clause proposes to empower authorized officers to seize, collect and detain evidence and produce such evidence in court or tribunal. This will facilitate the KRA officers in the investigation of cases without relying on police that have proved to be ineffective.

Clause 20

The Clause proposes to clean up the section

Clause 21

The Clause proposes to make a tax representative liable for late payment penalties by an individual tax payer

Clause 22

The Clause proposes to make a tax representative liable for late payment penalties by the company he represents, whereas the current law excludes penalties from reference to tax liabilities, penalties have always been a part of ax liability. The amendment therefore brings clarity and reaffirms that penalty is a part of tax liability.

Clause 23

a) The Clause proposes to exempt a director, general manager, company secretary, or other senior officer or controlling member of a company from tax liability of the company if they did not derive a financial or other benefit from the arrangement and not because they were not involved in the executive management of the company and had no knowledge of and could not reasonably have been expected to know of the arrangement.
b) The Clause proposes to make a tax representative liable for payment of penalties.

Clause 24

(a) The Clause proposes to extend the period for repatriation of foreign funds into Kenya by one year. This is meant to provide more time for Kenyans abroad to invest at home.
(b) The Clause proposes to limit the tax amnesty to funds voluntarily declared and have been transferred to Kenya

Clause 25

The Clause proposes to exempt a WH VAT agent from withholding if such a supplier demonstrates that he will be in perpetual credit position for at least 24 months. This is meant to alleviate the challenges associated with VAT refunds.

The Clause further proposes to set WHT remittance period at 14 days and declares it an offense if the same is not adhered to by the supplier. This provides certainty with regard to administration and enforcement of the law

Clause 26, 27, 28 and 29

These Clauses propose to increase to 50% tax charged on gross proceeds of betting, lotteries, gaming and prize competition activities. This is to ensure that the gains of theses undertakings benefit the youth in sports, culture and art activities.

Clause 30

The Clause proposes to update the list of revenue statutes that are administered by KRA

Clause 31

The Clause introduces definitions of Islamic Finance Arrangement, Islamic Finance Return, Islamic property finance and Sukuk under the Stamp Duty Act.

Clause 32

The Clause proposes to introduce equal treatment of Islamic property finance arrangement as it is for mortgages in terms of liability for stamping

Clause 33

The Clause proposes to grant equal treatment to interest and Islamic finance return in terms of instruments reserving interest such that both shall not be chargeable with duty higher than that with which it would have been charged had no mention of interest been made therein.

Clause 34

The Clause proposes to exempt from Stamp duty the transfer of property from an Islamic financial institution to the person acquiring the property. This is meant to avoid double taxation of the same property

Clause 35

The Clause introduces additional provisions for the exemption from payment of Stamp Duty on transfer of title relating to a sukuk arrangement

Clause 36

The Clause proposes to add SUKUK to the list of items included under general exemptions.

Clause 37

The Clause proposes to provide RBA with the function of approving trustee' remuneration as approved by members at the annual general meeting every three years. This is meant to regulate such remuneration and stifle governance issues relating to the matter

Clause 38

The Clause proposes to introduce an additional requirement that the Retirement Benefits Authority should regulate the practice of trustees. This is meant to enhance professionalism of trustees and protect interest of members

Clause 39

The Clause proposes to provide a penalty to for failure to submit statutory returns and further penalty for each day or part thereof during which the offence continues, without further court prosecution for the same offense. This is meant to enhance governance

Clause 40

(a) Clause (a) and (b) propose to introduce sukuk as an alternative national or county government security

(b) (c) proposes to introduce the definitions of sukuk and Islamic finance return. This is meant to provide interpretation of terms to be used under the PFM Act

(c) The Clause introduces Islamic finance return as an equivalent of interest used in relation to government security.

Clause 41

The Clause proposes to empower the Minister to make regulations for raising money through the issuance of sukuk, the place of raising the same and the currency to be used This is meant to streamline implementation of sukuk provisions

Clause 42

The Clause proposes to remove the extension for hearing of appeals. The time limit set for hearing of appeals before the tribunal is 90 days from the date disputes are lodged. This was a transitional provision to enable the Tribunal to ground itself as the said period has lapsed.

Clause 43

The Clause proposes to introduce an additional cooperative principle based on Islamic law

Clause 44

a) The Clause proposes to introduce payment of a return as opposed to interest where a person borrows money and is required to repay with interest.

b) The Clause further seeks to expand the meaning of deposit taking to include provision of funding which is compliant to Islamic Law

c) ??

(i) The Clause proposes to apply the principles of Islamic law within the meaning and operations of sacco business

(ii) The Clause proposes to introduce the word "finance" in the receipts of sacco businesses

(iii) The Clause proposes to expand the meaning of receipt of non-withdrawable deposits from members and which deposits are not available for withdrawal for the duration of the membership of a member in a Sacco society and may be used as providing finance in addition to use as collateral against borrowings and domestic money transfer services;

Clause 45

The Clause proposes to give powers to the Minister to make regulations providing for licensing and supervision of cooperative societies carrying out deposit taking business in compliance with Islamic Law

Clause 46

The Clause proposes to give powers to the Minister to make regulations providing for licensing and supervision of cooperative societies carrying out deposit taking business in compliance with Islamic Law

Clause 47

The Clause proposes to reduce the number of members of the Public Procurement Regulatory Board drawn from the professional associations and giving the Minister powers to appoint 4 other members and also ensure that there is gender and regional balance.

Clause 48

The Clause proposes to reduce the number of members of the Public Procurement Administrative Review Board, include a member from the Architectural Association of Kenya and giving the Minister Powers to appoint 7 other members and also ensure that there is gender and regional balance

Clause 49

The Clause proposes to introduce Specially Permitted Procurement method and the provisions and procedures prescribed by the Minister to govern its usage

Clause 50

The Clause proposes to exempt from export levy, goods exported into Special Economic Zones. This is meant to provide equal tax treatment to both EPZ and SEZ entities

Clause 51

The Clause proposes to exempt SEZ from railway development levy on goods imported or purchased before clearance through customs. This is meant to provide equal tax treatment to both EPZ and SEZ entities.

3.0 SUBMISSION BY THE STAKE HOLDERS

Following the call for memoranda from the public on 7th April 2017, the Committee received memoranda from sixteen (16) organizations. All their proposals were consolidated and discussed with them and the National Treasury in a retreat held between 7th April May 2017. The views of the stakeholders and the Cabinet Secretary for the National Treasury's comments are itemized in the table below:

Matrix of amendments from stakeholders and treasury comments

1	**British American Tobacco (BAT)**		
	PROPOSAL	***JUSTIFICATION***	***COMMENTS BY THE NATIONAL TREASURY***
	Change in the tax structure on cigarettes **Clause 4** That clause 4 of the Bill be amended in paragraph (a) by deleting sub-paragraph (ii).	Clause 4 (a) (ii) of the Bill has introduced a change in the excise structure of cigarettes with the introduction of a second tier at Kshs. 1800 which will lead to a reduction in legal industry volumes and an increase in illegal cigarettes in Kenya. The government should revert to the single tier specific structure with a review of the rate within a single tier structure to address affordability concerns.	***The proposed structure in the Bil has taken into consideration th need for equity and fairness in th taxation of cigarettes. The curren regime was taxing the low valu cigarettes at the same rate with th high value cigarettes.*** ***The proposal is therefore no supported.***
2	**Kenya Private Sector Alliance (KEPSA)**		
(a)	**Clause 5** That clause 5 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c) – "(d) by inserting the following new paragraph	Exemption of Jet A 1 fuel from excise duty will reduce the cost of travel hence positioning Kenya as an attractive and preferred tourist destination. This will also encourage more air travel through reduction of air fares.	***Currently Jet fuel supplied fo international flights is not subject t excise duty. Its only local flights an private and chartered aircrafts fo domestic travels that pay excis duty.*** ***Exempting excise duty on Jet fue for domestic flights, private an***

	immediately after paragraph 11- 12. Kerosene type Jet Fuel".		***chartered domestic flights will be discriminatory as other transport modes pay excise duty on fuel. Further, removing excise duty may not necessarily translate to reduce cost of travel as prices depend on market forces of demand and supply.*** ***The proposal is therefore not supported.***
(b)	**Clause 10** That clause 10 of the Bill be amended in paragraph (a) by deleting the proposed paragraph 13 in sub-paragraph (ii) and substituting therefor the following new paragraph – "13. The supply of maize (corn) flour, ordinary bread and cassava flour, wheat and maize flour containing cassava flour by more than 10% in weight".	• Cassava flour needs support for production. There is more than 800,000 tonnes of cassava roots produced in the country which is equivalent to 320,000 tonnes of cassava flour. • Such use of cassava flour or blending cassava flour with wheat and maize flour will reduce import of wheat and maize for local consumption. • This will also promote use of cassava flour as alternative to maize and wheat flour. • Availability of cassava flour is immediate saving foreign exchange on imports of grains. • Further, such support will help millions of farmers in Coast, Western and Eastern Kenya where cassava crop thrives. • Cassava is also a climate change adaptation crop.	***The zero rating of bread and maize was to address an immediate problem of prices for the widely used items and make the products affordable.*** ***The usage of cassava flour should be looked at together with sorghum and millet.*** ***The proposal is therefore not supported.***
(c)	**Clause 24** That clause 24 of the Bill be amended in paragraph (b) by deleting the proposed paragraph (c) and substituting therefor the following new paragraph – "(c) the assets that have been declared may be voluntarily transferred back to Kenya without having to declare or disclose the source of income from which these	• As (i) Kenya has no restriction on the holding of capital assets abroad; (ii) there is no restriction on transfer of foreign funds due to no exchange control in Kenya; (iii) it may be difficult to transfer assets of a capital nature back to Kenya; (iv) with East African business expansion,	***The seeking of amnesty is voluntary but the funds that are declared for amnesty will need to be transferred to Kenya.*** ***The proposal is therefore not supported.***

	assets were acquired".	Kenyans hold substantial investment in those countries, the requirement of repatriating funds declared is ambiguous and difficult to enforce. There is no definition of what constitutes funds. Moreover, capital assets by their nature cannot be repatriated; and (v) In addition with the plans to make Nairobi an International Finance Centre, anchored in an Exchange Control free environment, it would be advisable to have voluntary repatriation.	
(d)	**Clause 25** That clause 25 of the Bill is amended by deleting the proposed subsection (4B) and substituting therefor the following new subsection – "(4B) The tax withheld under this section shall be remitted to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made".	• Making withholding tax payments within 14 days each month they arise creates an unnecessary administrative hurdle. • It is recommended that batching the withholding tax with the VAT which is payable on or before the twentieth day of the following month makes for better efficiency and streamlining of the tax process.	*Agreed. This will bring predictability and ease of management.* *The proposal is supported.*
(e)	**Clause 26** The Bill be amended by deleting clause 26 and substituting therefor the following new clause – **26.**Section 29A of the Betting, Lotteries and Gaming Act be repealed	• Repealing sections 29A, 44A, 55A and 59B will have the effect that Betting, Gaming, Lotteries and Prize Competition companies will be taxed fairly at the corporate tax of 30% like other private sector players. • The proposed tax of 50% will leave gaming companies unable to meet their fixed or operational costs and result to a permanent structural loss which would challenge the sustainability of	*The tax 0f 50% is to better regulate the industry and safeguard the public from hazard associated with these activities. The revenue raised will go to the Sports Fund.* *The proposal is therefore not supported.*
(f)	**Clause 27** The Bill be amended by deleting clause 27 and substituting therefor the following new clause – **27.**Section 44A of the		

	Betting, Lotteries and Gaming Act be repealed.	the companies. • To reduce the impact of the operating losses, the betting companies will inevitably reduce their sponsorship and other marketing spend which will result to reduced brand visibility and consequent reduction of customer revenue. • The most likely impact of this is that such companies will restructure their business e.g. online sports ~~betting companies~~ may relocate offshore. Such a relocation would result in significant loss of tax revenue for the Kenyan Government. • Global online betting companies which have not set up in Kenya but are accessible to Kenyans and offer identical products will have a distinct advantage over Kenyan companies. • The increase to 50% tax may also result to loss of employment for the 10,000 Kenyans employed by betting, gaming and lottery companies. • A likely result may also be the marked decrease in sponsorship of clubs and teams.	
(g)	**Clause 28** The Bill be amended by deleting clause 28 and substituting therefor the following new clause – **28.**Section 55A of the Betting, Lotteries and Gaming Act be repealed.		
(h)	**Clause 29** The Bill be amended by deleting clause 29 and substituting therefor the following new clause – **29.**Section 59B of the Betting, Lotteries and Gaming Act be repealed.		
(i)	That the Bill be amended by inserting the following new clause immediately after clause 11 – **New Clause 11A** Section 7A of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (6) – "(6A) For the purposes of subsection (3), where a company pays capital gains tax on the disposal of property in accordance with the Eighth Schedule	• Before the reintroduction of capital gains tax (CGT) and the introduction of the simplified rental income regime, compensating tax would be charged on untaxed gains in line with Section 7A of ITA. • Capital gains on disposal of property are now subject to CGT as per the Eighth Schedule to ITA. The intention at the time of introducing CGT was to make it the final tax. This is the case where an individual sells property, but when a company sells the property, as the gain is	***This is being considered under the review of Income Tax Act.*** ***The proposal is therefore not supported.***

	of this Act, or where it pays residential rental income tax under section 6A of this Act, the income tax paid for the purposes increasing the dividend tax account under subsection 3 (a) shall be calculated using the formula: (m) multiplied by (t/g) where 'm' is the capital gains tax or the residential rental income tax paid, 't' is the percentage equal to the current corporation rate for the company and 'g' is the current rate of capital gains tax or the rental residential income tax as prescribed under the section 34 (1) (j) or the Third Schedule paragraph 10 respectively".	further subject to another 25% tax at the time the gain is declared as a dividend. Section 7A was introduced to tax capital gains, which lacuna is now addressed by the reintroduction of the Eighth Schedule. • Similarly, in the case of the simplified rental income, there is duplication of taxes since the simplified rental tax which is 10% is final tax. Therefore, distribution of income by a company falling under this regime will trigger compensating taxes, even though final tax on such residential income will already have been paid. • There is therefore double taxation when capital gains or simplified residential rental income is declared as a dividend by a company, where there is no additional tax burden on an individual. This anomaly, which was not fixed when CGT was reintroduced or when the simplified residential rental income tax was introduced may be cured by introduction of this new sub-section.	
(j)	That the Bill be amended by inserting the following new clause immediately after clause 15 – **New Clause 15A** The Second Schedule to the Income Tax Act is amended in paragraph (7) by deleting closing statement of subparagraph (3) and substituting therefor the following new closing statement –	When the Finance Act 2014 introduced a 37.5% wear and tear deduction on a petroleum pipeline, it inadvertently deleted wear and tear allowance for class (a) assets and provided two allowances for class (d) assets. This amendment is to correct this error.	***This was already amended in the Finance Act, 2015.*** ***The proposal is therefore not supported.***

	"and the appropriate percentage shall be 37.5 per cent for the class of machinery in subparagraph (a) and (cc), 30 per cent for the class of machinery in subparagraph (b), 25 per cent for the class of machinery in subparagraph (c), and 12.5 per cent for the class of machinery in subparagraph (d)".		
(k)	**Clause 17** That clause 17 of the Bill be amended in paragraph (c) by deleting subparagraph (i) and substituting therefor the following new subparagraph (i) – "(i) deleting the words "twenty per cent" appearing immediately after the words "contractual fee" in paragraph (a) and substituting therefor the words "ten per cent".	• The non-resident withholding tax rate is 20%. This rate presupposes that the net profit of the provider of imported services is 53.33%. A net profit of 53.33% multiplied by the non-resident tax rate of 37.5% results in a tax of 20%. This is not realistic. On the higher side, the profit margins of a service provider is around 25%. This multiplied by the non-resident tax rate of 37.5% results in a tax of 9.375%. • The 20% withholding tax is at most times not recoverable from the foreign supplier as they cannot claim the same as their tax credit and particularly where Kenya does not have a double tax treaty with the country of the supplier. This has resulted in local companies having to gross up the fees to absorb the tax. This increases the cost of such services by 25%. This is the main reason why the Government has accorded a lower rate of withholding tax to oil contractors (5.625%) and now through the Finance Bill 2017, 5% to motor vehicle manufacturers. • A 10% non-resident withholding	***All tax rates under the Income Tax Act are being reviewed in the ongoing Income Tax Act review.*** ***The proposal is therefore not supported.***

		tax rate is reasonable and its implementation will encourage compliance. If this proposal is implemented, KRA will generate more revenue from increased withholding tax payments.	
(l)	**Clause 51** That the Bill be amended by deleting clause 51 and substituting therefor the following new clause – "51. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended – (a) In Part A by – (i) inserting the words "or Special Economic Zones" immediately after the words "Export Processing Zones" in item (ii); and (ii) inserting the following new item immediately after item (xxi) – "(xxii) Aircraft engines, aircraft spare parts and Jet A1 fuel"; (b) In Part B by inserting the following new item immediately after item (v) – "(vi) Aircraft, aircraft engines, aircraft spare parts and Jet A1 fuel"	Payment of these taxes makes Kenyan Carriers uncompetitive. This increases the cost of spare parts compared to airlines from different countries that do not pay the charges. This has in effect led country's brain drain of experts and highly trained technical staff to other countries.	*Engines and air craft spare part: are exempt from import duty anc Value Added Tax and leaving ou jet fuel.* *The Treasury does not support th exemption of jet fuel from IDF.* *Exemption of RDL is confined t privileged persons where we hav international treaties to adhere to.* *The Treasury does not support th proposal to amend Part B of th Second Schedule to exempt Aircraf aircraft engines, aircraft spare part and Jet A1 fuel RDL.*
3	**Ernest Muguku Muriu (CPA)**		
(a)	**Clause 6** That clause 6 of the Bill be amended by inserting the following new paragraph	This will capture the use of mpesa and similar forms of electronic payment as part of definition of money.	*This was already amended in the Finance Act, 2015.*

	after paragraph (a) – "(aa) by inserting the words "or electronic payment system" immediately after the word "card" in paragraph (c) in the definition of money".		*The proposal is therefore not supported.*
(b)	That the Bill be amended by inserting the following new clauses immediately after clause 7 – **New Clause 7A** Section 12 of the Value Added Tax Act, 2013 is amended by inserting the following new subsection immediately after subsection (2) – "(2A) The time of supply in respect of a building transferred shall be on the date the transfer of the property is made at the relevant Lands Office".	This will ensure VAT is not payable until the transfer of building is complete. This will be consistent with the court ruling that stated Capital Gains Tax should not be paid before the transfer is complete. A supply of a building happens only when the transfer of the building has taken place. VAT should not be paid on deposits paid by the customers received but on an actual transfer of the building. In some instances, the transfer does not take place and refunds need to be made, currently the VAT act does not allow for credit notes to be issued after 6 months. Therefore, we need to change the time for supply for buildings.	***The implementation of this proposal may bring challenges and create loopholes as payment for the purchases of property is made before the transfer. In addition payment of stamp duty is made before the transfer is done.*** *The proposal is therefore not supported.*
	New Clause 7B Section 16 of the Value Added Tax, 2013 is amended in subsection (6) by deleting the words "of the name, address and personal identification number of the person to whom it is issued" appearing immediately before the words "and sufficient details" and substituting therefor the words "with the prescribed details of a tax invoice as provided in section 42 (1)".	This is to ensure Section 16 (6) is consistent with section 42(2) on the details of the tax invoice.	***There is no difference between what is provided for in the current law and the proposal.*** *The proposal is therefore not supported.*
(c)	**Clause 9** That clause 9 of the Bill be amended by inserting the following new paragraphs after paragraph (a) -	This is to encourage agriculture by reducing cost of inputs. This input include live trees and goods (including seedling vegetables) of a kind commonly supplied by nursery	***This proposal can be looked at during the next budget as it requires consultation with the Ministry of Agriculture.***

