REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
TENTH PARLIAMENT – THIRD SESSION

REPORT

OF THE
DEPARTMENTAL COMMITTEE
ON
FINANCE, PLANNING, TRADE & TOURISM

ON

THE FINANCE BILL, 2009

NOVEMBER, 2009

1.0 INTRODUCTION

Mr. Speaker Sir, on behalf of the Members of the Departmental Committee No. F on Finance, Trade Tourism & Planning and pursuant to the provisions of Standing Order No. 181, I would like to take this opportunity to present to the House, the Committee's Report on the Finance Bill, 2009.

The membership of the Committee comprise of the following:-

The Hon. Chrysanthus Okemo, EGH, M.P. **(Chairman)**

The Hon. (Prof.) Philip Kaloki, M.P. **(Vice Chairman)**

The Hon. Jakoyo Midiwo, MGH, M.P.

The Hon. Musikari Kombo, M.P.

The Hon. Lucas Chepkitony, M.P.

The Hon. Nelson Gaichuhie , MP

The Hon. Ntoitha M'Mithiaru, M.P.

The Hon. Ahmed Shabbir Shakeel, M.P.

The Hon. Nkoidila Ole Lankas, M.P.

The Hon. Lenny M. Kivuti, M.P.

The Hon. Sammy Mwaita, M.P.

The functions of this Departmental Committee as established under Standing Order No. 198 are *inter alia:-*

(i) to study and review all legislation after First Reading subject to the exemptions under Standing Order No. 111 (3)

(ii) to make reports and recommendations to the House as often as possible including recommendations of proposed legislation.

The Finance Bill, 2009 was referred to the Committee pursuant to the provisions of Standing Order No. 111(1). The Committee held several meetings with various stakeholders to deliberate on the

Finance Bill and their views have been incorporated in the Report. The Committee also held a meeting with the Minister for Finance and agreed on the proposed amendments.

2.0 DELIBERATION ON THE FINANCE BILL, 2009

Clauses 1-8	-	Agreed to
Clause 9	-	Amendment proposed
Clauses 10-13	-	Agreed to
Clause 14	-	Amendment proposed
Clauses 15-21	-	Agreed to
Clause 22	-	Amendment proposed
Clauses 23-25	-	Agreed to
Clause 26	-	Amendment proposed
Clause 27	-	Agreed to
Clause 28	-	Amendment proposed
Clauses 29-51	-	Agreed to
Clauses 52	-	Amendment proposed
Clauses 53-73	-	Agreed to

SCHEDULES

First Schedule	-	Agreed to
Second Schedule	-	Agreed to
Title	-	Agreed to

3.0 COMMITTEE'S OBSERVATIONS

CLAUSE 6

- Reduction of excise duty on water and carbonated soft drinks and juices from 10% to 5% and 7% respectively could have been well intentioned but might not translate to any benefit to the consumers. Manufacturers of the same are struggling with high business costs particularly energy and transportation thus the benefits of the slight reduction in excise duty is mainly a benefit to manufacturers and may not entice them to pass on the low cost to consumers.

- The change of excise duty regime on wines and spirits is regressive in nature and has obviously made them more expensive. This method of taxing these drinks was changed in 2008 after another change in 2007. This is a reflection of constant policy reversals in the alcoholic beverages industry and needs to be avoided since it is sending the wrong signal of unpredictability to the industry players and may even be a pointer to insincerity or directed to target certain industry players.

- Reduction of excise duty on cosmetics and skins care products from 10% to 5% will auger well for the local producers of such commodities in terms of reduced prices thus possible increased demand resulting in expansion of their market base. However a significant portion of these products are imports thus the government is perhaps encouraging more importation due to reduced taxation level and this may go a long way in killing the local manufacturing industry.

- Differentiation of the tax rate for locally produced and imported cosmetics and skin care products could have been an alternative for consideration.

CLAUSE 11

The repealed conditions were very specific and restrictive. The amendment opens up discretion which could be abused by the Minister during emergencies and therefore the current status should be retained.

CLAUSE 13

- Paragraph 1 - The list of exempt financial services has been amended and clarified in line with current market developments. However, there is need for clarity on revenue loss especially on exemption of MPESA.

- Services of sale of buildings is now included, in addition to renting, leasing, hiring or letting of land residential buildings as VAT exempt. This goes a long way in tightening loose ends of the law but could be open to different interpretations thus confusion.

CLAUSE 14

Paragraph 6

- The amendment requires the Commissioner of VAT to gazette the exporters of goods and services to be zero rated. This change may sound good in terms of legislation but could pose an operation challenge to the Kenya Revenue Authority in terms of the so many applicants who would want to be gazetted. It is likely to increase administrative burden to KRA and also enhance revenue risk through abuse.

- It is also likely to increase the number of taxpayers seeking tax refunds adding to the list of the many tax refund claims. The commissioner may also use the powers for gazettement to deny some applicants export licenses. For example in competitive commodities.

Paragraph 9

The amendment extends the zero-rating to complementary taxable supplies at the export tea auction centres. Even though this could help to simplify the taxation logistics applicable in export tea auction centres, it is not clear what these supplies are and therefore they should be specified.

Paragraph 20

- The amendment zero-rates supply of taxable goods and services for use in the construction of grain silos upon approval by the Director of Agriculture. This seems an attempt to encourage construction of more silos to help in storage of cereals/grains in the country to be used locally especially now that grain shortage is a major challenge. However, this may not be the best strategy to deal with perpetual food shortage and therefore there is need for justification of this proposal on silos now.

