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TWELFTH PARLIAMENT (THIRD SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE FINANCE BILL, 2019

Paper Laid on the Table  
of the House by the  
Chairperson of the  
Departmental Committee  
on Finance and National  
Planning (Hon. Joseph Kariuki  
on Tuesday, 17th September  
2019

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

SEPTEMBER, 2019

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## CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Finance Bill, 2019, which was read a first time on **Tuesday, 23<sup>rd</sup> July, 2019** pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the print media on **Friday, 26<sup>th</sup> July 2019** pursuant to Article 118 of the Constitution. By the time the Committee was considering the Bill, a total of forty-five stakeholders had submitted memoranda on the Bill with a majority of the memoranda being on the proposed increase in Capital Gains Tax.

The Committee further placed a schedule of public hearings in the print media on **Monday 19<sup>th</sup> and Tuesday 20<sup>th</sup> August, 2019** inviting stakeholders who had submitted memoranda and the general public for public hearings on the Bill which were held on **Wednesday 21<sup>st</sup> and Thursday 22<sup>nd</sup> August, 2019** in Lenana Hall at Kenyatta International Convention Centre. The Committee also sought the views of the National Treasury on each of the proposals.

The Committee put all the stakeholders' comments into consideration while preparing the proposed Committee's amendments. Some of the proposals were adopted and therefore formed part of the proposed Committee's amendments.

On behalf of the Departmental Committee on Finance and National Planning 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, 2019.

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 all the stakeholders especially members of the public who took keen interest and even participated 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.

It is my pleasure to report that the Departmental; Committee on Finance and National Planning has considered the Finance Bill 2019 and has the honour to report back to the National Assembly with the recommendation that it be **approved with amendments**.

**Hon. Joseph Limo, M.P.**

## EXECUTIVE SUMMARY

The Finance Bill, 2019 was published on 1<sup>st</sup> July 2019 and read a first time on Tuesday, 23<sup>rd</sup> July 2019 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Finance Bill, 2019 was submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2019/20 relating to liability to and collection of taxes and for matters incidental thereto by amending the **Income Tax Act Cap 470, Value Added Tax Act No. 35 of 2013, Excise Duty Act No. 23 of 2015, Tax Procedures Act No. 29 of 2015 and Miscellaneous Fees and Levies Act No. 20 of 2016.**

The Bill also seeks to amend the following laws: -

1. **The Privileges and Immunities Act (Cap. 179):** the Bill seeks to amend the Fourth Schedule to the Act to exempt goods and services imported or locally purchased by privileged organisations for their official use from taxes.
2. **The Capital Market Act (Cap. 485):** the Bill seeks to amend the Act to provide for financial penalties imposed by the Authority to be considered as civil debts with the Capital Markets Authority mandated to recover them in line with provisions for the recovery of decretal sums. The amendment is intended to enhance enforcement and recovery of financial penalties imposed by the Authority.
3. **The Banking Act (Cap. 488):** the Bill seeks to amend the Act by repealing section 33B to remove the caps on interest charged on loans. This is aimed at encouraging the banks to provide credit to Small and Medium Enterprises (SMEs).
4. **The Standards Act (Cap. 496):** the Bill seeks to amend the Act to provide for registration of consolidators of air and sea cargo.
5. **The Retirement Benefits Act (No. 3 of 1997):** the Bill proposes to activate the benefits and other accrued income of members of retirement benefits schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act, 2011. The amendment also intends to provide time limit in which approved issuers shall transfer scheme funds in guaranteed funds to one (1) year to protect the interests of members by reducing the exposure to low returns over an extended transfer period.
6. **The Employment Act (No. 11 of 2008):** the Bill seeks to introduce the definition of “basic salary” to guide on the base amount for computing the levy payable to the National Housing Development Fund. The amendment also seeks to delete the definition of “employee’s earnings”, words which have not been used in the Act.
7. **The Accountants Act (No. 15 of 2008):** the Bill proposes to remove the requirement for the students to register with ICPAK before qualifying as accountants.
8. **The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009):** the Bill seeks to designate lawyers, notaries and other independent legal professionals as amongst reporting entities to whom Anti-Money Laundering/Combating Financing of Terrorism obligations shall apply.

## **1 PREFACE**

### **1.1 Establishment of the Committee**

The Departmental Committee on Education and Research was appointed following resolutions of the National Assembly on 5 February 2018. The Committee's terms of reference as contained in S.O. 216 are as follows: -

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- iii. To study and review all the legislation referred to it;
- iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. To 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;
- vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
- vii. To examine treaties, agreements and conventions;
- viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- x. To examine any questions raised by Members on a matter within its mandate.

### **1.2 Mandate of the Committee**

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments;
  - a. The National Treasury and Planning
  - b. Ministry of Devolution and ASAL
  - c. The Commission on Revenue Allocation
  - d. Office of the Controller of Budget
  - e. Salaries and Remuneration Commission

### 1.3 Committee Membership

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

#### **Chairperson**

Hon. Joseph K. Limo, MP  
MP for Kipkelion East Constituency

#### **Jubilee Party**

#### **Vice-Chairperson**

Hon. Isaac W. Ndirangu  
M.P for Roysambu Constituency

#### **Jubilee Party**

#### **Members**

Hon. Jimmy O. Angwenyi, MP  
MP for Kitutu Chache North Constituency  
**Jubilee Party**

Hon. Christopher Omulele, MP  
MP for Luanda Constituency  
**ODM Party**

Hon. Dr. Enoch Kibunguchy, MP  
MP for Likuyani Constituency  
**FORD-K**

Hon. Shakeel Shabbir Ahmed, MP  
MP for Kisumu Town East  
**Independent Member**

Hon. Abdul Rahim Dawood, MP  
MP for North Imenti Constituency  
**Jubilee Party**

Hon. Daniel E. Nanok, MP  
MP for Turkana West Constituency  
**Jubilee Party**

Hon. Andrew A. Okuome, MP  
MP for Karachuonyo Constituency  
**ODM Party**

Hon. David M. Mboni, MP

MP for Kitui Rural Constituency  
**CCU Party**

Hon. Francis K. Kimani, MP  
M.P. Molo Constituency  
**Jubilee Party**

Hon. Joseph M. Oyula, MP  
MP for Butula Constituency  
**ODM Party**

Hon. Joshua C. Kandie, MP  
MP for Baringo Central Constituency  
**MCC Party**

The Hon. Lydia H. Mizighi, MP  
MP for Taita Taveta County  
**Jubilee Party**

Hon. Mohamed A. Mohamed, MP  
MP for Nyali Constituency  
**Independent Member**

Hon. Purity W. Ngirici, MP  
MP for Kirinyaga County  
**Jubilee Party**

Hon. Samuel Atandi, MP  
MP for Alego Usonga Constituency

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**ODM Party**

Hon. Stanley M. Muthama, MP  
MP for Lamu West Constituency

**MCC Party**

The Hon. Edith Nyenze, MP  
MP for Kitui West Constituency  
**WDM-K**

## **1.4 Committee Secretariat**

**Lead Clerk**  
Ms. Leah W. Mwaura  
**Senior Clerk Assistant**

Ms. Jennifer Ndeto  
**Principal Legal Counsel I**

Mr. Chelang'a Maiyo  
**Research Officer II**

Ms. Laureen Wesonga  
**Clerk Assistant II**

Mr. Josephat Motonu  
**Fiscal Analyst I**

## 2 OVERVIEW OF THE FINANCE BILL, 2019

The Finance Bill, 2019 seeks to amend the following Acts:-

### INCOME TAX ACT

5. The proposed amendments to the Income Tax Act are covered in clauses 2 – 14. The following are key highlights contained therein: -
6. **Replacement of demurrage charges with income derived in Kenya** (clause 2 and 5): - demurrage charges were introduced in the Income Tax Act through the Finance Act of 2018. The Bill seeks to recognize payment to non-residents as income derived in Kenya. According to the National Treasury, the Administration of taxation on the demurrage charges which was introduced through the Finance Act, 2018, has been complex. It is for this reason therefore the taxation of demurrage charges has been proposed to be combined with other sources of income of the shipping line. The amendment therefore proposes to delete the definition of the term “demurrage charges”. In addition, the amendment in clause 2 has proposed to propose to introduce the definition of the term “investee company” which has been used in other clauses of the Bill and hence the need to define it.
7. **Taxation of the digital economy** (clause 3): - technological advancements have seen the emergence of e-commerce as well as other transactional activities taking place in the digital marketplace. The Bill introduces taxes to income accruing through a digital marketplace. A new paragraph has also been introduced to define what a digital marketplace is, being a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.
8. **Clarity on exemption in Section 7A of ITA (clause 4):** - The proposed amendment seeks to clarify the exemption from tax under section 7A of ITA. Currently, only income distributed as dividends by collective investment schemes is exempt from tax under Section 7A. The amendment has sought to clarify that that the exemption is applicable to all except income under the ITA. This therefore has corrected the inadvertent error that implied that any other exempt income is taxable when distribute as dividends.
9. **Expansion of tax base by incorporating new services** (clauses 6, 10 and 13): - The amendment in paragraph (a) clause 6 is proposing to delete paragraph (i) on demurrage charges. This is in line with the proposed amendment in clause 2 and 5. Paragraph (b) of the same clause seeks to clarify that taxation of insurance premium paid to non- residents includes reinsurance premiums. The amendment in paragraph (c) seeks to expand the withholding to incorporate security services, cleaning and fumigation services, outside catering, transportation excluding air, sales promotion and marketing & advertising services. For residents, the withholding tax is proposed at 5% and for the case of non-residents; the tax rate is 20% of the gross amount for both. Paragraph (d) seeks to provide that where there is *Avoidance of Double Taxation Agreement*, payment in respect of services provided to a branch by the head office is subject to withholding tax. This will ensure that branches do not use treaty provisions to claim head office expenses while failing to deduct withholding tax on such payments. With the removal of taxation on demurrage charges, the National Treasury was foregoing revenue of KSh. 210. Introduction of withholding of tax on services such as security services, cleaning and fumigation services,

outside catering, transportation excluding air, sales promotion and marketing & advertising services, the National Treasury was seeking to raise KSh. 500 million.

10. **Re-introduction of Turnover Tax (clause 7):** - the Turnover Tax (ToT) at the rate of 3% of the gross receipts for businesses whose annual turnover does not exceed KSh. 5 million that was repealed through the Finance Act, 2018 is proposed to be re-introduced. The Presumptive Tax (PT) at the rate of 15% of amount payable for business permits or trading license issued by a county government will be used to enforce compliance. The Presumptive Tax will be considered as an advance tax deductible from turnover tax. The turnover tax period is given as one calendar month and presumptive tax period is at the time of paying for or renewing business permits or trading licenses. The regime will provide a simplified tax system for the informal sector. From this tax measure, the National Treasury was estimating to raise KSh. 196 million.
11. **Exemption of real estate investment trust to their special purpose vehicles (SPV) (clause 8)**  
The amendment in this clause proposes to extend exemption of real estate investment trust to their special purpose vehicles (SPV) which is wholly owned by the real estate investment trust.
12. **Enhancement of Capital Gains Tax (CGT) from the current 5% to 12.5% (clause 9):** - this increase in tax rate is intended to realize additional revenue. However, the Committee has proposed that the rate be retained as the current CGT rate of 5 % as this was likely to affect the affordable housing agenda. Inasmuch as the Kenyan rates are the lowest in the region, the proposed increase is likely to affect cost of land. The National Treasury was estimating to raise KSh. 4.365 billion from the proposed increase in CGT.
13. **Repeal of s. 72D of Cap. 470. (clause 11):** The amendment proposes to delete section 72D on penalty on unpaid tax since it is already provided in the Tax Procedures Act, 2015. There is need to rationalize the provisions in the tax laws so as to remove duplication.
14. **Exemption from Income for big four plan (clause 12):** The Government is in the process of implementing the “Big Four” Plan. The amendment proposes to exempt from income tax the income of the National Housing Development Fund and of individuals registered under the Ajira Digital Program. The new paragraph 57 is meant to support the “Big Four” Plan on affordable housing while Paragraph 58 is meant to support the youth engaged in productive activities through the Ajira Digital Program. It is important to note that the individual who are registered under the Ajira Digital Program will only enjoy the exemption upon payment of registration fee of ten thousand shillings per annum. Based on the representations received the registration fee is quite low given that it is a once per year payment. The Cabinet Secretary responsible for ICT will be expected to bring regulations on the implementation of the programme. The National Treasury will forgo KSh. 150 million from these two incentives.
15. **Corporate Tax Incentive of at 15% for investment in plastic recycling (clause 13):** - for companies that will invest in plastic recycling plants, they will be granted a tax incentive where they will pay the corporation income tax at the rate of 15% down from the 30%. This incentive will run for the first 5 years from the beginning of the operations.
16. **Clause 13 Paragraph (a):** The amendment in paragraph (a) seeks to clarify that affordable housing relief shall be based on employee contribution and not gross emoluments. Out of this, the National Treasury estimates to plug in KSh. 1.162 billion into the 2019/20 budget deficit.

17. **Capital Gains Tax exemption on account of transfer of property as part of corporate restructuring** (clause 14): - exemption will be considered on compulsory acquisition of property by government, fulfillment of the legal requirement, transfer on account of public interest and internal restructuring.

## VALUE ADDED TAX ACT

18. The proposed amendments to the VAT Act are covered in clauses 15 to 19 of the Finance Bill. In summary, the key proposed amendments include: -
19. **New definitions “concessional loan”** (clause 15): - taxable goods purchased locally or imported for use in Official Aid Funded Projects are VAT exempted, setting a threshold of at least 25% grant element in a loan to qualify as a concessional loan shall exclude Official Aid Funded Projects by loans with below the set 25% grant limit.
20. **Taxation of the digital economy** (clause 16): - with the enactment of this provision, the transactions that take place in the digital marketplace will be subjected to VAT. The amendment has defined what constitute a digital marketplace same as the case for the proposed amendment to the ITA.
21. **Special Economic Zones** (clause 17): The proposed amendment harmonizes the time of supply from a special economic zone with that of the export processing zones for the purpose of taxation. This is intended to clarify that the time of supply of goods from the special economic zone shall be the time the goods are removed from the zone for taxation purposes.
22. Under clause 18, the following items have been proposed to be introduced into the **VAT Exemption regime**. they comprise of:
- i. Agricultural pest control products;
  - ii. Locally manufactured motherboards, including input for their manufacture as approved by the CS responsible for ICT;
  - iii. Inputs for electrical accumulators and separators supplied for the manufacture of automotive and solar batteries, as approved by the CS for Industrialization;
  - iv. Plant, machinery and equipment for the construction of plastic recycling plant; and
  - v. Moved from zero rated to exemption is the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10%.
23. In addition, the amendment in paragraph (a) proposes that the exemption from VAT for specialized equipment for the development and generation of solar and wind energy be subjected to approval by the Cabinet Secretary responsible for energy. This is to enhance accountability. Further, the amendment in (ii) proposes to limit the exemption for tractors to only tractors for agricultural use. This will confine the incentive to the intended sector.
24. The removal from zero rate regime of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% and Inputs for electrical accumulators and separators is intended to rationalize the zero-rated goods so as to ensure that the original policy of restricting zero-rated status to exports is adhered to while maintaining few items in zero rating schedule for exceptional policy dispensation.

25. The VAT zero rated tax regime is proposed to be amended to include the supply of denatured ethanol. This is usually used as a solvent for various industrial activities and also for burning as fuel in burners and camping stoves. From the proposed move to zero the tax expenditure is expected to be KSh. 300 million.

### **EXCISE DUTY ACT**

26. The proposed amendments to the Excise Duty Act are covered in clauses 20 to 23 of the Finance Bill. In summary, the key proposed amendments include: -
27. **Excise duty on betting transactions** (clauses 20, 21 and 23): - introduction of excise duty on betting at 10% of the amount wagered or staked at the time placing a bet on a platform. The Bill has also proposed an amendment specifying the time when the proposed excise duty on betting is charged. Out of the introduction of the excise duty on betting at the rate of 10 % the National Treasury estimates to raise KSh. 19.7 billion.
28. **Excise duty on tobacco and alcoholic products** (clause 23): - excise duty on tobacco and alcoholic products has been increased by about 21%. These items have specific rate of tax thus, they are subjected to adjustment for inflation as well. The adjustment date is proposed to be changed from the current 1<sup>st</sup> July to 1<sup>st</sup> October. This is aimed at providing adequate time for obtaining actual data on average inflation and have more time for public consultation on the proposed inflation adjustment. The National Treasury estimates to raise KSh. 4.629 billion from the increase in excise duty on tobacco and alcoholic products.
29. **Tax incentive for 100% electrical vehicles** (clause 23): - The amendment proposes to increase the excise duty rates for imported motor vehicles of cylinder capacity exceeding 1500cc to 25%; and Motor vehicles of tariff no. 8703.24.90 and 8703.33.90 to 35%. The objective of this proposal is to protect the local assemblers from cheap imported motor vehicles thus encouraging local assemblies. However, it reduces the rate for 100% electric powered motor vehicles to 10%. This is to promote the use of clean energy.

### **TAX PROCEDURES ACT**

30. The proposed amendments to the Tax Procedures Act are covered in clauses 24 to 32 of the Finance Bill. In summary, the key proposed amendments include: -
31. **Exemption from requirement of the Personal Identification Number (PIN)** (clause 24): - this clause seeks to amend Section 12 of the Tax Procedures Act by providing powers to the Commissioner to exempt any person from requiring a Personal Identification Number (PIN) for any transactions as specified in the First Schedule of the Act. Some of these transactions include registration of titles, business names, companies, importation of goods and customs clearing and forwarding, all contracts for the supply of goods and services to Government Ministries and public bodies among other transactions for which the PIN is required. This is intended to facilitate business by ensuring that the requirement for a PIN is not a hindrance.
32. **Refraining from assessment or recovery of tax from companies that list on growth segment** (clause 25): - the proposed amendment seeks to refrain the Commissioner from assessing or recovering penalties or interest accruing within the two years prior to companies that list on the growth segment of a Nairobi Securities Exchange (NSE) in Kenya. Further, companies that delists from the exchange in which it is listed before the end of 5 years from the date of listing

shall be assessed for all taxes penalties or interest for the years it was in operation prior to the listing. There is need to encourage more companies to list and promote the development of the capital markets in the country. The amendment is therefore intended to provide amnesty on tax penalties and interests to companies that list in the growth segment of a securities exchange in Kenya. Besides encouraging more listing in the growth segment, the National Treasury estimate to raise a revenue of KSh. 1 billion.

