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ELEVENTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE

ON

FINANCE, PLANNING & TRADE

REPORT ON  
FINANCE BILL, 2013

PARLIAMENT BUILDINGS  
NAIROBI

SEPTEMBER, 2013

## INTRODUCTION

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental committees of the National Assembly established under SO 216 and mandated to, inter alia; **'to study and review all legislations referred to it;**

Specifically, the Committee deals with *Public finance, monetary policies, public debt, financial institutions, investment and divestiture policies, pricing policies, banking, insurance, population, revenue policies, planning, national development, trade, tourism promotion and management, commerce and industry.*

The Standing Orders also empowers the Committee to make its own selection of the subjects regarding the policy, management and administration among others of the Ministries and Departments falling under its jurisdiction.

## COMMITTEE'S MEMBERSHIP

The committee comprises of the following members:-

1. Hon. Benjamin Langat, MP (**Chairman**)
2. Hon. Nelson Gaichuhie, MP (**vice Chairman**)
3. Hon. Jones M Mlolwa, MP
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Ogendo Rose Nyamunga, MP

13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP
19. Hon. Mary Emase, MP
20. Hon. Joseph Limo, MP
21. Hon. Lati Lelelit, MP
22. Hon. Kirwa Stephen Bitok, MP
23. Hon. Sammy Mwaita, MP
24. Hon. Daniel E. Nanok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Abdul Rahim Dawood, MP
27. Hon. Sakwa John Bunyasi, MP
28. Hon. Alfred W. Sambu, MP
29. Hon. Sammy Koech, MP

On, 2<sup>nd</sup> July 2013, Finance Bill, 2013 went through the First Reading and referred to the Departmental Committee on Finance, Planning & Trade pursuant to the provisions of the Standing Order No. 127 of the National Assembly.

Pursuant to Article 118 of the Constitution and Standing Order 127, the Departmental Committee on Finance, Planning & Trade facilitated Public Participation by engaging the stakeholders on the Bill. The Committee met with the Kenya Bankers Association, Pricewaterhousecoopers (Independent auditing firm), and Institute of Certified Public Accountants of Kenya (ICPAK) in the process of public participation and made presentations.

## THE COMMITTEE'S OBSERVATIONS ON THE FINANCE BILL, 2013

### I. INTRODUCTION

1. **Mr. Speaker Sir**, the Committee noted that this year's Finance Bill is much less bulky than those of previous years and this is probably due to the just concluded Value Added Tax Act, 2013 which shouldered many of the matters that would ordinarily show up in a usual Finance Bill.
2. Nevertheless, **Mr. Speaker Sir**, the Finance Bill, 2013, amongst other matters that are discussed in detail later in this report, proposes to make amendments to following Acts which have financial implications;
  - a. The Customs and Excise Act Cap. 472, Laws of Kenya
  - b. The Income Tax Act Cap. 470, Laws of Kenya
  - c. The Value Added Tax Cap. 476, Laws of Kenya
  - d. The Banking Act Cap. 488, Laws of Kenya
  - e. The Retirement Benefits Act (No. 3 of 1997), Laws of Kenya
  - f. The East African Development Bank Act (Cap.493), Laws of Kenya
  - g. The Prevention of Terrorism Act (No. 30 of 2012) Laws of Kenya
3. The Committee noted the Bill has some advantages in streamlining several of these Acts with the constitution as well as promoting easing cross border trading. These include the repeal of the Local Authorities Transfer Fund Act, 1998 (LATF) as well as the redefinition of the term "minister" which was found earlier in Kenyan Law to "Cabinet Secretary" which is found in the current Constitution.

### II. SALIENT ISSUES IN THE FINANCE BILL, 2013

4. **Mr. Speaker Sir**, the tax measures and other miscellaneous amendments in the Finance Bill, 2013 can be broadly categorized into four salient areas, which are complementary :
  - i. Facilitating infrastructure development;
  - ii. Equity and Fairness in the Tax System;
  - iii. Tax Reforms and Tax Administration; and

iv. Re-examination of the Financial Systems.

