

Paper laid on the
Table of the House
by the Chairperson
of the Departmental
Committee on
Finance and
National Planning
on Wednesday
22nd August 2018
(Afternoon)

REPUBLIC OF KENYA



PARLIAMENT
OF KENYA
LIBRARY

NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION

**DEPARTMENTAL COMMITTEE ON
FINANCE & NATIONAL PLANNING**

.....
**REPORT ON THE CONSIDERATION OF THE FINANCE
BILL, 2018**

**CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI**

AUGUST, 2018

Approved
22/8
[Signature]

TABLE OF CONTENTS

ABBREVIATIONS	2
CHAIRPERSON’S FOREWORD.....	4
EXECUTIVE SUMMARY	5
1.0 PREFACE	9
1.1 ESTABLISHMENT OF THE COMMITTEE	9
1.2 MANDATE OF THE COMMITTEE	9
1.3 COMMITTEE MEMBERSHIP	10
1.4 COMMITTEE SECRETARIAT	10
2.0 CONSIDERATION OF THE BILL.....	12
2.1 BACKGROUND INFORMATION.....	12
2.2 CLAUSE BY CLAUSE ANALYSIS.....	14
3.0 SUBMISSION BY THE STAKEHOLDERS.....	23
3.1 KPMG	23
3.2 KENAFRIC INDUSTRIES LIMITED	26
3.3 MR. FRANCIS KORAGE.....	26
3.4 KENYA ASSOCIATION OF MANUFACTURERS	26
3.5 MR. ERNEST MUGUKU MURIU	42
3.6 KENYA BANKERS ASSOCIATION.....	49
3.7 TRADE UNIONS CONGRESS OF KENYA	54
3.8 MR. TIMOTHY OMONDI	57
3.9 COMMISSION ON REVENUE ALLOCATION	58
3.10 MR. HENRY OGOYE	59
3.11 BRITAM HOLDINGS PLC	60
3.12 MR. PATRICK MATE N’NDEI	61
3.13 FUND MANAGERS ASSOCIATION	62
3.14 MR. VINCENT OMBAKA	63
3.15 MRS. AGNES L. WACEKE MWANIKI	63
3.16 MR. BRIAN MBUGUA.....	64
3.17 THE EAST AFRICA TAX AND GOVERNANCE NETWORK (EATGN).....	64
3.18 KENYA OIL AND GAS ASSOCIATION.....	70
3.19 BDO EAST AFRICA LTD.....	75
3.20 BRITISH AMERICA TOBACCO (K).....	76

3.21 ASSOCIATION OF COLLECTIVE INVESTMENT SCHEMES.....	79
3.22 KTDA MANAGEMENT SERVICES LIMITED.....	80
3.23 ANJARWALLA & KHANNA.....	82
3.24 GREEN BONDS PROGRAMME KENYA (GBPK).....	89
3.25 ECONOMIC RENAISSANCE CHAMBERS LTD.....	91
3.26 KENYA PRIVATE SECTOR ALLIANCE.....	91
3.27 THE WRIGLEY COMPANY EAST AFRICA LTD.....	99
3.28 KENYA ASSOCIATION OF STOCKBROCKERS AND INVESTMENT BANKS.....	101
3.29 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK).....	103
3.30 ASSOCIATION OF GAMING OPERATORS OF KENYA.....	109
3.31 PRICE WATERHOUSE COOPERS.....	111
3.32 ENERGY REGULATORY COMMISSION.....	115
3.33 LAW SOCIETY OF KENYA.....	115
3.34 MR. NJOROGE WAWERU.....	119
3.35 WATER BOTTLERS ASSOCIATION OF KENYA.....	120
3.36 KENYA AIRWAYS PLC.....	120
3.37 NACADA.....	121
3.38 MR. ANDREW WANG'OMBE.....	122
3.39 HON. T. J. KAJWANG, MP.....	124
3.40 MS. LYDIA DA COSTA.....	124
3.41 GENGHIS CAPITAL INVESTMENT BANK.....	125
3.42 JOCKEY CLUB OF KENYA.....	126
3.43 CAPITAL MILLERS ASSOCIATION.....	127
3.44 THE NATIONAL TREASURY.....	127
4.0 COMMITTEE STAGE AMENDMENTS.....	131

ABBREVIATIONS

ACIS	-	Association of Collective Investment Schemes
APSC	-	Air Passenger Service Charge
BAT	-	British American Tobacco
BCLB	-	Betting and Control Licensing Board
CBK	-	Central Bank of Kenya
CEO	-	Chief Executive Officer
CMA	-	Capital Markets Authority
CS	-	Cabinet Secretary
EATGN	-	East Africa Tax and Governance Network
EPZ	-	Export Processing Zone
ERC	-	Energy Regulatory Commission
FMA	-	Fund Managers Association
ICAO	-	International Civil Aviation Organisation
IDF	-	Import Declaration Fees
IRA	-	Insurance Regulatory Authority
ITA	-	Income Tax Act
KAM	-	Kenya Association of Manufacturers
KASIB	-	Kenya Association of Stockbrokers and Investment Banks
KBA	-	Kenya Bankers Association
KEPSA	-	Kenya Private Sector Alliance