	(aa) by inserting the following new paragraph immediately after paragraph 22 – "22A. Live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage of Chapter 6 excluding those of tariff heading 06.03 and 06.04.	gardeners for planting. The item covered herein are: 06.01 Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicoryplants and roots other than roots of heading 12.12. 0601.10.00 - Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormantu 0601.20.00 - Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, in growth or in flower; chicory plants and roots 06.02 Other live plants (including their roots), cuttings andslips; mushroom spawn. 0602.10.00 - Unrooted cuttings and slips u 0602.20.00 - Trees, shrubs and bushes, grafted or not, of kinds which bear edible fruit or nuts 0602.30.00 - Rhododendrons and azaleas, grafted or not 0602.40.00 - Roses, grafted or not 0602.90.00 - Other	*The proposal is therefore no supported.*
	(ab) by inserting tariff 9619.00.90 diapers immediately after tariff 9619.00.10	This will exempt baby diapers because baby nappies are no longer used and baby diapers are hygienic. This will also exempt adult incontinent diapers	*The proposal has merit.* *The proposal is supported.*
	(ac) by including "laptops" in section A of Part 1 of the Value Added Tax Act, 2015	This will encourage supply of laptops for school children.	*Input for manufacture of laptops are exempted from VAT in order to encourage local manufacturers.* *The proposal is therefore not supported*
(d)	**Clause 9** That clause 9 of the Bill be amended in paragraph (b) by inserting the following new subparagraph immediately after subparagraph (i) – "(ia) by inserting the words "and flower auction services" immediately after the words "coffee	This is to encourage development of a flower auction is Kenya to compete with the Dutch auctions and making Kenya flowers more competitive by reducing the supply chain this the product is sent straight to the final consumer thus attracting a better price and more income to Kenya and thus Kenya becomes more competitive.	*Currently there is no established flower auction services.* *The proposal is therefore no supported.*

	brokerage services" in paragraph 10]";		
(e)	**Clause 10** That clause 10 of the Bill be amended in paragraph (a) by inserting the following new subparagraph after sub paragraph (ii) – "(iii) by inserting the word "flowers" immediately after the word "coffee" wherever it appears in paragraph 4".		***Currently there is no establishe flower auction services.*** ***The proposal is therefore no supported.***
(f)	That the Bill be amended by inserting the following new clause immediately after clause 11 – **New Clause 11A** Section 6A of the Income Tax Act is amended in subsection (1) by deleting the words "but does not exceed" appearing immediately before the words "ten million" and substituting therefor the words "up to the first".	This will ensure that all residential rental landlords are able to enjoy the lower tax rate on the first Kshs 10 million income unlike now where landlords with income exceeding Kshs 10 m do not enjoy the lower tax rate. This will put fairness in the enjoyment of the lower rate.	***This will be a big revenue loophol and is not consistent with th revenue policy.*** ***The proposal is therefore no supported.***
(g)	That the Bill be amended by inserting the following new clauses immediately after clause 15 – **New Clause 15A** <u>The Second Schedule</u> to the Income Tax Act is amended in paragraph 5 by inserting the following new subparagraphs immediately after subparagraph (1) (f) - "(g) a building which is in use as a specialized hospital including any accommodation facilities upon the recommendation by the Cabinet Secretary responsible for health who shall issue guidelines for the criteria to be used to determine eligibility and	This incentive will be consistent with the incentives provided in the VAT act for exemption for specialized hospitals in paragraph 63 of the FIRST SCHEDULE S. 2(1) EXEMPT SUPPLIES PART I— GOODS and paragraph 27 of PART II SERVICES Hospitals will reduce the number of people traveling to India saving forex and increase medical tourism by attracting patients from the EAC region to seek treatment in Kenya bringing a source of revenue to the country.	***This will be considered under th ongoing Income Tax Act review.*** ***The proposal is therefore no supported.***

	which the Commissioner has certified to be an industrial building; (f) in a case referred to in paragraphs 5(1)(g) one twenty-fifth".		
	New Clause 15B The Second Schedule to the Income Tax Act is amended in paragraph 24 by inserting the following new subparagraph immediately after subparagraph (1) (g) - (h) on the construction of a specialized hospital including any accommodation facilities which is certified as an industrial building under paragraph 5(1)(g);		*This will be considered under th ongoing Income Tax Act review.* *The proposal is therefore no supported.*
(h)	**Clause 17** That clause 17 of the Bill be amended in paragraph (b) by - (a) inserting the following proviso immediately after item 1 – "The Commissioner shall, by notice in the Gazette, adjust the above tax bands annually to take into account inflation in accordance with the formula"(A*B)". Where- A is the amount of tax in each band on the day immediately before the adjustment day; and B is the adjustment factor for the adjustment day calculated as one plus annual average rate of inflation of the preceding financial year". (b) inserting the following	To include an inflation adjusted increase to the tax bands.	*This will be considered under th ongoing Income Tax Act review.* *The proposal is therefore no supported.*

	proviso immediately after item 1A "The Commissioner shall, by notice in the Gazette, adjust the above tax bands annually to take into account inflation in accordance with the formula"(A*B)". Where- A is the amount of tax in each band on the day immediately before the adjustment day; and B is the adjustment factor for the adjustment day calculated as one plus annual average rate of inflation of the preceding financial year".		
(i)	That the Bill be amended by inserting the following new clause immediately after clause 17 – **New Clause 17A** "17A. Section 2 of the Tax Procedures Act, 2015 is amended in the definition of the term "tax decision" by deleting the number "49" and substituting therefor the number "47".	Section 47 is the one that deals with refunds and not section 49.	***This is a clean-up. The correc reference should be Section 48 anc not 47 as proposed.*** ***The proposal is supported a: amended.***
4	**PricewaterhouseCoopers Ltd (PWC) – Oil & Gas subcontractors**		
(a)	**Clause 10** That clause 10 of the Bill be amended in paragraph (a) by inserting the following new paragraph immediately after the proposed paragraph 14 in subparagraph (ii) – "15. The supply of taxable goods or taxable services, excluding motor vehicles	(a) The repealed VAT Act CAP 476, granted VAT remission (0% VAT) on taxable goods and taxable services supplied to O&G companies. This is also currently applicable to most O&G companies given the five (5) year transition period with respect to VAT remission on taxable goods and taxable services that was	***The exploration of oil and gas i based on production sharing contract. The subcontractors are no party to the agreement anc therefore exempting them is a los: to the Government.*** ***The proposal is therefore no supported.***

	principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by subcontractors of a company granted oil or gas exploration license in accordance with a production sharing contract with the Government of Kenya, and in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy".	granted under the VAT Act, 2013; (b) The remission scheme, albeit successful, did not address the impact on the O&G subcontractors most of whom are in a significant VAT refund position (given that they provide services exclusively to O&G companies). The cost of financing the amounts awaiting refund (which can take up to 3 years to be paid) has to be factored in the contract price which increases the cost of exploration and development; (c) The remission scheme expires with effect from September 2018 and supplies by O&G subcontractors for services will be subject to VAT at 16%. Although this will address the VAT refund challenges of the subcontractors, it will effectively increase the cost of investment of O&G companies as services account for more than 80% of the sectors costs during the exploration and development phase. O&G are also not making any supplies and therefore do not have the ability to pass the VAT cost to the final consumer.	
	PWC –Power Sector Players		
(b)	That the Bill be amended by inserting the following new clause immediately after clause 11 – **New Clause 11A** Section 7A of the Income Tax Act be repealed.	(a) With the significant investment still required to meet the additional demand of 6,500 MW by 2035, the Kenyan government has embarked on increasing electricity generation	***This will be considered under th ongoing Income Tax Act review.*** ***The proposal is therefore no supported.***

		through Public Private Partnerships. However, compensating tax provisions would make investors to shun participation in capital intensive investment as the return on investment would come about much later in the investment cycle; (b) Compensating tax was introduced at a time when capital gains tax was suspended. Since capital gains tax was re-introduced in January 2015, the compensating tax provisions are no longer relevant. Further, compensating tax leads to claw back of tax incentives which passes the wrong signals to current and potential investors; (c) To make Kenya a more attractive international investment destination by eliminating the perception of a higher corporate tax rate; and (d) Compensating tax is not international best practice and might discourage investment into the power sector. Other jurisdictions such as South Africa, Nigeria, Ghana and the East Africa Community do not have compensating tax provisions.	
(c)	Amend the Income Tax Act to provide for the thin capitalisation threshold of 6:1 (i.e. 85% debt and 15% equity) for the power sector.	(a) Power projects are capital intensive and the players heavily rely on both local and overseas debt for financing; (b) Under section 16 (3) (2) (j) of the Income Tax Act, a company is considered thinly capitalised if it is under the control of a non-resident and the debt to equity ratio	***This will be considered <u>under</u> th*** ***ongoing Income Tax Act review.*** ***The proposal is therefore no*** ***supported.***

		exceeds 3:1 (i.e. 75% debt and 25% equity); and (c) In order for Kenya to continue attracting foreign direct investment, the ratio should be significantly increased to perhaps 6:1 (i.e. 85% debt and 15% equity) to make it less punitive and easier for businesses that seek funding. Alternatively, the government should increase this ration on the power sector due to the large reliance on debt financing.	
(d)	**Clause 25** That clause 25 of the Bill be deleted and substituted therefor with the following new clause – "25. Section 42A of the Tax Procedures Act, 2015 is amended – (a) by deleting subsection (3) and substituting therefor the following new subsection – (3) Subsection (1) shall not apply where - (a) taxable supplies ~~relate~~ to official aided funded projects; (b) where the Commissioner is satisfied that the supplier has regularly complied with the obligations under this Act through issuance of a tax compliance certificate;	(a) The systems' disregard transaction volumes; (b) Taxpayers are not entitled to tax refunds arising from withheld VAT; (c) There is lack of distinction between compliant and non-compliant taxpayers; (d) The requirement to remit withholding VAT within fourteen days is administratively cumbersome and it remains unclear why a different declaration and payment cycle has been proposes to the ordinary VAT filing cycle of the 20th day of the subsequent month after VAT has been charged or incurred. In addition, this amendment will result in additional compliance costs for taxpayers since it will require them to adjust their systems to align them with the new withholding VAT declaration/payment cycle, which goes against the government's commitment to ease doing business in Kenya.	***The matter of due date has been addressed above.*** ***Withholding VAT policy is not based on noncompliance. There is need for uniform treatment for all tax payers.*** ***The proposal is therefore not supported***

	(c) the aggregate payment by the agent to the supplier in a month does not exceed the minimum level as determined by the Commissioner upon application by the supplier; or (d) the Commissioner is satisfied on application that the supplier's nature of business makes it impractical to withhold and account for tax in accordance with this section. (b) by inserting the following new subsections immediately after subsection (4) – "(4A) The Commissioner may at any time exempt any supplier from the provisions of this section if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty four months.		

	(4B) The tax withheld under this section shall be remitted to the Commissioner **on or before the twentieth day of the month following the month in which the deduction is made.** (4C) A person who is required under this section to withhold tax commits an offence if the person – (a) fails to withhold the whole amount of the tax which should have been withheld, or (b) fails to remit the amount of the withheld tax to the Commissioner within fourteen days following the time the withholding was made or ought to have been made"		
(e)	That the Bill be amended by inserting the following new clause immediately after clause 7 – **New Clause 7A** Section 17 of the Value Added Tax Act, 2013 is amended by deleting the proviso to subsection (5) and substituting therefor the following new proviso – "Provided that any such excess shall be paid to the	(a) International best practices in developed countries do not have withholding VAT systems yet operate efficient VAT systems; (b) Ease of doing business in Kenya requires a simple and conducive fiscal regulatory environment; (c) Fostering business and wealth creation for the poor in line with vision 2030 requires a conducive	*Withholding VAT enhance: compliance among the tax payers The withholding VAT rate has alsc been reduced to 6% thus resulting into few refund cases.* *The Finance Bill, 2017 ha: provided for cases where the ta: payer is at perpetual VAT credi necessitating refund by giving thc Commissioner powers to exemp such cases from withholding VAT.*

	registered person by the Commissioner where – (a) the Commissioner is satisfied that such excess arises from making zero rated supplies; or (b) tax is withheld by appointed tax withholding agents; and the registered person lodges the claim for the refund of the excess tax within twelve months from the date the tax becomes due and payable".	business environment; (d) Enhancement of legislative provisions to address the administration of VAT in the informal sector as a means of tapping into the untaxed revenue from this sector; (e) KRA's ability to use technology, specifically iTax to run exception reports to identify non-compliant taxpayers renders WH VAT unnecessary; and (f) WH VAT defies the principles that VAT is a self-assessment tax and further that VAT should be borne by the consumer and not by the business.	***The proposal is therefore no[t] supported.***
	PWC – Association of Gaming Operators – Kenya (AGOK)		
(f)	**Clause 26** That the Bill be amended by deleting clause 26 and substituting therefor the following new clause – **26.**Section 29A of the Betting, Lotteries and Gaming Act be repealed.	The proposed amendments will have adverse effects including – (a) The affected companies will operate at a loss; (b) Migration of the industry offshore; (c) Job losses; (d) Decrease in government revenue; and (e) Decrease in sponsorship and corporate social responsibility by the affected companies.	***The tax Of 50% is to better regulat[e] the industry and safeguard th[e] public from hazard associated wit[h] these activities. The revenue raise[d] will go to the Sports Fund.*** ***The proposal is therefore no[t] supported.***
	Clause 27 That the Bill be amended by deleting clause 27 and substituting therefor the following new clause – **27.**Section 44A of the Betting, Lotteries and Gaming Act be repealed.		
	Clause 28 That the Bill be amended by deleting clause 28 and substituting therefor the following new clause – **28.**Section 55A of the Betting, Lotteries and Gaming Act be repealed.		
	Clause 29 That the Bill be amended		

	by deleting clause 29 and substituting therefor the following new clause – **29.**Section 59B of the Betting, Lotteries and Gaming Act be repealed.		
5	**Acumen Communications**		
	Clause 26 That the Bill be amended by deleting clause 26.	(a) The amendments have been proposed without stakeholder participation; (b) Inadequate regulation is not addressed through punitive taxes but rather but rather through enhancing the mandate of the Betting, Control and Licensing Board; (c) Sponsorship by betting companies will reduce; and (d) It will lead to loss of foreign direct investment to the country.	*The tax 0f 50% is to better regulat the industry and safeguard th public from hazard associated wit these activities. The revenue raise will go to the Sports Fund.* *The proposal is therefore no supported.*
	Clause 27 That the Bill be amended by deleting clause 27.		
	Clause 28 That the Bill be amended by deleting clause 28.		
	Clause 29 That the Bill be amended by deleting clause 29.		
6	**Kenya Airways**		
(a)	**Clause 4** Clause 4 of the Bill be amended by inserting the following new subparagraph immediately after subparagraph (ii) in paragraph (a) – "(iii) by deleting tariff number 2710.19.21 (Kerosene type jet fuel per 1000l @20 degC) from the Schedule".	Exempting Jet A 1 fuel from Excise Duty will reduce the cost of travel hence positioning Kenya as an attractive and preferred tourist destination.	*Currently Jet fuel supplied fo international flights is not subject t excise duty. Its only local flights an private and chartered aircrafts fo domestic travels that pay excis duty.* *Exempting excise duty on Jet fue for domestic flights, private an chartered domestic flights will b discriminatory as other transpo modes pay excise duty on fue Further, removing excise duty ma not necessarily translate to reduc cost of travel as prices depend o market forces of demand an supply.* *The proposal is therefore nc supported.*
(b)	**Clause 51** That the Bill be amended by deleting clause 51 and substituting therefor the	(a) Payment of these taxes makes Kenyan carriers uncompetitive. This increases cost of spare parts	*Engines and aircraft spare parts ar exempt from import duty and Valu Added Tax and leaving out jet fuel.*

	following new clause – "51. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended – (a) In Part A by – (iii) inserting the words "or Special Economic Zones" immediately after the words "Export Processing Zones" in item (ii); and (iv) inserting the following new item immediately after item (xxi) – "(xxii) Aircraft engines, aircraft spare parts and Jet A1 fuel"; (b) In Part B by inserting the following new item immediately after item (v) – "(vi) Aircraft, aircraft engines, aircraft spare parts And Jet A1 fuel".	to airlines from different countries that do not pay the charges; (b) Loss of Maintenance Repair Operations (MRO) to Middle East carriers and ET. This has in effect led to the country's brain drain of experts and highly qualified staff, and (c) To harmonise exemption for free zones in Kenya to international standards which are exempted from all taxes and levies.	***The Treasury does not support thi exemption of jet fuel from IDF.*** ***Exemption of RDL is confined tc privileged persons where we havt international treaties to adhere to.*** ***The Treasury does not support the proposal to amend Part B of tht Second Schedule to exemp. Aircraft, aircraft engines, aircraf. spare parts and Jet A1 fuel RDL.***
7	**Agrochemicals Association of Kenya (AAK)**		
	Clause 10 That clause 10 of the Bill be amended in paragraph (a) by inserting the following new paragraphs after the proposed paragraph – "15. All inputs and raw materials (whether produced locally or imported) supplied to	(a) To enable manufacturers of pesticides to apply for upfront remission of VAT on direct inputs at the point of purchase; and (b) To enable manufacturers to claim VAT incurred on indirect includes such as electricity, transport and labour that may not be quantified for remission.	***The spirit of the law is to exemp. and zero rating only applies tc exports.*** ***The proposal is therefore no. supported.***

	manufacturers of agricultural pest control products upon recommendation of the Cabinet Secretary for the time being responsible for agriculture; and 16. Finished agricultural pest control products. **0R** 15. Finished agricultural pest control products.		
8	**Ministry of National Government – Betting Control and Licensing Board**		
	Clause 26 That the Bill be amended by deleting clause 26.	(a) The Board has developed the Online and Mobile Betting, Lotteries and Gaming Regulations to deal with betting and this is a better way to deal with any adverse effects of betting as opposed to heavy taxation; and (b) There is need for further consultation before amending the law.	***The tax 0f 50% is to better regulate the industry and safeguard the public from hazard associated with these activities. The revenue raised will go to the Sports Fund.*** ***The proposal is therefore no supported.***
	Clause 27 That the Bill be amended by deleting clause 27.		
	Clause 28 That the Bill be amended by deleting clause 28.		
	Clause 29 That the Bill be amended by deleting clause 29.		
9	**Ministry of Sports, Culture and the Arts – the National Sports Fund**		
	New clause **THAT** the Bill be amended by inserting the following new clause immediately after clause 51 – "**51A.** Section 12 of the Sports Act, 2013 be amended in subsection 2 by inserting the words "taxes levied under the Betting, Lotteries and Gaming Act" immediately before the word "investments" in paragraph (a)"	(a) The National Sports Fund is a State Corporation established under section 12 of the Sports Act, 2013 with the mandate to raise funds through lotteries, investments and other legal means to supplement the government's funding of sports; (b) The amendment is to align the Finance Bill, 2017 with the Budget Speech, 2017 which indicated that taxes collected from the gaming sector will be channelled to the National Sports Fund;	***The proposal has merit and i. therefore supported. The proposed taxes will enhance the proceeds o the Fund to support development o sports, culture and arts in Kenya***

		and (c) The Sports Fund has so far not been able to establish a Sports Lottery in line with the Sports Act, 2013 due to lack of sufficient budgetary allocation of the seed money.	
10	**Institute of Certified Public Accounts of Kenya - ICPAK**		
(a)(i)	**Excise Duty Act, 2015** Amend section 9 of the Excise Duty Act, 2015 to provide a clear definition of interest to facilitate the appropriate taxation of consumption.	(a) Section 9(6) of the Excise Duty Act, 2015 exempts excise duty on interest and insurance premium. However, the Act does define what constitutes interest for excise duty purposes. This has resulted in conflicting tax opinions between the industry players and KRA; (b) The industry players consider various fees or charges to be directly connected to advancement of loans to customers. Such fees include loan processing fees and commitment fee; (c) In the absence of a clear definition of interest in the Act, this has resulted to reliance of the definition contained in the Income Tax Act which provides as follows: *"interest" (other than interest charged on tax) means interest payable in any manner in respect of a loan deposit debt claim or other right or obligation, and includes **a premium or discount by way of interest and commitment or service fee paid in respect of any loan or credit.**"*	***The law is very explicit on wha constitutes the taxable value fo excise duty purposes.*** ***Processing and commitment fee are fees or charges for providing services to customers and are no therefore considered to be interes for the purposes of the Act.*** ***The proposal is therefore not supported***
(ii)	Amend the First Schedule Part III of the Excise Duty Act, 2015, under the definition of "other fees" to provide for a clear	This is to enhance compliance and mitigate ambiguity in interpretation.	***These are fees charged by financia institutions other than interest and are therefore excisable.*** ***The proposal is therefore no***

	interpretation on what "return on loan" entails for purposes of excise duty exemption.		*supported.*
(b)(i)	**Value Added Tax Act, 2013**		
	New clause **THAT** the Bill be amended by inserting the following new clause immediately after clause 7 – "7A. Section 15 of the Value Added Tax Act, 2013 is amended by inserting the following new subsections immediately after subsection (2) – (3)The registration of the tax representative shall be in the name of the non-resident person being represented. (4) A person may be a tax representative for more than one non-resident person, in which case the person shall have a separate registration for each non- resident person. (5)The Commissioner shall issue a PIN to the tax representative.	These provisions were deleted by the Second Schedule to the Tax Procedures Act, 2015 (TPA) yet they are still relevant.	***The proposals have merit. Howevei the proposed amendments should b… under section 15A of the Ta… Procedure Act and not the VAT Act.***
(ii)	**New clause** **THAT** the Bill be amended by inserting the following new clause immediately after clause 7 – "7A. Section 17 of the Value Added Tax Act, 2013 is amended –(a) in subsection (5) by inserting the words "or withholding VAT credits from VAT withheld" immediately after the word "supplies" in paragraph (a); and (b) inserting the following new subclause immediately	Section 17(5) of the Value Added Tax Act, 2013only entitles a VAT registered person to claim a VAT refund if he is making zero rated supplies. In view of the Withholding VAT credits, this section should be amended to permit VAT refund claims arising from WHVAT credits. This would enable persons who incur input tax on such projects to lodge a claim for the excess tax.	***The Commissioner has bee… empowered under clause 25 of th… Bill to exempt persons wit… perpetual credits from th… withholding regime.*** ***The proposal is therefore no… supported.***