33. **Penalty for failure to deduct withholding tax** (clause 26): - the amendment is proposed by introducing penalties to persons who are required under tax law to deduct or withhold tax and remit the tax to the Commissioner. The Provisions within the Tax Procedures Act of 2015 shall apply and therefore payment and penalties shall also apply.
34. **Reduction of Value Added Tax withholding from 6% to 2%** (clause 27): - the appointed withholding agents are required to withhold 6% of the taxable value on purchasing taxable supplies. The proposed amendment seeks to reduce the VAT withholding rate from 6% to 2%. The current withholding VAT rate is 6% and this has created perpetual credit positions and cash flow challenges for some taxpayers. This amendment, therefore, proposes to reduce the withholding VAT rate from 6% to 2%. This rate is designed to minimize the above-mentioned challenges. The proposed amendment has also clarified that withholding tax does not apply to zero rated supplies. The proposed amendment has created a revenue loss of KSh. 6.769 billion.
35. **Departure Prohibition Order on tax representatives** (clause 28): The TPA provides that prohibition order be issued to directors or people with control over a company where there is non-compliance with tax laws. This provision did not address cases where the directors or the owners of the company are not resident in Kenya. The proposed amendment seeks to include "tax representatives" (senior managers) among the categories that the Commissioner can issue a departure prohibition order where the Commissioner has reasonable grounds to believe the person may leave Kenya without paying tax which is due and payable.
36. **Tax Objection** (clause 29): The TPA gives the Commissioner sixty days to respond to a tax objection to a taxpayer. However, there are some instances where taxpayers take long to submit additional information that may be required to determine the case. This leaves little time for the Commissioner to analyze and make an objective decision. The amendment proposes to provide the Commissioner with adequate time to respond to a tax objection from a taxpayer especially where more information is required from the taxpayer.
37. **Penalty for late submission** (clause 30): The proposed amendment seeks to clarify that the penalty for late submission of return shall be based on the difference of tax payable under the return and the amount already paid at the time of filing the return.
38. **Transactions requiring PIN** (clause 32): - the proposed amendment expands the list of transactions which require a PIN number. They include: the registration and renewal of memberships by professional bodies and other licensing agencies as well as registration of mobile cellular pay bill and till numbers by telecommunication operators.

## MISCELLANEOUS FEES AND LEVIES ACT

39. The proposed amendments to the Miscellaneous Fees & Levies Act are covered in clauses 33 to 37 of the Finance Bill, 2019. The key proposed amendments include: -
40. Clause 33 is intended to provide definition for the term concessional loan for the purpose of providing incentives to projects financed through concessional loans.
41. **Import Declaration Fee (clause 34):** - the Import Declaration Fee (IDF) for raw materials and intermediate goods for manufacturing have been reduced from the current 2% of the value to 1.5% and the rate for the finished goods has been increased from the current 2% to 3.5%. This is meant to reduce the cost of production for manufacturers, thereby making their products competitive by raising IDF for finished goods. This is intended to support the manufacturing pillar. The revenue estimated to be raised in the adjustment of IDF rates is KSh. 8.192 billion.
42. **Railway Development Levy (clause 35):** - the Bill proposes to increase the Railway Development Levy for finished products from the current 1.5% of the value to 2% of the import value. In the case of raw materials and intermediate products imported by approved manufacturers, a rate of 1.5% shall be applied. This is meant to reduce the cost of production for manufacturers and as well encourage local production as a way of supporting the manufacturing pillar. From the revision of the rate of RDL, the National Treasury estimates to raise KSh. 3.898 billion.
43. **Anti-adulteration levy refund in certain incidences (clause 36):** - Anti-adulteration levy on illuminating kerosene was introduced in 2018 so as to discourage adulteration of petroleum products. This has increased the cost of kerosene which is a major input in the manufacture of resins, shoe polish and paints. The amendment, therefore, proposes to empower the Commissioner to refund Anti-adulteration levy paid on illuminating kerosene used as an input by the manufacturers of the above-mentioned products in order to cushion them from high cost of production which could make their products uncompetitive. The refund will be applied if evidence is supplied to the effect that imported illuminating kerosene is meant for manufacture of paints, resins and shoe polish. Out of these refunds, the National Treasury estimates to suffer a revenue loss of KSh. 393 million.
44. **Imposition of export levy on tanned and crushed hides and skins at the rate of 10% (clause 37):** - these items are currently not subjected to export levy. The Government policy is to encourage value addition for Kenyan products in order to increase the value of our exports. The amendment proposes to introduce a 10% export levy on semi processed hides and skins in order to promote value addition. In addition, this will create more employment opportunities.

## PRIVILEGES AND IMMUNITIES ACT, CAP. 179 – CLAUSE 38

45. The proposal seeks to amend the Fourth Schedule which provides for “Immunities and Privileges of an Organization and Officers.” The objective of the amendment is to extend the provision for **tax exemption to privileged organizations to include goods or services purchased locally.** Currently, these organizations enjoy exemption from taxes on the importation of goods for its

official use in Kenya or for exportation, or on the importation of any publications of the organization directly imported by it.

#### **CAPITAL MARKETS ACT CAP. 485A – CLAUSES 39 TO 42**

46. The definition of 'Key Personnel' has been proposed to be amended to exclude chief financial officers and Board of Directors of issuers of securities. What is being proposed for deletion in the definition of key personnel was inserted through an amendment in December 2018. Key personnel, according to the Act means a person who manages or controls the activities of a licensed or a regulated person. In this case, vetting of key personnel by CMA should be limited to the personnel of persons licensed by CMA to operate in the Capital Market.
47. The Act has also been proposed to be amended to allow Capital Market Authority to enforce penalties as well as sanctions on any licensed person who may violate any laid down procedures and rules in the capital market arena. CMA has been experiencing challenges in the recovery of penalties imposed under the Act. The amendment, therefore, proposes to provide that financial penalties imposed under the Act by the Authority to be recoverable as civil debts. This will enhance recovery of such penalties and discourage noncompliance.

#### **BANKING ACT – CLAUSE 43**

48. This amendment proposes to repeal section 33B of the Act which introduced interest rate capping in the banking industry.

#### **STANDARDS ACT, CAP. 496 – CLAUSES 44 TO 45**

49. The Act is amended by inserting a new definition and a new Section. The objective of the amendment is to provide for: the definition of Cargo Consolidators; provide for the legal frameworks for the registration and vetting of Cargo Consolidators of air and sea cargo prior to importation; and qualifications to be registered as a Consolidator. Imports, done through consolidators, have had challenges in the enforcement of standards due to misclassification and concealment. There is need to have credible consolidators. Further, the amendment provides for an offence for consolidators who consolidate goods without being registered.

#### **THE RETIREMENT BENEFITS ACT, 1997 – CLAUSES 46 TO 47**

50. The RBAA has been proposed to be amended to provide that where scheme funds are invested in a guaranteed fund asset class and upon termination of the agreement, the issuer is to transfer the funds within twelve months as opposed to the current 36 months. The reduction period of transfer of funds to beneficiaries from the current 3 years to 1 year guarantees better return for members without having to incur 25% charge if one wants to access their funds in a period less than 3 years. Currently the law does not provide timeframe for scheme administrators to transfer funds out of the guaranteed fund asset class upon termination of the investment. The fund manager have been requiring funds to be withdrawn in instalments spread in a period of three years failure to which they have been penalizing the schemes 25% of the amount invested. The amendment proposes to fix the time within which the funds invested in a guaranteed fund asset class are transferred to the scheme upon termination of the investment agreement.

51. The other amendment relates to allowing exiting members of an individual and occupational retirement benefits schemes to access their reserve funds. The current provision does not allow exiting members to receive their equitable share of their contribution in the reserve fund.
52. The RBAA requires that unclaimed financial assets, after winding up of a scheme, be transferred to a Trust Fund established under the Retirement Benefits Act. With the establishment of Unclaimed Financial Asset Authority (UFAA), the Trust Fund will be duplicating the functions undertaken by UFAA. The proposal therefore seeks to replace the role of the Trust Fund with that of UFAA in respect of unclaimed financial assets.

#### **EMPLOYMENT ACT – CLAUSE 48**

53. The proposal in the Employment Act seeks to introduce the definition of basic salary to mean employee's gross salary excluding allowances and other benefits. The objective is to provide for the basis of computing the levy on National Housing Development Fund. The term employee earnings has also been proposed for deletion since it has not been used anywhere in the Act.

#### **ACCOUNTANTS ACT, 2008 – CLAUSE 49**

54. The proposed amendment under the Accountants Act has proposed to delete the provision allowing a student to be registered as a member of Institute of Certified Public Accountants (ICPAK) before undertaking an examination. This therefore will imply that for anyone to be registered with ICPAK, one has to have completed and passed KASNEB examinations. The current provision requires the accounts students to be registered by ICPAK which is an institutional for professional accountants and hence students should not be required to join. The amendment, therefore, proposes to exclude accounting students from registering with ICPAK which is a professional body for qualified and practicing accountants.

#### **PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT, 2009 – CLAUSES 50 - 51**

55. The proposed amendment under the POCAMLA proposes to include advocates, notaries and other independent legal professionals who are sole practitioners, partners in the definition of 'designated non-financial businesses or professions. The objective is to designate legal professionals as reporting institutions.
56. According to POCAMLA, a reporting institution has an obligation to register with the Financial Reporting Centre and is required to monitor and report on an ongoing basis all complex, unusual, suspicious, or large transactions. This will support the fight against money laundering and financing of terrorism activities.

### 3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

57. Following the call for memoranda from the public on Friday 26<sup>th</sup> July, 2019, the Committee received memoranda from the following stakeholders: -

1. Office of the Attorney General
2. Green Bonds Programme Kenya
3. Google Kenya and Content Development and Intellectual Property Trust (CDIP-Trust)
4. Kenya Association of International Cargo Consolidators
5. African Salihya Cargo and Clearing Company
6. Golden Gate Cargo Services Company Limited
7. Kenya Private Sector Alliance (KEPSA)
8. East Africa Venture Capital Association
9. Agrochemicals Association of Kenya (AAK)
10. East African Forum for Alternative Investments
11. Ndatani Enterprises Company Limited
12. Nairobi Securities Exchange (NSE) and Kenya Association of Stockbrokers and Investment Banks (KASIB)
13. Kenya Professional Cleaners Association (KPCA)
14. East African Tax and Governance Network (EATGN)
15. Law Society of Kenya (LSK)
16. Kenya Bankers Association (KBA)
17. PricewaterhouseCoopers Limited (PWC)
18. KPMG Kenya
19. Institute of Certified Public Accountants of Kenya (ICPAK)
20. Association of Women Accountants of Kenya (AWAK)
21. Kenya Association of Manufacturers (KAM)
22. Kenya Wine Agency Limited (KWAL)
23. Kenya Breweries Limited (KBL)/UDV Kenya Limited
24. Association of Gaming Operators of Kenya (AGoK)
25. Jockey Club of Kenya
26. Small Scale Traders
27. Mastermind Tobacco (K) Limited and British American Tobacco (BAT)
28. Kenya Airways (KQ)
29. East African Petroleum Transporters Association
30. Bunge la Mwananchi
31. BDO East Africa Kenya
32. Article 19 and Kenya ICT Action Network
33. Hon. Moses Kuria, HSC, MP
34. Hon. Joseph Manje, MP
35. Prof. Tom Ojienda, SC
36. Mr. Ernest Muguku
37. Ms. Florence Njeri Okech
38. Mr. Julius Njiraini
39. Mr. Njoroge Waweru
40. Mr. Patrick Nderitu, Mr. Hendrick Omanwa and Mr. Romano Wachiye
41. Mr. Davies Simiyu

- 42. Mr. Nicholas Muthama
- 43. Mr. Mwangi Ngamate
- 44. Serian Asset Managers
- 45. Associated Battery Manufacturers East Africa Limited

58. The Committee placed an advert in the print media on Monday 19<sup>th</sup> and Tuesday 20<sup>th</sup> August, 2019 informing the public about public hearings on the Bill. The Committee held public hearings on Wednesday, 21<sup>st</sup> and Thursday, 22<sup>nd</sup> August 2019 in Lenana Hall at Kenyatta International Convention Centre. Below are the views carried during the public hearing exercise: -

### 3.1 OFFICE OF THE ATTORNEY GENERAL

59. The Office of the Attorney General proposed amendment: -

60. Amend Section 15 of the ITA by inserting the following new clause 7A:-

7A. Section 15 of the ITA is amended at subsection (2) by inserting the following proviso to paragraph (ab)-

*'provided that in the case of manufacturers of cement, steel and textiles, fifty per cent of the electricity cost incurred shall be deducted in addition to the normal electricity expense'.*

61. The Committee supported the new proposal since it was aimed at supporting the cement, textile and steel manufacturers by reducing the cost of electricity to the manufacturer. Electricity is a major input in the manufacturing industry. In addition, this will support the affordable housing plan given that cement and steel are major inputs in the construction sector.

62. Amend clause 12 in the proposed amendment to Part I of the First Schedule to the Income Tax Act by inserting the following new item immediately after item 58—

*59. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time homeowner.*

63. The purpose of the above proposed amendment is to exempt from income tax amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time homeowner. This is meant to provide an incentive to the affordable housing.

64. The Committee supported the proposal to exempt the amount withdrawn from income tax. This is because the incentive will support the affordable housing pillar and encourage more people to contribute to the fund.

65. Amend clause 34 by deleting paragraph (b) in respect of the intended amendment to subsection (2) of section 7 of the Miscellaneous Fees and Levies Act, 2016, and replacing it with the following new paragraph—

(b) inserting the following proviso at the end—

Provided that a rate of one point five per cent shall be charged on—

- (i) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and
- (ii) input for the construction houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

66. The Committee supported the proposed amendment as it would support the manufacturing pillar by making raw materials and intermediate products imported by manufacturers affordable, through a lower IDF rate of 1.5 %. Input for the construction houses under an affordable housing scheme will also enjoy a reduced rate of IDF at 1.5 %. Currently the IDF rate is at 2 % and through the Bill the rates have been proposed to be increased to 3.5 % this is with an exception of raw materials and intermediate products imported by manufacturers and inputs for the construction houses under an affordable housing scheme. The respective Cabinet Secretaries will be required to recommend the items to for the approval by Cabinet Secretary responsible for matters Finance. The Committee observed that there was need for the parent Ministries to put in place appropriate mechanism to curb abuse. The Committee was assured that all the contractors under the affordable housing scheme will be predetermined and during the procurement stage, the State Department for Housing will determine which items will qualify for the lower IDF rates.

67. Amend clause 35 by deleting paragraph (b) in respect of the intended amendment to subsection (2) of section 8 of the Miscellaneous Fees and Levies Act, 2016, and replacing it with the following new paragraph—

*(b) inserting the following proviso at the end—*

*Provided that a rate of one point five per cent shall be charged on—*

*(i) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and*

*(ii) input for the construction houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matter relating to housing.*

68. The proposed amendment by the AG is intended to lower the RDL for raw materials and intermediate products imported by manufacturers and input for the construction houses under an affordable housing scheme. The rate has been proposed to be retained at the current rate of 1.5 % of the import value. The Bill has proposed to increase the rate of RDL at the rate of 2%. This is intended to support the manufacturing and affordable housing pillar.

69. Based on the above, the Committee supported the above amendment since it is intended to support the “big four plan” economic agenda.

70. Amended by inserting the following new clause immediately after clause 7—

**7B.** *Section 16 of the Income Tax Act is amended in subsection (2) by deleting the proviso to paragraph (j) and replacing it with the following new proviso—*

*Provided that this paragraph—*

*(i) shall apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company; and shall not apply to a company implementing a project under an affordable housing scheme upon recommendation by the Cabinet Secretary responsible for housing.*

**71. New clause 32A:** so as to amend the long title to the Housing Act by deleting the words “a Housing Fund” and substituting therefor the words “the National Housing Development Fund”.

**72.** The above proposed amendment is intended to change the long title in the Housing Act by deleting the words Housing Fund and replacing it with the words the National Housing Development Fund”. The Committee therefore agreed to the proposed new amendment.

**73. New clause 32B:** The amendment relates to Section 2 of the Housing Act is amended—

Section 2 of the Housing Act is amended—

in the definition of “grant” by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”; and

**74. New clause 32C.** *The amendment is intended to amend the marginal note to section 6 of the Housing Act by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”.*

**75.** The Committee agreed to the proposed amendment.

**76.** The following amendments were proposed for insertion: -

**32D.** *Section 6 of the Housing Act is amended—*

*(i) by deleting the words “Housing Fund” appearing in subsection (1) and substituting therefor the words “National Housing Development Fund”;*

*(ii) by deleting the words “Housing Fund” wherever they appear in subsection (2) and substituting therefor the words “National Housing Development Fund”; and*

*(iii) by deleting the words “Housing Fund” wherever they appear in subsection (3) and substituting therefor the words “National Housing Development Fund”*

**77.** The Committee agreed to the proposed amendment.

**78. New sub clause 32E:**

*Section 7 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of subsection (1) and substituting therefor the words “National Housing Development Fund”.*

79. The Committee agreed to the proposed amendment.

**80. New clause 32F:**

*Section 7A of the Housing Act is amended by deleting the words "Housing Fund" appearing in subsection (3) and substituting therefor the words "National Housing Development Fund".*

**81. New sub clause 32G:**

*Section 11 of the Housing Act is amended by deleting the words "Housing Fund" appearing in the opening words of paragraph (a) and substituting therefor the words "National Housing Development Fund".*

**82. New sub clause 32H:** *Section 12 of the Housing Act is amended by deleting the words "Housing Fund" and substituting therefor the words "National Housing Development Fund".*

**83. New sub clause 32I:** Section 24 of the Housing Act is amended—

*(a) by deleting subsection (2) and replacing it with the following new subsection*

*(2) A person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or both.*

*(b) by inserting the following new subsection immediately after subsection (2)—*

*(2A) If an act or commission of a person results in the loss of money from the National Housing Development Fund, that person shall be liable to a penalty equivalent to twice the amount lost.*

84. The above proposed amendment is intended to enhance the punishment and penalty for contravention of the regulations from ten thousand to one million shillings and to increase the term of imprisonment from 2 years to 3 years.