KOGA	-	Kenya Oil and Gas Association
KPMG	-	Klynveld Peat Marwick Goerdeler
KQ	-	Kenya Airways
KRA	-	Kenya Revenue Authority
KTDA	-	Kenya Tea Development Authority
LSK	-	Law Society of Kenya
NACADA	-	National Agency for the Campaign Against Drug Abuse
NHDF	-	National Housing Development Fund
NHIF	-	National Hospital Insurance Fund
NSE	-	Nairobi Securities Exchange
NSSF	-	National Social Security Fund
POCAMLA	-	Proceeds of Crime and Anti-Money Laundering Act
PSC	-	Production Sharing Contract
PWC	-	Price Waterhouse Coopers
RBA	-	Retirement Benefits Authority
RDL	-	Railway Development Levy
RHT	-	Robin Hood Tax
SEZ	-	Special Economic Zone
SOFA	-	Special Operating Framework Arrangement
TUC-Ke	-	Trade Unions Congress of Kenya
VAT	-	Value Added Tax
WHT	-	Withholding Tax

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Finance Bill, 2018, National Assembly Bill No. 20 was published on 19th June, 2018 and went through the First Reading on 3rd July, 2018. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 6th July, 2018 pursuant to Article 118 of the Constitution. Fortythree (43) stakeholders submitted memoranda for consideration by the Committee. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Bill seeks to amend the following laws; the Betting, Lotteries and Gaming Act (Cap. 131), the Marine Insurance Act (Cap. 390), the Air Passengers Service Charge Act (Cap. 475), the Stamp Duty Act (Cap. 480), the Banking Act (Cap. 488), the Co-operative Societies Act (Cap. 490), the Central Bank Act (Cap. 491), the Kenya Revenue Authority Act (No. 2 of 1995), the Retirement Benefits Act (No. 2 of 1997), the Accountants Act (No. 15 of 2008), the Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009), the Public Finance Management Act (No. 18 of 2012) and the Tax Appeals Tribunal Act (No. 40 of 2013)

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, 2018.

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 stakeholders for their participation in scrutinizing the Bill.

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

HON. JOSEPH LIMO, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

EXECUTIVE SUMMARY

The Finance Bill, 2018, was published on 19th June, 2018 and went through the First Reading on 3rd July, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Finance Bill, 2018 seeks to amend the following Acts of Parliament:-

1. **The Betting, Lotteries and Gaming Act (Cap. 131)** -The Bill seeks to amend the Betting, Lotteries and Gaming Act to require that the tax collected under sections 29A, 44A, 55A and 59B of the Act be paid into the Sports, Arts and Social Development Fund.
2. **The Marine Insurance Act (Cap. 390)** - The Bill seeks to amend the Marine Insurance Act to define the term “Commissioner” being referred to in the Act for clarity. The proposed amendment seeks to harmonize the Marine Insurance Act with the Insurance Act by clarifying that registration of marine cargo insurers is done by the Commissioner of Insurance appointed under the Insurance Act.
3. **The Air Passengers Service Charge Act (Cap. 475)** - The Bill seeks to make necessary amendment to the Air Passengers Service Charge Act to include the Tourism Promotion Fund as one of the institutions to benefit from the proceeds of air charge imposed under section 3(1) of the Act.
4. **The Stamp Duty Act (Cap. 480)** - The Bill seeks to amend the Stamp Duty Act to exempt from duty all instruments executed for purposes of collection and recovery of tax.
5. **The Banking Act (Cap. 488)** - The Bill seeks to amend the Banking Act to review the capping of interest rate to ensure access to credit facilities across the economy, especially among the lower income retail consumers and small and medium enterprises. This is aimed at minimizing the adverse impact on credit growth, financial access and monetary policy effectiveness.
6. **The Co-operative Societies Act (Cap. 490)** - The Bill seeks to amend the Act to provide for the legal basis to trigger the cancellation of the registration upon the revocation of a license by the Authority.
7. **The Central Bank Act (Cap. 491)** - The Bill seeks to amend the Central Bank of Kenya Act to provide powers to the Bank to regulate mortgage refinance business and to bring mortgage refinance companies within the CBK’s reporting framework.