	after subclause (5) - " Subsection(5) also applies to persons who incur input tax on fixed capital expenses used in making taxable supplies, such as construction projects, which often exceed i2 months".		
(iii)	Amend the Part II of the Second Schedule to provide for specific rules and guidance on various services such as issuing of credit and debit cards and burial and cremation services.	(a) The description of these services is too broad; (b) In the case of issuing of credit and debit cards – it is not clear as to whether this includes card payments and transactions fees or charges. (c) In the case of burial and cremation services – provide a detailed description of the exempt services	***Paragraph 1(c) of Part II of the First Schedule and not Part II of the Second Schedule only provides for issuing of credit and debit card and therefore does not in any way include card payments and transaction fees or charges.*** ***The law as drafted in Part II of the First Schedule to the VAT Act exempts the services listed therein if provided by any person.*** ***The view that the description of the said services are too wide does not arise since the services are specific. However, in the case where determination of such services will require interpretation section 62 of the Tax Procedures Act may be invoked by the Commissioner.*** ***The proposal is therefore not supported.***
(iv)	**Clause 10** **THAT** clause 10 of the Bill be amended in paragraph (c) by renumbering the existing provision as subparagraph (i) and inserting the following new paragraph – (ii) Provide for descriptions under HS Codes 3003.10.00 and 3003.90.00.	(a) The Finance Act 2015 included HS Codes 3003.10.00 and 3003.90.00 under Part C of the Second Schedule. (b) The Finance Act 2016 amended the Second Schedule of Part C of the VAT Act, 2013 by inserting tariff number 3003.20.00 and deleting tariff number 3303.20.00. (c) However, neither of the above amendments provide the description thereof.	***The proposal is catered for under the same clause in the Finance Bill 2017 which provides for the requested tariff descriptions.*** ***The proposal is therefore not supported.***
(v)	Amend the Second Schedule to provide for	(a) The First Schedule provides for the exemption of certain	***The unprocessed foodstuffs and basic consumer commodities are***

	zero rating of unprocessed food stuffs and basic consumer commodities.	unprocessed foodstuffs and basic consumer commodities; (b) The Second Schedule should also be amended to provide for the zero-rating of such supplies; (c) This is because when a commodity is exempt from VAT, it implies that the input VAT incurred on the raw materials cannot be recovered on the sale of the sale of the commodity; (d) This, in effect, causes an increase in the prices of some basic commodities such as bread, wheat flour, maize flour among others.	*exempt under Part I of the Firs Schedule on account of the fact tha the inputs such as fertilizers agricultural equipment, seeds among others are also exempt.* *The proposal is therefore no supported.*
(vi)	Abolish withholding VAT.	(a) The Finance Act, 2016 amended the TPA by inserting a new Section 42A which allows the Commissioner to appoint a WHVAT agent. (b) WHVAT should be abolished to remove the burden of tax collection from the taxpayers.	*The introduction of WHVAT was meant to protect tax revenue from tax payers who were not remitting the same and those who were no paying the tax especially those who were supplying goods and services to the government and other public institutions.* *This proposal has no merit and is therefore not supported.*
(vii)	Amend the VAT Act to remove ambiguity as to when a service qualifies as exported, by providing guidelines for determining the place of "use or consumption" of services.		*This is catered for under the VAT Regulations.* *The proposal is therefore no supported.*
(viii)	Amend Part A of the Second Schedule to the VAT Act by inserting a new paragraph 14 to read: "The supply of taxable goods or taxable services to be used exclusively for development and extraction activities of a mining company granted a mining license in accordance with	Currently, supplies to mining companies involved in prospecting are exempt. Once the companies reach the development stage, supplies to them will become vatable.	*Goods including equipment and machinery used in the developmen and extraction of mining like othe sectors are exempt as capital goods. The current policy is to discourage and limit zero rating of goods and services to protect VAT revenue. The only other option available is to exempt the services which wil disadvantage the suppliers of those services since they will not be abl*

	the Mining Act, upon recommendation by the Cabinet Secretary responsible for Mining".		*to recover their input tax incurre in providing those services making them more expensive.* *The proposal is therefore no supported.*
(ix)	Amend paragraph 29 of the First Schedule by deleting the words "taxable supplies" and substituting therefor the words "taxable goods".		*Part I of the First Schedule is explicit on what is covered under paragraph 29. The heading of the said Part only cover goods and no services as services are listed under Part II of the First Schedule.* *The proposal is therefore no supported.*
	Income Tax Act		
(i)	**Mortgage interest relief from SACCOs and NSSF** **Clause 15** **THAT** clause 15 of the Bill be amended by renumbering the existing provision as paragraph (a) and inserting the following new paragraph – "(b) Section 15 of the Income Tax Act is amended in subsection (3) by deleting the word "four" appearing immediately before the words "financial institutions" and substituting therefor the word "six". **New clause** **THAT** the Bill be amended by inserting the following new clause immediately after clause 17 – "**17A.** The Fourth Schedule to the Income Tax Act is amended by inserting the following financial institutions immediately after the words "A co-operative society registered under the Co-operative Societies Act (Cap. 490)" "National Social Security	(a) There is need to extend the mortgage interest relief to institutions such as SACCOS and NSSF to align the mortgage interest relief to the current practice. (b) Currently, section 15 (3)(b) of the Income Tax Act provides for mortgage interest relief of KShs. 300,000 per annum from the following institutions: (i) Banks or financial institutions licensed under the Banking Act; (ii) An insurance company licensed under the Insurance Act; (iii) A building society registered under the Building Societies Act; (iv) The National Housing Corporation established under the Housing Act. (c) The housing landscape has changed and there are other players such as SACCOs and NSSF that are providing mortgage facilities.	*The amendments have been made under the Statute Law (Miscellaneous Amendment) Bill 2017 which became effective from 4th May 2017.* *The proposal is therefore no supported.*

	Fund established under the NSSF Act, 2013. SACCOS registered under the SACCO Societies Act, 2008"		
(ii)	**Increase the Home Ownership Saving Plan Deduction** **New clause** **THAT** the Bill be amended by inserting the following new clause immediately after clause 13 – "**13A.** Section 22C of the Income Tax Act, is amended in subsection (2) by deleting the words "forty eight" and substituting therefor the words "three hundred".	(a) Section 22C (2) of the Income Tax Act provides for Home Ownership Savings Plan ("HOSP) deduction of KShs. 4,000 per month or KShs. 48,000 per year; (b) The benefit is extended for a period of 10 years. Effectively, the total deductions allowable over the 10 year period would be KShs. 480,000; (c) Noting that the above provision is a tax incentive intended to entice Kenyans to own homes, these values do not reflect the reality in the current housing market. As such, there has been limited uptake of this scheme; (d) While the second pillar of the jubilee manifesto, outlines the party's committed to provide decent housing to all, we further note that there has been limited policy initiatives to facilitate the delivery of this promise; (e) The enhancement of the deductible HOSP benefit would go a long way in enhancing the uptake of home ownership schemes and thereby directly contributing to the delivery of "decent housing to all"; (f) Aligning the HOSP deduction with the mortgage interest relief would encourage more people to own houses;	*This provision was introduced in the Income Tax Act in the year 199[illegible] and similar plans have been introduced such as home ownership savings plan, there is need to consider the proposal under the comprehensive income tax review which is underway.* *The proposal is therefore not supported.*

		(g) The savings interest provided in the Banking Amendment Act 2016 will also encourage Kenyans to save under this scheme.	
(iii)	**Increase the per diem threshold from the current KShs. 2,000 per day to amounts that are reflective of the cost of living in various places.** **New clause** **THAT** the Bill be amended by inserting the following new clause immediately after clause 11 – "**11A.** Section 5 of the Income Tax Act be amended in subsection (2) by deleting subparagraph (iii) of paragraph (a) and substituting therefor the following new subparagraph – "(iii) Notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the amounts as prescribed by the Commissioner shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits".	(a) Kshs. 2,000 per day is not reflective of the cost of living in various cities; (b) Within the country, the cost of accommodation per day could be as high as Kshs. 10,000. This increases significantly when one travels outside the country; (c) The Commissioner should be empowered to prescribe the per diem rates on a regular basis and the prescribed rates should mirror the Government approved daily per diem rates (Daily Subsistence Allowance) that differ from location to location.	***This provision will be considere during the ongoing review of th Income Tax Act as stated by th Cabinet Secretary when presentin the Budget Statement.*** ***The proposal is therefore no supported.***
(iv)	**Compensating tax** **New clause** **THAT** the Bill be amended by inserting the following new clause immediately after clause 11 –	(a) Section 7A of the Income Tax Act provides for compensating tax. This arises where a company resident in Kenya distributes dividends from untaxed	***This provision will be considere during the ongoing review of th Income Tax Act as stated by th Cabinet Secretary when presentin the Budget Statement.***

	"**11A**. Section 7A of the Income Tax Act is amended by inserting the following new subsection after subsection (7) – "(7A) Where dividends have been declared out of gains taxed under sec 3(2) f, then compensating tax shall not apply".	income; (b) Compensating tax was introduced to act as a safeguard against companies making perpetual losses and still distribute dividends; (c) While section 34 (1) (j) sets the CGT rate at 5% as a final tax, there have has been no attempts to amend section 7A of the Income Tax Act dealing with Dividend Tax Account and Compensating Tax; (d) This implies that where a company (as opposed to an individual) sells a capital asset and pays capital gains tax at a rate of 5%, it will still be required to pay an additional 25% compensating tax when it declares such a gain as a dividend; (e) This proposal will align the law with the current tax legislation and prevent double taxation.	***The proposal is therefore no supported.***
(v)	Limitation of Tax Treaty Benefits New clause THAT the Bill be amended by inserting the following new clause immediately after clause 13 – "13A. Section 41 of the Income Tax Act be amended by deleting subsections (5) and (6) and substituting therefor the following new subsections – "(5) Except for a public listed company, where an international agreement concluded by the Government of Kenya with	(a) Section 41(5) of the Income Tax Act contains a provision limiting tax treaty benefits to the following: (i) Residents of the other contracting state if at least 50% of the underlying ownership of the resident person is held by individuals who are residents of that contracting state. (ii) Residents listed on the stock exchange in that other contracting state. (b) The objective of the limitation of tax treaty benefit is to deny treaty benefits to a company whose "underlying ownership" is	***This provision will be considere during the ongoing review of th Income Tax Act as stated by th Cabinet Secretary when presentin the Budget Statement.*** ***The proposal is therefore no supported.***

	another contracting state provides that income derived by a person resident in such other contracting state from sources in Kenya is exempt from Kenyan tax or is subject to a reduction in the rate of Kenyan tax, the benefit of that exemption or reduction shall not be available to any person who receives the income in a capacity which is other than that of a beneficial owner, within the meaning accorded to that term by the relevant international agreement, and who does not have full and unrestricted ability to enjoy that income and to determine its future uses; (6) a credit under this section shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit".	mostly in a third country. (c) We further recognize that Kenya has joined the BEPS inclusive framework that brings together over 100 jurisdictions to collaborate on the implementation of the OECD/ G20 Base Erosion and Profit Shifting (BEPS) Package. Action 6 of the OECD/G20 Project identifies treaty abuse, and in particular treaty shopping, as one of the most important sources of BEPS concerns. (d) To safeguard the country's revenue bases and provide assurance to investors, we propose the incorporation of the BEPS anti-abuse rule based on the principal purposes of transactions or arrangements, known as the principal purposes test or "PPT" rule. (e) This will provide the needed balance between providing certainty to foreign investors and protecting the tax base. (f) There is need also to include the principle purpose test	
	Inconsistencies between the Tax Procedures Act, 2015 and the Value Added Tax Act, 2013		
(i)	**New clause** **THAT** the Bill be amended by inserting the following new clause immediately after clause 25 - "**25A.** The Second Schedule to the Tax Procedures Act, 2015 is amended in paragraph 14	This is to correct the inconsistency between section 47 of the Tax Procedures Act, 2015 dealing with refund of tax paid in error and section 30 of the Value Added Tax Act, 2013 dealing with refund of overpaid tax.	***The provisions under Section 47 o the Tax Procedures Act provide fo refund of overpaid tax while Sectior 30 of the VAT Act is in respect o tax paid in error hence there is nc inconsistency between the twc sections.*** ***The proposal is therefore no***

	by deleting the words "section 32"and substituting therefor the words "sections 30 and 32".		*supported.*
(ii)	Provide clarification on the details surrounding the publication of a private ruling and the measures undertaken to safeguard confidentiality of the applicant.	Section 58 of the VAT Act on the making private rulings has been deleted. Section 69 of the TPA provides for the publication of the Private Ruling in two daily newspapers excluding the identity of the applicant to whom the ruling applies. There is need for clarity on the application of this section.	*The publication of a private ruling does not require disclosure of tax payers details as the rulings are based on facts of a case and not the parties to the ruling hence no breach of confidentiality of applicants.* *The proposal is therefore not supported.*
11	**Kenya Airways (KQ)**		
	Clause 9 That clause 9 of the Bill be amended in paragraph (a) by inserting the following new item immediately after the proposed paragraph 93 in sub-paragraph (iv) – "94 Transportation of cargo to destinations outside Kenya'.	(a) The VAT Act, 2013 provides zero rating status for exportation of goods and services; (b) However, it is impossible to separate exportation of goods to a different country from exportation of services that will ensure the goods reach the final destination; (c) In addition, the cost of imports or exports is defined by the CIF value as per the East African Community Customs Management Act (EACCMA) whereby CIF stands for Cost, Insurance and Freight; (d) The introduction of tax transportation services (freight charges) by KRA will make Kenya uncompetitive and will also lead to loss of revenue; (e) It will also lead to taxation of imports from Kenya in other jurisdictions if reciprocal treatment is to be applied; (f) Ultimately, this will have	**The VAT Regulations have clarified the treatment of export of services.** **The proposal is therefore not supported.**

		a huge impact on Kenya's foreign exchange earnings by making our exports uncompetitive compared to other countries.	
12	**Kenya Pipeline Company Limited (KPC)**		
	Clause 16 That clause 16 of the Bill be amended by renumbering the existing provision as paragraph (a) and inserting the following new paragraph – "(b) That the second Schedule to the Income Tax Act is amended in paragraph 24 by inserting the following new subparagraph immediately after subparagraph (g) – (g) on the construction of petroleum products, transportation and petroleum products facilities by a company involved in the transportation and storage of petroleum products in Kenya".	(a) This will result in investments in storage and transportation facilities in respect of petroleum products qualifying for investment deduction like other key players in the energy sector such Kenya Power (KP), Kenya Electricity Generation Company (KenGen), Kenya Electricity Transmission Company (KETRACO), Geothermal Development Company (GDC) and Independent Power Producers; (b) Kenyan businesses engaged in storage and transportation of petroleum products will thus become competitive globally.	**This provision will be considered during the ongoing review of the Income Tax Act.** **The proposal is therefore not supported.**
13	**Alcohol Beverages Association of Kenya (ABAK)**		
(a)	A stay on the proposed Kshs. 25 increase on spirits and further adjustment on inflation. **Clause 4** (a) That clause 4 the Bill be amended in paragraph (a) by deleting subparagraph (i); and	Increasing taxation on liquor has various adverse effects including – (a) The price of liquor is well beyond the reach of many lower and middle income groups; (b) Increase in unregistered and illegal trade in alcoholic drinks thus profiting smugglers and	**The increase of KSh 25 per litre is meant to align the rate of excise duty of alcoholic spirits to the current market prices since the rate is specific rather than advalorem.** **The inflation adjustment is meant to create certainity and**

	(b) The government to also suspend the planned inflation increase.	unlicensed operators; (c) Loss of revenue to the government due to illicit, counterfeit and contraband products and tax evasion; and (d) Increase in social costs related to illicit alcohol such as health costs.	**predictability in the taxation of the industry.** **The proposal is therefore not supported.**
(b)	Stabilisation of tax regime (a) The government with the support of the industry should conduct an economic modelling to develop optimal tax levels and appropriate tax levels that should take into account affordability and revenue needs. Any tax increase should be preceded by econometric modelling to ensure tax rates are not set way beyond optimal levels; or (b) Inflationary adjustments should be done every three years. The inflationary index should isolate change in price of the alcohol brands over the three year period using the formula – Inflationary factor =current period price less base period price/base period average price of alcohol x 100 A factor that isolates the change in price of alcohol over a		**This is an administrative issue and does not require any amendment to the law.** **The proposal is therefore not supported.**

	period of time is more realistic and will capture any perceived depreciation of tax base. In addition, taxation regime should be uniform across the various categories of wines, beer and spirits.		
(c)	Framework for enforcement and legislation (a) The ongoing framework for cooperation between ABAK and KRA should be encouraged in other key government institutions and be entrenched to coordinate enforcement measures against illicit alcohol; (b) The industry is prepared to commit resources towards this endeavour; (c) ABAK requests the Cabinet Secretary to nominate a small taskforce to draft a framework for cooperation between ABAK and the government in the area of enforcement of taxation and responsible consumption of alcohol; (d) The framework will help in lowering compliance/enforcement costs.		**This is an administrative issue and does not require any amendment to the law.** **The proposal is therefore not supported.**
14	**KPMG**		

(a)	**Clause 6** That clause 6 of the Bill be amended by inserting the following new paragraph after paragraph (a) – "(aa) in subsection (1) by deleting the definition of the term "service exported out of Kenya" and substituting therefor the following new definition - **"Services exported out of Kenya"** means a supply of services that satisfies the following conditions: a) The supply is physically rendered outside Kenya by a registered person; b) The supply relates to export of goods where the transportation of the goods terminates outside Kenya; or c) Where the service is physically provided in Kenya: (i) The service is provided to a person who is not a resident of Kenya; (ii) The service is not in connection to real property situated in Kenya; and (iii) Payment for the goods is made from outside Kenya in foreign currency".	(a) The definition of export of services is not clear opening it to different interpretations and legal disputes, (b) The recently published VAT Regulations, 2017 have complicated the issue by excluding services paid for from outside Kenya from treatment as exports; (c) Given that by their nature service exports are made to non-residents, this effectively subjects to tax all service exports giving rise to the following adverse consequences: (i) Companies which have set up in Kenya to provide services for export will be required to charge VAT on their services. This will increase their costs by 16%, making them globally uncompetitive since other countries competing with the same markets zero-rate export of services. This will impact Kenya's position as a preferred location for regional headquarters and business process outsourcing (BPO) services which the country is keen to attract; (ii) The changes are inconsistent with	**The VAT Regulations have clarified the treatment of export of services.** **The proposal is therefore not supported.**