**85. New sub clause 32J.** *Section 26 of the Housing Act is amended in subsection (4) by deleting the words "Housing Fund" and substituting therefor the words "National Housing Development Fund".*

**86. New sub clause 32K.** *Section 117 of the Stamp Duty Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (n)—*

*(o) the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation.*

87. The above amendment is intended to exempt from stamp duty a transfer of a housing constructed under affordable housing scheme from the developer to the National Housing Corporation. The developers will be expected to hand over the completed units to the NHC upon completion. At this stage of transfer no stamp duty shall be paid.

88. The Committee agreed to the proposed amendments by the Attorney General as it was intended to support the affordable Housing Pillar.

### **3.2 GREEN BONDS KENYA PROGRAMME**

89. The Green Bonds Programme proposed that green bonds should be exempted from WHT in order to attract more people to invest in the bonds, green sustainable job creation and health and create a new revenue stream for the Government. They proposed that section 23, First Schedule, clause 18 of the Income Tax Act should be amended.

90. The Committee supported the proposal to exempt green bonds from WHT as it will encourage more people to invest in the green bonds market.

### **3.3 GOOGLE KENYA AND CONTENT DEVELOPMENT AND INTELLECTUAL PROPERTY (CODE-IP) TRUST**

91. Google Kenya and CODE-IP Trust appeared jointly before the Committee and submitted the following with regards to the proposed amendments relating to the ITA:-

92. They observed that the definition to the term “digital marketplace” was too broad since KICA section 2 defines ‘electronic’ as relating to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

93. They further observed that definition has not considered that some digital platforms are end-to-end encrypted that enacting this proposal translates into breaking encryption and violating constitutional privacy rights of internet users.

94. They buttressed their argument by stating the general principles of taxation which emphasizes on the need for clarity, ability to define and enforce. The digital marketplace is therefore too broad and complex and there are many business models and as such there was need for consensus.

95. They stated that there was need for clarity on the meaning of ‘income’ as to whether it is income to or income from or income through digital platform (where there is no value creation besides interaction). The definition of what constituted digital platform was unclear as to the whether it constituted mobile money or other e-payment system and online website.

96. To cure the ambiguity, they therefore proposed the following options with regards to the proposed clause 3(d): -

(i) Delete the definition and its references under; or

(ii) Amend by inserting the following words at the end of the proposed new section 3(2)(d), ‘*Subject to a rate of tax and implementation mechanism being prescribed by the Cabinet Secretary in Regulations passed in accordance with this Act*’; or

- (iii) Focus on administration of tax if the intention is simply to capture those who are already covered under current laws. Help should be offered through a collaborative initiative or alternatively, defer the amendment to provide time for harmonization of the proposed amendment with the broader government policy on the digital economy blueprint.

97. The Committee observed that the transactions carried over the digital platforms are not different from those ones that are carried out through ordinary business activities. The tax law should not be discriminate imposition of tax based on the form the transaction is carried out. The CS under Section 130 of the ITA is empowered to make regulations for the better carrying out of the provisions of the ITA and therefore there is no need for the proposed amendment in paragraph 95 (ii). The Committee therefore rejected the proposal by Google Kenya and CODE -IP.
98. **Clause 16:** Amend clause 16 by deleting or inserting the following words at the end of the proposed new subsection 7, 'subject to a rate of tax and implementation mechanism being prescribed by the Cabinet Secretary in Regulations passed in accordance with this Act.
99. The justification for the above proposal was that VAT is already charged on electronic services under section 8(2)(d) and 8(3) of the VAT Act and that the digital marketplace is broad and complex and there are many business models and therefore there's need for consensus in the definition and as to tax jurisdiction i.e. is it where the platform is registered or where the person transacting is situated. The proposal is implemented, there was risk of negative perception on investors and entrepreneurs and could easily erode the gains in the transition from manual and cashless transactions. The imposition of this tax is likely to lead to job losses for the youth and unlikely to achieve the much-needed revenue.
100. The Committee observed that the transactions carried over the digital platforms are not different from those ones that are carried out through ordinary business activities. The tax law should not be discriminate imposition of tax based on the form the transaction is carried out. The CS under the VAT Act is empowered to make regulations for the better carrying out of the provisions of the Act. Therefore, the issues/concerns raised by Google Kenya and CODE-IP will be addressed by way of regulations.

### **3.5 KENYA ASSOCIATION OF INTERNATIONAL CARGO CONSOLIDATORS**

101. The Kenya Association of International Cargo Consolidators is the umbrella body for the international cargo consolidators registered under the Registrar of Societies.
102. The association supported the proposed amendment in clause 45 seeking to amend the Standards Act to ensure the registration of cargo consolidators because besides stopping the importation of substandard or counterfeit goods in the country, it will ensure that all consolidators are tax compliant hence increase tax collection. They also supported the penalties prescribed for the offence of importing cargo without registration.
103. They observed that the proposal to provide for the qualification for a cargo to be registered as cargo consolidator was a welcome move as it would weed out unscrupulous consolidators who pose unfair competition to the licensed consolidators and also import substandard goods. The move will also ensure the growth of small-scale traders who have suffered immensely in the

hands of illegal consolidators. They however proposed that the period for which an applicant for cargo consolidation license should not have committed offence relating to importation of substandard goods be excluded as part of the requirements.

104. They however proposed that the definition for “consolidator” should be amended as follows to offer more clarity, *‘consolidator means a person who assembles cargo belonging to various persons to form one consignment at origin which may be consolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at the destination port or consolidator’s warehouse’*.
105. The Committee rejected the proposal to the definition of term “consolidator” since the consolidation of consignment that is being referred to by the amendment is country of supply and not the country of origin. The Committee further proposed an amendment to insert the words “country of supply” immediately after the word “consignment”. The amendment is intended to clarify that consolidation is done at the country of supply

### **3.5 AFRICAN SALIHIYA CARGO AND CLEARING**

106. The African Salihiya Cargo and Clearing supported the proposed amendment to the Standards Act as it will provide a legal framework for the importation of consolidated cargo. They noted that the amendment which provides for the vetting of consolidators will help weed out illegal consolidators and enable small businesses to flourish. They supported the vetting criteria proposed in the amendment particularly the need to have warehouses in the countries of origin and destination as it will ensure that only credible firms are licensed. However, they stated that the vetting criteria of not having committed an offence may be too punitive if applied retrospectively and they proposed that it should be amended to be applicable only to firms that commit an offence after they have been licensed. The term of imprisonment should be reduced from three years to six months.
107. They proposed that the vetting criteria for not having committed an offence should be deleted since any firm that commits an offence will be punished under relevant laws like the Customs Laws or the Anti-Counterfeit Laws. Inclusion of this provision will lead to double punishment. They also did not support the definition of consolidators but recommended that it includes cargo declared at origin as belonging to one importer.
108. The Committee supported the proposal not to apply the law retrospectively and proposed to leave it open so as to ensure that as many consolidators are registered.

### **3.6 GOLDEN GATE CARGO SERVICES**

109. The Golden Gate Cargo Services supported the vetting of consolidators as it will help weed out illegal consolidators and facilitate small businesses to flourish. The current vetting is not grounded on any law and the amendment as proposed in the Bill will therefore resolve the lacuna. The proposed penalties for importation of consolidated cargo without a license should be made stiffer to deter parties that bring the industry to disrepute. They recommended a penalty of two million and an imprisonment term of two years.

110. The Committee observed the penalty imposed on the importation of cargo as a consolidator without being registered has been adequately addressed. The proposal was therefore rejected.

### 3.7 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

111. KEPSA presented a memorandum comprising of several members of the association. the following amendments were proposed: -
112. **Introduction of income and Value Added Taxes in the digital Marketplace (clause 3(d) and clause 16):** The Alliance proposed amendments like Content Development and Intellectual Property Trust and Google Kenya to the two clauses.
113. The Committee observed that the transactions carried over the digital platforms are not different from those ones that are carried out through ordinary business activities. The tax law should not be discriminate imposition of tax based on the form the transaction is carried out. The CS under ITA and VAT Acts is empowered to make regulations for the better carrying out of the provisions of the Act. Therefore, the issues/concerns raised by KEPSA will be addressed by way of regulations.
114. **Clarity on exemption in Section 7A of ITA (clause 4):-** Amend the clause by deleting. This is because the provisions of this clause are no longer applicable with the introduction of the Capital Gains Tax. The proposed requirement to subject to corporation tax dividends issued out of untaxed profit is a requirement that is unique to Kenya.
115. On the above-mentioned proposal, the Committee observed that the taxation of CGT is done under the eighth Schedule and not under the Section 7A which was introduced to provide for taxation of companies that declare losses but distribute dividends to their shareholders. The Committee therefore rejected the proposal by KEPSA in clause 4.
116. **Clause 5:** Amend the clause by inserting the following words in sub-section (1), *‘and any income received by the non-resident person in Kenya from delay in taking delivery of goods or returning any equipment used for transportation of goods’* immediately after the words *‘an account of the carriage’*. The current wording of the proviso implies that all income of non-resident shipping lines globally will be subject to tax in Kenya. This provision is impossible to implement and extends Kenya’s taxing rights to income which is not sourced in Kenya.
117. The Committee observed that the proviso should be read in the context of the main provision in Section 9 of ITA. This means that the taxation of income of shipping line in respect of income from delay in taking delivery of goods or returning equipment does not apply to income from other tax jurisdictions. Based on the observation, the Committee rejected the proposal by KEPSA.
118. **Clause 6(c):** Amend the clause by deleting the words *‘security services’*. This will enable security companies and the market to absorb the economic impact of implementing the Private Security Regulations recently gazette in July 2019 in a sustainable manner. These Regulations

will among other issues, escalate business costs.

119. The Committee supported the proposal by KEPISA and further proposed to delete paragraph (c) to remove withholding tax on all the services carried by the paragraph.
120. **Clauses 6(c), 10 and 13:** Amend the clauses by inserting the words '*and ocean*' immediately after the words excluding air and the words '*taxable under section 9(1) of this Act*' immediately after the words transport services. In the current wording of the Bill, non-resident shipping lines will potentially be subject to tax twice. This will not only lead to an increase in international transportation charges for both imports and exports but will also make Kenyan made products uncompetitive in the international market.
121. **Clause 9(a):** Amend the clause to either introduce indexation to ensure that gains arising from inflation are not subject to tax or a rate of 7.5% instead of 5% without any indexation. The proposed increment of the Capital Gains Tax will have an overall adverse impact on Kenya's competitiveness as a hub for international PEVC investment due to an increase in regulatory risk allocated to Kenyan investments.
122. The Committee resolved to retain CGT at the current rate of 5 % due to the complexities of indexation. The Committee therefore did not support the proposal in the Bill to raise CGT to 12.5 % as this was likely to affect the housing agenda.
123. **Clause 13(b)(i):** Amend clause 13 (b)(i) to expand the scope of the companies enjoying lower corporation tax rate (to include the companies that are already in practice of recycling plastics). This will help the government to achieve its objective of a clean environment as it will open up to other companies in the green and circular economy space.
124. The Committee observed that the proposal in the Bill is meant to encourage new investments in plastic waste management. The Committee therefore rejected the proposal as it would occasion a revenue loss if it is open to all companies that are already in the business of plastic recycling.
125. **Clause 14:** Amend clause 14 clause to read as follows: -  
No gain or loss shall be included in the computation of a gain or loss under section 3(2)(f) in the case of a property that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or restructuring by an individual, company, partnership or a trust, where such a transfer is:-
  - i. A legal or regulatory requirement; or
  - ii. As a result of derivative or compulsory acquisition by the Government; or
  - iii. Whereby the transferee has control over the transferor, or the transferor has a control over the transferee, or both the transferor and the transferee are controlled by another person, and the transfer of property is at the adjusted cost of the property being transferred; or
  - iv. A transfer between a person and a nominee or by a transfer made to a trustee in

- respect of a trust in which no beneficial interest passes in the property transferred with the property so transferred being held for the said benefit of the transferor alone or jointly with a spouse or members of the immediate family, and the transfer of property is at the adjusted cost of the property being transferred; or
- v. In the public interest and approved by the Cabinet Secretary.

126. The above exemption of group restructuring or reorganization transactions from Capital Gains Tax will allow for tax neutral restructuring of groups. With Kenya aspiring to be an investment hub, the speed at which investment transactions can be concluded needs to be reduced.

126.2 The Committee observed that the proposal in the Bill adequately covers the circumstances for exemptions. The Committee therefore rejected the proposal by KEPSA.

127. **Clause 15(a):** Amend the deeming provision for imported services, section 10(1) to also cover non-registered persons. As currently constituted, the deeming provision only covers registered persons and also amendment of section 34(2) of the VAT Act to specifically exclude the taxable value of imported services from the VAT registration threshold. In addition, VAT on imported services is accounted for through the reverse charge mechanism which requires that the recipient of imported services assumes the role of supplier. The recipient is deemed to have made a supply to him/herself. Without the deeming provision for non-registered persons, there will be an implementation gap in the law. It will therefore be difficult to implement the proposed change is.

128. The Committee observed that the proposal has merit as it will guide treatment of imported services by both registered and non-registered person. In that case therefore, a similar amendment should be made in subsection 3 to align it with the proposed amendment. The amendment in Section 10 (1) and (3) should therefore read as follows:-

(1) "If a supply of imported services is made to any person, that person shall be deemed to have made a taxable supply to himself"

(3) The output tax in respect of a deemed taxable supply under subsection (1) shall be payable at the time of the supply"

129. **Clause 18(a)(i):** Amend clause 18(a)(i) be amended by inserting the words, '*and that such recommendation should not be denied without valid reason and should be given within a week of application*' immediately after the words '*relating to energy*'. This is to include stipulations that will help achieve Kenya's vision of universal access to electricity by 2022 get exemptions as efficiently and effectively as possible.

130. The Committee observed that the above proposal by KEPSA is an administrative issue and should not be legislated. In addition, the processing of exemption depends on the submission of all the requisite documentation. The Committee therefore rejected the proposal by KEPSA.

131. **Clause 18(a)(iii) number 106:** Zero rating of agricultural pest control products to be reinstated in Part A of the Second Schedule to the VAT Act as it was in the Finance Act, 2017 or an agreed/negotiated rate of maybe 4% or 8% VAT on agricultural pest control products be inserted in Part A of the Second Schedule of the VAT Act. Exempt status still leads to increase in the prices of agricultural pest control products resulting in high prices of farm produce.
132. The Committee supported the proposal to zero rate agricultural pest control products so as to support farmers and the food security pillar.
- 132.2 **Clause 23(a)(i).** Reversion to the single tier specific excise structure which will be applied to filtered cigarettes post the 2019/2020 inflation adjustment at the base rate of Kshs. 2630 mille for any excise increase in 2019. The proposed amendment in the Finance Bill, 2019 will encourage the smuggling of illicit cigarettes leading to a loss of revenue by government.
133. The Committee observed that taxation of tobacco products is the low compared to the commitment made on the Framework Convention on Tobacco Control which Kenya has ratified. The proposed increase in excise duty on tobacco products is move towards that commitment. Measures to address counterfeit and illicit products are administrative and besides illicit trade can exist even where the tax rates are the same across the region.
- The Committee therefore did not support the proposal to revert to single tier specific excise on filtered cigarettes. The Committee also proposed further increase in excise to tobacco products and wines and spirits.
134. **Clause 23(b):** Amend clause 23 (b) to ensure a zero percent on amount wagered as the player (punter) currently pays WHT on winnings. The proposed tax is punitive to the punter and is double taxation as they are already being charged WHT. In addition, the tax is charged on the amount wagered which means that a customer is charged even before they place a wager.
135. The Committee rejected the proposal to remove excise duty on amount wagered as the tax is meant to address negative externalities as a result of betting.
136. **Clause 34(a):** Amend Clause 34 (a) to provide for differentiated application of Import Declaration Fee (IDF) that would ensure creation of a schedule of goods that would be eligible for 1.5%, 2% and 3.5% rates respectively. They further proposed that Part A of the Second Schedule to the Miscellaneous Fees and Levies should also include solar products and fertilizers. They stated that an increase in IDF on fertilizers would result to an increase in cost of fertilizer thereby affecting growth in the agricultural sector.
137. The Committee rejected the proposal by KEPSA as the proposed incentive in the Bill targets approved manufactured and not specific goods.

138. **Clause 36:** Amend clause 36 to provide that the Commissioner shall refund the levy on the written application of a **registered/licensed manufacturer** where the Commissioner is satisfied that the levy was paid in respect of illuminating kerosene that has subsequently been used to manufacture paint, resin or shoe polish. They stated that manufacturers of paint and shoe polish usually procure kerosene from oil marketers authorized by the Government to import kerosene. In this regard, the refund application should be made by the manufacturer and not the importer since it is the manufacturer that ultimately bears the levy.
139. The Committee supported the proposed further amendment as it will ensure that refund is applied to registered/ licenced manufacturers of paint, resin and shoe polish as opposed to importers of illuminating kerosene as the levy is borne by the manufacturer.
140. **Clause 46:** Amend clause 46 (Retirement Benefits Act) by deleting the word '*twelve (12) months*' and replacing with the word '*three (3) year*'. They justified their proposal by stating that the provision as contained in the Finance Bill, 2019 would pose a great challenge especially for the insurance companies because guaranteed funds are normally held in a pool and assets are not in the name of individual schemes. It is for this reason therefore a longer period of funds withdrawal would be required to in cases where one scheme wants to transfer their fund out of the pool so as to protect the investments if the remaining members if the pool. The requirement to transfer funds for withdrawing schemes within one year (as per the Bill) would mean liquidation of long-term investment of the pool in order to pay off the withdrawing scheme thereby exposing the remaining members of the guaranteed fund pool.
141. The guaranteed funds invest in long term investments including properties and long-term bonds. This therefore meant that if the Bill is enacted it would mean that the properties and the long term bonds would have to be sold for liquidity hence interference with the investment policies and strategies of the insurance companies from long term to short term which would in turn negatively affect the investment yields. If the Bill is enacted with the provision, it would mean that insurance companies would no longer be able to give guarantees on retirement fund as they would have to invest in short term instruments to honour the short-term withdrawal periods. In addition, the Life Insurance Company assumes risk as it is within its core business if risk taking by investing in long term assets hence the proposal for the transfer of the funds within one year would negatively impact the business.
142. The Committee rejected the above proposals by KEPSA by observing that though not legislated , the pension fund managers have been requiring withdrawal of funds out of asset class upon termination to be done within three years failure to which a penalty is levied equal to 25 % of the value of the funds being transferred. This adversely affect the benefits accruing to pensioners. The proposed amendment in the Bill is meant to shorten the period for transferring the fund out of the asset class to twelve (12) months or a shorter period that may be specified in the instruments of appointment. The Committee further observed that extending the period to three years will negatively affect the pensioners.