- Zero-rating supply of taxable goods, including motor vehicles, and taxable services to Kenya Red Cross Society (KRCS). This seems to be a government acceptance and appreciation of the paramount work the KRCS is carrying out especially in terms of emergency response thus the policy to remove tax costs on their supplies which are critical in their response to emergencies. However, KRCS is involved in some activities including running a hotel business in Nairobi. Therefore care should be taken so that the tax advantage given to them is purely for humanitarian activities and not to benefit their business.

Paragraph 21

The amendment zero-rates the supply of taxable goods and services to film producer approved by the minister for information. This may go a long way to encourage film producers to step up their business. However, the language should be *'approved by the minister responsible for information.* The sentence structure could be challenged in situation where the minister responsible is not called 'minister for information'

Part C of the VAT Act

- The amendment proposes to remove ambiguity and be specific on the agricultural and forestry machineries which fall in this category for zero-rating. This now includes parts of the zero-rated agricultural machinery (such as tractors and semi trailers) in the zero-rating bracket.

- However, rezo-rating forestry equipment could result in more forest destruction. Although the definition removes ambiguity, there is the risk of encouraging deforestation since zero rating forestry machinery could mean anything including any equipment that could be used for logging and cultivation of forests.

CLAUSE 29(d)

- The amendment prescribes the deduction rate as 25% for building used as residential building where such building is constructed in a planned development area approved by the Minister responsible for housing.

- However, there is need to limit the number of houses certified and approved for that purpose by the Commissioner and Minister responsible for housing.

CLAUSE 37

- Creating Kenya Airports Authority (KAA) Fund will lead to earmarking (ring-fencing) of resources which reduces flexibility in expenditure prioritization and is also against the principle of prudent financial management.

- This proposal will allow KAA to circumvent the practice where government agencies surrender surplus financial resources to the exchequer and this could lead to mis-use of public funds. Whenever an institution is given such authority there is a tendency for high exposure to governance issues and there is need for justification of the necessity for this fund.

CLAUSE 38

- The amendment is geared towards giving importers of commercial vehicles ample time to take them for inspection before registration. However, there are concerns that private vehicle owners are unfairly treated as their vehicles are usually detained at the port/ private warehouses due to unavailability of number plates hence attracting more port charges and warehouse rents.

- In such circumstances, the extra port charges and other costs should be waived since the problem is not caused by the importers but KRA (delay in providing number plates). Alternatively, the private cars should also be released to owners just like the commercial ones to await registration once the number plates are available.

CLAUSE 59

The amendment to the Banking Act will allow KRA, KACC, Police and other investigative agencies to access crucial information. However, there is need to streamline information acquisition to avoid the tendency of abuse of the same. On this account, a court order might be the best way to obtain information.

CLAUSE 64

The proposed amendment to the Central Bank Act makes no meaning in the current state. It is assumed that the word office in the first line should be offense and it is not clear who the penalty is directed to.

4.0 COMMITTEE'S RECOMMENDATIONS

CLAUSE 9

The claim period on input tax should be three months since six months is too long.

CLAUSE 14

Paragraph 21

The approval should be done by the Minister responsible for information because the current position could be challenged in a situation where the Minister responsible for information is not called the "Minister for information".

CLAUSE 22(d)

The deduction period should be extended beyond four years.

CLAUSE 62

The Minister for Finance should periodically inform the House through the Finance Committee of the remedial measures taken based on early warning signs to cushion the financial sector against systemic risks as espoused in the Fiscal Management Act 2009.

5.0 PROPOSED AMENDMENTS TO THE FINANCE BILL

CLAUSE 9

THAT, Clause 9 be amended by deleting the words ***"six months"*** and substituting thereof the words ***"three months".***

Rationale

The claim period on input tax should be three months since six months is too long.

CLAUSE 14

THAT, Clause 14 be amended by inserting the word ***"responsible"*** after the word ***"Minister".***

Rationale

The approval should be done by the Minister responsible for information because the current position could be challenged in a situation where the Minister responsible for information is not called the "Minister for information"

CLAUSE 22

THAT, Clause 22 amended by deleting the words ***"five years"*** and substituting thereof the words ***"four years".***

CLAUSE 26

THAT, Clause 26 be deleted.

Rationale

The scrapping of the set-off import duty paid in respect of capital goods qualifying for tear and ware will negatively impact on businesses with huge capital investments which are used to benefiting from the set-off arrangement.

CLAUSE 28

THAT, Clause 28 be deleted.

Rationale

The proviso for the Commissioner to demand for tax payment before due date could be abused by harassing certain business or people and could be an avenue to raise revenue in advance to meet "targets" once it is imminent that Kenya Revenue Authority agency is doing poorly in its work.

Secondly giving such power to the Commissioner would be tantamount to allowing the Commissioner to get advance loans from private business through the backdoor.

CLAUSE 52

THAT, Clause 52 (a) be amended be inserting the following proviso:- Provided that where such an institution is a Co-operative Society, prior approval of the arrangements should be sought from the SACCO Societies Regulatory Authority.

Rationale

The SACCO Societies Regulatory Authority is the main body in charge Co-operative Societies in Kenya and the proviso will ensure that the Authority is able to carry out its functions efficiently and effectively without compromise.

6.0 CONCLUSION

The Committee recommends that the House adopts its Report on the Finance Bill, 2009. Mr. Speaker Sir, may I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations on the Bill.

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Hon. Chrysanthus Okemo, MP
Chairman
Departmental Committee on
Finance, Planning, & Trade, Tourism

Date......5/11/2009......