			Government efforts to establish a vibrant service industry in Kenya as evidenced through the establishment of Special Economic Zones (SEZs) which have provisions for business services parks incorporating regional headquarters and science and technology parks which aim to provide services in Kenya to the international market. Implementation of Regulation 13 will most likely force some companies to re-locate operations to the SEZs resulting in losses of revenue due to the incentives that SEZ enjoy;	
		(iii)	Persons procuring services from outside their home countries are often required to account for VAT under the reverse charge mechanism in their home countries. In addition, just like Kenya they are not allowed a deduction for VAT paid in other	

		countries This means that persons receiving services from Kenya will be subjected to tax twice, in Kenya and in their home countries on the same service significantly reducing Kenya's attractiveness; (iv) Regulation 13 is inconsistent with the provisions of the substantive legislation (Section 2) and international best practice on taxation of export of services and is likely to be the subject of protracted legal disputes between the Kenya Revenue Authority and taxpayers.	
(b)	**Clause 9** That clause 9 of the Bill be amended in paragraph (a) by deleting the proposed paragraph 88 in subparagraph (iv); and **Clause 10** That clause 10 of the Bill be amended in paragraph (a) by deleting subparagraph (i).	(a) The Finance Bill 2017 proposes to revoke the zero-rating of LPG which was introduced in the Finance Act, 2016 and instead exempt LPG from VAT; (b) The result is that LPG suppliers will not be allowed a deduction for input VAT they incur to supply the LPG forcing them to include the input VAT in the cost of LPG; (c) Under the zero-rated status, the suppliers can claim back the VAT from the KRA reducing their	**The current government policy is to discourage and limit zero rating in order to protect tax revenue.** **The proposal is therefore not supported.**

		costs and the eventual cost to the customers; (d) Exempting the LPG from VAT will deny the suppliers the opportunity to claim a deduction for the input incurred on the supply, resulting in an increase in the cost of LPG; (e) Retaining the current zero-rated status will allow the suppliers of LPG to get a deduction for the input tax, allowing them to pass on the tax benefit to the consumers.	
(c)	**Clause 9** That clause 9 of the Bill be amended in paragraph (a) by deleting the proposed paragraph 92 in subparagraph (iv); and **Clause 10** That clause 10 of the Bill be amended in paragraph (a) by inserting the following new paragraph after the proposed paragraph 14 in subparagraph (ii) – "15.Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture".	(a) The exemption of VAT on inputs for the manufacture of pesticides will favour the importers of the inputs while increasing the cost of local suppliers of the inputs since they will not be able to deduct the input VAT they incur is supplying the pesticides; (b) To put the local and international suppliers on the same level, we propose that the inputs be zero-rated; (c) Zero-rating will put domestic suppliers of inputs at par with international suppliers and help in reducing the cost of pesticides which is critical in securing our agricultural sector from harmful pests.	**The current government policy is to discourage and limit zero rating in order to protect tax revenue.** **The proposal is therefore not supported.**
(d)	**Clause 17** That clause 17 of the Bill be amended in paragraph (b) (ii) (b) by deleting the proposed subparagraph (j) and substituting therefor the	(a) Local assemblers of motor vehicles have the option of either setting up in the special economic zones where they enjoy a reduced corporation tax	**This incentive has just been introduced and there is need to give it sometime for implementation before being reviewed.**

	following new subparagraph – "(j) in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of operations - provided that the rate of fifteen per cent shall be extended for a further period of 5 years if the company achieves a local content equivalent to thirty five per cent of the ex-factory value of the motor vehicles".	rate of 10% over 10 years and a further reduced rate of 15% for the subsequent 10 years; (b) The Finance Bill should be amended to increase the period of the reduced tax rate of 10 years due to the huge investment involved; (c) The reduced rate should be accompanies by a local content requirement to allow the motor vehicle assemblers become the nucleus for the development of the manufacturing sector; (d) The amendment extends the reduced tax rate for an additional period of five years while ensuring that the manufacturers start sourcing for some of their inputs from the local market; (e) It is only by progressively encouraging manufacturers to procure inputs from the local market that Kenya will be able to grow its manufacturing sector and create the much needed employment opportunities	**The proposal is therefore not supported.**
15	**Kenya Association of Manufacturers (KAM)**		
(a)	**Excise Duty Act, 2015** **New clause** That the Bill be amended by inserting the following new clause immediately after clause 1 – "**1A.** Section 10 of the Excise Duty Act, 2013 is amended by deleting the word "annually" and substituting therefor the	(a) The Excise Duty Act is not clear on whether industries should expect an automatic or mandatory inflation adjustment by the Commissioner General on specific excise rate every year. This needs to be clarified within the law; (b) In addition, there is need	**This is a mandatory adjustment to protect tax revenue from the effects of inflation.** **The proposal is therefore not supported.**

	words "every three years".	to allow for adequate time for industries to adjust to inflation impositions by Government; (c) We propose that the government develops a specific excise rate plan to address the statutory uncertainty that currently exists in the Excise Duty Act; (d) Clarity of this nature will help avoid an excise shock like the one experienced when the Excise Duty Act 2015 was implemented; (e) The effect of this proposal is to make the commissioner adjust the rates of taxes once every three years instead of annually for certainty; (f) Annual adjustment to tax lead to annual adjustments to price and this crates price instability which causes distortions in inflation. Price instability makes it difficult to make long term investment decisions in the value chain.	
(b)(i)	**Clause 4** That the provisions of paragraph (a) subparagraph (i) should take effect after the passage of the Finance Bill, 2017 or in June 2017 to allow to finalise their stock and make necessary adjustments. In addition, no further inflation adjustment should be imposed to the cost proposed as the cost increase is based on the inflation cost.	(a) The Bill proposes a sharp increase in costs to spirits of undenatured ethyl alcohol, spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10% is at 15%; (b) Such sharp increases should be based on empirical reasons to show the urgent need for the increase. We propose gradual increases should be imposed at a manageable percentage	**The Provisional Collection of Taxes and Duties Act allows the collection of duty and taxes until the Bill is passed into law.** **The proposal is therefore not supported.**

		increases to allow industry to transition and avoid any drastic changes; (c) Experiences in the past have shown that drastic increase changes in cost lead to an increase in consumer prices and in the end, increase the cost of doing business; (d) In addition, in the alcohol sector, the increase in consumer prices force consumers to shift to cheaper, unregulated and untaxed alcohol which has serious health burden implications; (e) Experience from other parts of the world show that high duties imposed on alcohol have only served to encourage smuggling, counterfeiting or manufacture of illicit alcohol; (f) The cost increase has already come into effect due to the Provisional Collection of Taxes and Duties Act being applied; (g) The alcohol industry in Kenya employs more than 5,000 people directly and over 1 million indirectly; (h) In addition, locally beverage alcohol is manufactured using local ingredients such as neutral spirits, barley and sugar; (i) Reduction in volumes will definitely reduce demand for these raw materials and interrupt the incomes of Kenyan farmers in the barley and	

		sugarcane growing areas.	
(ii)	**Clause 4** That clause 4 of the bill be amended in paragraph (a) by deleting subparagraph (ii).	(a) The introduction of a single tier excise regime through the Excise Duty Act 2015 was a positive step. This regime is in line with best practice on taxation of cigarettes where all cigarettes are taxed at the same rate in a manner that is transparent, predictable and easy to administer; (b) A single tier excise regime rate introduced represents a 50% increase in excise on cigarettes. This increase has led to a reduction in legal industry volumes and an increase in illegal cigarettes in Kenya. It has also affected the ease of doing business; (c) The change in the excise structure by the introduction of a second tier at the rate of Kshs 1,800 for plain cigarettes was according to the Cabinet Secretary (CS) designed to maintain affordability; (d) However, any concerns on affordability are best addressed through a review of the rate within a single tier structure. This will maintain the benefits of the structure in terms of transparency, predictability and ease of administration of the current system; (e) Reviewing the single tier rate will also assist in the fight against illegal cigarettes. This proposal will lower the cost of	**The proposed structure in the Bill has taken into consideration the need for equity and fairness in the taxation of cigarettes. The current regime was taxing the low value cigarettes at the same rate with the high value cigarettes.** **The proposal is therefore not supported.**

		doing business in the sector and promote contribution to the economy.	
(c)	**Value Added Tax Act, 2013** **Clause 7** That clause 7 of the Bill be amended by deleting paragraph (a).	(a) The implication of the amendment is that goods whose supply was installed, assembled or delivered outside Kenya, will be subject to 16% VAT; (b) However, the supplies of exports of all supplies of goods or taxable services used as exports are zero rated under the same VAT Act, the Second Schedule, Part A, item 1. Therefore the new proposals to amend section 11 will be in contradiction of the provisions; (c) The VAT incentive of zero rating offered to cross-border exporters and producers of export goods was done with the aim of increasing the performance of the exports in the country. Any changes to this would drastically affect this process; (d) The Government should ensure that a thorough analysis of the outcome over the year are carried out to inform any policy changes to this, such as removing incentives especially to the manufacturing industry; (e) Already, due to the Provisional Collection of Taxes and Duties Act being applied on proposals in the Finance Bill 2017, transport	**The amendment is a clean-up meant to separate The conditions specified under Section 11 of the VAT Act which apply independently.** **The proposal is therefore not supported.**

		service providers are already imposing the proposed VAT tax; (f) The removal of the charges will allow promotion of exports in the country.	
(d)(i)	**Clause 9** That clause 9 of the Bill be amended in paragraph (a) by inserting the following new subparagraph immediately after subparagraph (ii) – "(iii) inserting the following items under paragraph 39 (3) – Wheat Bran, Wheat Pollard and Maize Bran".	(a) The government's efforts to reduce the cost of staple food by making wheat flour, maize flour and ordinary bread zero-rated is commendable; (b) The incentive was not extended to by-products of wheat and maize which still remain VAT exempt. This is despite that the same millers who produce wheat and maize flour use the by-products to produce other products used by consumers such as Wheat Bran, Wheat Pollard and Maize Bran; (c) Accordingly, VAT will still apply to such millers who will not be able to fully claim input VAT on the same due to costs on transport, energy and packaging. As a result the cost of animal feeds will remain high; (d) In addition, with the recent increase in milk prices at retail level and with the persistent drought, there is a likelihood that milk and meat prices will increase further as animal feeds prices remain high; (e) We therefore propose zero rating of by-products of maize and wheat to increase productivity and reduce costs for millers.	**The current government policy is to discourage and limit zero rating in order to protect tax revenue.** **The proposal is therefore not supported.**
(ii)	**Clause 9**		**Exempting the products**

	That clause 9 of the Bill be amended in paragraph (a) by inserting the following new paragraphs immediately after the proposed paragraph 93 in subparagraph (iv) -		**from VAT will make the products more expensive since they will not be able to recover input tax. In addition, the current window of allowing duty and VAT free imports from EPZs is temporary.** **The proposal is therefore not supported.**
	"94. Sale of locally manufactured footwear, leather goods and leather garments (accessories).	The Government should implement Duty free and VAT free selling to the local market by the EPZ textile companies (20% of annual production) to level the playing field and encourage investment into the shoemaking industry in Kenya. This will in turn lead to improved competitiveness, increased job creation and market access locally in the region.	
(iii)	95. tariff codes 2302.20.00 (rice bran) and 2302 40.00 (bran from other cereals)	(a) The Finance Act 2016 exempted animal feeds. However, some of the animal feeds were left out namely, rice bran and bran from other cereals; (b) Rice bran and bran from other cereals are similar to all the raw materials and used for the manufacture of animal feed and therefore there should not be any restriction on the VAT exemption to only a few types of brans; (c) The effect of excluding the brans has led to increasing costs for manufacturers producing them and therefore lower their competitiveness and job creation ability.	**The exemption of animal feeds from VAT was based on a recommendation from the Ministry responsible for livestock. Further addition to the list will require a similar recommendation from the Ministry.** **The proposal is therefore not supported.**
(e)	**Clause 10** That clause 10 of the Bill be amended in paragraph (a) by inserting the following new paragraph after the proposed paragraph 14 in subparagraph (ii) –	(a) Water treatment and wastewater treatment industry is fast growing, (b) Ensuring that local production will be competitive will create jobs and enhance	**The current government policy is to discourage and limit zero rating in order to protect tax revenue.** **The proposal is therefore**

	"15. 8421.21.00 and 8421.22.00 – filtering or purifying machinery and apparatus for liquids".	technology development, increase local content absorption, promote import substitution and expand export of these products to the region; (c) In addition, it will enhance efforts to promote environmental protection, pollution reduction and create decentralized waste management infrastructure; (d) Improving the quality of untreated raw water will increase availability of potable water. Recycling of waste water will be offer additional water availability and security; (e) This will lead to competitiveness, market access locally and regionally and job creation.	**not supported.**
(f)	**Income Tax Act** Marine investment **Clause 16** That clause 16 of the Bill be amended by inserting the following new paragraph after the proposed paragraph 24C – "24 Subject to this Schedule, where capital expenditure is incurred on or after the 1st January, 2017 on the construction of a building or on the purchase and installation of machinery by or for marine fisheries and fish processors for the purpose of carrying out the business activities for which that enterprise was licensed, **a deduction,**	Under paragraph 150 of the Budget statement by the Cabinet Secretary of Finance. the Government acknowledged the country's great potential to leverage its marine resources for purposes of creating wealth and employment. In this regard, they proposed a 150% investment deduction allowance for capital expenditures in this sector.	**This is already provided for under the Second Schedule to the Income Tax Act.** **The proposal is therefore not supported.**

	referred to as an investment deduction, equal to one hundred and fifty per cent of the capital expenditure shall be effected against the gains or profits of that enterprise in the year in which the building or machinery is used".		
(g)(i)	New clauses under the Income Tax Act to deal with - (a) Advance Price Agreements (APA);	There is currently no legislation that facilitates Advance Price agreement (APA) covering transfer pricing. Advance Price Agreement will assist companies to lock in prices or margins for large transaction especially over intercompany transaction, for a given period of time.	**This proposal will be considered under the ongoing Income Tax Act review.** **The proposal is therefore not supported.**
(ii)	(b) the development of the Income Tax Transfer Pricing Rules;	Introduce a new paragraph that facilitates Advance Price Agreement (APA) and which can allow development of the Income Tax Transfer Pricing Rules. This reduces the risk of Transfer Price disputes with the KRA that result in long drawn out court processes and disruption to business activities.	**This proposal will be considered under the ongoing Income Tax Act review.** **The proposal is therefore not supported.**
(iii)	(c) exempting corporate tax income to the agri-business sector where value addition is in excess of 30%;	(a) Up to 91% of Kenya's agricultural products are sold raw, limiting the amount of foreign exchange earned and the number of people who can be employed in the sector. There is therefore need to encourage up to 100% value addition in Agro-processing; (b) The justification for the 30% is to ensure it is in line with EAC rules of origin; (c) This will encourage investment in this sector and provide better	**This proposal will be considered under the ongoing Income Tax Act review.** **The proposal is therefore not supported.**

		incomes for farmers. Indonesia and Malaysia have adapted this approach to enhance and expand their manufacturing sector; (d) This will lead to competitiveness, higher productivity and more incomes for farmers, increased employment and foreign earnings from investments and exports.	
(iv)	(d) 50% of the income derived from the exportation of locally manufactured products to be subject to corporate tax.	(a) The manufacturing sector exports are still low and uncompetitive due to lack of fiscal incentives especially for local manufacturers in Kenya; (b) The Kenya natural resources endowment should be optimally utilized for the achievement of Vision 2030; (c) The fiscal incentives will spur investments in local manufacturing sector for exports. This would enhance exports of value added products Singapore has this system that has positioned the country as a leader in exports and among leading economies of the world; (d) This will lead to competitiveness, higher productivity and more incomes for farmers, increased employment and foreign earnings from investments and exports.	**This proposal will be considered under the ongoing Income Tax Act review.** **The proposal is therefore not supported.**
(h)(i)	**Tax Procedures Act, 2015 Clause 25** (a) That clause 25 of the Bill be amended in the proposed	The issue of refunds continues to bring about challenges for manufacturers. The key concerns are – 1. If a person fails to remit the	**The introduction of WHVAT was meant to protect tax revenue from tax payers who were not remitting the same and**

	subsection (4A) by deleting the words "twenty-four" and substituting therefor the word "twelve"; (b) Amend section 17 (5) of the VAT Act, 2013 and the Tax Procedures Act, 2015 to provide that "VAT refunds will be paid when an excess of input VAT against output Vat results as long as the excess arises from making zero rated supplies and or Withholding VAT". (c) Allow for offsetting refunds in excess against all taxes (PAYE, Corporation tax, Excise tax, VAT, Withholding tax) by amending the Tax Procedures Act, 2015 to allow this. (d) Limit Withholding VAT requirements on tax payers to supplies to Government (national and county government) and parastatals	withheld VAT, the person who's withholding VAT was retained fails to receive a clearance certificate from KRA. The person who withholds VAT should be accountable to KRA and therefore refund payments should be made. A tax payer who pays their withholding VAT should not be denied their refunds. Manufacturers engage in sales on a daily basis, therefore, they are continuously in a refund position. This has brought in a challenge of always claiming refunds. The refund process continues to prove to be challenging with increased delays which are time consuming. 2. The VAT Act, section 30 provides that claims for refund can be made within twelve (12) months. The new proposed provisions under Clause 25 now provide for 24 months which contradicts section 30 of the VAT Act, 2013. The requirement to wait for 24 months to demonstrate that one is in a continuous credit position will mean that one will not be able to qualify to claim for refund as per section 30 of the VAT Act, 2013. 3. The introduction of Withholding VAT came after the passage of the VAT Act, 2013. This therefore means that there is need to take into account Withholding VAT in the Act especially on refunds. The Finance Act 2016, amended section 17(5) of the VAT Act 2013 to provide that VAT	**those who were not paying the tax especially those who were supplying goods and services to the government and other public institutions.** **Offsetting of refunds is already provided for under the KRA Act.** **The proposal is therefore not supported.**

		refunds will be paid where there is an excess of input VAT against output Vat results as long as the excess arises from making Zero rated supplies. There is therefore need to now amend the VAT Act to provide that "VAT refunds will be paid where there is an excess of input VAT against output Vat results as long as the excess arises from making Zero rated supplies and or Withholding VAT." This will then pave way for KRA to immediately refund all outstanding withholding VAT already accumulated to date. Alternatively, tax payers who are accredited by AEO and CBW, (which are the KRA Compliance teams) and who are in a continuous refund position may automatically be given by KRA a certificate of exemption from having their VAT withheld on their sales.	
(ii)	**Clause 25** That clause 25 of the Bill be amended by inserting the following new subsection immediately after the proposed subsection (4C) – "(4D) Notwithstanding the provision of subsection (1), a registered person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due".	(a) Amendment to the TPA on the remittance of the WH VAT within 14 days of making payment to the suppliers, will create an administrative burden to the tax payer; (b) It is best to synchronise the provisions of the TPA Act, 2015 to the provisions of the section 19 (2) of the VAT Act which provides that a registered person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due.	**The proposal is acceptable.**
(i)	Waiver of interest	(a) The Tax Procedures Act	**This is already provided**

	Amend the Tax Procedures Act to· 1. Reinstate the provisions of waiver of interest; 2. Where one is in a refund position, and the refund is more than the interest payable, then it should automatically be waived 3. Application for waiver of interest should be similar to the provisions applicable on waiver of penalties.	2015 dropped waiver of interest effective 19th Jan 2016; (b) The amendments will encourage the alternative dispute resolution (ADR) (c) process, instituted by the ADR Act. Otherwise matters will delay in the Tax Appeals Tribunal and the High Court process; (d) The amendments will speed up the rate of collection of principal taxes where there is dispute; (e) Some disputes in assessment come about due to different interpretation of the Tax law and erroneous omission and not a fraudulently underpaying of tax or tax avoidance.	**for in the Law.** **The proposal is therefore not supported.**
(j)	**Public Procurement and Disposal Act, 2015** **Clause 47** That clause 47 of the Bill be amended in paragraph (b) by – (a) deleting the word "two" and substituting therefor the word "three"; and (b) inserting the following new subparagraph immediately after subparagraph (ii) – "(iia) the Kenya Association of Manufacturers".	(a) Some of the provisions in the Public Procurement and Asset Disposal Act, specifically, section 155 (2) provides that only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement subject to availability and realization of the applicable international or local standards; (b) In addition, preference shall be given to manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable that have been assembled in Kenya or firms where	**The standard for appointment of members into the Board is that they are drawn from relevant professional bodies to offer an oversight role.** **Inclusion of KAM in the board may result to conflict of interest considering that KAM members are manufacturers and by extension suppliers of the goods sourced by the government. Consequently, their independence as a regulator is not guaranteed.** **The proposal is therefore**

		Kenyans are shareholders who shall be above fifty-one percent (51%) of Kenyan shareholders; (c) It is therefore on this basis that the Kenya Association of Manufacturers proposes that its representative be part of the representative bodies to support realization of implementation of local content provisions and also provide technical support on procurement issues.	**not supported.**
(k)	**Miscellaneous Fees and Levies Act, 2016**		
	New clause That the Bill be amended by inserting the following new clause immediately after clause 49 – "**49A.** Section 7 of the Miscellaneous Fees and Levies Act, 2016 is amended in subsection (1) by inserting the words "based on the Free on Board value" immediately after the word "use"; and **Clause 51** That clause 51 of the Bill be amended by renumbering the existing provisions as paragraph (a) and inserting the following new paragraph – "(b)The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended in Part A by inserting the following new paragraph immediately after paragraph xxi – xxii. Import Declaration Fee shall not be charged	(a) When IDF was introduced in the early 1990s, it was aimed at payment for Pre-Shipment Inspection (PSI), which has since been taken over by the Kenya Bureau of Standards (Kebs); (b) Today, Kebs charges their fees directly (even more than the former rates) while IDF fees continue to be collected under the old principle leading to multiple collections of fees from importers; (c) Furthermore, there are no reciprocating services to this fee; (d) It should therefore be deleted; (e) Under EAC and COMESA, all raw materials imported into the regions come in at a 0% import duty rate. Introduction of Import Declaration Fee (IDF) on all imports to Kenya is a	**Customs value is always based on the CIF value internationally and not FOB.** **Exempting raw materials from IDF as proposed will be discriminative and difficult to implement since raw materials of one entity is a finished product for the other.** **The proposal is therefore not supported.**

	on imported raw materials, industrial inputs and machinery for manufacture	derogation from the agreed regional customs principles; (f) By doing away with IDF, products manufactured in Kenya will become more competitive both regionally and internationally because other EAC and COMESA Partner States do not charge these levies on imported raw materials (g) Secondly, IDF is an extra cost on imports and the rate is still much higher than in other EAC states. Furthermore the lower rates of other EAC states like Tanzania are based on the FOB value. In the spirit of harmonization, the IDF should be based on the Free on Board (FOB) value instead of the Customs Value. This is the practice in other EAC countries and a harmonization of the same is ideal for the Kenyan manufactured products to be competitive.	
(l)	**New clause** Section 8 of the Miscellaneous Fees and Levies Act be – (a) Deleted; or (b) amended by inserting the following new subsection after subsection (1) – "(1A) Despite subsection (1) Railway Development Levy or Infrastructure Levy shall not be charged on imported raw materials,	(a) When the Railway Development Levy was introduced, it was meant for the construction of the Standard Gauge Railway and the targeted collection was Kshs. 327bln This target has since been surpassed and there is therefore no justification to charge RDL anymore; (b) Goods and machinery already exempted from pre-shipment inspections	**Exempting raw materials from IDF as proposed will be discriminative and difficult to implement since raw materials of one entity is a finished product for the other.** **The proposal is therefore not supported.**

	industrial inputs and machinery for manufacture; or (1A) Despite sub-section (1), the Cabinet Secretary shall refund all Railway Development Levy (RDL) collected from imported firm inputs, meant for production of goods for export, and machinery.	should also be exempted from Railway Development Levy (RDL) as these have been identified as critical goods for the competitiveness of the manufacturing sector; (c) The exempted goods under the pre-shipment verification schemes are used as raw materials for the manufacture of goods for export. This has been an incentive for mass production of goods for export and the application of RDL on these goods will increase their export price making the Kenyan exports uncompetitive abroad; (d) For all materials imported from EAC into Uganda there is no infrastructure levy and for all materials imported into Uganda where the CET is nil, there is no Infrastructure levy; (e) An example of a sector that has been affected by IDF is the pharmaceutical sector. This has caused losses to government in revenue terms and in terms of employment which is not in tandem with Vision 2030 to attain middle income status and to fast-track industrialization.	
16	**Viva Africa Consulting** **Income Tax Act** **New clause** That the Bill be amended by inserting the following new clause immediately after	(a) all internal reorganizations in which the underlying beneficial ownership remains unaltered, should be exempt from capital gains tax, as they do not yield	**This proposal will be considered under the ongoing Income Tax Act review.** **The proposal is therefore not supported.**

	clause 17 – "**17A.** That the Eighth Schedule to the Income Tax Act be amended in paragraph 13 by deleting the words "found by the Minister in his discretion to be public interest".	any commercial benefit; (b) These need not be in the public interest, as per the Minister's (cabinet Secretary's) discretion; (c) The proposed amendment would enable businesses to restructure themselves efficiently towards placing them in a better position to meet their needs, including preserving and optimizing their capital, potential third party investment, amongst others; (d) Moreover, such an exemption is an internationally recognized concept that is enshrined in the domestic legislation of many jurisdictions, and is also recognised under sections 95 and 96 of the Stamp Duty Act (Cap. 480).	