### 3.8 EAST AFRICA PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION

143. The East Africa Private Equity and Venture Capital Association (EAVCA) is an umbrella association that represents private equity and venture capital funds established to facilitate ease of investment across East Africa and to build awareness of private capital as an alternative for business funding needs.

144. Clause 9: An amendment to section 34 of the Income Tax Act Cap 470 sub-section 1 paragraph j, *'the Act remains unchanged with a cap of five percent for capital gains tax maintained'*. Upward adjustment to Capital Gains Tax reduces Kenya's competitiveness as a hub for international private equity and venture capital investment with an increase in regulatory risk allocated to Kenyan investments.

145. The Committee supported the proposal by EAVCA as an increase in CGT will negatively affect the competitive edge of Kenya as an international hub.

### 3.9 AGROCHEMICALS ASSOCIATION OF KENYA

146. **Zero rating of agricultural pest control products (clause 18):** The Agro-chemicals Association of Kenya was opposed to the making of pest control products VAT exempt and instead proposed that they should be zero rated. They stated that tax exemption denies the manufacturers the opportunity to claim the tax incurred on inputs thus pass the same to the final consumers who are farmers. Ultimately, the tax is passed to the consumers through increased prices of farm produce

147. The Committee supported the proposal to zero rate of agricultural pest control products which is currently at stand rate of 16 %.

### 3.10 EAST AFRICAN FORUM FOR ALTERNATIVE INVESTMENTS AND NDATA NI ENTERPRISES COMPANY LIMITED

148. The Forum proposed the following amendments with a view of mobilizing capital from the private sector into real estate: -

#### Section 22C (8) of the ITA

149. Amend the section to read, *'approved institution means a bank or financial institution registered under the Banking Act, an insurance company registered under the Insurance Act, a building society registered under the Building Societies Act and a Fund Manager registered under the Capital Markets Act'*. This amendment will expand the meaning of approved institution that hold deposits intended for the Home Ownership Savings Plan (HOSP) to include Fund Managers.

#### Section 22C (4)

150. Amend the section to read, *'deposits in a registered home ownership savings plan shall be invested in accordance with the prudential guidelines issued by CBK and other investment guidelines as under the regulations provided by the Capital Markets Authority'*. This will include investment guidelines provided by the CMA Regulations in addition to the prudential guidelines issued by CBK to regulate investment of deposits under a registered HOSP.

151. The Committee supported the proposals as it will also bring on board other players mobilise funds for purpose of HOSP.

### **3.11 NAIROBI SECURITIES EXCHANGE (NSE) AND KENYA ASSOCIATION OF STOCKBROKERS AND INVESTMENT BANKS (KASIB)**

152. NSE and KASIB presented a joint memorandum by proposing the following amendments to the Bill: -

153. **Section 10 of the Stamp Duty Act:** An amendment to Section 10 of the Stamp Duty Act to by deleting the words '*or marketable security*'. They supported their proposal by stating that payment of Stamp Duty on contract notes for marketable securities like Government bonds and derivative contracts will be untenable because such contracts are typically very large in nature and imposing such a duty on them will make them expensive and unattractive to investors. The Government will therefore be unable to raise money through the issuance of bonds. In addition, entering into equity derivatives transactions does not attract stamp duty as a derivative contract does not prefer and actual title of an asset. Globally, if an equity derivatives transaction in respect of stock is physically settled, share transfers will be involved and stamp duty may be charged at on the higher of the consideration or market value of the shares, on the instrument of transfer. If the transaction is cash-settled, it will not attract stamp duty (as a derivative does not fall within the definition of a stock in the relevant statute).

154. The Committee observed that the proposal by NSE required deeper engagement between the CMA, Ministry of Lands, the National Treasury and the KRA. The reference to marketable securities in the current provision is meant to support the development of the capital markets by encouraging listing of securities at the NSE. The Committee therefore rejected the proposal to allow engagement amongst the aforementioned parties.

155. **Exemption from Requirement of PIN (clause 24):** An amendment to clause 24 by inserting the following new subsection immediately after sub-section 5-

*(5A) The Commissioner may upon receipt of an application made by or on behalf of any person or class of persons, exempt such person or class of persons from the requirement for a PIN for any of the transactions specified in the First Schedule.*

*(5B) Any non-resident person or class of persons trading in shares and marketable securities that are listed at a securities exchange shall be exempt from the requirement for a PIN of such transactions.*

156. The requirement that foreign investors who invest in shares and marketable securities at a licensed securities exchange must have a PIN shall discourage trade and foreign investment. The requirement shall make Kenyan marketable securities across the world. The requirement is also impracticable because of the large number of foreign investors that invest in these marketable securities.

157. With regards to above proposals, the Committee observed that the issue proposed by NSE/KASIB has been adequately in the proposed exemption from PIN requirement by empowering the Commissioner to exempt from the requirement of a PIN, specific circumstances. A blanket exemption for all non-resident persons trading in shares and marketable securities would lead to a

risk of revenue loss. The Committee therefore did not support the proposal by NSE/ KASIB.

158. **Clause 25:** An amendment in clause 25 by deleting the words '*the growth segment*' and inserting the words '*licensed securities exchange*'.
159. A new amendment to delete the words 'the growth segment of' and wherever it appears and insert the word '*licensed*' immediately after the words '*lists on a*'. This is because there are many large and established companies that would be attracted to list on the stock market if this waiver would be extended to them. If this companies list, they will in turn be able to raise capital to enable them expand their businesses and increase their productivity.
160. The Committee observed that the proposed exemption in the Bill was targeted to micro and medium tax payers who list on the growth segment. The policy measure was not meant for all tax payer. Based on the observations, the Committee rejected the proposal by NSE and KASIB.
161. **Paragraph 3(c) of the Third Schedule Part B of ITA:** Amend the section by deleting the word '*forty*' and replacing it with the word '*ten*'. The proposed amendment will encourage companies to list at the Nairobi Securities Exchange.
162. The amendment was not accepted by the Committee since no company was paying corporation tax at 40% and further reduction to 10 % will lead to loss of revenue. The Committee therefore rejected the proposal by NSE and KASIB.
163. **Exemption of the green economy and climate bonds from income tax (Paragraph 18 of the First Schedule):** Amend ITA in paragraph 18 of the First Schedule by inserting the following words immediately after the words funds for infrastructure, '*the green economy and climate bonds*'. All the bonds issued for purposes relating to improving infrastructure and the social well-being of the country are tax exempt except green bonds which were not in existence when the ITA was drafted.
164. The Committee supported the proposal to exempt the green economy and climate bonds from income tax. This is so as to encourage investment into this new sector.
165. **Personal Relief (Section 29(1):** A new amendment to the ITA in the aforementioned section by inserting new sub-clause 29(1)(b), '*an exchange traded fund or*'. They stated that the amendment will encourage the creation and listing of Exchange Traded Funds.
166. The Committee rejected the proposal by NSE and KASIB since security instruments were already exempt from income tax. Where exchange traded fund, which is a portfolio of security instruments, is traded in the NSE will qualify for the exemption.

### 3.12 KENYA PROFESSIONAL CLEANERS ASSOCIATION

167. The Kenya Professional Cleaners Association was opposed to the proposal to subject fees for professional cleaning and fumigation services to 5% WHT. Citing that the introduction of the

WHT will lead to the following negative effects including the creation of tax refund burden for the Government, increased cash flow challenges for players in the sector, increase in prices making the services expensive and thereby to losing clients which eventually to downsizing and winding up of businesses

168. They noted that the main objective of the introduction of the WHT was to increase government revenue through expansion of the tax base. They proposed that the government should make the Association a regulator by law so that they can compel all their members to be tax compliant. This will ensure that everyone in the cleaning industry is a member of the Association and hence pay their taxes.
169. Due to the possibility of high levels of unemployment arising from the introduction of WHT to the cleaning services, the Committee supported the concerns raised by the stakeholders. The Committee has rejected the proposal in the Bill.

### 3.13 EAST AFRICAN TAX AND GOVERNANCE NETWORK

170. In their submission, EATGN recommended that revenue projections should be made based on evaluation and analysis of the sources and its potential to meet the set targets. In order to boost revenue collection, the Government should put measures in place to increase the tax base while providing a friendly business environment. There is need to consider alternative sources of resources especially for the provision of services to citizens. In addition, the National Treasury should plan for public expenditure based on revenue generation capabilities. In this regard, EATGN proposed the following amendments: -
  171. **Complexity of Presumptive Tax (clause 7):** The Bill should simplify the filing of taxes by small businesses especially the Presumptive Tax (PT) without adding an undue burden on small businesses.
  172. The Committee observed that PT is an advance tax to be offset against the Turnover Tax hence it is not a burden to small business. The PT is payable at the rate of 15% of the amount payable for a business permit or trading license issued by a county government. The PT is meant to enforce Turnover Tax.
  173. **Clause 8:** The exemption of investee companies is a move that may deprive the country from attaining maximum revenue collection. Therefore, the proposal should be reversed to the old regime.
  174. The Committee observed that the extension of exemption of real estate investment trust to their SPV which is wholly owned by the real estate investment will support the affordable housing pillar. The proposal by EATGN has not considered that the proposed amendment is to incentivize the sector. The proposal by EATGN was therefore rejected.
  175. **Capital Gains Tax (clause 9):** Need for a clear implementation plan to determine the true value of properties in order to curb tax avoidance. The problem of undervaluation should be

addressed.

176. Due to the concerns raised above, the Committee resolved to retain CGT at the current rate of 5%.
177. **Exemption from income tax on the Ajira Digital Program (clause 12):** Requirement for registration fee as a condition for qualifying for the exemption be dropped. Instead, the Government should establish a system for taxing high income earners (a threshold should be determined through a study of earning patterns) from digital freelance work. The exemption should be maintained for low income earners.
178. The Committee observed that the registration fee is an annual fee of ten thousand hence it's not unaffordable by individuals under the Ajira Digital Programme. Some of the stakeholders cited that the fee can be earned within hours. The proposal for EATGN to remove the registration was not supported by the Committee.
179. **Clause 13:** Companies to qualify for the 15% Corporate Tax due to recycling plastics should also be given a precondition on ensuring they provide job opportunities for the youth, women and persons living with disabilities.
180. The Committee observed that the proposed amendment was meant to provide an incentive to companies intending to operate plastic recycling plants. The proposal to employ youth, women and PWDs can be covered by regulations by CS responsible for Industrialization. The proposal by EATGN was therefore not supported by the Committee.
181. **Zero rating of agricultural pest control products (clause 18):** Zero rating of agricultural pest control products as opposed to exempted status proposed by the Bill. They further stated that unlike exemption, zero-rating will allow producers of pest control products to claim input VAT credits, thereby making the products cheaper.
182. The Committee agreed to the proposal by EATGN as zero rating agricultural pest control products would make pesticides affordable as producers of pest control products would be able to claim input VAT.
183. **Inflation adjustment on petroleum products (clause 23):** To avoid overburdening citizens, the 2018/19 exemption of petroleum products from the inflationary adjustment should be extended to the FY 2019/20 since a VAT of 8% was recently imposed on petroleum products, the Government should consider alternative ways of maximizing revenue collection.
184. **Excise Duty on tobacco (clause 23):** Tax on tobacco should be increased further by 12% to

attain the WHO recommended rate of 70%. The government should introduce a uniform tax rate that gradually moves Kenya to achieve the 70% share of tax in the total retail price of cigarettes. The simulation results indicate the uniform tax rate of Kshs. 2,500 per mille performs better than the current two-tier tax.

185. The Committee supported the above proposal by EATGN as it will support the WHO recommendation.

186. **Reduction of WHT (clause 27):** The reduced WHT to 2% will improve liquidity for many manufacturers and improve cash flow to ensure high productivity in their supply and value chains.

187. **Refund of Anti adulteration levy (clause 36):** Refund on the anti-adulteration levy should also apply to households using kerosene for domestic consumption.

188. The Committee rejected the proposal by EATGN since it was difficult to monitor households to ensure adulteration does not take place. With registered / licensed manufacturers of paint, resin and shoe polish, it is easy to monitor.

189. **Part V of the Tax Procedures Act:** Inclusion of a clause in the Bill to delete section 37B(4) of the Tax Procedures Act seeking to exempt remittances from the provisions of Proceeds of Crime and Anti-Money Laundering Act and other Regulations relating to reporting and investigation of financial transactions.

190. The Committee rejected the above proposal as the exemption is meant to encourage remittances and the only way is to provide amnesty by not subjecting these remittances to POCAMLA.

### 3.14 LAW SOCIETY OF KENYA

191. The Law Society of Kenya (LSK) was opposed to the amendments to clauses 50 and 51 because the proposed amendment was affecting the principal of advocate-client or legal professional privilege applicable to advocates. The subject of legal professional privilege/advocate-client privilege cemented under the law by the evidentiary rule of privilege under the law of evidence and the common law principle adopted under the Judicature Act. Additionally, the proposed amendment impacts several principles, practices and laws. The emerging issues include, confidentiality, role of lawyers, constitutional rights, evidentiary rules, criminal law principles and procedures and the self-regulation of professional bodies.

192. Based on the above concerns raised by the LSK, the Committee resolved to reject the proposed amendment in the Bill to allow the introduction of the amendment Bill to POCAMLA and not through miscellaneous amendments. This will allow extensive public participation.

### 3.15 KENYA BANKERS ASSOCIATION

#### Clause 24

193. KBA supported the proposal in clause 24 regarding giving the Commissioner the discretion to exempt certain persons from the PIN requirement. They recommended that for purposes of uniformity, certainty, and expediency, the law should be amended to include specific classes of persons exempted from PIN requirement in addition to giving the Commissioner the discretion to exempt any other upon application. They noted that the exemption should be expressly provided in the Act.
194. To cure their sentiments on the above-mentioned concern, KBA proposed the following amendment to section 12 (7) of the TPA: -
195. 'The following persons are exempted from the provisions of subsection (3) and the paragraph (11) of the First Schedule: -
- (a) Non-resident persons who invest in/intend to invest in marketable securities in Kenya and whose sole source of income is interest, dividends or capital gains;
  - (b) Non-resident financial institutions with no physical presence in Kenya and licensed by the relevant government or appointed regulator in their home or host country;
  - (c) Non-resident persons opening accounts in Kenya for the sole purpose of making disbursements to resident persons;
  - (d) Privileged persons exempted from taxation under any law; and
  - (e) Any other person or class of persons the Commissioner may deem fit upon application.
196. They further supported the above argument by stating that the above-mentioned category of persons do not have a physical address in Kenya but they invest in the Kenyan capital and money markets through buying and selling of securities. For the foreign investors to undertake their transactions in Kenya, they are required to disburse funds through local banks accounts and instruct local brokers to purchase or sell securities on their behalf. The issuer of the securities also pays dividend, interests or sales proceeds through these banks' accounts. The income such investors earn in Kenya is in respect of dividends , interests and CGT which was subject to WHT at source with an exception of capital gains for listed companies. Therefore, the obligation to deduct and pay the taxes due to KRA is on the local payer. Based on the foregoing, KBA observed that the PIN requirement imposes unnecessary administrative burden for the process as the account holders pose no threat as they would have already been taken through KYC procedures by the banks. There is also no risk for terrorism financing, money laundering as well as proceeds of corruption as they would be flagged in the normal course of business by the banks' compliance units.
197. The Committee observed that the issue proposed KBA has been adequately in the proposed exemption from PIN requirement by empowering the Commissioner to exempt from the requirement of a PIN, specific circumstances. The Committee therefore did not support the proposal by KBA.
198. **Repeal of interest capping law (clause 43):** KBA stated that they were in support of the

repealing of Section 33B of the Banking Act stating that the industry is accountable to the public and the CBK as their primary regulator on the commitments they had made prior to the capping law being enacted. They stated that they were committed to maintaining the current performing customers' loan contracts within the existing contractual framework and it was only new loan contracts that will be risk-priced post the repeal of the interest rate capping law. They emphasised that the repeal of the law will not disadvantage the existing borrowers that have the benefit of a good track record and the existing pricing reflect their risk profile.

199. The Committee rejected the proposed amendment in the Bill and observed that the banking industry continued to be profitable. The Committee further observed that the credit to SMEs has not been due to the capping of interest but to government increased domestic borrowing. The Committee noted that the ruling at the High Court gave direction as to how Section 33B could be amended to avoid nullification. The Committee therefore agreed to support Hon. Jude Njomo's proposed amendment under the Banking (Amendment) Bill, 2019.

### 3.16 PRICEWATERHOUSECOOPERS LIMITED

200. PWC proposed that Excise Duty Act be amended in Part III of the First Schedule to define the term return on loan as '*return on loan means charges or proceeds 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 commitment or service fee paid in respect of any loan or credit*'. Further, Excise Duty Act exempts return on loan and interest from the excise duty charge. However, the Act does not define the phrase return on loan or interest. This has led to uncertainty on what constitutes return on loan or interest. They stated that the lack of definition of the term means that ordinary meaning is reverted to and the general practice adopted in the definition of the phrase. This has led to many disputes between KRA and taxpayers.

201. They also proposed Second Schedule to the Excise Duty Act, Part be amended by introducing a new paragraph to the Schedule, '*1(c) commission earned from interbank transactions arising from collaboration with card companies and other payment platform operators*'.

202. They stated that the commissions earned by banks from the above sources are currently subject to excise duty. However, excise duty should only be applicable in business to end customer transactions.

203. PWC recommended an amendment to the First Schedule to the Excise Duty Act, Part III (Interpretation of the Schedule) on the definition of other fees as follows, '*other fees includes any fees, charges or commissions charged by financial institutions relating to their licensed financial activities only, but does not include interest on loan or return on loan or an insurance premium or premium based or related commissions*'. Currently, the definition of the term 'other fees' under the Excise Duty Act does not exclude non-financial services offered by banks. As a result, the services are subject to excise duty if rendered by banks but excise duty is not applicable where the services are rendered by non-banking institutions.

204. **Introduction of a new section 14A to the Excise Duty Act:** PWC proposed insertion of a

new section immediately after section 14 to read as follows, '*where excise duty has been incurred by a licensed person in respect of excisable services which form part of input for further supply of excisable services, the excise duty paid on these services shall be offset against the excise duty payable on the final supply of service*'. There is no provision in the Excise Duty Act for offsetting excise duty incurred on purchase of services against excise duty charged on sale of services (rebates) as the case with excisable goods.