8. **The Kenya Revenue Authority Act (No. 2 of 1995)** - The Bill seeks to amend the Kenya Revenue Authority Act to provide for a legal mechanism for collection of surplus funds from the regulatory bodies and timely payment of the same to the National Treasury.
9. **The Retirement Benefits Act (No. 2 of 1997)** - The Bill seeks to amend the Retirement Benefits Act to deal with penalties payable for late submission of investment returns and contribution returns by the Fund manager and administrator respectively. This is intended to increase the compliance with timely submission of all statutory returns under the Act and Regulations made thereunder. The amendment will further ensure that trustees meet their fiduciary and a strong deterrent with non-compliance within schemes.
10. **The Accountants Act (No. 15 of 2008)** - The Bill seeks to amend the Accountants Act by defining the term “Minister” to mean the “Cabinet Secretary” in line with the terminology used in the Constitution.
11. **The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)** - The Bill seeks to amend the Act by introducing a requirement for reporting institutions to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions originating from higher risk countries when called upon by the Financial Action Taskforce (FATF) through its public statement or when independently identified by the country authorities.
12. **The Tax Appeals Tribunal Act (No. 40 of 2013)** - The Bill seeks to amend the Tax Appeals Tribunal Act to streamline time of appeal as specified in section 55 of the Tax Procedure Act and section 13(7) of the Tax Appeals Tribunal. Further, the amendment proposed is to ensure expeditious dispensation of the appeal proceedings.

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit any fundamental rights and freedoms. The Bill does not affect the functions of the county governments as set out in the Fourth Schedule of the Constitution. The Bill is a money Bill within the meaning of Article 114 of the Constitution.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on **Friday, 6th July, 2018** pursuant to Article 118 of the Constitution. On expiry of the period to submit memoranda the Committee had received memoranda from forty-three (43) stakeholders for consideration. The Clerk of the National Assembly further placed an advert for public hearings in the Daily Nation and Standard newspapers on **Tuesday, 31st July, 2018**. All the proposals were discussed in a stakeholder’s

meeting held from **Wednesday 1st to Friday 3rd August, 2018** pursuant to Article 118 of the Constitution. The following stakeholders submitted their memoranda:

1. KPMG
2. Mr. Francis Korage
3. Kenya Association of Manufacturers
4. Mr. Ernest Muguku Muriu
5. Kenafric Industries Limited
6. Kenya Bankers Association
7. Trade Unions Congress of Kenya
8. Mr. Timothy Omondi
9. Britam Holdings PLC
10. Commission on Revenue Allocation
11. Mr. Henry Ogoye
12. Mr. Patrick Mate N'ndei
13. Fund Managers Association (FMA)
14. Kenya Association of Stockbrokers and Investment Banks (KASIB)
15. Mr. Vincent Ombaka
16. Hon. T.J. Kajwang', MP
17. Mrs. Agnes L. Waceke Mwaniki
18. Kenya Private Sector Alliance (KEPSA)
19. East Africa Tax and Governance Network (EATGN)
20. KTDA Management Services Ltd.
21. Green Bonds Programme Kenya (GBPK)
22. The Wrigley Company East Africa Ltd
23. Kenya Oil & Gas Association (KOGA)
24. Association of Collective Investment Schemes (ACIS)
25. Institute of Certified Public Accountants of Kenya (ICPAK)
26. British America Tobacco (BAT)
27. Anjarwalla & Khanna
28. Economic Renaissance Chambers
29. Price Waterhouse Coopers (PWC)
30. BDO East Africa
31. Mr. Brian Mbugua

32. Mr. Andrew Wang'ombe
33. Association of Gaming Operators of Kenya/Kenya Charity Sweepstake
34. Energy Regulatory Commission
35. Law Society of Kenya
36. Mr. Njoroge Waweru
37. Water Bottlers Association of Kenya
38. Kenya Airways PLC
39. NACADA
40. Ms. Lydia Da Costa
41. The Jockey Club of Kenya
42. Cereal Millers Association
43. Genghis Capital

The Committee also engaged the National Treasury on Wednesday 15th August, 2018 where each of the comments from the stakeholders were discussed. The deliberations formed the basis which the Committee made its decision in regards to the Bill.

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) 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;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;**
- d) 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;
- e) 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;
- f) 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);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

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.