17.	**In-house Proposals (committee)**		
1.	**Clause 8** This clause needs to be clarified.	The proposal to amend section 43 of the Value Added Tax Act, 2013 by renumbering subsection (6) as subsection (5) does not reflect in the Act.	**This is a clean-up since there is no subsection (5) under the Act but there is Subsections (4) and (6) hence the renumbering.** **The proposal is therefore not supported.**
2.	**Clauses 9 and 10.**	(a) Prior to 2013, the VAT regime contained numerous tax exemptions and zero rating to an extent that despite the huge tax expenditure involved, the system was cumbersome to	**The comments are noted.**

		administer. The VAT refund backlog was also a common menace; (b) However, this changed with the overhaul of VAT legislation in 2013; (c) The current proliferation of exemption and zero rating is likely to claw back the said gains; (d) Save for the zero rated items that are addressing vulnerability such as supply of corn flour, the rest may be considered for review.	
3.	**Clause 12**	(a) The proposal is general and needs to be specific to simplify administration; (b) In the alternative, it should be considered with reference to Article 208 of the Constitution and section 20 of the Public Finance Management Act, 2012.	**This is an incentive to allow for deduction in respect to support for the donations made to Kenya Red Cross.** **The proposal cannot therefore be said to be general.**
4.	**Clause 15**	Although the proposal is intended to attract foreign direct investment, it may result in aggressive tax planning, including cases of multinationals exploiting Double Taxation Agreements between Kenya and other countries hence reducing tax revenue to the country.	**This ~~incentive~~ to encourage foreign direct investments rather than being used for tax planning.**
5. (a)	**Clause 17 (a) and (b)** of the Bill should be amended by inserting the number (i) immediately before paragraph (a) after the	This is a typographical error.	**The numbering of Clause 17 of the Bill is correct since the numbering are both under paragraph (b). Paragraph (a) has**

	opening statement.		**only one item and the proposed renumbering is not correct.** **The proposal is therefore not supported.**
(b)	**Clause 17 (c) (ii), (iii) and (iv)**	These proposals should be reviewed as the incentives are likely to favour aggressive tax planning schemes by multinational companies, including potential tax in double tax agreements platform, thereby reducing tax revenue to the government.	**This incentive to encourage foreign direct investments rather than being used for tax planning.**
6.	**Clause 18** That clause 18 of the Bill be amended by inserting the words "in subsection (2)" immediately after the word "amended".	This is to correct a cross referencing error.	**The wording of clause 18 of the Bill is correct and should remain as it is.** **The proposal is therefore not supported.**
7.	**Clause 25** of the Bill be amended by deleting the proposed subsections (4B) and (4C).	This will harmonise the provisions of the Tax Procedures Act, 2015 and section 19 (2) of the Value Added Tax Act, 2013	**Earlier proposals have addressed this issue.**
8.	**Clauses 26 to 29** should be amended with a view to reducing the imposed ~~punitive uniform~~ tax of 50%.	(a) The amendments are intended to reverse the negative social effects of gambling and also to raise revenue; (b) However, this measure is too punitive to the industry; (c) In addition, taxation alone may not be the only solution; (d) There is need to incorporate additional measures to ensure creation of economic substance such as ensuring gambling activities take place only in authorized physical establishments;	**Earlier proposals have addressed this issue.**

		(e) This may create employment opportunities through food outlets and other attendant services.	
9.	**Clause 39** That clause 39 of the Bill be amended by deleting the proviso.	The proviso exempts a person who has been penalized from prosecution. This may be reviewed in order to make non-compliance more punitive.	**The proposed fines are punitive enough.** **The proposal is therefore not supported.**
10.	**Clause 40** That clause 40 of the Bill be amended by – (a) deleting paragraph (a); and (b) deleting the words "or a county government security" in the proposed subsection (3) in paragraph (d).	A reading of the sections 2, 58, 141, 144 and 205 of the Public Finance Management Act, 2012 indicates that the introduction of the *Sukuk*as one of the securities instruments especially for county governments might imply that this Finance Bill contains matters concerning county governments.	**The proposal is introducing an Islamic financial product into the Kenyan market in the Public Finance Management Act and does not discriminate where the product is availed.** **In addition, the provision does not propose to amend any county government law.** **The proposal is therefore not supported.**
11.	**Clause 46** That clause 46 of the Bill be amended by deleting the word "Co-operatives" and substituting therefor the word "SACCOS".	Section 68 of the Saccos Societies Act concerns Saccos and not Co-operatives.	**The provision in the Bill is correct as it is** **The proposal is therefore not supported.**
12	**Clauses 47 to 49** of the Bill be deleted.	(a) These clauses are proposing changes to the procedure of appointment into the key procurement organs by replacing most nominees by independent institutions with the Cabinet Secretary's appointees, without specifying if there will be consideration of merit or any other process;	**Clauses 47 and 48** **The proposed amendment under this clause is in line with Article 27 and in particular article 27(8) of the Constitution of Kenya.** **the gender parity amended under clause 48 is to ensure compliance with the above Articles of the Constitution** **Clause 49**

		(b) In addition, the proposals introduce a new procurement method which shall be authorized by the National Treasury without any provision for checks and balances; (c) Providing discretionary powers to the Cabinet Secretary to determine the management as well as operations in procurement may affect the independence of the procurement institutions; (d) In addition, the introduction of the proposed new procurement method referred to as Specially Permitted Procurement may eradicate competition.	**The proposed amendment under this clause will provide flexibility in conducting and dealing with unique procurements where it is impractical to comply with the procurement laws as provided.** **The proposal is therefore not supported.**
18.	**Association of Pension Administrators of Kenya (APAK)**		
1.(a)	**Clause 40** That clause 40 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) – "(ba) in the definition of "public money" by inserting the following new paragraph – (c) Public money shall not include pension funds or any other retirement scheme funds"; and	(a) The law is unclear whether pension funds are public funds or not; (b) Pension funds consists of monies already earned, as part of employment benefits, by private individuals. It is therefore neither money owned by the national government nor a county government; (c) Under the Retirement Benefits Act, pension contributions vest in a member immediately. What this means is that,	
(b)	**New clause** The Public Finance Management Act, 2012 is amended by inserting the		

	following new section after section 5 – "5A. No pension scheme, whether or not for a public entity, shall be declared a national or a county government entity".	once earned, both the employer and employee contributions ceases to be the employer's and becomes private funds fully owned by the employee; (d) Pension funds are vested in the trustees of the respective schemes and under the law of trust, are to be managed independently as trust funds for and on behalf of members and beneficiaries.	
2.	**New clause** That the Bill be amended by inserting the following new clause after clause 46 – "46A. Section 2 of the Public Procurement and Asset Disposal Act, 2015 is amended in the definition of "public money" by deleting paragraph (o).	(a) This function should be taken up by the Retirement Benefits Authority; (b) This shall eliminate a multiplicity of regulatory authorities and the associated overlap of regulatory functions; (c) The Cabinet Secretary in charge of National Treasury in consultation with Retirement Benefits Authority should come up with guidelines for the procurement and disposal of assets by pension funds and retirement benefits schemes.	**The definition of "public money" does not have said paragraph (o). However the said paragraph is in the definition of a "public entity".** **The deletion of this paragraph implies that public pension schemes will not comply with the Public Procurement and Asset Disposal Act and yet they are sponsored by the public entities. This will expose them to financial risks resulting from procurement and asset disposal.** **The proposal is therefore not supported.**
3.	**New clause** That the Bill be amended by inserting the following new clause after clause 39 – "The Retirement Benefits Act, 1997 is amended by inserting the following new	(a) These amendments shall ensure safeguarding of the trustees' fiduciary responsibility to beneficiaries and	**There are adequate provisions under the Public Procurement and Asset Disposal Act, 2015 on procurement and asset disposal planning.** **In addition engagement**

	section after section 38 - "38A. (1)Every retirement benefit scheme shall with the assistance of a procurement professional prepare a procurement and disposal of assets manual in accordance with such guidelines as shall be issued by the Authority. (2)The procurement and disposal of assets manual shall be submitted to the Authority for registration once every three years".	members but provide for primary objective of accountability, transparency and value for money procurement processes; (b) The same shall not be in breach of the common law of trusts and The Trustees Act.	**of a procurement professional will erode the resources of the schemes.** **The proposal is therefore not supported.**
4.	**New clause** That the Bill be amended by inserting the following new clause after clause 51 - "51A. Section 68 of the Public Private Partnerships Act, 2013 is amended by deleting subsection (1) and substituting therefor the following new subsection - (1) A Public Private Partnership may be initiated through an investment proposal to be developed by a private body or a group of private bodies and proposed to a contracting authority. Provided that: (a) The private body or a group of private bodies shall conduct a feasibility study and a report of the feasibility study submitted to a contracting authority for consideration; (b) A Contracting Authority shall evaluate the privately initiated investment proposal and the feasibility study report; (c) If the investment proposal meets the requirements of subsection (3), the contracting authority shall enter into negotiations	(a) Under the current framework, a private initiator of an investment proposal is subjected to competitive tendering; (b) It is extremely unfair (and certainly very discouraging) to subject competitive tendering to a person who comes up with a novel idea, whether or not registerable, devotes their time and resources developing their proposals, thinks through the idea and the proposal over and over again; (c) The proposed amendment provides for an alternative means of entering into a Public-Private Partnership, which avoids the tedious and often discouraging bureaucracies; (d) There is need to protect the proprietary rights of private initiators of projects in a Public Private Partnership;	**The proposed amendment is already provided for under section 61 of the Public Private Partnerships Act, 2013** **The proposal is therefore not supported**

	with the private body or group of private bodies without subjecting the investment proposal through competitive tendering process and approval circles. (d) The first initiator ownership rights of the initiating private body or group of private bodies, whether or not registerable under any law, shall under this Act be protected as the proprietary rights of the private initiator.	(e) The proposed amendments shall ensure that Public Private Partnerships are more attractive and popular among private investors.	

4.0 COMMITTEE OBSERVATIONS

Having extensively considered the, the Committee noted the following:

1 The Bill proposes to increase PAYE, pension tax bands, and personal relief by 10%.

2 The Bill proposes to increase the excise duty on alcoholic spirits from the current rate of 175 shillings per litre to 200 shillings per litre

3. The Bill proposes to introduce a two tier tax system with the Excise tax on cigarettes with filter at the rate of shs 2500 per mille and cigarettes without filter at excise duty rate of shs 1800 mille. The Excise Duty Act, 2015 introduced a specific rate on cigarettes of shs 2500 per mille with the aim of achieving simplicity in tax administration and revenue collection. However, this single tier system was unfair to the lower valued cigarettes consequently hurting our revenue collection. In order to bring fairness in the sector and boost exchequer revenue,

4. The Bill proposes amendments to various tax legislations to entrench Islamic Capital products in the Kenya Capital Market. The Bill further proposes amendments to other Acts to allow more Kenyans to benefit from Islamic financial products. Currently, our Capital Market does not exhaustively cover all the Islamic capital products and services thus denying our economy huge capital that could be tapped from Islamic markets; for instance Sukuk Bond.

5. The Bill seeks to reduce corporate tax rate to 15% for new motor vehicle assemblers for the first five years. Kenya is positioning itself as a regional hub for motor vehicle assembly and is therefore keen to attract Foreign Direct Investment in the sector.

6 The Bill proposes to exempt from excise duty, locally purchased raw materials for manufacture of sanitary towels The Finance Act, 2016 exempted from excise duty, goods imported for direct use in the manufacture of sanitary towels. Despite being a good policy measure, the exemption discriminated against locally purchased goods used in the manufacture of the sanitary towels, which were subject to excise duty. This will provide a level ground for players in this sector.

7. The Bill proposes to zero rate ordinary bread and maize flour in order to reduce the cost of production for these commodities thereby making them affordable. The drought experienced in the country for the last three or so months has increased the cost of living making it difficult for Kenyans to access basic commodities across the country. This led the Government to declare the drought a national disaster.

8 The Bill seeks to exempt ingredients imported for manufacture of pesticides thus boosting local agricultural production and enhance job creation. The Value Added Tax Act, 2013 imposed VAT on all imported ingredients for manufacture of pesticides but maintained zero rate status for imported manufactured products. This has made locally produced products expensive hence uncompetitive.

9. The Finance Act, 2016 provided exemption of materials used in construction of specialized hospitals with accommodation facilities. However, the exemption did not cover medical equipment and apparatus to be used in the facilities. In order to ensure that the government objective to provide more Kenyans with quality health care facilities, the Bill therefore proposes to exempt medical equipment and apparatus used in specialized hospitals from VAT upon recommendation by the Cabinet Secretary for Health. However, there is need to define what a specialized medical equipment is before implementation of this provision.

10. The Bill proposes various fiscal measures that are expected to revive the fisheries sector; this include 150% investment deduction allowance for capital expenditure as well as zero rating of inputs used in fish processing. This investment deduction is too high and need not go beyond 100%.

11. The Bill proposes to amend the Betting, Lotteries and Gaming Act to introduce a uniform tax rate of 50% to apply for betting, lottery, gaming and prize competition. This rate is punitive enough to discourage such activities. In the event they continue, taxation proceeds from this measure shall be directed to the development of the National Sports, Culture and Arts sectors to support development of talents across the country. Currently the sports sector derives its funding from the National Sports Fund whose monies include proceeds of sports lotteries, investment and any payments as required by the Act. To increase funding to Culture and Arts sectors.

12. The Income Tax Act is obsolete and has been subject to numerous amendments year in year out. This is clear from the number of amendments that the stakeholder proposed to the Act. Though the Cabinet Secretary had indicated that it is in the process of being overhauled, the process has taken inordinately long.

The Committee concurred with the National Treasury on most of the comments on the proposed amendments to the Bill from the stakeholders. The Committee further adopted amendments to clauses 7, 8, 9, 10, 17, 18, 20, 25, 26, 27, 28, 29, 39, 40, 46, 47, 49, and 51. The adopted amendments were majorly editorial; exemption from VAT of supply of goods and services by the sub contractors within the oil and gas industry (clause 10); maintaining the status quo of twenty days of the preceding month within which VAT deducted should be paid rather than being done within 14days (clause 25); maintaining the status quo on taxation of betting gaming and lotteries (clauses 26-29) and having the proceeds go to sports fund; deletion of a specially permitted procurement method (49); and review of the membership of the public procurement regulatory board (47) among others

5.0 COMMITTEE RECOMMENDATIONS

Having considered the Bill, the Committee adopted the following amendments:

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 1 –

Amendment of section 10 of No. 23 of 2015.	**1A.** Section 10 of the Excise Duty Act, 2013 is amended by deleting the word "annually" and substituting therefor the words "every two years".

NEW CLAUSE

THAT the heading to "**PART II – VALUE ADDED TAX**" be amended by deleting the words "**PART II**" and substituting therefor the words "**PART III**".

CLAUSE 8

THAT clause 8 of the Bill be deleted.

CLAUSE 9

THAT clause 9 of the Bill be amended in paragraph (a) -

(1) deleting subparagraphs (i) and (ii) and substituting the following new subparagraphs –

- (i) by deleting paragraph 31 – Agricultural pest control products;
- (ii) by deleting the word "blind" appearing in paragraph 39(1)(b) and substituting therefor the word "disabled";
- (iii) by deleting the following items –
  1102.20.00 – Maize (corn) flour;
  1101.00.00 – Wheat or meslin flour; and
  ordinary bread;
- (iv) by inserting tariff no. 9619.00.90 diapers immediately after tariff no. 9619.00.10 sanitary towels (pads) and tampons;
- (v) in subparagraph (iv) by -
  - (a) by deleting the proposed paragraph 88; and
  - (b) inserting the following new item immediately after the proposed paragraph 93
    "94. Transportation of cargo to destinations outside Kenya".

(2) renumbering subparagraphs (iii) and (iv) as (v) and (vi) respectively.

CLAUSE 10

That clause 10 of the Bill be amended in paragraph (a) –

(a) by deleting subparagraph (i);

(b) in subparagraph (ii) by deleting the proposed paragraph 13 and substituting therefor the following new paragraph –

"13. The supply of maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight",

(c) inserting the following new paragraphs immediately after the proposed paragraph 14 –

"15. All inputs and raw materials whether produced locally or imported supplied to manufacturers of agricultural pest control products upon recommendation of the Cabinet Secretary for the time being responsible for agriculture;

16. Agricultural pest control products

NEW CLAUSE

THAT the heading to "**PART III – INCOME TAX**" be amended by deleting the words "**PART III**" and substituting therefor the words "**PART IV**".

CLAUSE 16

THAT clause 16 of the Bill be amended by renumbering the existing provision as paragraph (a) and inserting the following new paragraph –

"(b) That the second Schedule to the Income Tax Act is amended in paragraph 24 by inserting the following new subparagraph immediately after subparagraph (g) –

"(h) on the construction of petroleum products, transportation and petroleum products facilities by a company involved in the transportation and storage of petroleum products in Kenya".

CLAUSE 17

That clause 17 of the Bill be amended in paragraph (b) (ii) (b) by inserting the following proviso in the proposed subparagraph (j) -

"provided that the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles".

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 17 –

Amendment of section 2 of No. 29 of 2015	**17A**. Section 2 of the Tax Procedures Act, 2015 is amended in the definition of the term "tax decision" by deleting the number "49" and substituting therefor the number "48".

CLAUSE 18

THAT clause 18 of the Bill be amended by inserting the words "in subsection (2)" immediately after the word "amended".

CLAUSE 20
THAT clause 20 of the Bill be amended by deleting the words "expression "(d)" and substituting therefor the words "paragraph "(d)".

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 20 -

Amendment of section 15A of No. 29 of 2015.	**20A.** Section 15A of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (2) – (3)The registration of the tax representative shall be in the name of the non-resident person being represented. (4) A person may be a tax representative for more than one non-resident person, in which case the person shall have a separate registration for each non- resident person. (5)The Commissioner shall issue a PIN to the tax representative.

CLAUSE 24
THAT clause 24 of the Bill be amended by deleting the opening statement to paragraph (b) and substituting therefor the following new opening statement –

"(b) inserting the following new paragraph immediately after paragraph (b) –

CLAUSE 25
THAT clause 25 of the Bill be amended by deleting the proposed subsection (4B) and substituting therefor the following new subsection –

"(4B) The tax withheld under this section shall be remitted to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made."