#### A. Facilitating Infrastructure Development

5. **Mr. Speaker Sir**, the Bill proposes tax measures aimed at facilitating development of infrastructure and specifically railway transportation in order to reduce the cost of transport and energy and make our economy competitive.
6. The Bill, **Mr. Speaker Sir**, in this regard proposes amendment to the Customs and Excise Act to introduce a Railway Development Levy of 1.5 percent on all imported goods for use in Kenya, to fund the construction of a standard gauge railway line.
7. **Mr. Speaker Sir**, the Committee noted that while this may be a good move to ensure that resources geared towards this critical area are ring-fenced and not subject to wanton re-allocation, it still requires streamlining to ensure that several critical goods that currently enjoy duty free status such as medicine as well as agricultural inputs are not adversely affected to the point of reversing prevailing government policy in those respective sectors.
8. The Committee, **Mr. Speaker Sir**, also noted that since the fund is purely designed to construct the railway and it is arguable that such activity may be time bound and therefore require re-examination after a specified period, that a specific timeline be placed on this provision to provide an opportunity for Parliament to re-examine the efficacy of the Fund.

#### B. Equity and Fairness in the Tax System

9. **Mr. Speaker Sir**, the Finance Bill, 2013 provides stipulations to encourage employers to pay insurance premiums on behalf of employees for Group Life and Group Personal Accident policy covers. In this regard it has proposals to exempt premiums for such covers where they do not confer a benefit to the employees.

10. **Mr. Speaker Sir**, the Bill also proposes to amend the Income Tax Act so as to impose withholding tax on winnings from gaming and betting. This measure should make the winners to equally contribute towards the exchequer more so since it is provided for both residents as well as non-residents.
11. The Committee, **Mr. Speaker Sir**, noted with concern that there is no provision for taxation of winnings which are in kind and not in cash and this may therefore either complicate the calculation of tax due by the revenue authority or negate the principal of ensuring equity in taxation if it such gains are deemed not taxable.

### C. Tax Reforms and Tax Administration

12. **Mr. Speaker Sir**, the Bill also seeks to bring the Customs and Excise Act in line with the principles of Article 201, such as transparency by requiring that the Customs Commissioner give reasons in cases when he/she refuses to grant licenses to persons who wishing to manufacture excisable goods. This is beneficial and in line with international practice which provides for a predictable and open taxation system.
13. The Finance Bill **Mr. Speaker Sir**, also proposes to remove exemption from taxes on members of armed forces and this proposal is consistent with Article 210(3) of Constitution which provides that no law may exclude or authorize the exclusion of any person from payment of tax by reason of the office he/she holds.
14. The Bill also proposes to amend the compounding framework for offences under the income tax act by providing for a tribunal of three people selected by the Commissioner to advise him before he takes action. The Committee, noted with concern that such compounding should be subject to a Committee that exceeds three people and should be, as much as possible, independent of the Commissioner in order that its advice may be non-partisan and therefore meaningful.

## D. Re-examination of the Financial Systems

15. **Mr. Speaker Sir**, The Bill makes an attempt at shielding beneficiaries of retirement benefits from malpractice by requiring that managers of retirement benefit funds meet minimum educational and professional qualifications before they can serve in such positions.
16. The Bill, **Mr. Speaker Sir**, further provides stiff penalties to banking institutions ostensibly to deter institutions from violation of the law. The Committee was, however, concerned with the power given to the Central Bank in issuing regulations for the Central Bank Act which indeed sets up the bank itself and also provides for the operations and powers of the bank.
17. The Bill, **Mr. Speaker Sir**, lastly provides for the categorization of financing of and resource mobilization to fund terrorism as a criminal act and sets the maximum punishment at 20 years.

## III. SUBMISSIONS FROM STAKEHOLDERS

**Mr. Speaker Sir**, the Committee has also been in consultation with the Budget and Appropriations Committee. The Committee will consider the following concerns from the Budget and Appropriations Committee:

- i) **Clause 15:** This Clause deals with payment of taxes before the hearing of a tax assessment appeal. The Committee was particularly concerned about the requirement that a taxpayer aggrieved by the refusal of the Commissioner to accept a notice of objection will be required to pay 30% of disputed tax and any interest due. The Committee observed that this provision is not equitable since it is likely to affect the cash flow of taxpayers seeking redress from payment of any disputed taxes.
- ii) **Clause 16:** This Clause amends Section 114 of the Income Tax Act by taking away the power to compound offences from the “Minister” or Cabinet Secretary to the Commissioner. The Committee was opposed to this change and suggested that the power to constitute the committee to deliberate on applications to compound

offences (Clause 16(b)) should remain with the Cabinet Secretary. This will afford some fairness and independence in the practice of compounding of offences. Thus, the references to the Commissioner in Clause 16(b) may be replaced with “Cabinet Secretary”.