In executing its mandate, the Committee oversees the following government Ministries;

- i. The National Treasury
- ii. Ministry of Devolution and Planning
- iii. Office of the Controller of Budget
- iv. Salaries and Remuneration Commission
- v. Commission on Revenue Allocation

1.3 COMMITTEE MEMBERSHIP

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

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MP
4. The Hon. Alfred W. Sambu, MP
5. The Hon. Enoch Kibunguchy, MP
6. The Hon. Shakeel S. Ahmed, MP
7. The Hon. Abdul R. Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP

1.4 COMMITTEE SECRETARIAT

1. Ms. Leah W. Mwaura - **Senior Clerk Assistant/Lead Clerk**
2. Ms. Jennifer Ndeto - **Principal Legal Counsel I**
3. Ms. Laureen Wesonga - **Third Clerk Assistant**
4. Mr. Josephat Motonu - **Fiscal Analyst I**

5. Mr. Chelang'a Maiyo - **Research & Policy Analyst III**
6. Mr. Collins Mahamba - **Audio Officer**

2.0 CONSIDERATION OF THE BILL

2.1 BACKGROUND INFORMATION

The Finance Bill, 2018, was published on 19th June, 2018 and read a First Time on 3rd July, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

The Bill according to the Budget Highlights by the Cabinet Secretary for the National Treasury and Planning, is intended to raise additional KSh. 27.5 billion to finance the 2018/19 fiscal year budget. It also introduces various tax incentives which are principally meant to spur economic growth as well as support the government's "big Four" economic plan in the areas of ensuring food security, construction of affordable housing, provision of universal healthcare and increasing the share of manufacturing for value addition and job creation.

The total projected expenditure and net lending for 2018/19 estimates amounted to KSh. 2.533 trillion to be financed through ordinary revenue (KSh. 1.743 trillion) and AIA (KSh. 179.95 billion). Expected external grants will amount to KSh. 47.037 billion, bringing the total revenue to KSh. 1.970 trillion. This leaves a fiscal deficit of KSh. 562.748 billion to be financed through debt. The proportion of revenue estimates to GDP for 2018/19 is 19.6% which is equivalent to that of the 2017/18 budget.

The full financing of the budget depends on implementation of planned tax enhancing proposals in the Finance Bill, tax administration reforms through modernizing of VAT Systems, reducing zero rated products through the Tax Laws (Amendment) Act, 2018), tax base expansion through targeting nil and non-filers, ensuring that all national and county government suppliers are tax compliant, reducing diversion of transit cargo through electronic cargo tracking system, and improved customs systems and border control. Further, planned repeal of the Income Tax Act is expected to greatly influence the collection of income taxes positively if substantial tax waivers and exemptions are removed.

The planned revenue estimates can only be achieved with adequate implementation of the revenue enhancing measures and addressing proliferation of tax waiver and exemption schemes.

In processing the Bill, the Committee invited comments from the stakeholders pursuant to Article 118 of the Constitution. Forty three (43) institutions and individuals responded by sending their memoranda to the Committee for consideration. The Committee held public hearings from **Wednesday 1st to Friday 3rd August, 2018 in Taifa Hall, Kenyatta International Convention Centre** to engage stakeholders on their memoranda pursuant to Article 118 of the Constitution. The following stakeholders appeared before the Committee during the stakeholder's conference:-

1. KPMG
2. Kenya Association of Manufacturers
3. Mr. Ernest Muguku Muriu
4. Kenafric Industries Limited
5. Kenya Bankers Association
6. Trade Unions Congress of Kenya
7. Britam Holdings PLC
8. Commission on Revenue Allocation
9. Mr. Henry Ogoye
10. Fund Managers Association (FMA)
11. Kenya Association of Stockbrokers and Investment Banks (KASIB)
12. Hon. T.J. Kajwang'
13. Kenya Private Sector Alliance (KEPSA)
14. East Africa Tax and Governance Network (EATGN)
15. KTDA Management Services Ltd.
16. Green Bonds Programme Kenya (GBPK)
17. The Wrigley Company East Africa Ltd
18. Kenya Oil & Gas Association (KOGA)
19. Association of Collective Investment Schemes (ACIS)
20. Institute of Certified Public Accountants of Kenya (ICPAK)
21. British America Tobacco (BAT)
22. Anjarwalla & Khanna
23. Economic Renaissance Chambers
24. Price Waterhouse Coopers (PWC)
25. BDO East Africa
26. Mr. Brian Mbugua

27. Association of Gaming Operators of Kenya
28. Energy Regulatory Commission
29. Law Society of Kenya
30. Mr. Njoroge Waweru
31. Mr. Andrew Wang'ombe
32. Water Bottlers Association of Kenya
33. Kenya Airways PLC

2.2 CLAUSE BY CLAUSE ANALYSIS

Clause 2: Introduction of new definition to define demurrage charges in the ITA. It is intended for the new proposed tax on demurrage charges for non-resident persons.

Clause 3: The Bill expands the definition of dividends to include an array of transactions between a company and its shareholders. This includes instances where a company settles debts on behalf the shareholders. The dividends will cover debt settlement even for third parties of shareholders, company expenses to shareholder and transactions that may occasion assets or dividend adjustments.