205. **Section 7A of the Income Tax Act:** PWC further recommended introduction of the following new paragraph at the end of the proviso in section 4 of the Finance Bill, 2019, '*and any dividends tax account balances as at 31<sup>st</sup> December, 2018 shall be carried forward until reserves prior to 1<sup>st</sup> January, 2019 are fully utilised*'.
206. They justified the above recommendation by stating that forfeiting of the dividend account balances as at 31<sup>st</sup> December, 2018 would translate to double taxation at the point of distribution of dividends from past retained earnings which had been subjected to income tax under the previous section 7A of the Income Tax Act.
207. **Section 7A of the Income Tax Act:** They proposed introduction of a new subclause in the Finance Bill, 2019 to read as follows, '*the Commissioner may issue guidelines for purposes of this section*'. PWC stated that taxpayer should be allowed to track taxes paid from year one to three so that the same is used to mitigate the impact of compensating tax that may arise in year four. As such, there is need to track the cumulative taxes paid by a company. In the absence of any tracking mechanism provided for in the law, double taxation would arise through the compensating tax provision.
208. They proposed an amendment to clauses 6 (c), 13(b)(iii) and (iv) by inserting the words '*excluding advertising services offered by established media houses*' after the words '*sales promotion and marketing and advertising services*' and by inserting the words '*excluding in-flight catering services*' after the words '*catering services offered outside hotel premises*'. The proposed amendment is intended to exclude advertising services offered by established media houses and in-flight catering services from withholding tax. They stated that if the proposal to introduce WHT on payments made in relation to marketing and advertising services would adversely affect advertising companies as they would be required to deduct 5 % WHT. The above change would have adverse cash flow and also cost implication of the advertising companies because most of the customers such as classified advertising customers may not be registered for tax. This means that if such customers choose to withhold tax on payments made to the advertising companies, the companies would not be able to claim tax credit because WHT would not be reflected on KRA's iTax and the advertising company would therefore be required to pay the resulting tax cost. The same scenario would replicate even for the registered tax payers who may chose not to remit the tax withheld. This would result in additional cost to the advertising company and revenue loss to KRA, thereby rendering the tax proposal ineffective.
209. They proposed an alternative provision to cover the intended revenue by amending clause 10(b) by inserting the words '*(the aggregate value of which is twenty-four thousand shillings or more in a month)*' after the words '*sales promotion, and marketing and advertising services*'.

### 3.17 KPMG KENYA

210. KPMG Kenya proposed the following amendments to the Bill: -

211. **Amendment to section 3 of the ITA (clause 3):** Introduces of a clause detailing the point at which 'revenue accrues or may be deemed to have accrued in Kenya or is taxable'. This is because the question on creation of value remains critical in the taxation of the digital economy. It is therefore important that the taxing law specifies the tax point and at what point income will be deemed to accrue in Kenya. Failure to do so will result in a situation where the provisions are not implementable.
212. The Committee observed that revenue is considered to have accrued in Kenya if it is earned in Kenya as provided for in section 3 of ITA. In addition, income may be deemed to have accrued in Kenya when the income is accounted in Kenya although it is not earned in Kenya. The point at which it is taxable is the point of payment /supply whichever comes earlier. In that case, the Committee did not the proposal by KPMG.
213. **Increase in Capital Gains Tax:** An amendment to section 34 of the ITA to introduce a clause on indexation allowing the incorporation of the inflation element while computing capital gains. Indexation of gains for Capital Gains Tax purposes is best practice and jurisdictions like UK and Uganda have indexation provisions. This is because in taxing capital gains, the current law allows for the deduction of costs incidental to making the property ready for sale. Similarly, for purposes of taxation, the law ought to make provision for indexation which will then ensure the resulting gain is accurate and reflective of inflation.
214. The Committee did not support indexation in calculation of CGT as it introduces complexities in tax calculation. The Committee proposed retention of CGT at the current rate of 5%.
215. **Amendment to Head B of the Third Schedule to the ITA (clause 13):** Amend clause 3 reflect that the 15% rate can be enjoyed for 5 years either from 1<sup>st</sup> January, 2020 or from the year of commencement whichever is applicable. This is because there are companies that have already been in operation within the plastic recycling space and should also benefit from this incentive. Availing the incentive to existing companies also levels the competitive field for all players.
216. The Committee rejected the proposal by KPMG to include companies that have already set up plastic recycling plants to enjoy reduced rate of 15 % corporation tax as opposed to the regular rate of 30 %. The Committee observed that the proposal is an incentive to encourage new investments in plastic recycling hence cannot be applied to existing companies in the same line of business.
217. **Amendment to section 2 of the VAT Act:** Incorporation of a clause to provide guidance on how non-VAT non-registered taxpayers will account for VAT on imported services. This is because the implementation of this proposal is almost impossible without clear guidelines on accounting for reverse charge VAT by unregistered persons. Such a lacuna will lead to numerous disputes between taxpayers and KRA.
218. **Zero rating Amendment to the First Schedule of the VAT Act (exempt supplies):** The Bill should be amended to list the supply of the aforementioned products as zero-rated. This is

because zero-rating inputs is more beneficial to the end consumer when compared to exempting inputs. When a supply is exempt, producers are not able to claim input VAT and thus generally load the cost of the unclaimed input VAT onto the cost of the end product passing this along to the ultimate consumer.

219. The Committee noted the above concerns and therefore chose to adhere to the Zero-rating policy which is to restrict zero rate to exports only in order to maintain a few items in the zero rate schedule for exceptional circumstances.

### 3.18 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

220. ICPAK submitted as follows:-

221. **Introduction of income tax on digital marketplace** (clause 3): The government should expedite enactment of a new Income Tax Legislation that among other items, defines and provides a broader framework for taxation of digital economy. The Income Tax Regime should facilitate the development of an overarching mechanism to tax intangibles, provide guidance on transfer pricing and benchmarking against global standards such as BEPS Action plan. ICPAK further noted the need for collaboration with other global actors on digital taxation. This includes development of global policy on digital taxation. Benchmark against global best practice/conform to shifting global environment and ever-changing technology. They observed that fragmented approach on this complex matter may therefore not yield result.
222. The Committee noted that taxation should be implemented and if there are any challenges, they should be addressed in subsequent review of ITA.
223. **Capital Gains Tax** (clause 9): The rate of CGT has more than doubled. With the understanding that the intention of government is to raise more revenues, there is need for a clear framework on how this should be collected. They proposed that the government should also consider providing for indexation allowance which has been implemented in other countries like Uganda and Spain.
224. Clause 110(a) (ii): ICPAK proposed the deletion of clause 10(a)(ii) of the Bill. They observed that while it could spur growth of local insurance companies, there may be some limitations in the capacity of local insurance companies having to cover risks associated with certain sectors such as aviation, marine and extractive industries.
225. The Committee observed that the proposed amendment in the Bill is intended to bring fairness and equity between companies which operate insurance / reinsurance business and are taxed and the non-resident counterparts who do the same and have not been subjected to tax over the years on the income they derive from Kenya. The Committee therefore did not support the concerns raised by ICPAK in clause 10 (a) (iii) of the Bill.
226. **Exemption from income tax for the Ajira Digital Programme** (clause 12): Amend clause 12(58)(a) to read:-  
*'the individual shall qualify for the exemption upon payment of registration fee of Kshs. 10,000.*

227. To make it affordable and encourage a huge percentage of the youth to take up the program. This amendment is intended to make the registration fee one off presumably to make it affordable to the youth.
228. The Committee rejected the proposal by ICPAK as the registration fee is in lieu of tax and therefore should be charged annually.
229. **Introduction of VAT to the digital marketplace (clause 16):** ICPAK stated that the Government should provide specific guidelines on how the digital economy will be taxed as it is not provided in the VAT Act. This will ensure there is clarity in taxation.
230. On the above concern, the Committee observed that Section 67 of VAT Act has empowered the CS to make regulations for the better carrying out of the provision and therefore there is no need for this amendment proposed by ICPAK. The CS will make the regulations for the digital marketplace. The Committee therefore rejected the proposal by ICPAK.
231. **Zero rating of inputs for electric accumulators and separators including lead battery separator rolls (Clause 18 First Schedule (ii)):** VAT on the aforementioned inputs should remain zero rated so that manufacturers can claim their input VAT. To enable the manufacturing sector expand and grow to effectively contribute to the economy.
232. The Committee supported the amendment as the move to zero rate has only been in existence for a year since the amendment was done through the Finance Act, 2018. This will ensure that there is a predictable tax regime.
233. **Zero rating of Agricultural pest control products (clause 18):** The government should consider zero rating of agricultural pest control products rather than exemption. Exemptions at times increase rather than reduce cost of products.
- The Committee supported the amendment as the move to zero rate.
234. **Zero rating on locally manufactured motherboards and their components :** Inasmuch as the proposed exemption is a measure to enhance the competitive edge of computers' assembly so as boost ICT in as Kenya and to also contribute to the growth of the economy, they supported zero-rating of locally manufactured motherboards and their components rather than exemption. Exemption does not necessarily lead to cheaper products. Manufacturers might pass the cost to the consumers since they cannot claim input VAT.
235. The Committee did not support the proposal by ICPAK as the zero-rate policy is to be restricted to exports only and exceptional items.
236. **Exemption of VAT on plant, machinery and equipment used in the construction of a plastics recycling plant (clause 18).** The move to exempt VAT on plant machinery and equipment used in the construction of a plastics recycling plant. They observed that this will encourage the recycling of plastic wastes and enforce the ban in the conservation of the environment. It will also promote plastic waste management hence reduce pollution and provide a clean environment for the health of Kenyans.

237. Imposition of excise duty tax on betting (**clause 21**): Excise duty on betting should be harmonised against all taxes. They supported the move to excise duty on betting activities as it will expand the excise revenue base whilst reducing the negative social effects of betting and addiction to betting activities on the vulnerable youths.
238. The Committee opposed to the harmonisation of excise duty since VAT and excise duty are different taxes and the penalties address specific challenges.
239. **Exemption from requirement of PIN (clause 24)**: Amendment proposed in clause 24 will enhance and improve Kenya's ease of doing business besides the imminent influx of Direct Foreign Investment. Foreigners and residents will open bank accounts with ease without the requirement of a PIN.
240. **Clause 25**: ICPAK supported the amendment in clause as it was meant to increase the profile and liquidity of small and medium sized firms to raise the necessary capital to meet their needs within a regulated environment. However, they noted the need to harmonise amnesty for companies in addition to the ones listed in the growth segment.
241. The Committee observed that the amendment in clause 25 of the Bill is targeted to micro and medium tax payers who list on the growth segment . The policy measure was not intended for all taxpayers. The Committee therefore rejected the proposal by ICPAK.
242. **Reduction of WHT (clause 27)** : ICPAK supported the proposal to reduce WHT VAT to 2 % since the current rate of 6% has caused cashflow and liquidity problems to taxpayers who wouldn't utilise their credits.
243. **Additional transactions requiring PIN (clause 32)**: ICPAK supported the requirement for a PIN for registration and renewal of membership by professional bodies. The move will help in bringing all the active members of professional bodies together with those who are self-employed into the tax net. This will ultimately increase tax revenues.
244. **Repeal of interest cap law (clause 43)**: Deletion of the proposed amendment in clause 43. They noted that to free up more credit to SME, the government should reduce domestic borrowing. There is need for consolidation of the banking sector by ensuring that banks are encouraged to consolidate. In addition, ICPAK stated that there is need for more consultation by industry players to come up with monetary policies that are market driven and will provide access to credit to all.
245. **Clause 49**: Amend clause 49 by deleting as it was undermining the mandate of the Institute.

247. The Committee supported the proposed amendment by ICPAK.

246. **Clause 51:** ICPAK supported the move to incorporate all the professionals within the framework of curbing illicit transactions and financial flows. This will ensure fairness, equity and transparency in all financial transactions involved.

247. The Committee rejected the proposal to allow the amendment to be carried through a substantive amendment Bill and not miscellaneous amendments.

### **ADDITIONAL AMENDMENTS TO THE ACCOUNTANTS ACT**

ICPAK proposed the following new amendments to the Accountants Act: -

#### **Section 8(a)**

248. Amend Section 8 (a) by rewording it as follows, '*promote standards of professional competence and practice in accountancy*'. This is to align with the requirement of the Companies Act to prescribe standards in accountancy and also to enhance regulation of the accountancy profession by prescribing the required international standards.

249. The Committee supported the proposal for the new amendment as here-above. This is to ensure that the Accountants Act is aligned to the Companies Act and to ensure that the Institute is responsible for promote standards of professional competence and practice in accountancy

250. Amend Section 19 (2) by deleting the section and insert the following new paragraph, '*(a) is employed or salaried employee engaged in the practice of accountancy (b) Trainee and Associate members employed and engaged in the practice of accountancy shall not hold themselves as accountants*'. This is to recognise the vital role the professionals in employment play in the financial management and reporting on whose work the auditors rely on and it will enable the Institute enhance compliance and regulation.

251. Amend Section 19 in order to enable members and the Institute to tame quacks operating as accountants and encourage the use of qualified accountants in the discharge of the finance, auditing and accounts functions both in private and public sector.

252. Amend Section 32 in order to deal with the increasing number of cases of professional malpractice and economy wide vice, the Institute being experts in accountancy matters would like to investigate matters of public interest and provide a report thereof to enhance compliance and strict adherence to controls thereby assist in fighting corruption and fraud in institutions.

253. The Committee supported the above amendments as they will bring order in the practice of accountancy and ensure accounting standard are observed

### **3.19 ASSOCIATION OF WOMEN ACCOUNTANTS OF KENYA( AWAK)**

254. AWAK proposed the following amendment: -

255. Amend clause 49 by deleting the proposed amendment. The Association opposed the removal of the requirement for accountancy students to register with ICPAK before qualifying as accountants. They recommended that the Accountants Act should be retained as it currently is. They opposed the amendment because Kenya needs expertise in the accountancy profession with requisite skills and competence. Such expertise should be in conformity with the international best practice to allow for global mobility of Kenyan accountants.
256. The Committee supported the above proposal and agreed to retain the provision as it is in the Act. This will ensure that the accountancy students are guided through the standards way before even qualifying with CPA(K). This will give them a competitive edge globally as they will be exposed to international accounting standard.

### **3.20 KENYA ASSOCIATION OF MANUFACTURERS**

257. The Association proposed the following amendments: -

#### **Section 47(5) of the Tax Procedures Act**

258. Amend the section as follows, *'the Commissioner shall repay the overpaid tax within a period of 60 days from the date of application, failure to which the amount due shall attract an interest of 2% per month or part thereof of such unpaid amount after the period of 60 days'*. The amount held by KRA in VAT refunds has led manufacturers to incur huge costs as they are forced to absorb these costs by borrowing loans at high interest rates from banks.
259. The Committee observed that the reduction of the period within which the overpaid tax would be repaid would affect the government funding negatively. KRA collects the revenue which is transferred to exchequer and withdrawal of such funds for overpaid would certainly require a longer period than sixty days. The proposal by KAM was therefore rejected.

#### **Clause 9**

260. Amend clause 9 by deleting the proposed amendment. This is in order to maintain the original provision of 5% capital gains tax. The proposal will double the CGT rate and impact negatively on businesses including the manufacturing sector.
261. The Committee considered the proposal and agreed with the proposal to retain CGT at the current rate 5%.

#### **Clause 18**

262. Amend clause 18 by inserting the following paragraph under Second Schedule of the VAT Act, *'Agricultural pest control products'*. Zero rating of agricultural pest control products will make them more affordable hence enable the agriculture industry to thrive.
263. The Committee agreed with the proposal to zero rate Agricultural pest control products as the current standard VAT rate of 16 % has resulted in increased price in pesticides. With the zero rate manufacturers will be able to claim input tax on raw materials.

## **Second Schedule of the VAT Act**

264. Amend the Second Schedule of the VAT Act by deleting the words, '*sanitary towels*'. Imported finished sanitary towels are zero-rated for VAT while locally manufactured sanitary towels are VAT exempted, a situation that makes manufacturers unable to claim input VAT hence higher costs this results in uneven playing field between imported and locally manufactured sanitary towels in terms of cost.

## **First Schedule, Part 1 of the VAT Act**

265. Amend the First Schedule of the VAT Act by inserting the following words, '*locally manufactured sanitary towels*'. This is to reduce the cost of locally manufactured sanitary towels.
266. The Committee did not support the proposal by KAM as the zero rate policy is to be restricted to exports only and exceptional items. Locally manufactured sanitary will continue enjoying the VAT exemption.

## **Clause 23**

267. Amend the clause by deleting the words, '*school buses for use by public schools*'. Kenya currently has installed capacity of 30,000 vehicles yet the firms currently operate at 40% capacity only. This capacity needs can be increased if the excise duty is imposed on imported fully built vehicles under chapter 87. This will increase the competitiveness of the local products and incentivize investment in local assembly. There is sufficient capacity to produce school buses in the country.

268. All lines of motorcycles should be included in the payment of excise duty.

## **First Schedule to the Excise Duty Act**

269. Inclusion of duty of KSh. 20 per kg on sugar confectionery by introducing new provisions as follows, '*in Part 1 – Imported sugar confectionery of tariff heading 17.04 @ KSh. 20 per kg*' and '*in Part 1 – Imported white chocolate, chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, 1806.90.00 @ KSh. 200 per kg*'. The proposed amendment will go a long way in supporting the local industries in sustaining the current employment and creating more employment opportunities through planned investments, it will be a progressive tax because imported confectionery and chocolates target high end consumers, enhance value chain integration and it will be in sync with the spirit of the Big 4 Agenda.
270. The Committee supported the inclusion of the imported sugar confectionery into the zero rate regime. This is to ensure that manufacturers remain competitive within the region.

## **Clause 37**

271. Amend clause 37 by deleting. The proposed tax will affect investments of tanners in Kenya and business development.

272. The Committee supported the deletion which means the proposed schedule will not be subjected to export levy. This will enhance the importation of the wet blue hide/ skin to other countries. Currently, Kenya has no capacity to process hides and skins and therefore imposition of the export levy will negatively affect the sector. The Government should first prioritize training of leather specialists before moving to value addition of hides and skins.

### 3.21 KENYA WINE AGENCIES LIMITED

273. Kenya Wine Agencies Limited (KWAL) proposed an amendment to clause 23(a)(i) by deleting the entire 8<sup>th</sup> row on the table that reads, '*wines including fortified wines and other alcoholic beverages obtained by fermentation of fruits – shs. 181 per litre*'. They proposed a reversal of the proposed tax and replacing it by a specific tax that is based on inflation similar to the beer and cider category in order to create a predictable tax environment and to protect the budding wine industry. The proposed 15% excise tax increment on wines in the 2019/20 budget proposal represents an acute increase of approximately 300% from the current inflation-pegged specific tax rate of approximately 5.2%.