**iii) Clause 17:** This Clause makes directors and senior managers of corporations squarely responsible for payment of unpaid taxes including other penalties upon conviction for tax fraud. The Committee observed that this provision seeks to take away the sole responsibility of payment of taxes including penalties from the body corporate. This in the opinion of the Committee may affect the actual payment of taxes. In addition, the provision is punitive to senior managers of corporations who may have little direct connection to the offences committed.

**iv) Clause 7:** This Clause seeks to exempt goods and equipment used for sports through an amendment to the old VAT Act, CAP 476. The Committee noted that the Clause refers to the old VAT Act that is already repealed by the recently enacted VAT Act. The Committee felt that the amendment is contrary to the policy of exempting certain essential items, which informed the list of exempt items in the recently passed VAT Act. The Clause also opens the potential for new amendments through the Finance Bill to the list of exempt and zero-rated items.

**18. In addition, Mr. Speaker Sir,** the Committee had several sittings with various stakeholders on the Finance Bill and key amongst them were;

- i. Pricewaterhouse Coopers,
- ii. The Kenya Banker’s Association,
- iii. Institute of Certified Public Accountants of Kenya (ICPAK),
- iv. The Kenya Revenue Authority, and
- v. A written memorandum from East African Breweries Ltd.



19. The interaction with the various stakeholders brought invaluable insight to the Committee and greatly assisted in its deliberations. Their submissions are also included as annexes to this report.

#### IV. PROPOSED AMENDMENTS TO THE FINANCE BILL

20. The Committee has received and is considering the following amendments for introduction into the House during the Committee stage of the Bill:

CLAUSE 2: Agreed to  
CLAUSE 3: Agreed to  
CLAUSE 4: Agreed to  
CLAUSE 5: Agreed to  
CLAUSE 6: Agreed to  
CLAUSE 7: Agreed to  
CLAUSE 8: Agreed to  
CLAUSE 9: Agreed to  
CLAUSE 10: Agreed to  
CLAUSE 11: Agreed to  
CLAUSE 12: Agreed to  
CLAUSE 13: Agreed to  
CLAUSE 14: Agreed to  
CLAUSE 15: Agreed to  
CLAUSE 16: Agreed to  
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CLAUSE 22: Agreed to  
CLAUSE 23: Agreed to  
CLAUSE 24: Agreed to  
CLAUSE 25: Agreed to  
CLAUSE 26: Agreed to  
CLAUSE 27: Agreed to  
CLAUSE 28: Agreed to  
CLAUSE 29: Agreed to  
CLAUSE 30: Agreed to  
CLAUSE 31: Agreed to  
SHORT TITLE: agreed to

LONG TITLE: Agreed to

**V. CONCLUSION**

**ACKNOWLEDGEMENTS**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the Secretariat for the preparation of this report.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

Mr. Speaker Sir,

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade to table this report on the Finance Bill, 2013.

SIGNED  .....

**CHAIRPERSON  
(HON. BENJAMIN LANGAT, MP)**

DATE 19 - 09 - 2013 .....

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## Annex 1 – Submissions from Stakeholders

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
<b>PricewaterhouseCoopers</b>		
<b>Withholding tax on sale of property or shares</b>		
<p>The Finance Act 2012 (the Finance Act) amended Sections 3(2), 10, 34, 35 and the Third Schedule of the Income Tax Act to introduce a final withholding tax, 20% or 10% for non-resident and residents respectively, on the amount or value of the consideration from the sale of property or shares in respect of oil companies. For the purposes of the amendment, the sale of property or shares includes the assignment of rights, sale of companies and businesses and takeovers or any other non-inventory assets.</p> <p>Section 22(b)(ii) of the <b>Finance Bill, 2013</b> proposes to make the resident withholding tax paid not a final tax.</p> <p>In principle, taxation of the sale of property or shares should be levied on the gain and not the consideration. In addition, the tax should capture value that leaves Kenya and not what is reinvested in Kenya.</p>		
Repeal	Repeal section 22(b)(ii) of the Finance Bill, 2013	<p>This amendment does not deal with the key issue of taxing consideration and not the gain / profit.</p> <p>The key issues can be adequately addressed by introducing the following amendments to the Income Tax Act:</p>
(i) Revoke	Repeal sec 3(2)(g); 3(3)(c); 10(h); 34(1)(i); 34(2)(k); 35(1)(l); 35(3)(j); Third schedule para 3(n); 5(k)	<p>Prior to the introduction of WHT on the sale of property or shares of a Petroleum Company, Kenya was viewed as a fiscally competitive and stable location particularly for exploration activities.</p> <p>The Ninth Schedule as currently enacted effectively taxes the gains made from the assignment of rights transactions while encouraging future investment through work obligations.</p> <p>Changes as drastic as the aforementioned in the Finance Act will negatively impact investment in Kenya's oil and gas industry. Kenya will now be a less competitive and less attractive location for capital investment, with the associated risk of such capital being redirected to other oil and gas exploration and production regions.</p>