Clause 4: Amends Section 7A on dividend tax account. The Bill replaces the current compensating tax provisions with a straight 30% tax on dividends paid out of untaxed profits. The proposed amendment seeks to shift taxation of dividends distributed out of untaxed gains from the current compensating tax to corporate income tax. The proposal is designed to ease how profits or gains are taxed where a corporation pays dividends to shareholders without fully paying corporate taxes on the distributed income.

Clause 5& 9: The Bill proposes to amend Section 10 of ITA by deeming payments made to non-resident persons on account of demurrage charges and insurance premiums to be income derived from Kenya. These measures are intended to expand the tax base and facilitate collection of additional taxes to finance the budget.

Clause 6: The amendment repeals section 12C that provides for turnover tax of 3% on the gross receipts for persons with a turnover of less than KES 5,000,000 and replace it with a presumptive tax. Presumptive tax will be applicable to a resident person whose turnover from business does not exceed KES 5,000,000 per annum. The tax will be 15% of the single business permit fee issued by County Governments. This is a final tax. Turnover tax presented administrative difficulties due to

the nature of the taxpayers. So shift to presumptive tax is easy to implement if KSh. 5M threshold is well determined.

Clause 7: The Bill seeks to amend Section 15 of ITA which provides for the allowable tax deductions. The amendment introduces an additional tax deduction of 30% of electricity cost incurred by manufacturers in addition to the normal electricity expense subject to conditions set by the Ministry of Energy. This effectively allows manufacturer a deduction of 130% of their electricity costs. The measure is meant to incentivize manufacturers to support one of the “Big four economic plan”

Clause 8: The Bill amends section 19 of the ITA which provides for ascertainment income insurance companies. The amendment effectively brings to tax capital gains arising from the transfer of property by general insurance companies. It provides clarity on the taxation of transfers of property by insurance companies, bringing out the difference in tax treatment for general and life insurance companies. The proposed amendment introduces capital gains tax at the rate of 5% on transfer of property by insurance companies for general insurance business.

Clause 10: Bill proposes to amend Section 35 of the ITA by introducing a provision that requires the Commissioner to pay the taxes collected from winnings into Sports, Arts and Social Development Fund established under Public Finance Management Act, 2012.

Clause 11: The Bill introduces a new provision under the Third Schedule of the ITA for the taxation of persons engaged in business under framework agreements with the government. The businesses will be subject to tax based on the rates provided for under the agreement.

Clause 12: The proposed amendment seeks to delete the definition of the expression "electronic notice system" in the Value Added Tax Act, 2013.

Clause 13: This Section defines the taxable value for mobile cellular services to exclude excise duty. The deletion, will effectively mean that excise duty will now apply on the value of the service together with the applicable taxes, duties and levies, effectively increasing the tax base by 10% or 12% for money transfer services.

Clause 14: The debit note being issued is one that is in a prescribed form unlike what had been further provided in the substantive Act.

Clause 15: The amendment deletes provision on what amounts to unauthorized access to or improper use of tax computerized system.

Clause 16: Deletes provision on interference with tax computerized system.

Clause 17: Deletes provision for a person to file returns outside the specified period for the Commission to grant application for extension of time to file return. Deletes penalty for not filing as required under the section.

Clause 18: The existing VAT exemption for plant and machinery of tariff code 84 and 85 has now been restricted to plant and machinery used for manufacture. The current provision does not specify the purpose of the equipment. The exemption for specialised solar equipment and accessories has been modified to limit the exemption to equipment for the development and generation of solar and wind energy.

Clause 20: The amendment enables proceedings to continue without adjournment where a member ceases to be a member, for purposes of equity and expeditious dispensation of proceedings. There's no justification for adjournment on basis of a member ceasing to hold office.

Clause 21: The amendment allows for alternative dispute resolution and out of court settlement.

Clause 22: Liability shall be paid in accordance with section 36.

Clause 23: The amendment ensures that excise duty is only paid for goods which are to be used and consumed in Kenya.

Clause 24: The proposal reduces review period from two to one year.

Clause 25: section 23 of the Excise Duty Act 2015 highlights the process of revocation of the license that is issued.

Clause 26: If an appeal is rejected then a license stands cancelled and there's no need for further notice to cancel. In any case the person cancelling is similar to person hearing appeal.

Clause 27: The Bill proposes to give the Commissioner power to cancel a license without giving notice where the license, has engaged in fraud; is found to be in possession of counterfeit excise

stamps; has goods bearing counterfeit excise stamps; or has violated any regulations relating to health and safety, standards or packaging of goods.

The proposal further gives the Commissioner wide powers to fight counterfeiting of excisable goods. It is interesting that the change also proposes to give the Commissioner power to suspend a license on account of violation of health and safety standards. Issues of health and safety standards are vested in other bodies such as KEBS and the National Council for Occupational Safety and Health.