CLAUSE 26
THAT clause 26 of the Bill be deleted.

CLAUSE 27
THAT clause 27 of the Bill be deleted.

CLAUSE 28
THAT clause 28 of the Bill be deleted.

CLAUSE 29
THAT clause 29 of the Bill be deleted.

NEW CLAUSE
THAT the following new clause be inserted immediately after clause 29 –

Amendment of section 69 of Cap. 131..	**29A.** Section 69 of the Betting Lotteries and Gaming Act is deleted and substituted therefor the following new section -

Revenue to be paid into the Consolidated Fund.	69. Save for the taxes provided for under sections 29A, 44A, 55A and 59B, any other moneys received under this Act by or on behalf of the Board by way of fees, shall be paid into the Consolidated Fund.

CLAUSE 35

THAT clause 35 of the Bill be amended by deleting the words "section 96" and substituting therefor the words "section 96A"

CLAUSE 39

THAT clause 39 of the Bill be amended –

(a) in the opening statement by deleting the words "subsection 4(B)" and substituting therefor the words "subsection (4B)";
(b) in the proviso to the proposed subsection (4C) by deleting the words "not be prosecuted" and substituting therefor the words "also be liable to prosecution".

CLAUSE 40

THAT clause 40 of the Bill be amended by –

(a) deleting paragraph (a); and
(b) deleting the words "or a county government security" in the proposed subsection (3) in paragraph (d).

CLAUSE 46

THAT clause 46 of the Bill be amended by deleting the word "Co-operatives" and substituting therefor the word "SACCOS".

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 46 –

Amendment of section 2 of No. 33 of 2015.	**46A.** Section 2 of the Public Procurement and Asset Disposal Act, 2015 is amended in subsection (1) by deleting paragraph (o) in the definition of "public entity".

CLAUSE 49

THAT clause 49 of the Bill be deleted.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 51 –

Amendment of section 12	**52.** Section 12 of the Sports Act, 2013 is amended in subsection 2 by inserting the words "taxes levied under the Betting, Lotteries and Gaming Act"

of No. 25 of immediately before the word "investments" in paragraph (a)".
2013.

SIGNED................................DATE....18th May 2017..........

THE HON. NELSON GAICHUHIE, MP

VICE-CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE

MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 18TH MAY 2017 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDING AT 11:30AM

PRESENT

1. Hon. Nelson Gaichuhie, MP — **Vice-Chairperson**
2. Hon. Mary Emase, MP
3. Hon Ronald Tonui, MP
4. Hon. Joseph Limo, MP
5. Hon. Shakeel Shabbir, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Jimmy Nuru Angwenyi, MP
8. Hon. Joash Olum, MP
9. Hon. Sammy Mwaita, MP
10. Hon. Lati Lelelit, MP

APOLOGIES

1. Hon. Benjamin Langat, MP — **Chairperson**
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Abdul Rahim Dawood ,MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Alfred Sambu, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Abdullswamad Shariff, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Patrick Makau King'ola, MP
12. Hon. Kirwa Stephen Bitok, MP
13. Hon. Hezron Awiti, MP
14. Hon. Sakwa John Bunyasi, MP
15. Hon. Sammy Koech, MP
16. Hon. Sumra Irshadali, MP
17. Hon. Ogendo Rose Nyamunga, MP
18. Hon. Daniel Epuyo Nanok, MP

INATTENDANCE
SECRETARIAT

1. Evans Oanda
2. Mr. Nicodemus Maluki - Third Clerk Assistant
3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Mr. Emma Esendi - Legal Officer

MIN.NO. DCF/102/2017: PRELIMINARIES
The Vice Chairperson called the meeting to order at 11:35am followed by a word of prayer from Hon. Lati Lelelit, MP

MIN.NO. DCF/103/2017: CONFIRMATIONS OF MINUTES

1. Minutes of the 22nd Sitting held on Monday 1st April 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Joseph Limo, MP
2. Minutes of the 23rd Sitting held on Monday 8th May 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Nelson Gaichuhie, MP and Seconded by the Hon. Joash Olum, MP
3. Minutes of the 24th Sitting held on Tuesday 9th May 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Joash Olum, MP and Seconded by the Hon. Jones Mlolwa, MP
4. Minutes of the 25th Sitting held on Wednesday 17th May 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emaase, MP and Seconded by the Hon. Sammy Mwaita, MP
5. Minutes of the 26th Sitting held on Monda 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui , MP and Seconded by the Hon. Mary Emase, MP

MIN.NO. DCF/104/2017: MATTERS ARISING

Under consideration of the Insurance (Amendment) Bill, 2017 and the Nairobi Financial International Center Bill, 2017, the Secretariat was asked to process the reports for tabling.

MIN.NO. DCF/105/2017: CONSIDERATION OF AMENDMENTS TO THE FINANCE BILL, 2017

The Committee reconsidered the proposed amendments to the Finance Bill, 2017 and adopted the following amendments:

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 1 –

Amendment of section 10 of No 23 of 2015

1A. Section 10 of the Excise Duty Act, 2013 is amended by deleting the word "annually" and substituting therefor the words "every two years".

NEW CLAUSE

THAT the heading to "**PART II – VALUE ADDED TAX**" be amended by deleting the words "**PART II**" and substituting therefor the words "**PART III**".

CLAUSE 8

THAT clause 8 of the Bill be deleted.

CLAUSE 9

THAT clause 9 of the Bill be amended in paragraph (a) -

(1) deleting subparagraphs (i) and (ii) and substituting the following new subparagraphs –

(i) by deleting paragraph 31 – Agricultural pest control products;

(ii) by deleting the word "blind" appearing in paragraph 39(1)(b) and substituting therefor the word "disabled";

(iii) by deleting the following items –
1102.20.00 – Maize (corn) flour;
1101.00.00 – Wheat or meslin flour; and
ordinary bread,

(iv) by inserting tariff no. 9619.00.90 diapers immediately after tariff no. 9619.00.10 sanitary towels (pads) and tampons,

(v) in subparagraph (iv) by -

(a) by deleting the proposed paragraph 88; and

(b) inserting the following new item immediately after the proposed paragraph 93

"94. Transportation of cargo to destinations outside Kenya"

(2) renumbering subparagraphs (iii) and (iv) as (v) and (vi) respectively.

CLAUSE 10

That clause 10 of the Bill be amended in paragraph (a) –

(a) by deleting subparagraph (i);

(b) in subparagraph (ii) by deleting the proposed paragraph 13 and substituting therefor the following new paragraph –

"13. The supply of maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight";

(c) inserting the following new paragraphs immediately after the proposed paragraph 14 –

"15. All inputs and raw materials whether produced locally or imported supplied to manufacturers of agricultural pest control products upon recommendation of the Cabinet Secretary for the time being responsible for agriculture;

16. Agricultural pest control products.

NEW CLAUSE

THAT the heading to "**PART III – INCOME TAX**" be amended by deleting the words "**PART III**" and substituting therefor the words "**PART IV**".

CLAUSE 16

THAT clause 16 of the Bill be amended by renumbering the existing provision as paragraph (a) and inserting the following new paragraph –

"(b) That the second Schedule to the Income Tax Act is amended in paragraph 24 by inserting the following new subparagraph immediately after subparagraph (g) –

"(h) on the construction of petroleum products, transportation and petroleum products facilities by a company involved in the transportation and storage of petroleum products in Kenya".

CLAUSE 17

That clause 17 of the Bill be amended in paragraph (b) (ii) (b) by inserting the following proviso in the proposed subparagraph (j) -

"provided that the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles".

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 17 –

Amendment of section 2 of No 29 of 2015

17A. Section 2 of the Tax Procedures Act, 2015 is amended in the definition of the term "tax decision" by deleting the number "49" and substituting therefor the number "48".

CLAUSE 18

THAT clause 18 of the Bill be amended by inserting the words "in subsection (2)" immediately after the word "amended".

CLAUSE 20
THAT clause 20 of the Bill be amended by deleting the words "expression "(d)" and substituting therefor the words "paragraph "(d)".

NEW CLAUSE
THAT the Bill be amended by inserting the following new clause immediately after clause 20 -

Amendment of section 15A of No 29 of 2015	20A. Section 15A of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (2) – (3)The registration of the tax representative shall be in the name of the non-resident person being represented. (4) A person may be a tax representative for more than one non-resident person, in which case the person shall have a separate registration for each non- resident person (5)The Commissioner shall issue a PIN to the tax representative.

CLAUSE 24
THAT clause 24 of the Bill be amended by deleting the opening statement to paragraph (b) and substituting therefor the following new opening statement –

"(b) inserting the following new paragraph immediately after paragraph (b) –

CLAUSE 25
THAT clause 25 of the Bill be amended by deleting the proposed subsection (4B) and substituting therefor the following new subsection –

"(4B) The tax withheld under this section shall be remitted to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made."

CLAUSE 26
THAT clause 26 of the Bill be deleted.

CLAUSE 27
THAT clause 27 of the Bill be deleted.

CLAUSE 28
THAT clause 28 of the Bill be deleted.

CLAUSE 29

THAT clause 29 of the Bill be deleted.

NEW CLAUSE
THAT the following new clause be inserted immediately after clause 29 –

Amendment of section 69 of Cap 131

29A. Section 69 of the Betting. Lotteries and Gaming Act is deleted and substituted therefor the following new section -

Revenue to be paid into the Consolidated Fund

69. Save for the taxes provided for under sections 29A, 44A, 55A and 59B, any other moneys received under this Act by or on behalf of the Board by way of fees, shall be paid into the Consolidated Fund.

CLAUSE 35
THAT clause 35 of the Bill be amended by deleting the words "section 96" and substituting therefor the words "section 96A".

CLAUSE 39
THAT clause 39 of the Bill be amended –

(a) in the opening statement by deleting the words "subsection 4(B)" and substituting therefor the words "subsection (4B)";
(b) in the proviso to the proposed subsection (4C) by deleting the words "not be prosecuted" and substituting therefor the words "also be liable to prosecution".

CLAUSE 40
THAT clause 40 of the Bill be amended by –

(a) deleting paragraph (a), and
(b) deleting the words "or a county government security" in the proposed subsection (3) in paragraph (d).

CLAUSE 46
THAT clause 46 of the Bill be amended by deleting the word "Co-operatives" and substituting therefor the word "SACCOS".
NEW CLAUSE
THAT the Bill be amended by inserting the following new clause immediately after clause 46 –

Amendment of section 2 of No 33 of 2015

46A. Section 2 of the Public Procurement and Asset Disposal Act, 2015 is amended in subsection (1) by deleting paragraph (o) in the definition of "public entity".

CLAUSE 49
THAT clause 49 of the Bill be deleted.

NEW CLAUSE
THAT the Bill be amended by inserting the following new clause immediately after clause 51 –

Amendment of section 12 of No

52. Section 12 of the Sports Act, 2013 is amended in subsection 2 by inserting

25 of 2013 the words “taxes levied under the Betting, Lotteries and Gaming Act” immediately before the word “investments” in paragraph (a)”.

The secretariat was thereafter asked to process the report on the finance bill, 2017 for tabling.

MIN.NO. DCF/106/2017: ADJOURNMENT

The Vice Chairperson adjourned the meeting at 1.30 pm..

Signed..Date...
Chairperson

MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 18TH MAY 2017 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDING AT 11:30AM

PRESENT

1. Hon. Nelson Gaichuhie, MP — **Vice-Chairperson**
2. Hon. Mary Emase, MP
3. Hon. Ronald Tonui, MP
4. Hon. Joseph Limo, MP
5. Hon Shakeel Shabbir, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Jimmy Nuru Angwenyi, MP
8. Hon. Joash Olum, MP
9. Hon. Sammy Mwaita, MP
10. Hon. Lati Lelelit, MP

APOLOGIES

1. Hon. Benjamin Langat, MP — **Chairperson**
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Abdul Rahim Dawood ,MP
4. Hon. Eng Shadrack Manga, MP
5. Hon. Alfred Sambu, MP
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8. Hon. Sakaja Johnson, MP
9. Hon Abdullswamad Shariff, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Patrick Makau King'ola, MP
12. Hon. Kirwa Stephen Bitok, MP
13. Hon. Hezron Awiti, MP
14. Hon. Sakwa John Bunyasi, MP
15. Hon. Sammy Koech, MP
16. Hon. Sumra Irshadali, MP
17. Hon. Ogendo Rose Nyamunga, MP
18. Hon. Daniel Epuyo Nanok, MP

INATTENDANCE
SECRETARIAT

1. Evans Oanda
2. Mr. Nicodemus Maluki - Third Clerk Assistant

3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Mr. Emma Esendi - Legal Officer

MIN.NO. DCF/102/2017: PRELIMINARIES

The Vice Chairperson called the meeting to order at 11:35am followed by a word of prayer from Hon. Lati Lelelit, MP

MIN.NO. DCF/103/2017: CONFIRMATIONS OF MINUTES

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5. Minutes of the 26th Sitting held on Monda 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui , MP and Seconded by the Hon. Mary Emase, MP

MIN.NO. DCF/104/2017: MATTERS ARISING

Under consideration of the Insurance (Amendment) Bill, 2017 and the Nairobi Financial International Center Bill, 2017, the Secretariat was asked to process the reports for tabling.

MIN.NO. DCF/105/2017: CONSIDERATION OF AMENDMENTS TO THE FINANCE BILL, 2017

The Committee reconsidered the proposed amendments to the Finance Bill, 2017 and adopted the following amendments·

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 1 –

Amendment of section 10 of No 23 of 2015

1A. Section 10 of the Excise Duty Act, 2013 is amended by deleting the word "annually" and substituting therefor the words "every two years".

NEW CLAUSE

THAT the heading to "**PART II – VALUE ADDED TAX**" be amended by deleting the words "**PART II**" and substituting therefor the words "**PART III**".

CLAUSE 8

THAT clause 8 of the Bill be deleted.

CLAUSE 9

THAT clause 9 of the Bill be amended in paragraph (a) -

(1) deleting subparagraphs (i) and (ii) and substituting the following new subparagraphs –

(i) by deleting paragraph 31 – Agricultural pest control products;

(ii) by deleting the word "blind" appearing in paragraph 39(1)(b) and substituting therefor the word "disabled";

(iii) by deleting the following items –
1102.20 00 – Maize (corn) flour;
1101.00.00 – Wheat or meslin flour; and
ordinary bread;

(iv) by inserting tariff no. 9619.00.90 diapers immediately after tariff no. 9619.00.10 sanitary towels (pads) and tampons;

(v) in subparagraph (iv) by -

(a) by deleting the proposed paragraph 88; and

(b) inserting the following new item immediately after the proposed paragraph 93
"94. Transportation of cargo to destinations outside Kenya".

(2) renumbering subparagraphs (iii) and (iv) as (v) and (vi) respectively

CLAUSE 10

That clause 10 of the Bill be amended in paragraph (a) –

(a) by deleting subparagraph (i);

(b) in subparagraph (ii) by deleting the proposed paragraph 13 and substituting therefor the following new paragraph –

"13. The supply of maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight";

(c) inserting the following new paragraphs immediately after the proposed paragraph 14 –

"15. All inputs and raw materials whether produced locally or imported supplied to manufacturers of agricultural pest control products upon recommendation of the Cabinet Secretary for the time being responsible for agriculture;

16. Agricultural pest control products.

NEW CLAUSE

THAT the heading to "**PART III – INCOME TAX**" be amended by deleting the words "**PART III**" and substituting therefor the words "**PART IV**".

CLAUSE 16

THAT clause 16 of the Bill be amended by renumbering the existing provision as paragraph (a) and inserting the following new paragraph –

"(b) That the second Schedule to the Income Tax Act is amended in paragraph 24 by inserting the following new subparagraph immediately after subparagraph (g) –

"(h) on the construction of petroleum products, transportation and petroleum products facilities by a company involved in the transportation and storage of petroleum products in Kenya".

CLAUSE 17

That clause 17 of the Bill be amended in paragraph (b) (ii) (b) by inserting the following proviso in the proposed subparagraph (j) -

"provided that the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles".

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 17 –

Amendment of section 2 of No 29 of 2015

17A. Section 2 of the Tax Procedures Act, 2015 is amended in the definition of the term "tax decision" by deleting the number "49" and substituting therefor the number "48".

CLAUSE 18

THAT clause 18 of the Bill be amended by inserting the words "in subsection (2)" immediately after the word "amended".

CLAUSE 20

THAT clause 20 of the Bill be amended by deleting the words "expression "(d)" and substituting therefor the words "paragraph "(d)".

NEW CLAUSE
THAT the Bill be amended by inserting the following new clause immediately after clause 20 -

Amendment of section 15A of No. 29 of 2015.

20A. Section 15A of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (2) –
(3)The registration of the tax representative shall be in the name of the non-resident person being represented.
(4) A person may be a tax representative for more than one non-resident person, in which case the person shall have a separate registration for each non- resident person.
(5)The Commissioner shall issue a PIN to the tax representative.

CLAUSE 24
THAT clause 24 of the Bill be amended by deleting the opening statement to paragraph (b) and substituting therefor the following new opening statement –

"(b) inserting the following new paragraph immediately after paragraph (b) –

CLAUSE 25
THAT clause 25 of the Bill be amended by deleting the proposed subsection (4B) and substituting therefor the following new subsection –

"(4B) The tax withheld under this section shall be remitted to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made."

CLAUSE 26
THAT clause 26 of the Bill be deleted.

CLAUSE 27
THAT clause 27 of the Bill be deleted.

CLAUSE 28
THAT clause 28 of the Bill be deleted.

CLAUSE 29
THAT clause 29 of the Bill be deleted.

NEW CLAUSE
THAT the following new clause be inserted immediately after clause 29 –

Amendment of section 69 of Cap 131

29A. Section 69 of the Betting. Lotteries and Gaming Act is deleted and substituted therefor the following new section -

Revenue to be paid into the Consolidated Fund

69. Save for the taxes provided for under sections 29A, 44A, 55A and 59B, any other moneys received under this Act by or on behalf of the Board by way of fees, shall be paid into the Consolidated Fund.

CLAUSE 35

THAT clause 35 of the Bill be amended by deleting the words "section 96" and substituting therefor the words "section 96A".

CLAUSE 39

THAT clause 39 of the Bill be amended –

(a) in the opening statement by deleting the words "subsection 4(B)" and substituting therefor the words "subsection (4B)";

(b) in the proviso to the proposed subsection (4C) by deleting the words "not be prosecuted" and substituting therefor the words "also be liable to prosecution".

CLAUSE 40

THAT clause 40 of the Bill be amended by –

(a) deleting paragraph (a); and

(b) deleting the words "or a county government security" in the proposed subsection (3) in paragraph (d).

CLAUSE 46

THAT clause 46 of the Bill be amended by deleting the word "Co-operatives" and substituting therefor the word "SACCOS".

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 46 –

Amendment of section 2 of No 33 of 2015

46A. Section 2 of the Public Procurement and Asset Disposal Act, 2015 is amended in subsection (1) by deleting paragraph (o) in the definition of "public entity".

CLAUSE 49

THAT clause 49 of the Bill be deleted.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 51 –

Amendment of section 12 of No 25 of 2013

52. Section 12 of the Sports Act, 2013 is amended in subsection 2 by inserting the words "taxes levied under the Betting, Lotteries and Gaming Act" immediately before the word "investments" in paragraph (a)".

The secretariat was thereafter asked to process the report on the finance bill, 2017 for tabling.

MIN.NO. DCF/106/2017: ADJOURNMENT

The Vice Chairperson adjourned the meeting at 1.30 pm

Signed..Date..
Chairperson

MINUTES OF THE 26TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 17TH MAY 2017 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 3:00PM

PRESENT

1 Hon. Benjamin Langat, MP — **Chairperson**
2 Hon Nelson Gaichuhie, MP — **Vice-Chairperson**
3. Hon. Mary Emase, MP
4. Hon. Ronald Tonui, MP
5. Hon Daniel Epuyo Nanok, MP
6. Hon. Joseph Limo, MP
7. Hon. Sumra Irshadali, MP
8 Hon. Ogendo Rose Nyamunga, MP
9. Hon Shakeel Shabbir, MP

APOLOGIES

1 Hon Dr Oburu Oginga, MP
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Jones Mlolwa, MP
4. Hon. Abdul Rahim Dawood ,MP
5. Hon. Eng Shadrack Manga, MP
6. Hon. Alfred Sambu, MP
7 Hon. Tiras Ngahu, MP
8 Hon. Dennis Waweru, MP
9. Hon. Sakaja Johnson, MP
10. Hon Abdullswamad Shariff, MP
11. Hon Anyanga Andrew Toboso, MP
12. Hon. Patrick Makau King'ola, MP
13. Hon. Kirwa Stephen Bitok, MP
14. Hon. Joash Olum, MP
15. Hon. Hezron Awiti, MP
16 Hon. Sammy Mwaita, MP
17. Hon. Lati Lelelit, MP
18 Hon. Sakwa John Bunyasi, MP
19. Hon. Sammy Koech, MP

INATTENDANCE
SECRETARIAT
1. Evans Oanda
2 Mr Nicodemus Maluki - Third Clerk Assistant

3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Mr. Emma Esendi - Legal Officer
5. Eric Ososi - Research Officer
6. Josephat Motonu - Fiscal Analyst

MIN.NO. DCF/099/2017: PRELIMINARIES

The Chairperson called the meeting to order at 3:30pm.