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
		Hence revert to the Ninth Schedule by revoking the amendments introduced by Finance Act 2012.
(ii) Expand Ninth Schedule to tax transfer of shares in a company having a PSC with Government	No action. Await proposed legislation on tax on capital gains	<p>The Finance Cabinet Secretary made a commitment that new legislation would be introduced with respect to tax on capital gains.</p> <p>It would be premature to make additional comments on tax on capital gains.</p> <p>Hence await the proposed legislation</p>
(iii) Introduce reinvestment relief as part of capital gains tax	No action. Await proposed legislation on tax on capital gains	<p>The Finance Cabinet Secretary made a commitment that new legislation would be introduced with respect to tax on capital gains.</p> <p>It would be premature to make additional comments on tax on capital gains.</p> <p>Hence await the proposed legislation</p>
(iv) Ninth schedule to deal with all matters regarding corporation tax on exploration and production of oil and gas	<p>We propose that section 4(f) is repealed.</p> <p>A new section 4C be inserted in the words below:</p> <p><i>“For the avoidance of doubt and notwithstanding anything contrary in this Act, for the purposes of section 3(2) or any other section that provides for income upon which tax is chargeable under this Act, in respect of a Petroleum Company or a Petroleum Service Subcontractor, the provisions of the Ninth Schedule shall apply. Where there is inconsistency in the taxation of Petroleum Company or a Petroleum Service Subcontractor as between the Ninth Schedule and other parts of this Act, the provisions of the Ninth Schedule shall prevail. ”</i></p>	To promote clarity and certainty on the tax provisions applicable to Petroleum Companies, the ITA should be amended to give the Ninth Schedule precedence over the other provisions of the ITA on matters specifically addressed within the Ninth Schedule.

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
<p><b>Withholding tax on deemed interest</b></p> <p>Funding for pre-development activities is generally considered too risky for financial institutions to debt finance and therefore is generally funded by quasi-equity from group companies.</p> <p>The Finance Act 2010 introduced the concept of “deemed interest” which is based on loans provided free of interest. No interest is being paid on the funding as the funds are seen as equity and the Petroleum Company does not have the funds to repay the funding or pay interest as they have no income (similar to where a company has no profits then it cannot pay a dividend).</p>		
<p><b>Withholding tax on “management or professional fees”</b></p> <p>Extractive industry (petroleum and mining) in Kenya requires specialist services which may not be available in Kenya. A 12.5% withholding tax applies on technical services assumes the supplier has a profit margin of 33.33% in Kenya (taxed at 37.5%) which is considered too high for the technical services being provided.</p> <p>The withholding tax rate should be reviewed to bring it more in line with other jurisdictions leading to more reasonable margins as suppliers tend to simply pass additional costs to the companies involved in the extractive industry leading to increased costs of oil &amp; gas activities in Kenya.</p>		
<p>Withholding tax rate on overseas services</p>	<p>a) For petroleum companies under the Ninth schedule amend para 3(i) of the Third Schedule as follows: Delete the term “twelve and a half” and replace with “six”.</p> <p>b) For companies involved in mining, introduce a new paragraph under Third Schedule</p> <p>Insert new paragraph “3(o). In respect of any management or professional fees deductible under Paragraph 16(1) of the Second Schedule, six per cent of the gross sum payable”</p> <p>Insert the following words after the word “Schedule” appearing under Paragraph 3(a) in the Third Schedule “ deductible under Paragraph 16(1) of the Second Schedule”</p>	<p>This amendment only impacts services imported into the country. For local services the withholding tax is an advance tax and therefore can be utilized against the tax due.</p> <p>Due to the specialized nature of services required in this industry, the entities sub contract a majority of the specialized services to specialist suppliers.</p> <p>The high rate of withholding tax result in cash flow impact, incremental cost of operations and impact on the share of Government’s share of oil revenue in the future for petroleum companies.</p>