Clause 28: The Bill proposes to amend Section 36 of the Excise Duty Act to make it mandatory for the Commissioner to pay into Sports, Arts and Social Development Fund established under the Public Finance Management Act to support social development and universal health care, excise duty collected from certain sectors.

Clause 29: The amendment increases the penalty by providing for minimum of five million.

Clause 30: The amendment provides for forfeiture of any plant, excisable goods, any materials or finished goods in respect of which an offence has been established in addition to any other penalties set. The amendment will serve to further discourage manufacture of counterfeits.

Clause 33: Section 71 the Tax Procedures Act 2015 highlights the prescribed form as opposed to Section 70.

Clause 34: The word application has been used at the beginning of the sentence thus there is no need for it being repeated.

Clause 35: The amendment is for purposes of clarity if the taxpayer has more than one tax representative, then it only becomes logical that all the tax representatives are assigned different distinct roles, therefore they are expected to play their specific roles as they were assigned.

Clause 36: The amendment clarifies the process of application for extension of time to file tax returns, including setting timelines for when this shall be done for certain classes of returns.

Clause 37: The amendment provides for reasons being given for rejection of amended self-assessment forms for purposes of fair administrative practices.

Clause 38: The Bill proposes to repeal Section 37B of the TPA thereby extending the period of filing returns under tax amnesty from 30th June 2018 to 30th June 2019. The extension also covers

income received in the year 2017. It further proposes an amendment that provides that the Commissioner shall not question the source of the funds unless the funds are from terrorism, poaching or drug trafficking.

Clause 39: Increases late payment interest from one per cent per month to two per cent.

Clause 40: The amendment places obligation on both the tax payer and the agent acting on behalf of the taxpayer.

Clause 41: The amendment increases parameters as to what is a validly lodged notice of objection.

Clause 42: The amendment is for clarity as section 63 of the Tax Procedures Act 2015 actually delves into details on how public rulings are to be effected by the commissioners.

Clause 43: section 47 of the Tax Procedures Act 2015 clearly states the procedure of return of tax to a tax payer by the commissioner while section 48 states the erroneous refund of tax to a tax payer and what is to occur next.

Clause 44: Deletes the general penalty provision on late submissions returns other than employment income and turnover tax and clarifies the penalty for specific late returns.

Clause 45: Introduces twenty percent penalty for failure to pay tax on due date.

Clause 46: Amendment makes it mandatory for the Commission to determine which penalty applies where an act imposes more than one penalty for the same act or omission. Provides the Commissioner with the power to remit a penalty or interest collected except those under section 85 to a person.

Clause 47: Creates an offence on Unauthorized access or improper use of computerized tax system.

Section 103B: Creates an offence on Interference with computerized tax system.

Clause 48: The amendment is for clarity purposes. The current provision makes a person convicted under the section liable to both the a fine not exceeding two million shillings and to imprisonment for a term not exceeding five years

Clause 49: The proposed amendments align the Act with the understanding of the Special Economic Zones as a separate customs territory.

Clause 50: First Schedule of the Act by introducing an export levy on copper waste and scrap at the rate of 20%. The Scrap Metal Act, 2015 banned exportation of Scrap Metal unless the exporter has obtained the necessary authorisation. This provision may therefore be deemed to be redundant especially since exportation of the scrap metal without a license is an offence.

Clause 51: The amendments to the Second Schedule to the Act by exempt goods imported for implementation of projects under a special operating framework arrangement with the Government from import declaration fee.

Clause 52: The amendment provides for criteria for determining suitability of an applicant of a license.

Clause 53: The amendment provides for remittance of taxes collected under the specified sections to the Sports, Arts and Social Development Fund. Further provides for penalty for non-payment of tax imposed under specified sections.

Clause 54: The reference to Commissioner shall be the Commissioner under the Insurance Act. The amendment is for purposes of clarity.

Clause 55: Registration of insurers is under the insurance Act.

Clause 56: The amendments incorporates the tourism promotion fund as one of the institutions listed to benefit from proceeds of air charge imposed.

Clause 57: Exempts instruments for purposes of collection taxes and recovery from stamp duty and those relating SEZs, possibly for purposes of promoting such enterprises.

Clause 58: This is necessary since it's reviewing the capping of interest rate to ensure access to credit facilities across the economy, especially among the lower income retail consumers and small and medium enterprises. This will ensure that there is minimization of the adverse impact on credit growth, financial access and monetary policy effectiveness.

Clause 59: It provides that a cooperative society to lose registration once the deposit taking licence has been revoked. The amendment is necessary so as to ensure that upon there being a legal basis that can give rise to the cancellation of the registration, then the SASRA should act and indeed revoke the license that it had earlier issued. This is a measure to ensure the Cooperative operate under prudential guidelines.