274. They stated that tax policy should uniquely treat different industry players according to their capabilities and constraints to ensure optimum tax efficiency. They proposed that for this to be effected, wine imported to Kenya should not be taxed at the same rate as finished/packaged imported wine ready for consumption. They advocated for producer type-specific taxation policies in order to consider different producer classes. The provision reducing custom tax on imported bulk wine for local production of finished wines in Kenya will propel growth in local manufacturing industries and attendant economic benefits.

275. The Committee did not support the concerns raised by KWAL as excise duty chargeable on the wines is mainly to used to correct the negative externalities.

### 3.22 KENYA BREWERIES LIMITED/UDV (KENYA) LIMITED

276. EABL proposed the following amendments in:-

277. Section 10 of the Excise Duty Act to ensure that the period of inflation adjustment on specific excise rates is moved from annual to biennial. This is because increasing the tax annually has brought in the risk of hyperinflation, exacerbated affordability challenges and has led to an increase in contraband bottle beer in trade.

278. The Committee observed that the inflation adjustment is meant to take into account general increases in prices which occur annually. The law aligns general price increase with the specific rates of excise duty. Based on the observations, the Committee rejected the proposal by EABL to apply inflation adjustment biannually as opposed to annually.

279. Clause 23 by deleting the words, '*spirits of undenatured ethy alcohol; spirits liquers and other spirituous beverages of alcoholic strength exceeding 10%*'. They stated that any excise duty increase outside the inflation adjustment will lead to increase in prices of spirits with devastating impact on the class of consumers who purchase mainstream and value spirits.

280. Clause 19 by deleting the words, '*the supply of denatured ethanol*'. They stated that the exemption of denatured ethanol from VAT could be an avenue for importation of contraband/illicit ethanol which will not only be used in the manufacture of illicit alcohol but also endanger consumers' health. They stated that it was not easy to distinguish denatured ethanol from pure ethanol hence some importers could take advantage of this.

281. The Committee rejected the proposal as the control of influx of illegal ethanol is a matter that can be dealt with administratively. The denatured ethanol is used in most for cooking in most households and hence the government efforts to encourage use of clean energy would be interfered with.

### **3.23 ASSOCIATION OF GAMING OPERATORS OF KENYA**

282. The Association of Gaming Operators of Kenya was opposed to the proposal to subject betting stakes to 10% excise duty. They proposed that the government could collect the revenue by increasing the rate of betting tax from the current 15% or increasing the Excise Duty on transactional fees charged on mobile money deposits to betting wallets which is 12.5%. They also stated that there was need for proper interpretation of the definition of winnings to mean the net positive difference between payouts made and stakes placed in a given month. This will ensure an effective tax policy with regards to amounts won, which will consequently spur revenue growth and taxes remitted to KRA.

283. The Committee observed that betting tax and excise duty tax were meant to address different issues hence it was impossible to treat these two taxes as the same. In order to deal with the negative externalities related to betting, the tax chargeable is excise duty.

### **3.24 THE JOCKEY CLUB OF KENYA**

284. The Jockey Club proposed that the definition of 'winnings' should be amended to mean the amount won by a punter. This is because it is difficult to operationalize the tax at the retail level. They also proposed that a threshold of the amount on which the tax is paid is set.

### **3.26 MASTERMIND TOBACCO (K) LIMITED AND BRITISH AMERICAN TOBACCO KENYA**

The above-mentioned companies presented the following proposed amendments: -

#### **Clause 23(a)(i)**

285. Amend clause 23 (a) (i) by deleting the first 6 paragraphs as this will increase the cost of cigarettes in the country and encourage smuggling of cigarettes into the country from other countries with low taxes.

286. The Committee observed that taxation of tobacco products is considered to be the low compared to the commitment made on the Framework Convention on Tobacco Control which Kenya has ratified. The proposed increase in excise duty on tobacco products is move towards that commitment. Measures to address counterfeit and illicit products are

administrative and besides illicit trade can exist even where the tax rates are the same across the region.

### **3.27 KENYA AIRWAYS**

287. Kenya Airways proposed the following amendments: -

#### **Miscellaneous Fees and Levies Act**

288. Amend the second schedule Part A on goods exempted from import declaration fees to include aircraft engines, aircraft spare parts and Jet A1 fuel because payment of these taxes makes Kenyan carriers uncompetitive. This increases cost of spare parts compared to airlines from different countries that do not pay the charges.
289. Amend second schedule Part B-Goods exempted from Rail Development Levy to include aircraft, aircraft engines, aircraft spare parts and Jet A1 fuel due to loss of Maintenance, repair Operations to Middle East carriers and Ethiopian Airlines leading to brain drain of experts and highly trained technical staff to other countries.
290. Amend the second schedule Part B on goods exempted from Rail Development Levy to include goods destined for approved Special Economic Zones in order to harmonise tax exemption for free zones in Kenya to the international standards which are exempted from all taxes and levies.

#### **Excise Duty Act**

291. Amend tariff 2710.19.21 kerosene type jet fuel per 1000l@20degC from KSh. 5755.00 to KSh. 0 (nil). Exempting Jet A 1 fuel from excise duty will reduce the cost of travel hence positioning Kenya as an attractive and preferred tourist destination.

#### **VAT on petroleum products**

292. Amend the first schedule to the VAT Act to include Jet A1 fuel. Fuel and lubricants should be exempted from all taxes as per "Document 8632-C/968 ICAO's Policies on Taxation in the field of International Air Transport".

#### **Custom Duty**

293. Amend Part B of the First Schedule to the East African Community Customs Management Act to include any aircraft spare parts, accessories and utilities exclusively used in aircraft to be exempted from duties and other taxes to make it consistent with the Government Policy of exempting from tax goods consumed by the airline industry.

#### **Income Tax Act**

##### **Section 35(1)(a)(ii)**

294. Amend the section by inserting the words, 'and reservation costs'. Reservation costs are commission and costs incurred in booking the tickets worldwide. The platform facilitates generation of revenues for the airlines especially for passengers who book directly on KQ websites.

#### **Section 35(1)(c)**

295. Amend the section by inserting the words, 'aircraft spare parts and flight simulator'. The flight simulator will facilitate training of pilots in Kenya hence creating more job opportunities for the company.

#### **Section 35(1)(n)**

296. Amend the section by deleting the words, '*insurance premium paid for insurance of aircraft*' and inserting the words, '*aviation insurance premium*'. Besides insurance of aircraft, airlines must insure passenger loss of life, passenger baggage and cargo, all spare parts for maintenance of aircraft and other airline related risks. The costs are incurred throughout the network making KQ uncompetitive.

#### **Section 35**

297. Amend section 35 by introducing a provision to exclude payments by airlines for costs incurred out of the country. Kenya has limited double taxation agreements compared to KQ network of over 50 countries. This reduces the competitiveness of KQ since this new tax is not borne by other international carriers.
298. The Committee rejected the proposals by Kenya Airways because a proper analysis of the aviation industry was necessary in order to assess the exemptions that can be effected in the industry.

### **3.28 EAST AFRICAN PETROLEUM TRANSPORTERS ASSOCIATION**

299. In their submission, they noted that all transportation services have been listed to pay WHT VAT except air transport. They noted that the industry is heavily taxed and proposed that corporate companies that have been in existence for a long time and are tax compliant should be exempted from paying advance tax. They stated that the proposal to pay WHT VAT will paralyse the industry.
300. The Committee accepted the proposal to exempt them from WHT.

### **3.29 BUNGE LA MWANANCHI**

301. Bunge La Mwanachi focused their presentation on the following key areas i.e the Capital Gains tax, the Corporate Tax, income tax exemptions to individuals registered under the Ajira Digital Programme, increase in excise duty on tobacco products, spirits and wines, and excise duty on betting and the taxation of the digital marketplace.
302. Capital Gains Tax: The Bill is proposing increase in CGT to 12 %. Bunge La Mwanachi recommended that the CGT be reduced to 8%. They cited whereas the government is interested in collection of revenue to fund its programme, the proposed increase will affect the real estate sector and other related sectors. They also stated that the increase in

CGT was working against the affordable housing agenda and also against the proposal for exemption of real estate investment trust from income tax.

303. The Committee supported the proposal by the Bunge La Mwanachi and proposed that the CGT be retained at the current rate of 5%.
304. Ajira Digital Programme exemption from income tax: They stated that the exemption of income tax on the individuals under the programme was a welcome move given the high levels unemployment. However, there was need for a review on the registration fee to be paid once every three years.
305. The Committee rejected the proposal to review registration fee to be paid once every three years. This is because the registration fee is to be paid in lieu of tax.
306. Introduction of excise duty on betting activities; They stated that the proposed introduction of 10 % excise duty on betting is unfair given that the tax is being proposed to be charged before a punter realizes any profit. They proposed that the tax should be applied on the profit net winning. They further proposed that the excise be applied on a stake of more than KSH. 500. They noted the need for the government to appreciate the role played by the betting companies in supporting sporting activities.
307. The Committee rejected the proposal to reduce the minimum amount to be charge excise duty. This is because excise duty is meant to take care of the negative externalities.
308. On the proposed reduction of corporation tax: They proposed that companies that are involved in green energy production should also be listed as among the companies to benefit from the reduction in corporate tax as proposed to restricting it to companies that are operating a plastics recycling plant.
309. The Committee rejected the proposal by Bunge La Mwananchi as the proposal in the Bill is meant to encourage new investment in plastic recycling; leaving it open to also companies involved in green energy production will negatively affect government revenue.
310. Taxation of Digital Economy: They observed that the introduction of taxation in the digital marketplace will pose challenges especially on tax jurisdiction. They cited that the digital marketplace creates employment for the youth hence introduction of tax will negatively affect them. They proposed a reduced rate which will be affordable.

### **3.30 BDO EAST AFRICA KENYA**

311. BDO East Africa proposed the following amendments: -

#### **Third Schedule of the Excise Duty Act**

312. Amend the schedule to reduce the corporate tax rate for level three motor vehicle manufacturers to 15% for the first ten years from 2020 in order to align the tax treatment of motor vehicle assemblers with new assemblers who obtained the 15% rate through the Finance Act, 2017 for five years beginning 2018 with an extension of 5 years upon 50% local content being achieved. The incentive will enable level three manufacturers to make a major investment in local production.
313. The Committee observed that locally manufactured vehicles are not subjected to excise duty and the companies involved in the assembly enjoy corporate tax at 15% for the first five years of operations. These incentives are adequate for the sector and therefore extending it to level three motor vehicle manufacturer will have a negative impact on revenue. The proposal to reduce corporate tax was therefore not rejected by the Committee.

#### **Second Schedule of the Income Tax Act**

314. Amend paragraph 24 of the schedule to allow a 150% capital deduction on capital expenditure incurred in establishing or expending or improving facilities used in automotive manufacturing and assembly.
315. The Committee observed that the Incentive on 150% capital deduction on capital expenditure is extended to new companies willing to set up assemblies outside of major cities and is meant to encourage companies to also set up in other places except major cities. The incentive can therefore not be left open. The Committee rejected the proposal.

#### **Second Schedule of the VAT Act**

316. Amend the schedule to zero rate raw primary and intermediary band inputs imported or purchased locally for the direct and exclusive use in vehicle assembly and auto component manufacturing provided that such a zero rating is recommended by the CS responsible for Industrialisation in consultation with the CS for the National Treasury.

#### **First Schedule to the VAT Act**

317. Amend the schedule to exempt locally manufactured or assembled motor vehicles and parts.
318. The locally manufactured vehicles are not to excise duty and the companies involved in the assembly enjoy corporate tax at 15% for the first five years of operations. These incentives are adequate for the sector. The proposal to exempt VAT on locally manufactured or assembled motor vehicles and parts was therefore not supported.

### **3.31 ARTICLE 19 AND KENYA ICT ACTION NETWORK**

319. They stated that the 'digital marketplace' should be redefined because the definition in the Bill is vague and may impact freedom of expression and right to information disproportionately. They observed that the imposition of the digital economy should be postponed until a thorough cost benefit assessment has been conducted and takes into

account of the difficulty latent in determining economic presence in the dynamic digital transactions. Based on these concerns, they proposed the following amendments: -

320. Amend clauses 3 and 16 by deletion.
321. Amend clause 12 by deletion because the selective tax exemption is discriminatory and amounts to an implied coercion requiring citizens to register for the Program in order to benefit.
322. The Committee observed that the transactions carried over the digital platforms are not different from those ones that are carried out through ordinary business activities. The tax law should not be discriminate imposition of tax based on the form the transaction is carried out. The CS under ITA and VAT Acts is empowered to make regulations for the better carrying out of the provisions of the Act. Therefore, the issues/concerns raised by KEPISA will be addressed by way of regulations.

### **3.32 HON. MOSES KURIA, HSC, M.P.**

323. Hon. Moses Kuria was opposed to the proposed amendment to repeal Section 33B of the Banking Act to remove the interest rates cap in a bid to unlock credit to the private sector and in particular to the MSMEs and arresting the shrinking of the loan books of small banks. He proposed an amendment in line with the court ruling to the said section. His proposed amendment further sought to enable a bank or financial institution issue a credit facility to a micro and small enterprise or an unsecured individual member of the public at a higher interest rate in order to promote the financial service sector.
324. The Committee noted the concerns raised by Hon. Kuria and proposed an amendment to address the issues raised by the High court in Petition No. 413 of 2016.

### **3.33 HON. JOSEPH MANJE, M.P.**

325. Hon. Manje proposed deletion of clause 37 because local tanneries do not have the capacity to process hides and skins to leather. The move to tax exports of hides will do little to improve the local industry and will have a negative impact on the prices and profits. The quality of locally produced hide also requires consideration. The local industry has been affected by cheap importation from other countries undercutting the local market.
326. The Committee accepted the proposed deletion based on the reasons cited above.

### **3.34 PROF. TOM OJIENDA, SC**

#### **Amendment to clause 50 and 51**

327. Professor Ojienda proposed deletion of the words 'advocates, notaries and other independent legal professionals wherever they appear in the two clauses. This is because section 18 of the Proceeds of Crime and Anti-Money Laundering Act already recognizes

the principle of the advocate-client privilege and the proposed amendment seems to nullify the recognition and create a conflict of duty for the advocates as concerns the legal relationship between advocates and their clients.

328. Based on the above concerns raised by Prof. Tom Ojienda, the Committee resolved to reject the proposed amendment in the Bill to allow the introduction of the amendment Bill to POCAMLA and not through miscellaneous amendments. This will allow extensive public participation.

### 3.35 MR. ERNEST MUGUKU MURIU

329. Mr. Ernest Muguku proposed the following amendments: -

330. Amend clause 2 by inserting the following new paragraph (c): -

(c) the definition of permanent establishment is amended by inserting the following new paragraph (c) in the proviso *'a permanent establishment shall be deemed to also include a digital marketplace carrying a business in Kenya for six months or more'*. To ensure that non-resident businesses carrying out business in Kenya through digital marketplace are taxable in Kenya too in order to give the proposal in clause 3 more impetus.

331. Amend clause 3(a) by deleting the words in subsection 2 by inserting the following new paragraphs immediately after paragraph (c)-

*'(d) income chargeable to tax includes income accruing through a digital marketplace'* and replacing with the words in subsection 2 by inserting the following new proviso to paragraph (c) *'business income chargeable to tax includes income accruing through a digital marketplace'*.

332. The clause in the bill creates a new separate source of income, yet many businesses may use online sites to sell their goods, which is treated as part of business income.

333. The Committee objected to the proposals as a jurisdiction cannot unilaterally define a term that is applicable universally. The Committee noted that there are ongoing efforts at the international level to provide a definition that will be applicable worldwide. African Tax Administration Forum to which Kenya is a member is also working with the regional and international bodies including OECD and UN to come up with a definition and also develop an effective tax collection mechanism for transactions carried over the digital platforms.

334. Amend clause 6, 10(a) (iii), 10(b), 13(b)(iii), 13(b)(iv) by deleting the words *'cleaning and fumigation'* and replacing with the words, *'cleaning or fumigation'*. This is to ensure that cleaning and fumigation are treated separately for purposes of tax application.

335. The Committee proposed to delete any provision relating to imposition of tax on all services under clause 6 (c) hence the proposal to separate the cleaning and fumigation will not be necessary.

#### Clause 7

336. Amend clause 7 by inserting new sub-clause 9 to section 12(C)(c) as follows: -

*'(9) A county government shall not issue a business permit or trading license to a person required to pay turnover tax under this section until the person has paid the presumptive tax required under subsection 5. A county government licensing officer who issues a business permit or trading license in contravention of this sub-section commits an offense'. To ensure compliance with this section.*

337. The Committee objected to the proposal by Mr. Muguku as it was likely to interfere with the operations of county governments. The framework for collection of presumptive tax should be agreed on between KRA and the county governments.

338. **Exemption from turnover tax:** Amend clause 7 be amended by inserting new proviso in subsection 3 to section 12(C)(c) as follows:-

*'Provided management and professional services; shall mean a payment made to a person, other than a payment made to an employee by his employer, as consideration for managerial, professional or consultancy services however calculated'.*

339. This is so as to exclude technical, agency, contractual from the definition of management and professional services.
340. The Committee did not support the above proviso since the term "professional or management fees" is already been defined in section 2 of ITA.

#### Clause 13(a)

341. Amend clause 13 (a) by deleting and substituting therefore the following –

- (a) in Head A by deleting paragraph 3 and substituting therefor the following new paragraph: -

*"the amount of affordable housing relief shall be employee's contribution to the affordable housing scheme.*

342. The proposal will ensure that the relief is a sufficient incentive to join the affordable housing scheme.
343. The Committee observed that the proposed incentive proposed to be provided under the Affordable Housing is meant to ensure affordability and sustainability. The incentives are treated as tax expenditure and have a resultant negative effect in revenue.