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
Functional currency	<p>Amend sec 51A by inserting ...</p> <p>Delete the words appearing under Sec 51A(1) "For the purposes" and insert the words "Subject to any other provisions"</p> <p><b>Introduce a new para 6A in the Ninth Schedule as below:</b></p> <p>"A petroleum company shall maintain its books of account and make its return of income in the currency of the Petroleum Agreement".</p>	<p>The USD is the functional currency of petroleum companies which is recognized by the petroleum agreement signed with the Government of Kenya. Competitor jurisdictions in the region allow for the books to be maintained and the tax return to be filed in foreign currency.</p>
Carry forward of tax losses	<p>Amend sec 15(4) by inserting</p> <p><b>Subject to any other provisions of this Act,</b> Where the ascertainment ...</p> <p>Insert para 5 (6) in the Ninth Schedule</p> <p>(a) Where in ascertaining the gains or profits of a petroleum company in a year of income, there results a deficit, the amount of that deficit shall be an allowable deduction in ascertaining the gains or profits of the petroleum company for that year and the next nine succeeding years of income.</p> <p>(b) Notwithstanding paragraph (a), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a petroleum company applies through the Commissioner for such extension, giving evidence of inability to</p>	<p>The exploration to production stage takes a minimum of 10 years.</p> <p>This change will ease tax administration by petroleum companies and allow them to concentrate on exploration, appraisal and development activities.</p>

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
	<b>extinguish the deficit with that period.</b>	
<b>Kenya Bankers Association</b>		
<p>“7. Excise duty on fees charged for money transfer services by cellular phone service providers, banks, money transfer agencies and other financial service providers shall be ten percent.</p> <p>8. Excise duty on other fees charged by financial institutions shall be ten percent.”</p>	<p>Change to the effective date to the excise duty provisions in both the Finance Act 2012 and the Finance Bill 2013 from 9th January 2013 and 18th June 2013, respectively to 1st August 2013.</p>	<p>Taking into consideration the fact that excise duty is a new tax to the banks, banks will require approximately 3 to 5 months enhance their software in order to fully comply with the provisions of the Customs and Excise Act in this regard.</p>
<b>East African Breweries</b>		
<p><b>NEW CLAUSE 3A</b> 3A. The Customs and Excise Act is amended in section 91A by inserting the words “or wooden or metallic containers” immediately after the words bottle appearing in subsection 1(A).</p>	<p>Section 91A (1A) stipulates that alcoholic beverages may only be packed in containers of 200 milliliters and specifies that the containers should be only glass or PET (Polyethylene terephthalate). The section is however restrictive as it omits other materials which are internationally used to distribute distilled beverages. It is the practice all over the world for distilled beverages to be conveyed in either wooden barrels or metallic containers for safety, security and health reasons. Distilled beverages are usually processed and stored in can only be manufactured using specialized wooden or metallic vats. Moreover, distribution of beverages in wooden or metallic containers opens opportunities for secure distribution of legitimate beverages to consumers. The amendment seeks to allow the packaging of distribution of distilled beverages in wooden and metallic containers. It does not call for additional expenditure by the exchequer and will result in additional revenue being collected as excise, VAT and corporation tax.</p>	
<p>Section 91A of Cap. 472 which it is proposed to amend</p>	<p>91A. (1) No person shall pack or sell an alcoholic beverage in a container the capacity of which is two</p>	