Clause 60: Provides for better understanding of what the terms as will be used in the Central Bank Act. In addition, the proposed amendment intends to introduce a mortgage financing business and give the Central Bank the mandate of licensing, regulating and supervising the business. This may be linked with the proposed National Housing Development Fund proposed in Clause 68 of the Bill.

Clause 61: This being a new role added to Central Bank to ensure efficiency in the service delivery and making sure that no aspect is left un monitored including that of licensing and supervising mortgage refinance companies as proposed in the Bill.

Clause 62: It provides the Bank with powers on how it operates with regards to regulation of the mortgage refinance business and to bring mortgage refinance companies within the Bank's reporting framework. This will ensure there is complete oversight of the same.

Clause 63: Includes for specified mortgage refinance companies to provide information required under the section

Clause 64: This is a provison relating to the role of CBK to issue guidelines and circulars. It expands the latitude of the Central Bank by providing that in addition to making of regulation for the implementation of the Act, it can also issue guidelines, circulars and directives.

Clause 65: The proposed amendment seeks to the inclusion of the Public Finance Management Act, 2012, as among the written laws relating to revenue. The First Schedule of the Act presents several other laws in this category.

Clause 66: This amendment deals with late submission of investment returns and contribution. If this is enforced, it will ensure that all the stakeholders meet their end of the bargain so as to avoid having to pay hefty penalties and fines. This will actually deter non-compliance with the requirements of the law.

Clause 67: The amendment will ensure that employers fulfill their obligations to their employees by imposing specific penalties for non-remittance of contributions of retirement benefits schemes.

Clause 68: The amendment provides for mandatory contribution to the National Housing Development Fund. It seeks to mandate . The amendment introduces contribution by both the employers and employees into the National Housing Development Fund as follows:

- Employer – 0.5% of the employees gross pay per month.
- Employee – 0.5% of the earnings deducted from the employee's earnings.

Clause 69: The proposed amendment seeks to harmonize the Principal Act with the Constitution of

Kenya, 2010 by redefining the term “minister” and also referencing the usage of term “company” to the relevant statute, which the Companies Act.

Clause 70: The proposed amendment seeks to introduce stringent measures on conducting any business transactions with countries considered risky according to the Financial Action Task Force. In addition, the Sacco’s Society Regulatory Authority (SASRA) has been included among the supervisory bodies for the purpose of mutual sharing of information between the Financial Reporting Centre and the supervisory bodies when conducting any investigation or for the enforcement of the law.

Currently, several supervisory bodies in the financial sector are required to receive information from reporting institutions which includes all transactions exceeding USD 10,000 or its equivalent in other currencies, for onward reporting to the Financial Reporting Centre. They include:- CBK, IRA BCLB, CMA, RBA, , NGO Coordination Board and Estate Agents Registration Board.

3.0 SUBMISSION BY THE STAKEHOLDERS

Following the call for memoranda from the public on 6th July, 2018, the Committee received memoranda from forty (40) stakeholders. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

3.1 KPMG

The representative from KPMG made the following submission: -

The Finance Bill, 2018 contains various tax measures that the government proposes to implement to actualize the Big Four Agenda. There are a few provisions in the Finance Bill, 2018 that request the Committee on Finance and National Planning to consider to better give effect to the Government's Big Four Agenda.

They proposed the following amendments: -

Clause 4

THAT Clause 4 of the Bill be amended by deleting the proviso to the proposed section (7)(A) of the Income Tax Act and replacing it as follows:-

Provided that this section shall not apply to:

- i. Registered collective investment schemes
- ii. Distributions of exempt dividend income
- iii. Companies where the Commissioner is satisfied that the tax losses arose from utilization of capital allowances and
- iv. Distribution of income that has been exempted under any other provision of this Act.

Issue with the provision

KPMG observed that if the provision is implemented as proposed, it will result in double taxation for a number of holding companies including those listed on the NSE. Further, the proposal subjects to tax, income exempted from tax to promote certain sectors of the economy. The specific examples are as follows:-

- a. Dividends paid by subsidiaries companies to their parent companies are exempt from tax under the Income Tax Act. Under the proposed change the holding company will pay corporation tax on the dividends because of the exemption even though the subsidiary will have already

accounted for corporation tax before making the distribution. This results in an effective tax rate of 51% on the two companies.

- b. Companies that take advantage of capital allowances which only defers taxation to the future will be taxed twice when paying dividends and in future when they finish utilizing the allowances.

Justification

KPMG justified the on the fact that the amendment will remove double taxation inherent in the current provision and reduce the incentive for investors to use offshore investment vehicles for investments into Kenya.