MIN.NO. DCF/100/2017: CONSIDERATION OF AMENDMENTS TO THE FINANCE BILL, 2017

The Committee continued its consideration of the the consolidated amendments from stakeholders and the vews of the Cabinet Secretary to the National Treasury on those amendments and resolved as itemized in the table below:

NO	Organization	Proposed clauses to amend	Treasury Comment	Committee Resolution
1.	ICPAK	7A, 9, 10, 11A, 13A, 15, 17, 25A	Rejected	Agreed with treasury exept clause 7A, on with holding VAT
2.	KPMG	6, 9, 10, and 17	Rejected	Agreed with the National Treasury exept on clasues 9 on LPG gas, 17 on incentives to motor assembly,
3.	KAM	1A, 4, 7, 9, 10, 16, 25, 47, 49, and 51	Rejected all exept clause 25	Agreed with Treasury on all exept clause 1A which the Committee adopetd with amendments
4.	Budget Office	8, 9, 12, 15, 17, 18, 25, 26 to 29, 39, 40, 46, 47 to 49	Rejected	Abyance
5.	Viva Africa Consulting	17A	Rejected	Agreed with the National Treasury
6.	Association of Pension admnistrators	40, New clauses 46A, 39A and 51A	Rejected	Abyance
7.	Alcohol Beverages Association of Kenya (ABAK)	4	Rejected	Agreed with the National Treasury
8.	PBO	8, 9, 10, 12, 15, 18	Rejected	adopted caluses 8, 18, 39, 40, 46, 47 (with amendments), and deletion of clause 49
9.	Kenya Pipeline Company Ltd	16	Rejected	Adopted the Kenya Pipeline Company proposal

MIN.NO. DCF/101 /2017: ADJOURNMENT

The Chairperson adjourned the meeting at 1 30 pm Next meeting was pıoposed to be held on 17th May 2017 at 3 00pm. Next meetıng wıll be held on 18th May 2017 at 10 00am

Signed..Date...18th May 2017...........

Chairperson

MINUTES OF THE 25TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 17TH MAY 2017 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 11:00AM

PRESENT

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Nelson Gaichuhie, MP - Vice-Chairperson
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Mary Emase, MP
6. Hon. Ronald Tonui, MP
7. Hon. Hezron Awiti, MP
8. Hon. Sammy Mwaita, MP
9. Hon. Lati Lelelit, MP
10. Hon. Joseph Limo, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Sammy Koech, MP
13. Hon. Ogendo Rose Nyamunga, MP
14. Hon. Sakwa John Bunyasi, MP

APOLOGIES

1. Hon. Jones Mlolwa, MP
2. Hon. Shakeel Shabbir, MP
3. Hon. Abdul Rahim Dawood ,MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Alfred Sambu, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Abdullswamad Shariff, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Patrick Makau King'ola, MP
12. Hon. Daniel Epuyo Nanok, MP
13. Hon. Kirwa Stephen Bitok, MP
14. Hon. Joash Olum, MP

INATTENDANCE
SECRETARIAT

1. Mr. Nicodemus Maluki - Third Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Emma Esendi - Legal Officer

4. Eric Ososi - Research Officer
5. Josephat Motonu - Fiscal Analyst

MIN.NO. DCF/096/2017: PRELIMINARIES

The Chairperson called the meeting to order at 11.30am followed by a word of prayer from the Hon. Nelson Gaichuhie, MP.

MIN.NO. DCF/097/2017: STAKEHOLDER PROPOSALS TO THE FINANCE BILL, 2017

The Committee considered the consolidated amendments from stakeholders and the vews of the Cabinet Secretary to the National Treasury on those amendments and resolved as itemized in the table below:

NO	Organization	Proposed clauses to amend	Treasury Comment	Committee Resolution
1.	BAT Kenya	4	Rejected	Concurred with Treasury
2.	KEPSA	5,10,24,25,26,27,28,29,11A, 15A,17, and 17A	Rejected	Agreed with treasury all all proposals exept Clause 10 on zerorating of cossava, clauses 26-29 on betting.
3.	Ernest Muguku	6, 7A, 7B, 9, 10, 11A, 15A, 17 and 17	Rejected all exept exemption from VAT of diapers and new clause 17A on editorial	Agreed with Treasury
4.	PWC	10, 11A, 25, 7A, 26, 27, 28 and 29	Rejected all except clause 10 on oil and gas subcontractors	Agreed with Treasury
5.	Acumen Communications	26, 27, 28 & 29	Rejected	Delt with under tne Ministry of Interior
6.	Kenya Airways	4, 9, 51	Rejected	Adopted KQ proposals on clause 9 regarding 0-rating of export service transport
7.	Association of Agrochemicals (AAK)	10	Rejected	Adopted AAK proposal
8.	Ministry of Interior (Betting Control & Licensing Board)	26, 27, 28 and 29	Rejected	Adopted the Ministry's proposals
9.	Ministry of Sports, Culuture	51A	Agreed to	Adopted

	& Arts			

MIN.NO. DCF/098 /2017: ADJOURNMENT

The Chairperson adjourned the meeting at 1 30 pm Next meeting was proposed to be held on 17th May 2017 at 3:00pm

Signed...**Date**...18th May 2017
Chairperson

MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 9TH MAY 2017 IN SHIMBA CONFERENCE HALL, PRIDE INN HOTEL, MOMBASA AT 9:00AM

PRESENT

1. Hon. Benjamin Langat, MP — **Chairperson**
2. Hon. Nelson Gaichuhie, MP — **Vice-Chairperson**
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Mary Emase, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Ronald Tonui, MP
7. Hon. Hezron Awiti, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Joseph Limo, MP
10. Hon. Abdullswamad Shariff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Joash Olum, MP
13. Hon. Kirwa Stephen Bitok, MP
14. Hon. Sammy Koech, MP
15. Hon. Ogendo Rose Nyamunga, MP
16. Hon. Daniel Epuyo Nanok, MP
17. Hon. Sakwa John Bunyasi, MP
18. Hon. Patrick Makau King'ola, MP

APOLOGIES

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Shakeel Shabbir, MP
3. Hon. Abdul Rahim Dawood ,MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Alfred Sambu, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Sammy Mwaita, MP
10. Hon. Lati Lelelit, MP

INATTENDANCE
SECRETARIAT

1. Mr. Evans Oanda - First Clerk Assistant
2. Mr. Nicodemus Maluki - Third Clerk Assistant
3. Mr. Fredrick Otieno - Third Clerk Assistant

4.	Robert Nyaga	-	Chief Fiscal Analyst
5	Mr. Emma Esendı	-	Legal Officer
6.	Eric Ososi	-	Research Officer
7	Josephat Motonu	-	Fiscal Analyst
8	Abdul Rahim Omar	-	Fiscal Analyst

STAKEHOLDERS

1.	Henrry Rotıch	-	CS, National Tteasury
2	Richard Ekai	-	PS, coorectional Servıces
3	Kirimi Kaberia	-	PS, Sports Development
4	Moses Maina	-	KRA
5	Godfrey Kiplin	-	Insurance Regulatory Authorıty
6	Kalaı Musee	-	IRA
7.	Mathews Odero	-	IRA
8.	Ronal Karauri	-	AGOK
9.	Aloyce Omondi	-	AGOK
10.	Charles Wambıa	-	Betting Control and Licensing Board
11.	George Maina	-	Lotto
12.	Brian Waluchuo	-	Lotto
13.	Martin Machira	-	National Sports Fund
14.	Terry Omulama	-	National Sports Fund
15.	Mark Wambugu	-	Sports Fund
16.	Indakara Taxon	-	National Sports Fund
17.	Aloyce Omondi	-	AGOK

MIN.NO. DCF/093/2017: PRELIMINARIES

The Chairperson called the meeting to order at 10 00am followed by a word of prayer from the Hon Nelson Gaıchuhie, MP. After leading the meeting through introductions, he introduced the agenda of the meetings as consideration of memoranda from stakeholders on both the Finance Bill, 2017 and the Insurance (amendment) Bill, 2017.

MIN.NO. DCF/094/2016: CONSIDERATION OF THE FINANCE BILL, 2017 AND THE INSURANCE (AMENDMENT) BILL, 2017

Presentation from the PS, Sports & Development on Finance Bill 2017

The PS for Sports Development prposed to amend clause 15 of the Finance Bill, 2017 so that all the procceeds that will be realized from 50% taxation of betting, gaming and lotteries to go to the Sports Fund .

Presentation from Parliamentary Budget Office

After highlightinh the salient issues in the Bill, the Parliamentary Budget Office proposed amendments to clauses 8, 9, 12, 15, 17, 18, 25, 26 to 29, 39, 40, 46, and 47 to 49.

Presentation by the CS, National Treasury on the Insurance (Amendment) Bill, 2017
The Cabinet Secretary fro the National Treasury gave the following highlights on the Bill

(a) Supervision of Insurance Groups - the proposed amendments are to enable the Authority to supervise the insurance groups to assess their financial impact to the insurer, the risk management framework, prudential supervision of the insurance groups and conducting fit and proper test to significant shareholder, director and management of the Insurance

(b) Perpetual Licensing of Insurers – the proposed amendment is to establish the requirement of perpetual licensing of insures in line with the risk based supervision model This is in line with the requirement of Insurance Core Principals (ICPs) of the International Association of insurance supervisors

(c) Minimum Assets in Kenya – the proposed amendment is meant to remove the requirement of minimum assets in Kenya so as to align the Insurance Act with the requirements of risk based capital

(d) Harmonization of the provisions of the Act – various amendments to align the Insurance Act with the requirement of risk based capital The proposed amendments remove the requirement of admitted assets and substitute with that of total assets in determination of capital adequacy.

Presentation by the CS, National Treasury on the Finance Bill, 2017
The Cabinet Secretary fro the National Treasury gave the following highlights on the Bill

1. **Amendments to Excise Duty Act**
- Registered paint or resin manufacturers will be allowed to claim refund of excise duty paid on illuminating kerosene used as inputs in their products to make them competitive [*Clause 2 & 3*].
- Excise duty on alcoholic spirits has been increased from the current rate of 175 shillings per litre to 200 shillings per litre [*Clause 4*].
- Introduction of two tier taxation system for cigarettes; 2500 shilling's per mille for hinge lid and soft cap, and 1800 shillings per mille for plain cigarettes to bring fairness in the taxation of low end and high end cigarettes [*Clause 4*].
- Excisable goods imported or purchased locally by St. John's Ambulance for official use in provision of relief services have been exempt from excise duty.[*Clause 5*].

2. **Amendments to the VAT Act**
- All vehicles imported and converted for tourism use in Kenya are exempt from payment of VAT to promote tourism and create employment *[Clause 9].*
- Medical equipment and apparatus for use in specialized hospitals are exempt from VAT to ease the cost of specialized Medicare *[Clause 9].*
- Ordinary bread and maize (corn) flour are zero rated in the VAT Act to ease cost of living *[Clause 10]*

3. **Amendments to the Income Tax Act**

- Special Economic Zones allowed 100 percent investment deduction on capital expenditure incurred on the construction of a building or on the purchase and installation of machinery by or for the SEZ enterprise in performing licensed business activities. *[Clause 16]*.
- Further, the rate of professional and management fees, royalties and interest for non residents persons have been reduced to 5% **[Clause 17]**
- Corporate tax reduced to 15% from 30% for local assemblers of motor vehicles during the first five years of operations. **[Clause 17]**.

4. **Amendments to the Tax Procedures Act**

- Authorized officers allowed to enter, search and seize premises or vessels to collect and detain evidence for use in a court of law or in a tax appeals tribunal to enhance enforcement of tax collection [Clause 19]
- The Commissioner has been empowered to revoke withholding of VAT in respect of suppliers in continuous credit position for a period of not less than 24 months under the Tax Procedure Act *[Clause 25]*

5. **Miscellaneous Amendments**

- Gaming, Betting, lotteries and price competition taxes have been increased to 50% and the proceeds channeled to Sports Fund to promote and develop sports, culture and arts across the country *[Clauses 26-29]*
- The Cabinet Secretary has been empowered to appoint members of both the Public Procurement and Asset Disposal Regulatory Board and Review Board in consideration of region and gender to avoid disparity in the appointments *[Clause 48]*
- Various amendments have been made in; tax legislations, Retirement Benefits Act, Public Finance Management Act, Cooperative Societies Act and Sacco Societies Act in order to entrench Islamic Capital products in the Kenya Capital Markets and expand the sources of capital for both the Government and private sector so as to achieve inclusive development through the issuance of sukuk bond and participation in other islamic products. *[Clauses 31- 46]*

Comments by the CS, National Treasury on various proposals from Stakeholders

The Cabinet Secretary rejected most of the proposed amendments by stakeholders as itemized in the table below.

NO	Organization	Proposed clauses to amend	Treasury Comment	Committee Resolution
1.	BAT Kenya	4	Rejected	Concurred with Treasury
2.	KEPSA	5,10,24,25,26,27,28,29,11A, 15A,17, and 17A	Rejected	Agreed with treasury exept 26-29 on betting (abyance)
3.	Ernest Muguku	6, 7A, 7B, 9, 10, 11A, 15A, 17 and 17	Rejected all exept exemption of diapers and new clause 17A	Agreed with Treasury
4	PWC	10, 11A, 25, 7A, 26, 27, 28	Rejected all exept	Agreed with Treasury

		and 29	clause 10 on oil and gas subcontractors	
5.	Acumen Communications	26, 27, 28 & 29	Rejected	Provisions on betting were held in abyance
6.	Kenya Airways	9, 51	Rejected	Agreed with Treasury
7.	Association of Agrochemicals	10	Rejected	
8.	ABAK	4	Rejected	Agreed with Treasury
9.	Kenya Pipeline	16	Rejected	Agreed with Treasury
10	ICPAK	7A, 9, 10, 11A, 13A, 15, 17, 25A	Rejected	Agreed with treasury exept on with holding tax
11	KPMG	6, 9, 10, and 17	Abyance	Abyance
12	KAM	1A, 4, 7, 9, 10, 16, 25, 47, 49, and 51	Abyance	
13	Betting Control and Licensing Board	26, 27, 28 and 29	Rejected	abyance
14	Ministry of Sports	15A	Rejected	Abyance
15	Budget Office	8, 9, 12, 15, 17, 18, 25, 26 to 29, 39, 40, 46, 47 to 49	Rejected	Abyance
16	Viva Africa Consulting	17A	Rejected	Abyance
17	Association of Pension admnistrators	40, New clauses 46A, 39A and 51A	Rejected	Abyance

MIN.NO. DCF/095 /2016: ADJOURNMENT

The Chairperson adjourned the meeting at 6.15 pm.

Signed...**Date**. 18th May 2017 ....

Chairperson

MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON MONDAY 8th MAY 2017 IN SHIMBA CONFERENCE HALL, PRIDE INN HOTEL, MOMBASA AT 9:00AM

PRESENT

1. Hon. Benjamin Langat, MP — **Chairperson**
2. Hon. Nelson Gaichuhie, MP — **Vice-Chairperson**
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Mary Emase, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Ronald Tonui, MP
7. Hon. Hezron Awiti, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Joseph Limo, MP
10. Hon. Abdullswamad Shariff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Joash Olum, MP
13. Hon. Kirwa Stephen Bitok, MP
14. Hon. Sammy Koech, MP
15. Hon. Ogendo Rose Nyamunga, MP
16. Hon. Daniel Epuyo Nanok, MP
17. Hon. Sakwa John Bunyasi, MP
18. Hon. Patrick Makau King'ola, MP

APOLOGIES

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Shakeel Shabbir, MP
3. Hon. Abdul Rahim Dawood ,MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Alfred Sambu, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Sammy Mwaita, MP
10. Hon. Lati Lelelit, MP

INATTENDANCE

SECRETARIAT

1. Florence Abonyo - Diector, Committee Services
2. Mr. Evans Oanda - First Clerk Assistant
3. Mr. Nicodemus Maluki - Third Clerk Assistant

4. Mr. Fredrick Otieno - Third Clerk Assistant
5 Robert Nyaga - Chief Fiscal Analyst
6. Mr. Emma Esendi - Legal Officer
7. Eric Ososi - Research Officer
8. Josephat Motonu - Fiscal Analyst
9 Abdul Rahim Omar - Fiscal Analyst

STAKEHOLDERS

1 Simukai Mundangana - BAT Kenya
2. Ben Njuguna - BAT Kenya
3. Darryn Barasa - BAT Kenay
4 Muriu Ernest - Partenr- Ernesst & Martin
5. Ronal Karauri - AGOK
6 Steve Okello - PWC
7 Philip Korir - Tax Resolition Consultangs
8. Martin Machira - National Sports Fund
9. Terry Omulama - National Sports Fund
10. Mark Wambugu - Sports Fund
11. Vitoria Kagai - BAT Kenya
12. H. M. Macharia - Twiga Chemicals
13. Manoj Shah - KAM/KEPSA/Agro sector
14. Mercy Mutemi - KEPSA
15. Robert Waruiri - ICPAK
16. Peter Kinuthia - KPMG
17. Clive Akora - KPMG
18. Phoebe Njoga - KPMG
19. Indakara Taxon - National Sports Fund
20 Aloyce Omondi - AGOK
21. Judith Kiragu - AGOK
22. Charles Wambia - BCLB
23 Peter Karimi - Acumen Communications
24. Allan Wainaina - BAT Kenya
25. Brian Waluchio - Oxygen 8
26. George Maina - Oxygen 8
27. Job Kabochi - PWC
28. Bhalet Shah - KAM
29. Mariam Bomett - KAM
30. Rianny Gikonyo - KAM
31. Antony Kimani - BCLB
32. Paul Kinuthia - Bambazuka
33. Lydia Sitienei - APAK
34. Hosea Kili - APAK

35. Isaac Koech - APAK
36. Immaculate Wanderi - Viva Africa Consulting
37. Isaac Mwangi - Kenya Airways
38. Beatrice Njagi - Manager, Tax
39. Mbuvi Ngunze - Kenya Airways
40. Dick Murianiki - Kenya Airways
41. Granto Onyanko - Kenya Airways

MIN.NO. DCF/090/2017: PRELIMINARIES

The Chairperson called the meeting to order at 9.30am followed by a word of prayer from the Hon. Patrick Makau, MP. After leading the meeting through introductions, he introduced the agenda of the meetings as consideration of memoranda from stakeholder on both the Finance Bill, 2017 and the Insurance (amendment) Bill, 2017. He therefore called upon all stakeholders to precisely present their proposals for consideration by the Committee.

MIN.NO. DCF/091/2016: STAKEHOLDER PROPOSALS TO THE FINANCE BILL, 2017

The Committee received memoranda on various clauses from stakeholders as itemized in the table below:

NO	Organizations	Proposed clauses to amend
1.	BAT Kenya	4
2.	KEPSA	5,10,24,25,26,27,28,29,11A, 15A,17, and 17A
3.	Ernest Muguku	6, 7A, 7B, 9, 10, 11A, 15A, 17 and 17
4.	PWC	10, 11A, 25, 7A, 26, 27, 28 and 29
5.	Acumen Communications	26, 27, 28 & 29
6.	Kenya Airways	9, 51
7.	Association of Agrochemicals	10
8.	ABAK	4
9.	Kenya Pipeline	16
10.	ICPAK	7A, 9, 10, 11A, 13A, 15, 17, 25A
11.	KPMG	6, 9, 10, and 17
12.	KAM	1A, 4, 7, 9, 10, 16, 25, 47, 49, and 51
13.	Betting Control and Licensing Board	26, 27, 28 and 29
14.	Viva Africa Consulting	17A

MIN.NO. DCF/092 /2016: ADJOURNMENT

The Vice Chairperson adjourned the meeting at 5.30 pm.

Signed...**Date**...18th May 2017...