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
	<p>hundred millilitres or less.</p> <p>(1A) for the avoidance of doubt, the container referred to in subsection (1) shall either be a glass or PET (polyethylene terephthalate) bottle.”</p> <p>(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.</p> <p>2. It is proposed that the Finance Act be amended by inserting a new clause 32 immediately after clause 31</p>	
<p><b>NEW CLAUSE 32</b>  <b>SECTION 31 OF NO. 4 OF 2010 WHICH IT IS PROPOSED TO AMEND—</b></p> <p>(1) No person shall sell, manufacture, pack or distribute an alcoholic drink in sachets or such other form as may be prescribed.</p> <p>(2) Notwithstanding the provisions of subsection (1)—</p> <p>(a) No person shall manufacture, pack, distribute or sell an alcoholic drink in a container of less than 250 milliliter;</p> <p>(b) The alcoholic drink previously known as chang’aa or any other distilled alcoholic drink shall only be manufactured, packed, sold or distributed in glass or PET (polyethylene terephthalate) bottles of the kind specified in paragraph (a).</p> <p>(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not</p>	<p>32 Section 31 of The Alcoholic Drinks Control Act 2010 is amended by inserting the words “or metallic containers” immediately after the word bottle appearing in paragraph 2 (b)</p>	<p>It is international practice that distilled beverages are often transported in pressurized Metallic or wooden barrels due to safety and hygiene. This amendment seeks to authorize packaging of distilled beverages in metal or wooden containers. It does not call for any additional expenditure by the exchequer will promote responsible drinking and reduce the harmful effects of illicit brews.</p>



Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
exceeding six months, or to both.		
<b>ICPAK</b>		
Clause 5	The Bill proposes a levy of 1.5 % on goods imported for home use.	<p>Amend to the levy apply have all goods imported through the Port of Mombasa. It should therefore apply to imports for home use as well on transit.</p> <p>It will also add value that we provide timelines when this levy shall be in force since it is a levy imposed for purposes of funding a specific project. We propose a period of 10 years in this regard.</p>
Clause 9 (f) ii	The amendment seeks provide clarity of treatment of exemption of premiums for group policy covers	<p>We propose the deletion of the proviso.... Unless such a cover confers a benefit to the employee or any of his dependants.</p> <p>We further propose that the group accident covers should be included for similar exemption under this clause as alluded to by the Cabinet Secretary in his Budget Speech.</p>
Clause 10	The proposal to amend section 10 of the Income Tax Act to include winnings from betting and gaming under income that is deemed to accrue from Kenya is bound to be complex in its application.	<p>Amend this subsection to read:</p> <p>(g) winnings from betting and gaming transactions ..... How do we address the winning in kind i.e. the non-cash winnings where for instance the winnings are in the form of physical assets.</p>
Clause 15	The proposal requiring a person aggrieved by the refusal of the Commissioner to admit a notice of objection to pay to the Commissioner that part of the amount of tax assessed that is not in dispute and thirty percent of tax in dispute is against the principle of being presumed innocent until declared guilty.	<p>Amend this proposal by deleting the requirement to pay 30% of disputed tax and the attendant penalties as we await the outcome of the appeal process.</p> <p>We note that a separate bill has sought to consolidate all appeals processes under a Single Tax Appeals Tribunal. We recommend that the</p>

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
		<p>reform process must incorporate appeals tribunal being given sufficient capacity to dispense with appeals within defined timelines.</p> <p>We must also prescribe timelines within which the tribunal will hear and determine an appeal. It is also critical that we go ahead and define the timeline for filing, hearing and determining any matter concerning that may have been referred to a court of law.</p> <p>We propose that the appeals tribunal shall hear and determine appeals within 45 days of an appeal being filed.</p> <p>We further propose that should an appeal be referred to a court of law of competent jurisdiction, the court shall hear and determine such matters within 30 days of filing.</p> <p>All taxes that were subject to an appeal shall be payable on demand.</p> <p>Penalties and interest under Sec 37A, 72 and Sec 94 shall also become payable on demand.</p> <p>Where a tax payer resorts to appeal an assessment, he shall lose the benefit of accessing waivers for penalties and interest.</p>
Clause 18	<p>It is proposed that the Commissioner or an authorized officer may without warrant exercise all or any of the following powers, where the person has or is reasonably suspected of committing an offence under this Act:-</p> <ol style="list-style-type: none"> <li>a) To enter any premises between sunrise and sunset to search for money, documents or other articles relevant to the inquiry;</li> <li>b) To open, or remove from the premises and open any container, box or package in which it is suspected that money, document or</li> </ol>	<p>We recommend that the Bill reinstates the requirement for a warrant to exercise the powers bestowed on the revenue officers.</p>

Proposal	Proposed changes to be included in Finance Bill, 2013	Justification
	relevant articles are contained; c) To seize money, documents or relevant articles which may be necessary for the inquiry or for the purpose of civil or criminal proceedings and to retain them for as long as they are so required.	