344. Amend Clause 13(b) (i) by deleting the words '*from the year of commencement of its operations*' and replace with '*from the 1<sup>st</sup> of January 2020 existing businesses or from the year of commencement of its operations*'. This is to ensure that this benefit is also given to those who are in the plastics recycling business.
345. The Committee rejected the proposal to expand the scope of the incentive as the proposed amendment in the Bill is meant to encourage new investment in plastic waste management.
346. Amend clause 14 by adding new item (e)-  
*'the gain accruing to a company on conversion of the company to a limited liability partnership which does not involve transfer of property to a third party'*.
347. The above proposed amendment is intended to exempt from capital gains tax any conversion of company to a limited liability partnership.
348. The Committee observed that there is no CGT when a company converts into a limited liability partnership. The Committee therefore did not support the proposal by Mr. Muguku.
349. Amend clause 15 by deleting paragraph (a) i.e. the amendment to the definition of supply of imported services. He noted that the intention of the proposed amendment in the Bill is to return reverse charge VAT. He however, observed that this amendment on its own will not succeed in meeting this objective since consequential amendments were not made in section 5(6) and 10(1) that imposes the liability for VAT on imported services on a registered person.
350. The Committee noted the gap in section 5(6) of VAT Act and proposed the following consequential amendment so as to align it with the proposed amendment in the Bill.  
*(6) "Tax on the supply of imported taxable services shall be a liability of the person receiving the supply and, subject to the provisions of this Act relating to accounting and payment, due shall become due at the time of supply"*
351. Amend clause 27 by inserting the following sub-section 1A,  
*'Amount referred to under sub-section (1), shall be deemed to be tax for purposes of this Act'*.
352. The proposal is intended to deem WHT VAT under section 42A(1) as a tax for purposes of the Tax Procedures Act.
353. The Committee observed the refund issue was addressed through the Statute Law (Miscellaneous) Amendments Act, 2019 which allowed refund of excess credit arising from withholding VAT. The Committee therefore did not support the amendment by Mr. Muguku.
354. Amend clause 29 by deleting the words '*failure to which the objection shall be allowed*' and replace with the words '*failure to which the objection shall be deemed to be allowed*'.

355. The Committee agreed to the proposal by Mr. Muguku as it was providing clarity that when the commissioner has not made an objection decision within specified period the objection will be considered to have been allowed.
356. Amend section 51 by deleting sub-section 3 and 4 and replacing them with the following new sub-sections 3 and 4: -
- 3) *A notice of objection lodged by a taxpayer shall: -*
    - a) *be in writing and signed by the appellant or his tax agent;*
    - b) *set out concisely under distinct heads, numbered consecutively, the grounds of objection the amendments required to be made to correct the decision, and the reason for the amendments;*
    - c) *have all the relevant documents relating to the objection included and shall contain an index of all documents in the objection with number of pages at which they appear; and*
    - d) *be accompanied by a copy of the tax assessment*
  - 4) *In relation to an objection to an assessment, the taxpayer shall pay the entire amount of tax due under the assessment that is not in dispute or shall apply for an extension of the time to pay the tax not in dispute under section 33(1).*
357. This is to give certainty to the objection process.
358. The Committee observed the objections are lodged electronically through the iTax system and therefore the manner in which the objections documents are submitted is addressed administratively as opposed to the matter being legislated.

#### **Other New proposals by Mr. Ernest Muguku**

359. Amend section 76A by deleting the word 'withholding' as it appears in section 76A. This is because there are other final taxes that are not WHT e.g. presumptive tax or rental income.
360. The Committee rejected the proposal and observed that the current provision had clarified that withholding tax which is a final shall not be subjected to further assessment by the Commissioner.
361. Amend section 6A(2) of ITA and replace it with-
- 2) *The Minister may by notice in the Gazette prescribe regulations-*
    - a. *governing the payment of residential rental Income Tax and imposition of penalties and interest; and*
    - b. *specify such requirements as he may consider necessary for the better carrying out of the provisions of this section.*
362. This will ensure that the Minister has the power to administer payment and impose penalties for non-payment.
363. The Committee observed that the current provision was sufficient and the penalties for noncompliance with any of the tax laws have been prescribed under TPA. The proposal by Mr. Muguku was therefore rejected.
364. Amend section 6A ITA by inserting the following subsection 3:-

*(3) for purposes of this section income means gross rental receipts. And gross rental receipts means payment received from a right granted to another person for use or occupation of immovable property which includes rent, premium or similar consideration received for the use or occupation of property.*

365. The section is not clear on what rental income is and given that it lacks definition, a tax payer make an assumption that they should be allowed to deduct expenses under section 15 of ITA, thus undermining the spirit of section 6A of ITA.
366. The Committee observed that there was no contradiction between the two sections as section 6A of ITA is the charging section and section 34 (i) (k) of ITA defines the base of charging to be the gross rental receipts. The Committee therefore rejected the proposal.
367. Amend section 30A(1) of ITA by inserting paragraph (d):-
- (d) or is making loan repayments for the purchase of a house under an affordable housing scheme approved by the Cabinet Secretary in charge of housing.*
368. The above proposed amendment was intended to enable loan repayment for a house allocated under the affordable housing scheme to qualify for the personal relief. This will make section 30A of ITA consistent with the Housing Fund Regulations, 2018.
369. The Committee observed that there was already and existing mortgage relief for loans taken for purchase of a house. In this case , loan repayments and contributions to an affordable housing scheme should be treated differently for tax purposed as treating them, equally will have a huge negative revenue implication. The proposal was therefore rejected.
370. Amend the proviso in paragraph 10 part 1 of the first schedule of ITA by deleting the words:-
- 'provided further that an exemption under this paragraph' and replacing it with 'provided further that in the case of non-profit making company under section 716(4) of the Companies Act, 2015 an exemption under this paragraph'.*
371. He observed that the requirement for an exemption certificate under paragraph 10 of the first schedule of ITA should be restricted to companies engaged in not for profit activities.
372. The Committee rejected the above proposal and observed that for tax purposes tax payer are grouped into two i.e natural persons (individuals) and artificial persons (corporate persons including NGOs). Therefore, the current provision captures the interest is intended for and that is exempting the income of organisations that meet the requirement of paragraph 10.
373. Amend paragraph 2(a) of Head B-Rates of Tax of the 3rd Schedule of ITA to provide that Corporate income tax to 20% for a resident company other than companies engaged in petroleum or mining sector, increase resident dividend tax to 15%, increase non-resident dividend tax to 20% and reduce corporate income tax to 20%.

374. The Committee observed the differentiated corporate tax rate will require a deeper study as it may have a significant impact. The Committee therefore did not support the proposal.
375. Amend section 10(1)(c) of ITA by deleting the words 'or deemed interest'.
376. Amend Section 10(3) of ITA as follows: -
- For the purposes of this Act, where a resident person or a person having a permanent establishment in Kenya having loans giving rise to deemed interest, the deemed interest shall be deemed to be income which accrued in or was derived from Kenya.*
377. This is because having deemed interest included in section 10(1) of ITA may make it prone to challenge in court since section 10(1) of ITA applies to items that are subject to payment. As such, payment of any WHT has to be preceded by a payment of the items envisaged in section 10(1). He therefore recommended meaning of deemed interest as a standalone item.
378. The Committee observed that the word payment as used should be read together with the definition of paid. The word "Paid" is broad and includes 'deemed to have been paid' which includes 'deemed interest', The Committee rejected the proposal by Muguku.
379. Amend section 35(1) of ITA by deleting the words '*and deemed interest*' everywhere they appear and insert a new section 35(1B) as follows, '*a person having loans giving rise to deemed interest which is chargeable to tax shall pay WHT on the deemed interest at the appropriate non-resident rate*'. The amendment is intended to let deemed interest be a standalone item in section 35.
380. The Committee observed that the word payment as used should be read together with the definition of paid. The word "Paid" is broad and includes 'deemed to have been paid' which includes 'deemed interest'; The Committee rejected the proposal by Muguku.
381. Amend paragraph 1 of head A of Third Schedule of ITA, he proposed an amendment by adding a proviso '*provided that the amount of personal relief shall be adjusted every year by 10%*'. The amendment is for purposed of avoiding for annual adjustment of personal relief.
382. The Committee observed that the proposal requires deeper study as it may have significant implication in government revenues. The Committee rejected the amendment pending a further study on the matter.
383. Amend paragraph 1 of head B of Third Schedule of ITA by adding a proviso '*provided that the amount of each tax band, for the individual rates of tax, shall be adjusted every year by 10%*'. This is intended to provide for annual adjustment to bands for the individual rates of tax.
384. The Committee observed that the matter a deeper study and hence therefore the Committee did not support the amendment.
385. Amend the insertion of a new section 8A of Value Added Tax: -  
Place of use or consumption of services.

8A. services supplied is used or consumed in Kenya include: -

- (a) The services are physically performed in Kenya by a person who is in Kenya at the time of supply to a person who is physically in Kenya at the time of supply irrespective of who is making payment for the services; or
- (b) The services are directly related to movable or immovable property in Kenya; or
- (c) The services are directly related to goods physically in Kenya at the time of supply;
- (d) A supply that is made in relation to rights if rights are for use in Kenya irrespective of who is making payment for the services irrespective of whether the supply was made to a recipient who was not physically in Kenya; or
- (e) The services are radio or television or broadcasting services received at an address in Kenya; or
- (f) The effective use or enjoyment of the services takes place in Kenya irrespective of who is making payment for the services or irrespective of whether the supply was made to a recipient who was not physically in Kenya.

386. The above proposal amendment is to clearly state when a service is deemed to be consumed in Kenya and is therefore not an export.
387. The Committee observed that section 8 of the VAT Act as read together with Regulation 31 of the VAT Regulations, 2017 clarifies place of use or consumption of services for purposed of taxation. The Committee rejected the proposal.
388. Amend Section 16(1) VAT Act by replacing the words 'six months' with the words 'twelve months' as it appears in the proviso. He was concerned that six months is a very short period for a company to be required to raise and claim a credit note. In addition, commercial and business factors do change and this short period puts the taxpayer at a disadvantage. He therefore proposed be increased to 12 months as this will reduce the amount of potential unrecoverable VAT.
389. On the above proposal by Mr. Muguku on increasing timelines for raising and claiming credit notes, the Committee observed that VAT is a monthly tax and therefore the six months provided to adjust a credit note is adequate. The Committee therefore rejected the amendment.
390. Amend Section 16(5) VAT Act by replacing the words: -  
*'in the next subsequent month'* with the words *'within six months after the end of the tax period in which the debit note was issued'*. This is intended to ensure section 16(5) is consistent with section 17(2) on claiming input VAT.
391. On the above proposed amendment, the Committee observed that the current timeframe provided in the law for claiming debit note is adequate. The proposed amendment was not adopted.
392. Amend Section 17(2) of VAT Act by replacing the words 'six months' with the words 'twelve months' as it appears in the proviso. He stated that six months is a very short period for a company to be required to claim in cases where documents are missing and this short period puts the taxpayer at a disadvantage and reduces the amount of potential unrecoverable VAT.
393. On the above proposed amendment, the Committee observed that the current timeframe provided

in the law for claiming input tax is adequate. It provides that where documents are not available, the taxpayer has upto 6 months to file the documents and claim the input tax deduction. The proposed amendment was not adopted.

394. Amend Section 30 of VAT Act citing inconsistency with section 48 TPA. He proposed deletion of the section on the refunds paid in error. He stated that the provisions should be under section 48 TPA for consistency.
395. The Committee observed that the two provisions i.e section 30 of VAT Act and section 48 TPA address different issues. The latter deals with erroneous refund of tax by the Commissioner and provides for the mechanism for the Commissioner to recover such refund. On the other hand, section 30 of VAT Act deals with refund of taxes paid in error by the taxpayer. The proposed amendment by Mr. Muguku was rejected.
396. Amend Section 43(3) of VAT Act by deleting the word 'sub-section' and replacing it with the word 'section'. He stated that his proposal was intended to make the penalty in subsection 3 to apply to section 43 because the penalty as presently put is unenforceable.
397. The Committee observed that the requirement to keep records is under subsection (1) and therefore the reference to subsection (1) under subsection 43 (3) is sufficient. In addition, the offences are covered under subsection (5). The proposed amendment in section 43(3) of VAT Act was therefore rejected.
398. Amend section 12 of VAT Act by inserting the following new subsection 2A-
- 2A. the time of supply in respect of building transferred shall be on the date the transfer of the property is made at the relevant lands office.*
399. The above proposed amendment was intended to provide that the tax point for transfer of buildings to be the date that the transfer of the property is made at the relevant lands office. This will consistency with the provisions for Capital Gains Tax and will help overcome difficulty set under section 16(1) that credit note may be issued only within six months after the issue of the relevant tax invoice.
400. The Committee observed that proposal to amend 12 of VAT Act was not merited. This is because the tax points for VAT and CGT are different. CGT is provided for under the income tax while VAT is a consumption tax and therefore the tax points cannot be the same.
401. Amend the First Schedule in paragraph 11(b) Part II by deleting the words 'exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act, Cap 470 and'. The amendment is meant to remove the requirement for NGOs to have income tax exemption certificate under paragraph 10 of the First Schedule to the Income Tax Act, Cap 470, for services they render to members to be exempt. He stated that the Income Tax Act does not tax NGOs under paragraph 2 of head B of the 3rd schedule. As such, NGOs do not need an income tax exemption certificate since they are not taxable.

402. The Committee rejected the proposal to amend the First Schedule in paragraph 11(b) Part II. . This is because for tax purposes tax payers are grouped into two i.e natural persons (individuals) and artificial persons (corporate persons including NGOs). Therefore the current provision captures the interest intended for, and that is exempting the income of organisations that meet the requirement of paragraph 10.

403. Amend the First Schedule in Part II by inserting:-

*32. Taxable services imported or purchased for direct and elusive use in geothermal, oil or mining prospecting or exploration by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the CS responsible for energy or the CS responsible for mining as the case may be.*

404. The above proposal by stating that the amendment is meant to exempt VAT services associated to geothermal, oil or mining prospecting or exploration.

405. The Committee observed that the sector has been granted numerous tax incentives under various tax laws including import duty, VAT on imported goods, generous income tax deductions, exemption from RDL and IDF. Currently the sector only pay VAT on services.

406. Amend the First Schedule in Part II by inserting:-

*33. Taxable services procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by the CS for National Treasury upon recommendation by the CS responsible for liquefied petroleum gas.*

407. The amendment was hinged on the need to exempt VAT services associated to construction of liquefied petroleum gas storage facilities.

408. On the above proposed amendment, the Committee observed that the sector has been granted numerous tax incentives under various tax laws including import duty, VAT on imported goods, generous income tax deductions, exemption from RDL and IDF. Currently the sector only pays VAT on services.

### **3.36 MS. FLORENCE NJERI OKETCH**

409. Ms. Oketch proposed that section 47(5) of the Tax Procedures Act No. 29 of 2015 should be amended as follows, '*The Commissioner shall repay the overpaid tax within a period of 60 days from the date of application, failure to which the amount due shall attract an interest of 2% per month or part thereof of such unpaid amount after the period of 60 days*'. The proposed amendment will ensure that the Kenya Revenue Authority does not delay in refunding Value Added Tax refunds hence encourage business growth in the country especially the manufacturing

sector.

410. The Committee observed that the period and the rate within which the Commissioner should refund the overpaid tax had already been provided under the TPA. The reduction of the period within which the overpaid tax would be repaid would affect the government funding negatively. KRA collects the revenue which is transferred to exchequer and withdrawal of such funds for overpaid would certainly require a longer period than sixty days. The proposal by Florence was therefore rejected.

### **3.37 MR. JULIUS NJIRAINI**

411. Mr. Julius Njiraini stated that forensic experts should be included as part of the designated non-financial businesses or professions” in the Proceed from Crime and Anti-Money Laundering Act, 2009. This is due to the expertise of forensic professionals in the implementation of the Act especially in terms of investigation.
412. The Committee observed that forensic experts are linked to specific professions in certain field e.g accounting, auditing which are already covered under the POCAMLA. The proposal to include forensic experts as part of the designated non-financial businesses or professions who are obligated by POCAMLA to report any suspicious activities to FRC.

### **3.38 MR. NJOROGE WAWERU**

413. Mr. Waweru proposed zero-rating of textbooks, journals and periodicals to make them affordable.
414. The Committee rejected his proposal because it introduction of zero rate to textbooks, journals and periodicals will necessitate a revenue loss to the Government.

### **3.39 MR. PATRICK MAINA NDERITU, MR. HEDRICK MASAKI OMANWA AND MR. ROMANO WACHIYE**

415. They proposed that the Capital Gains Tax should be retained at 5% as currently is because in their opinion, the CGT tax revenue benefit to the government is most times outweighed by the disadvantages of imposing CGT unless the government introduces numerous exemptions and thus never realizes the tax revenue targeted.
416. The Committee supported the proposal to retain CGT at 5%.

### **3.40 MR. DAVIES SIMIYU**

417. Mr. Simiyu stated that the Bill does not protect the common ‘mwananchi’ because of the 16% VAT. He proposed that the VAT should be shared among all the people in the chain i.e. manufacturers, distributors, retailers and ‘mwananchi’ at 4% each. He added that ways through which the cost of transport can be reduced should be sought. He proposed that service tax should be introduced in the service industry and a universal tax charged for the digital economy.
418. He noted that alternative dispute resolution mechanisms should be sought when handling tax evasion cases as opposed to court cases because they take long to be determined. He

added that it is important for intersex persons to be included in the tax regime just like people living with disability. He concluded by stating that churches need to be taxed just like other institutions.

### **3.41 MR. NICHOLAS MUTHAMA**

419. Mr. Muthama informed the meeting that the Bill had not put women and children into consideration. In his opinion, the youth and women do most of their business on the digital space thus proposed that a threshold should be set on the turnover to be taxed on the digital space. He noted that the Ajira Digital Programme is a good idea but the rate of KSh. 10,000 that is being charged is restrictive and he therefore proposed that it should be halved to KSh. 5,000 for the youth and further subsidized for the women.
420. The Committee observed that the registration fee is being charged in lieu of tax, essentially is a loss of revenue for the government. The Committee rejected the proposal to reduce the registration fee.
421. He proposed that people who are making a turnover of one million and below should be exempted from turnover tax. Tax on fumigation, cleaning and catering services should have a threshold on the turnover for which WHT VAT will be paid.
422. The Committee observed that the withholding tax chargeable on the services proposed in clause 6 will lead to loss of jobs as the companies involved in the business will be forced to scale down their operations. The Committee therefore rejected the proposal to impose the WHT on the services as the same would be passed down to the consumers making the services unaffordable.
423. More goods should be zero-rated as opposed to being exempt in order to make them affordable.
424. The Committee observed that zero rating policy only covered exports and a few selected goods hence the zero-rating regime cannot be extended to all goods. The proposal above was therefore rejected.