Chairperson

MINUTES OF THE 22ND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON MONDAY 1ST APRIL 2017 IN BAOBAB CONFERENCE HALL, SERENA BEACH & SPA, MOMBASA AT 10:30AM

PRESENT

1. Hon. Nelson Gaichuhie, MP — **Vice-Chairperson**
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Mary Emase, MP
4. Hon. Jones Mlolwa, MP
5. Hon. Ronald Tonui, MP
6. Hon. Hezron Awiti, MP
7. Hon. Anyanga Andrew Toboso, MP
8. Hon. Joseph Limo, MP
9. Hon. Abdullswamad Shariff, MP
10. Hon. Sumra Irshadali, MP
11. Hon. Joash Olum, MP

APOLOGIES

1. Hon. Benjamin Langat, MP — **Chairperson**
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Shakeel Shabbir, MP
4. Hon. Abdul Rahim Dawood ,MP
5. Hon. Kirwa Stephen Bitok, MP
6. Hon. Eng. Shadrack Manga, MP
7. Hon. Alfred Sambu, MP
8. Hon. Tiras Ngahu, MP
9. Hon. Dennis Waweru, MP
10. Hon. Sakaja Johnson, MP
11. Hon. Sammy Mwaita, MP
12. Hon. Patrick Makau King'ola, MP
13. Hon. Sakwa John Bunyasi, MP
14. Hon. Sammy Koech, MP
15. Hon. Ogendo Rose Nyamunga, MP
16. Hon. Lati Lelelit, MP
17. Hon. Daniel Epuyo Nanok, MP

INATTENDANCE
SECRETARIAT

1. Florence Abonyo - Director, Committee Services
2. Mr. Evans Oanda - First Clerk Assistant

3. Mr. Nicodemus Maluki - Third Clerk Assistant
4. Mr. Fredrick Otieno - Third Clerk Assistant
5. Mr. Emma Esendi - Legal Officer
6. Sharon Rotino - Research Officer

NATIONAL TREASURY

1. Nzomo mutuku
2. Christopher Oisebe
3. Oscar Njuguna
4. Samuel
5. Joseph Mwanzia

MIN.NO. DCF/086/2017: PRELIMINARIES

The Vice Chairperson called the meeting to order at 10.30am and prayed.

MIN.NO. DCF/087/2017: CONSIDERATION OF THE NAIROBI INTERNATIONAL FINANCIAL CENTER BILL, 2017

1. Mr. Oisebe conyed the apologies of the Ps for the National Treasury for not attending He then read the PS's speech
2. Presentation of policy brief underpinning the bill by mutuku
3. Clause by clause presentation of the Bill was done by Oscar Njuguna

MIN.NO. DCF/088 /2017: CONSIDERATION OF THE AMENDMENTS

Consolidated amendments from the Stakeholders were discussed and the committee concurred with the National Treasury's comments on all of them. The Committee further adopted the following amendments for introduction into the during the Committee Stage of the Bill:

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the words "under section 28 (4)" immediately after the word "Authority" in the definition of the term "NIFC firm".

(for clarity on the section that provides for certification)

CLAUSE 7

THAT clause 7 of the Bill be amended by –

(a) deleting the number "(1)" appearing immediately before the words "in order" in the opening statement;

(b) inserting the word "and" immediately after the word "Authority" in paragraph (h); and

(c) deleting paragraph (i) and substituting therefore the following new paragraph –

"(i) undertake any other activity necessary for the fulfillment of its objectives under this Act"

(to correct typographical errors and to better express the powers and functions under paragraph (i))

CLAUSE 8

THAT clause 8 of the Bill be amended in subclause (2) by deleting the words "any of the following" appearing immediately after the words "level in" in paragraph (b)

(the words are unnecessary)

CLAUSE 9

THAT clause 9 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause –

"(2) The appointment of members of the Board shall be done in such a manner as to ensure that the terms of the persons appointed do not lapse at the same time and that there is continuity of service"

(to express the need for institutional memory)

CLAUSE 11

THAT clause 11 of the Bill be amended by –

(a) deleting the word "legitimate" appearing immediately before the word "disbursements" in paragraph (d); and

(b) deleting the word 'banking" appearing immediately before the word "accounts" and substituting therefor the word "bank" in paragraph (e).

(to delete unnecessary words and correct typographical errors)

CLAUSE 13

THAT clause 13 of the Bill be amended by -

(a) deleting the word "consultations" appearing immediately before the words "with the Cabinet Secretary" and substituting therefor the word "consultation", and

(b) deleting the words "Cabinet Secretary" and substituting therefor the words "Salaries and Remuneration Commission".

(to correct a typographical error and include the Salaries and Remuneration Commission in determining the remuneration and allowances for the Board members))

CLAUSE 14

THAT clause 14 of the Bill be amended in subclause (3) by deleting the words "any of the following" appearing immediately after the words "level in" in paragraph (b)

(the words are unnecessary)

CLAUSE 15

THAT the Bill be amended by deleting clause 15 and substituting therefor the following new clause –

"**15.** (1) The Authority may appoint such staff as are necessary for the performance of its functions under this Act

(2) The staff appointed under subsection (1) shall serve on such terms and conditions of service as the Authority may, in consultation with the Salaries and Remuneration Commission, determine".

(The staff of the Authority are public servants and therefore their terms and conditions of service should be subject to the Salaries and Remuneration Commission (SRC) recommendation. In addition, as the appointing authority is the Authority, it is the Authority that should consult with the SRC)

CLAUSE 16

THAT clause 16 of the Bill be amended by deleting the word "anything" appearing immediately before the words "done by any member" and substituting therefor the word "thing".

(typographical error)

CLAUSE 17

THAT clause 17 of the Bill be amended –

(a) in subclause (1) by –

(i) inserting the words "or her" immediately after the word "his" wherever it appears in paragraph (b);

(ii) deleting the word "the" appearing immediately before the word "Act" and substituting therefor the word "this" in paragraph (b); and

(iii) deleting the words "when lawfully required to do so" appearing immediately before the words "by a court" in paragraph (c)

(b) in subclause (3) by –

(i) inserting the words "or her" immediately after the word "his";

(ii) deleting the word "to" appearing immediately before the word "subsection" and substituting therefor the word "of", and

(iii) deleting the word "same" appearing immediately before the words "to any other person" and substituting therefor the words "document, material or information"

(c) in subclause (4) by -

(i) deleting the word "an" appearing immediately before the word "imprisonment"; and

(ii) deleting the word "to" appearing immediately before the words "a term" and substituting therefor the word "for"

(to correct typographical errors, delete unnecessary words and clarify the intention of the clause)

CLAUSE 19

THAT the Bill be amended by inserting the following new subclause immediately after subclause (1) –

"(2) The Authority shall provide secretariat services to the Council".

(To provide for secretariat services to the Council)

CLAUSE 20

THAT clause 20 of the Bill be amended by –

(a) inserting the word "the" immediately before the word "exercise" in paragraph (a), and

(b) deleting the word "Parliament" and substituting therefor the words "the National Assembly" in paragraph (c).

(to reflect the correct position that it is the National Assembly that appropriates money)

CLAUSE 21

THAT clause 21 of the Bill be amended by –

(a) deleting the words "in trust funds" appearing immediately before the words "or in any other securities" in subclause (1); and

(b) deleting the words 'such bank or banks" appearing immediately before the words "as it may determine" and substituting therefor the words "any bank" in subclause (2).

(for clarity)

CLAUSE 23

THAT clause 23 of the Bill be amended in subclause (2) by –

(a) deleting the word 'pensions" appearing immediately before the word "gratuities" and substituting therefor the word "pension" in paragraph (c);

(b) deleting the word "the" appearing immediately before the word "equipment" in paragraph (f), and

(c) inserting the words 'payment of" immediately before the words "any other costs" in paragraph (g).

(to correct typographical errors and insert missing words)

CLAUSE 24

THAT clause 24 of the Bill be amended in subclause (1) by –

(a) deleting the word "all" appearing immediately before the word "proper", and

(b) deleting the word "other" appearing immediately before the word "records"

(to remove superfluous words)

CLAUSE 26

THAT clause 26 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause –

"(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings or in case of a legal person, the chief executive officer shall be liable to imprisonment for a term not exceeding five years".

(To distinguish sentencing between natural and legal persons and to correct typographical errors)

CLAUSE 28

THAT clause 28 of the Bill be amended in subclause (8) by inserting the word "are" immediately before the word "necessary" in paragraph (a)

(to insert a missing word)

CLAUSE 29

THAT clause 29 of the Bill be amended –

(a) in subclause (1) by deleting the word "license" and substituting therefor the word "licence" appearing immediately after the word 'firm's" in paragraph (d);

(b) by deleting subclause (2) and substituting therefor the following new subclauses –

"(2) The Authority may, instead of withdrawing a certification under subsection (1), suspend the certification for a specified period or impose conditions or restrictions on the certification

(3) Subsection (2) does not apply to a withdrawal or revocation under subsection (1) (d)".

(to correct typographical errors and clarify the intention of the clause)

CLAUSE 32

THAT clause 32 of the Bill be amended by deleting the word "of" appearing immediately before the words "or resident" in paragraph (d)

(to remove a superfluous words)

CLAUSE 34

THAT clause 34 of the Bill be amended -

(a) in subclause (1) by –

(i) deleting the word "the" appearing immediately before the word "chairperson" and substituting therefor the word "a" in paragraph (a),

(ii) deleting the word "members" and substituting therefor the word "persons" in paragraph (b); and

(iii) inserting the word "the" immediately before the word "financial" in paragraph (b);

(b) in subclause (3) by inserting the words "a term of" immediately before the word "three";

(c) by deleting subclause (4) and substituting therefor the following new subclause–

"(4) The appointment of members to the Tribunal shall be done in such a manner as to ensure that the terms of the persons appointed do not lapse at the same time and that there is continuity of service".

(d) in subclause (5) by –

(i) deleting paragraph (b) and substituting therefor the following new paragraph "(b) accepts any position of employment which conflicts with his or her role in the Tribunal"; and

(ii) inserting the words "without the permission of the Tribunal" immediately after the word "Tribunal" in paragraph (e);

(e) in subclause (6) –

(i) by deleting the word "the" appearing immediately before the word "members"; and

(ii) by inserting the words "in consultation with the Salaries and Remuneration Commission" immediately before the words "from time".

(to correct typographical errors, provide that a person may be removed from membership of the Tribunal in case he accepts a position of employment that conflicts with his role in the Tribunal, express the need for institutional memory and include the Salaries and Remuneration Commission in determining the remuneration of members of the Tribunal)

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 34 –

Jurisdiction of the

34A. (1)The Tribunal shall have jurisdiction to hear and determine –

Tribunal

(a) appeals arising from any decision under this Act;

(b) any complaints arising from the Cabinet Secretary's decision in exercise of his or her powers under this Act,

(c) questions relating to a refusal by the Authority to certify a firm under this Act or unreasonable delay in making of that decision, and

(d) any complaints by a person aggrieved by a decision or order of the Authority.

(2) In determining an appeal, the Tribunal may affirm, quash or vary the decision or order

(to provide for the jurisdiction of the Tribunal)

<u>CLAUSE 36</u>

THAT clause 36 of the Bill be amended –

(a) by deleting subclause (1) and substituting therefor the following new subclause -

"(1) The Judicial Service Commission may appoint such staff as are necessary for the performance ofthe functions of the Tribunal under this Act"; and

(b) by inserting the words "in consultation with the Salaries and Remuneration Commission" immediately before the words "from time" in subclause (2).

(to express the intention of the clause and include the Salaries and Remuneration Commission in determining the remuneration of the staff of the Tribunal)

<u>CLAUSE 37</u>

THAT clause 37 of the Bill be amended by deleting the words "of the" appearing immediately before the word "member".

<u>CLAUSE 38</u>

THAT clause 38 of the Bill be amended in subclause (2) by deleting paragraphs (c), (d), (e) and (f) and substituting therefor the following new paragraphs –

" (c) the nature of records to be kept;

(d) the procedure of giving notice to the parties; and

(e) the fees to be charged".

(for clarity)

SCHEDULE

THAT the Schedule to the Bill be amended –

(a) in paragraph 2 by -

(i) deleting the word "of" appearing immediately before the words "the business" in subparagraph (2),

(ii) deleting the word "total" in subparagraph (3), and

(iii) deleting subparagraph 8

(to delete unnecessary words Also subparagraph 8 is unnecessary unless the intention is to provide for the attendance of experts)

(b) in paragraph 3 by inserting the words "does not disclose his or her interest in a contract or any other matter or who" immediately before the word "benefits"in subparagraph (3)

(to include non-disclosure of interest as an offence)

(c) in paragraph 4 by deleting the words "all instruments or decisions" and substituting therefor the words "instrument or decision".

(to correct typographical errors)

MIN.NO. DCF/089 /2017: ADJOURNMENT

The Vice Chairperson adjourned the meeting at 4.45 pm.

Signed..

Chairperson

Date......18th May 2017......

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FIFTH SESSION

In the Matter of consideration by the National Assembly – The Finance Bill, 2017

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.*" Standing Order 127(3) states that "*the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House*".

The Finance Bill, 2017 seeks to amend:-

1. The Betting, lotteries and Gaming Act (Cap.131) to increase the tax rates from the current rates to 50%
2. The Kenya Revenue Authority Act (Cap. 469) to include the Value Added Tax Act, 2013, Tax Procedures Act, 2013, and the Miscellaneous Fees and Levies Act, 2013 to be under the administration of KRA.
3. The Stamp Duty Act (Cap. 480) to provide for the tax neutrality for Islamic financial products to favourably compete with similar conventional products in Kenyan market.
4. Cooperative Societies Act (490) and the Sacco Societies Act (Cap.490B) to provide for Islamic finance in cooperative subsector in Kenya.
5. The Retirement Benefits Act (No. 3 of 1997) to make it an offence for anybody who fails submitting returns to the authority.
6. The Public Finance Management Act (No. 18 of 2012) to provide for equal footing of the Islamic finance bond and the conventional bond.
7. The Public Procurement and Asset Disposal Act (No.33 of 2015) by providing for the composition of the Public Procurement Regulatory Review Board; the composition of the Public Procurement Review Board and the introduction of specially permitted procurement method as an alternative procurement method.
8. The Miscellaneous Fees and Levies Act (No.29 of 2016) to amend Part II of the First Schedule to exclude Special Economic Zones from the provisions of Part I of the Schedule

The Finance Bill, 2017 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the **Departmental Committee on Finance, Planning & Trade** for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bill.

The representations may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to **clerk@parliament.go.ke**; to be received **on or before Tuesday, 18th April, 2017 at 5.00 pm.**

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

	DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE		
	MEMBERS ATTENDANCE REGISTER		
DATE	18/05/2017	TIME	10:00AM
AGENDA	CONSIDERATION OF AMENDMENTS TO THE FINANCE BILL/2017		
	NAME	TITLE	SIGNATURE
1			
2	Hon. Nelson Gaichuhie	V/C (Chairman)	[signature]
3	Hon. Jones Mlolwa	Member	[signature]
4	Hon. Lati Lelelit	member	[signature]
5	Hon. Janny Mwaita	member	[signature]
6	Hon Mary Emaase	"	[signature]
7	Hon Joseph K. Limo	"	[signature]
8	Hon Joash Olum	"	[signature]
9	Hon RONALD TONUI	"	[signature]
10	Hon Shakeel Shabbir	"	[signature]
11	Hon JIMMY ANGWENYI	"	[signature]
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	DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE		
	MEMBERS ATTENDANCE REGISTER		
DATE	17/05/2017	TIME	3:30pm
AGENDA	CONSIDERATION OF PROPOSED AMENDMENTS TO THE FINANCE BILL, 2017		
	NAME	TITLE	SIGNATURE
1	Hon. Benjamin Langat	Chairman	
2	Nelson Gaichuhie	V/Chair	
3	HON RONALD TONUI	member	
4	Hon ISHAQ SUMRA	"	
5	Hon ROSE NYAMUNGA	"	
6	Hon. Daniel Epuyo Nanok	"	
7	Hon Mary Emaase	"	
8	Hon Joseph Limo	"	
9	Hon Shakeel Shabbir	"	
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	DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE		
	MEMBERS ATTENDANCE REGISTER		
DATE	17/5/2017	TIME	10:00AM
AGENDA	CONSIDERATION OF AMENDMENTS TO THE FINANCE BILL, 2017		
	NAME	TITLE	SIGNATURE
1	Hon Benjamin Langat	Chairman	
2	Nelson Gaichuhie	V/Chair	
3	Hon Sammy Koech	Member	
4	HON RONALD TONUI	member	
5	HON Awiti Bolo	Member	
6	Hon. Dr. Oburu Oginga	Member	
7	Hon Joseph Limo	"	
8	Hon Shakeel Shabbir	"	
9	Hon Rose Nyamunga	Member	
10	Hon Mary Emaase	"	
11	Hon. Jimmy Angwenyi	"	
12	HON. SAKUJA BURMA	"	
13	Hon Irshad Sumra	"	
14	Hon. Mwaita	"	
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DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 9/5/2017 TIME 2:30PM

AGENDA (i) MEETING WITH THE CS NATIONAL TREASURY TO CONSIDER PROPOSED AMENDMENTS TO THE FINANCE BILL, 2017 BY STAKEHOLDERS
(ii) CONSIDERATION OF THE INSURANCE (AMENDMENT) BILL 2017

	NAME	TITLE	SIGNATURE
1	Hon Benjamin Langat	Chair	
2	Nelson Gaichuhie	V/Chair	
3	Hon. RONALD TONUI	member	
4	Hon Rose Nyamunga	member	
5	Hon Awlo Bolla		
6	Hon. Joash Olum	-//-	
7	Hon. Jones Mlolwa	"	
8	Hon Mary Emaase Otucho	"	
9	Hon Sammy Koech	member	
10	Hon Anyanga Andrew Toboso		
11	Hon. Dr. Oburu Oginga	"	
12	Hon. Kimosa S. Bitok	"	
13	Hon Daniel Epuyo Nanok	"	
14	Hon. SAKWA BUNYASI	"	
15	Hon Joseph Limo	"	
16	Hon. A.S. NASSIR	"	
17	Hon Ishmael Sunjte	"	
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DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 9/5/2017 TIME 9:00 AM

AGENDA MEETING WITH THE CABINET SECRETARY NATIONAL TREASURY TO CONSIDER PROPOSED AMENDMENTS TO THE FINANCE BILL, 2017 BY THE STAKEHOLDERS

	NAME	TITLE	SIGNATURE
1	Hon. Benjamin Langat	Chair	[signature]
2	Nelson Gaichuhie	V/Chair	[signature]
3	Hon Mary Emaase Otucho	member	[signature]
4	Hon Rose Nyamunga	member	[signature]
5	Hon Awiti Bolo		[signature]
6	Hon Ronald Tonui	"	[signature]
7	Hon. Joash Olum	"	[signature]
8	Hon. Jones Mlolwa	"	[signature]
9	Hon Sammy Koech	"	[signature]
10	Hon. Anyanga Andrew Toboso	"	[signature]
11	Hon. Wamwa Stephen B/Pok	"	[signature]
12	Hon. Dr. Oburu Oginga	"	[signature]
13	Hon. Daniel Epuyo Nanok	"	[signature]
14	Hon SAKUJA BAINYATA	"	[signature]
15	Hon Joseph Limo	"	[signature]
16	Hon. A. J. Nanok	"	[signature]
17	Hon Ishad Sumra	"	[signature]
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DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 8/5/2017 TIME 2:30PM

AGENDA MEETING WITH THE STAKEHOLDER TO CONSIDER THE FINANCE BILL, 2017

	NAME	TITLE	SIGNATURE
1	Hon Benjamin Langat	Chairman	
2	Nelson R. Gaichuhie	V/Chair	
3	Hon Patrick Makau	Member	
4	Hon Rose Nyamunga	Member	
5	Hon Awali Bollo	"	
6	Hon. Joseph Limo	"	
7	Hon. Joash Olum	"	
8	Hon. Ronald Tonui	"	
9	Hon- Mary Emaase	"	
10	Hon. Jones Mlolwa	"	
11	Hon. Kirwa Stephen Bitok	"	
12	Hon. Dr. Oburu Oginga	"	
13	Hon Sammy Koech	"	
14	Hon. Anyanga Andrew Toboso	"	
15	Hon. Daniel Epuyo Nanok	"	
16	Hon SAKWA BUNYASI	"	
17	Hon - A S NAWAWI	"	
18	Hon Joshad Sumba	"	
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DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 8/5/2017 TIME 9.00AM

AGENDA MEETING WITH THE STAKEHOLDERS TO CONSIDER THE FINANCE BILL, 2017

	NAME	TITLE	SIGNATURE
1	Hon Benjamin Langat	Chairman	
2	Nelson Gaichuhie	V/Chair	
3	Hon. Joseph Oluoch	Member	
4	Hon Sammy Koech	"	
5	Hon Ronald Tonui	"	
6	Hon Mary Emaase	"	
7	Hon. Anyanga Andalwa Tobolo	"	
8	Hon Patrick Mokaw	"	
9	Hon Rose Nyamunga	"	
10	Hon. Kimaz Stephen Bitok	"	
11	Hon Joseph K. Limo	"	
12	Hon. Jones Mlolwa	"	
13	Hon Awelo Awiti	"	
14	Hon. DR. OBURU OGINGA	"	
15	Hon. DANIEL EPUYO NANOK	"	
16	Hon. SAKWA BUNYASI	"	
17	Hon. A. S. NURSIN	"	
18	Hon Irshad Sumra	"	
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