### **3.42 MR. MWANGI NGAMATE**

425. Mr. Ngamate submitted that he would like to see a financial market-based economy where entities cover their financing needs by issuing financial securities such as shares, bonds, commercial paper, derivatives, futures directly to investors. This will in turn reduce the cost of doing business in Kenya.
426. He did not support the repeal of interest caps citing that the country needs to implement the law to for a longer period to determine the merits and the demerits of the capping law. He however proposed that banks should be given more wiggle room so that they can charge higher interest rates on high risk clients.
427. He proposed that the Capital Gains Tax and other taxes introduced on equities should be removed in order to encourage more people to save.

### 3.43 ERIAN ASSET MANAGERS

428. They proposed that section 22 of the Income Tax Act should be amended to include Collective Investment Schemes in the Home Ownership Savings Plan (HOSP).
429. The Committee supported the proposed amendment so as to include other alternative source of financing the HOSP.

### 3.44 ASSOCIATED BATTERY MANUFACTURERS EAST AFRICA LIMITED

430. The Associated Battery Manufacturers East Africa Limited proposed that the East African Common External Tariffs be amended to remove duty on imported raw materials used in the manufacture of accumulators (automotive and solar batteries) and to have all raw materials used for manufacture of accumulators (automotive and solar batteries) put under one HS code 85.07.
431. The Committee observed that the proposed amendment is on import duty which should be considered at the EAC level. EAC pre-budget consultations relating to import are held in the months of April or May every year. This period has already passed. Therefore, the proposal by Associated Battery Manufacturers East Africa Limited will be considered in the next budget cycle.

### 3.44 SHEIKH AND COMPANY ADVOCATES

432. They proposed the zero rating of propane gas by amending the Second Schedule of the Value Added Tax by inserting the word '*propane*' immediately after the words '*liquefied petroleum gas*'. This is to encourage the use of propane in LPG as opposed to butane which makes LPG expensive in Kenya compared to other countries.

433. The Committee supported the proposed zero rating of propane to encourage use of this form of clean energy.

434. They also proposed imposition of excise duty at 35% on all imported gas cylinders to make local manufacturer of LPG cylinder competitive

435. The Committee supported the imposition of 35 % excise duty on imported LPG cylinders to promote local manufacturing.

### 3.45 UBER

436. They proposed a deletion of clauses 3 and 16 and proposed that adequate stakeholder engagement should be done to find a workable solution that is conducive to the Government, KRA, the players in the digital market place sector and the consumers. Alternatively, they proposed that a simplified flat tax rate e.g. 0.5% be imposed on the revenues of entities operating in the digital market place sector in replacement of the corporate income tax, VAT and withholding tax provisions in the extant laws. This will provide certainty, clarity and foster compliance.

437. The Committee did not support the proposed amendment by Uber based on the fact that transactions carried over the digital platforms are not different from those ones that are carried out through ordinary business activities. The tax law should not be discriminate imposition of tax

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based on the form the transaction is carried out.

#### **4 COMMITTEE RECOMMENDATION**

438. The Committee having considered the Finance Bill, 2019 recommends that the House approves the Bill with amendments as proposed in the schedule.

## 5 SCHEDULE OF PROPOSED AMENDMENTS

### CLAUSE 2

439. THAT, clause 2 of the Bill be amended in paragraph (b) by deleting the definition of “investee company” and substituting therefor the following new definition-  
“investee company” has the meaning assigned to it under the Capital Markets Act and the regulations made thereunder:

### CLAUSE 3

440. THAT, clause 3 of the Bill be amended-  
(a) in paragraph (a) in the proposed paragraph (d) by deleting the words “income chargeable to tax includes”;

### Justification

441. To avoid repetition as the words are already in the Act.  
  
(b) by inserting the following new paragraph immediately after paragraph (a)-  
(ab) by inserting the following new subsection immediately after subsection (2)-  
(3) The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of subsection (2) (d).

### CLAUSE 6

442. THAT, clause 6 of the Bill be amended by deleting paragraph (c).

### NEW CLAUSE

443. THAT, the Bill be amended by inserting the following new clause immediately after clause 7 –  
6A. Section 15 of the Income Tax Act is amended in sub-section (2) by inserting a proviso in paragraph (ab) at the end as follows-  
“Provided that in the case of manufacturers of cement, steel and textiles, fifty percent of electricity cost incurred shall be deducted in addition to the normal electricity expense”

### NEW CLAUSE

444. THAT, the Bill be amended by inserting the following new clause immediately after clause 7—  
7B. Section 16 of the Income Tax Act is amended in subsection (2) by deleting the proviso to paragraph (j) and substituting therefor the following new proviso—  
Provided that this paragraph—  
(i) shall apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company; and  
(ii) shall not apply to a company implementing a project under an affordable housing scheme upon recommendation by the Cabinet Secretary responsible for housing.

### NEW CLAUSE

445. THAT, the Bill be amended by inserting the following new clause immediately after clause 8 –

6A. Section 22C of the Income Tax Act be amended —

- (a) in sub-section (4) by inserting the words “and other investment guidelines made under Regulations under the Capital Markets Act.” immediately after the phrase “Central Bank”;
- (b) in subsection in the definition of “approved institution” by inserting the words “and a Fund Manager registered under the Capital Markets Act (Cap.485)” immediately after the phrase “(Cap 489)”.

#### **CLAUSE 9**

446. THAT, clause 9 of the Bill be amended by deleting paragraph (a).

#### **CLAUSE 10**

447. THAT, clause 10 of the Bill be amended-

- (a) in paragraph (a) by deleting sub-paragraph (iii);
- (b) by deleting paragraph (b).

#### **Justification**

448. Most of the businesses that are listed are still growing and imposing the taxes on them may either lead to closure, increase in the cost of their services or downsizing.

#### **CLAUSE 12**

449. THAT, clause 12 of the Bill be amended in the proposed amendment to Part I of the First Schedule to the Income Tax Act by inserting the following new item immediately after item 58—

59. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner

60. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services:

Provided that such bonds, notes or securities shall have a maturity of at least three years.

#### **CLAUSE 13**

450. THAT, the Bill be amended clause 13(b) by —

- (a) deleting sub-paragraph (iii);
- (b) deleting sub-paragraph (iv).

#### **Justification**

451. Most of the businesses that are listed are still growing and imposing the taxes on them may either lead to closure, increase in the cost of their services or downsizing.

#### **CLAUSE 16**

452. THAT, the Bill be amended by deleting clause 16 and substituting therefor the following new clause —

16. Section 5 of the Value Added Tax Act, 2013 is amended —

- a) in sub-section (6) by deleting the words “a registered person” and substituting therefor the words “any person”;
- b) by inserting the following new subs-sections—

1. The provisions of subsection (1) shall be applicable to supplies made through a digital market place
2. The Cabinet Secretary shall make regulations to provide the mechanisms for implementing the provisions of subsection (7)
3. For the purpose of this section, “digital market place” means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

#### **NEW CLAUSE**

453. THAT, the Bill be amended by inserting the following new clause immediately after clause 16 –

16A. Section 10 of the Value Added Tax Act, 2013 is amended—

- a) in subsection (1) by deleting the words “a registered person” and substituting therefor the words “any person”;
- b) in sub-section (3) by deleting the words “a registered person” and substituting therefor the words “any person”

#### **CLAUSE 18**

454. THAT, the Bill be amended in clause 18 –

- a) in paragraph (a) (iii) by deleting the proposed new paragraphs 105, 106 and 110;

#### **Justification**

455. When a product is tax exempt, the manufacturer does not claim input tax which is transferred to the final consumer making the product more expensive.

- b) by inserting the following new items immediately after item 110—

111. Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

112. Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.

#### **Justification**

456. To ensure the success of the affordable housing program which is one of the agendas of the ‘Big Four Plan’ and to promote talent among the youth.

#### **CLAUSE 19**

457. THAT, the Bill be amended in clause 19 –

- (a) by deleting paragraph (a);
- (b) by inserting the following new paragraph immediately after paragraph (a) –
  - (aa) in paragraph 13 by inserting the words “or propane” immediately after the words “liquefied petroleum gas”;
- (c) by deleting paragraph (b) and substituting therefor the following new paragraph –
  - (b) in paragraph 18, by inserting the words “upon recommendation of the Cabinet Secretary for the time being responsible for industrialization” immediately after the word “Kenya”;
- (d) in paragraph (c) by inserting the following new item immediately after item 19 –
  20. Agricultural pest control products.

## CLAUSE 23

458. THAT, the Bill be amended in clause 23 –

(a) in paragraph (a) by deleting subparagraph (i) and substituting therefor the following subparagraph-

(i) by deleting the rate of excise duty in respect of the description set out in the first column hereunder and substituting therefor the new rates respectively in the second column-

<i>Description</i>	<i>Rate of Excise</i>
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,624 per kg
Electronic cigarettes	Shs. 3,787 per unit
Cartridge for use in electronic cigarettes	Shs. 2,525 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,157 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,272 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 8,837 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 189 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 253 per litre

(b) in paragraph (a) by inserting the following sub-paragraph immediately after sub-paragraph (iii)-  
(iv) by inserting the following items-

Description	Rate of Excise
Imported sugar confectionary of tariff heading 17.04;	Shs. 20 per kg
Imported white chocolate in blocs, slabs or bars of per kg. tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs 200
Imported gas cylinders	35%

### Justification

459. This is to support local industries in sustaining the current employment and creating more employment opportunities and also encourage manufacturing.

(c) in paragraph (b) in the proposed new paragraph 5 by deleting the word “ten” and substituting therefor the word “twenty”.

**Justification**

460. This is aimed at discouraging betting (sin tax)

461. in paragraph (c) by deleting subparagraph (ii) and substituting therefor the following new sub-paragraph –

(ii) by deleting the words “or an insurance premium or premium based or related commissions” the definition of the term “other fees” and substituting therefor the words “or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder”.

**CLAUSE 25**

462. **THAT**, the Bill be amended in clause 25 in the proposed new section 37C by deleting the words “assessing or” immediately after the words “shall refrain from”.

**CLAUSE 29**

463. **THAT**, the Bill be amended in clause 29 in the new subsection 11 by inserting the word “deemed” immediately after the words “objection shall be”.

**CLAUSE 34**

464. **THAT**, the Bill be amended by deleting clause 34 and substituting therefor the following new clause-

34. Section 7 of the Miscellaneous, Fees and Levies Act, 2016 is amended –

- a) in subsection (2) by deleting the word “two” appearing immediately after the words “rates of” and substituting therefor the words “three point five”;
- b) by inserting the following new subsection immediately after subsection (2) –  
(2A) Without prejudice to the provisions of subsection (2), the fee at a rate of one point five shall be charged on the custom value of-
  - a) raw materials and intermediate products imported by approved manufacturers;
  - b) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry;
  - c) input for the construction houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

**CLAUSE 35**

465. **THAT**, clause 35 of the Bill be amended by deleting paragraph (b) and substituting therefor the following paragraph—

- (b) by inserting the following new subsection immediately after subsection (2) –
- (2A) Without prejudice to the provisions of subsection (2), the levy at a rate of one point five shall be charged on the customs value of-
- a) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and
  - b) inputs for the construction houses under an affordable housing scheme approved by the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matter relating to housing.

**CLAUSE 37**

466. THAT, the Bill be amended by deleting clause 37.

**CLAUSE 43**

467. THAT, the Bill be amended by deleting clause 43 and substituting therefor the following new clause-

43. Section 33B of the Banking Act is amended —

a) by deleting subsection (1) and substituting therefor the following new subsection —

“(1) A bank or financial institution shall set the maximum annual interest rate chargeable for a loan in Kenya at no more than four percentage points above the Central Bank Rate set and published by the Central Bank of Kenya under section 36(4) of the Central Bank Act.”

b) by deleting subsection (3) and substituting therefor the following new subsection —

(3) Any person who contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings or to imprisonment for a term not less than one year.

c) by inserting the following new subsection immediately after subsection (3) —

(4) In this section, the term “loan” has the meaning assigned to it under section 44A (5).

**CLAUSE 44**

468. THAT, clause 44 of the Bill be amended by inserting the words “at the country of supply” immediately after the word “consignment”.

**CLAUSE 45**

469. THAT, clause 45 of the Bill be amended in subsection (2) (d) by deleting the words “in the last three years”.

**NEW CLAUSE**

470. 22. The provisions of section 14C (2) (d) shall not apply to any company, which was in the business of consolidation before the commencement of this Act.

**NEW CLAUSE**

471. THAT, the Bill be amended by inserting the following new clause immediately after clause 48 –

48A. Section 8 of the Accountants Act is amended by deleting paragraph (a) and substituting therefor the following new paragraph –

promote standards of professional competence and practice in accountancy;

#### CLAUSE 49

472. THAT, the Bill be amended by deleting clause 49 and substituting therefor the following new clause-

49. Section 17 of the Accountants Act, 2008 is amended by deleting sub-section (2A) and substituting therefor the following new sub-section-

(2A) The Examination Board jointly with the Institute shall require a trainee accountant to be registered as a member of the Institute, before undertaking an examination.

#### NEW CLAUSES

473. THAT, the Bill be amended by inserting the following new clause immediately after clause 48 –

474. 49A. Section 19 of the Accountants Act is amended –

a) by deleting sub-section (2) and substituting therefor the following new subsection-

2. A salaried employee of the Government practices as an accountant if he-

a) engages in the practice of accountancy;

b) performs services involving the auditing or verification of financial transactions, books, accounts or records;

c) performs services involving the verification or certification of financial accounts and related statements;

d) engages in any practice, or performs or offers to perform any services, which may be prescribed.

b) by inserting the following sub-sections immediately after subsection (3)-

4. No person or a public or private entity shall employ a person to practice accountancy unless the person to be employed is a member of the Institute.

5. No person holding foreign qualifications shall practice accountancy in Kenya unless he or she satisfies the requirement of section 26(3) and is registered with the Institute.

6. A trainee accountant or associate accountants shall not hold themselves as accountants.

7. The Institute shall prescribe guidelines for the practice of accountancy by associate accountants.

8. The Institute shall, on consultation with the Examination Board, prescribe guidelines for the practice of accountancy by trainee accountants.

475. 49B. The Accountants Act is amended by inserting the following new section immediately after section 19-

19A. (1) A foreigner who intends to practice accountancy in Kenya for the purpose of performing a specific assignment shall apply to the Institute for registration and shall satisfy the Institute of his or her qualifications.

(2) The Institute may register the person to practice accountancy in Kenya for a period not exceeding one year or for the duration of the assignment.

476. 49C. The Accountants Act is amended by deleting section 46 and substituting therefor the following new section-

46. (1) The Cabinet Secretary may, by notice in the *Gazette*, make Regulations to provide for—

- (a) anything which shall or may be prescribed in terms of this Act; and
  - (b) any matter which is necessary to prescribe for the effective implementation of the provisions and objects of this Act.
- (2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations to provide for-
- (a) registration of persons with foreign qualifications;
  - (b) registration of foreigners to practice accountancy in Kenya.
- (3) For the purpose of Article 94(6) of the Constitution-
- (a) the purpose and objective of the delegation under this section is to enable the Attorney General to make regulations to provide for the better carrying into effect the provisions of this Act;
  - (b) the authority of the Attorney General to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;
  - (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

477. **49D.** The Seventh Schedule to the Accountants Act is amended by inserting the following paragraphs immediately after paragraph 12-

12. Subject to section 19(4), any person who at the commencement of this Act was employed or was performing functions which may be deemed to be the practice of accountancy shall register with the Institute.

13. The Council shall establish a class for registration of the persons under paragraph 12.

14. Any person who at the commencement of this Act was practicing accountancy in Kenya contrary to the provisions of section 19A shall apply for registration within twelve months.

#### **CLAUSE 50**

478. **THAT**, the Bill be amended by deleting clause 50.

#### **Justification**

479. The amendments should be considered as substantive amendments to allow for proper public participation.

#### **CLAUSE 51**

480. **THAT**, the Bill be amended by deleting clause 51.

## **Justification**

481. The amendments should be considered as substantive amendments to allow for proper public participation.

## **NEW CLAUSES**

482. **THAT**, Part VII of the Bill be amended by inserting the following new clauses immediately after clause 50 —
483. **51.** The long title to the Housing Act is amended by deleting the words “a Housing Fund” and substituting therefor the words “the National Housing Development Fund”.
484. **52.** Section 2 of the Housing Act is amended—
- (a) in the definition of “grant” by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”; and
  - (b) by deleting the definition of “Housing Fund”;
  - (c) by inserting the following new definition in its proper alphabetical sequence—  
“National Housing Development Fund” means the Fund established under section 6 of this Act.
485. **53.** The marginal note to section 6 of the Housing Act is amended by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”.
486. **54.** Section 6 of the Housing Act is amended—
- (a) by deleting the words “Housing Fund” appearing in subsection (1) and substituting therefor the words “National Housing Development Fund”;
  - (b) by deleting the words “Housing Fund” wherever they appear in subsection (2) and substituting therefor the words “National Housing Development Fund”; and
  - (c) by deleting the words “Housing Fund” wherever they appear in subsection (3) and substituting therefor the words “National Housing Development Fund”.
487. **55.** Section 7 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of subsection (1) and substituting therefor the words “National Housing Development Fund”.
488. **56.** Section 7A of the Housing Act is amended by deleting the words “Housing Fund” appearing in subsection (3) and substituting therefor the words “National Housing Development Fund”.
489. **57.** Section 11 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of paragraph (a) and substituting therefor the words “National Housing Development Fund”.

490. 58. Section 12 of the Housing Act is amended by deleting the words “Housing Fund” and substituting therefor the words “National Housing Development Fund”.
491. 59. Section 24 of the Housing Act is amended—
- (a) by deleting subsection (2) and replacing it with the following new subsection
- (2) A person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or both.
- (b) by inserting the following new subsection immediately after subsection (2)—
- (2A) If an act or commission of a person results in the loss of money from the National Housing Development Fund, that person shall be liable to a penalty equivalent to twice the amount lost.
492. 60. Section 26 of the Housing Act is amended in subsection (4) by deleting the words “Housing Fund” and substituting therefor the words “National Housing Development Fund”.
493. 61. Section 117 of the Stamp Duty Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (n)—
- (o) the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation.

SIGNED.......... DATE.....17-9-2019.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING  
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE FINANCE  
BILL, 2019

DATE: 17<sup>TH</sup> SEPTEMBER, 2019

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
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10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
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15. HON. MOHAMED ALI, MP	
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