Clause 18

In Clause 18, KPMG proposed to change the current provision 18(a)(vi) as follows:-

By deleting the words “primary school laptop tablets” appearing in Paragraph 53 and substituting therefore the words “computers, microwaves, fridges, ovens, electric heaters, electric and gas cookers and television sets”

Issue with the provision

KPMG observed that the Bill proposes to exempt from tax raw materials for the local assembly of computers. This provision is to help promote the local assembly of computers to spur the manufacturing sector. They noted that while this was a good move, it would not create a significant boost to the sector. They recommended that the exemption be expanded to include a number of common household equipment such as fridges, ovens heaters. This would create a larger manufacturing base and provide an avenue for developing a significant pool of local content providers.

Justification

They justified their proposed amendment by stating that this would provide a large base for the development of higher value manufacturing.

Section 31(a)(i)

In the Section above, KPMG proposed that the excise duty on kerosene be retained at Kshs. 7,205 per 1000 litres @ 20 degC. They noted that the government has proposed to increase excise duty on kerosene to reduce the incentive to adulterate petrol and diesel with kerosene. They however argue that the proposed increase amounts to only Kshs. 3 per litre which was not adequate to bridge the price gap between kerosene and petrol and diesel.

They further argued that the increase will therefore not help in the fight against adulteration but has an immediate negative impact on the cost of living especially for the vulnerable persons since kerosene is the main fuel used for cooking and lighting by a majority of Kenyans. The move will equally not assist the Government in the fight against adulterated fuel. In view of the above, KPMG argue that retaining the current rates will cushion the poor especially in light of the proposed introduction of VAT on petroleum products.

Justification

Section 31(b)(5)

In the Section mentioned above, KPMG proposed the expanding of the definition of “...*transfers at a rate of 0.05% on transfer funds by banks, money transfer agencies and other financial service providers in case of the money transferred is Kshs. 500,000 or more*”. Provided that this section shall not apply to:

- a) Transfers where the sender and the recipient are the same person;
- b) Payment of taxes and other statutory remittances;
- c) Purchases and receipt of proceeds from government debts transactions;
- d) Purchases and sales of securities on the NSE;
- e) Cash withdrawals; and
- f) Loan transactions including inter-bank borrowing.

Issue with the provision

They noted that the explanation of “*0.05% of the money transferred in case of money transfer of Kshs. 500,000 or more*” was not clear hence opening it to different interpretations and legal disputes. They argue that as currently structured, the transfer includes the following:-

- a) Payments of taxes and other statutory charges;
- b) Transfers from different bank accounts of the same person;
- c) Loan repayments; and
- d) Trade settlements.

Justification

KPMG justifies the need to provide a clear definition of the explanation “*0.05% of the money transferred in case of money transfer of Kshs. 500,000 or more*” due to the fact that the current section was subject

to disputes because it does not provide adequate guidelines on determination of what constitutes transfer of funds. Further, the proposed amendments will bring clarity to the legislation and reduce disputes in its implementation.

3.2 KENAFRIC INDUSTRIES LIMITED

Kenafri Industries Limited (KIL) submitted the following memorandum to the Committee: -

KIL noted that Clause 31 of the Finance Bill, 2018 proposes to amend the First Schedule to the Excise Duty Act, 2015 by introducing Excise Duty on Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.321.00 and 1806.90.00 at the rate of Kshs. 20 per kilogram.

The proposal goes against the spirit of the Big Four Agenda which is to promote local manufacturing. If the proposal is passed, it will make local manufacturers uncompetitive as a result of cheap imports and strong possibilities of smuggling as happened in Uganda which has now reversed the excise duty for local manufacturing. This will be an addition to existing high liquidity constraints arising from Withholding VAT and Export Refund formula and the existing with non-tariff barriers in the EAC market. This will have an effect on job creation as the entire value chain will be affected by this tax right from the supply chain to the kiosk vendors.

3.3 MR. FRANCIS KORAGE

Mr. Francis Korage stated that;

The Banking Act (488) should be reviewed to allow supply and demand of finance to be left to control the interest rates. The current capping has left the lower income earners vulnerable. The economy is not performing well following the interest rate capping regime. He proposed that the provision as contained in the Banking Act be repealed.

3.4 KENYA ASSOCIATION OF MANUFACTURERS

Kenya Association of Manufacturers is the representative organization for manufacturing value-add industries in Kenya. KAM membership constitutes 40% of manufacturing value-add industries in Kenya and comprises of small, medium and large enterprises.

KAM appeared before the Committee on **Thursday, 2nd August, 2018**. They submitted the following proposed amendments: -

Clauses 2, 5, 9 and 10

KAM proposed the deletion of the proposed provisions under clause 2 and 5 introducing demurrage charges.

Justification

They justified their amendment by stating that demurrage refers to the charges or penalties assessed for delay of operations of loading/unloading. Demurrage charges is therefore an inefficiency penalty and not an income that should not be classified under section 10 of Income Tax Act. Section 10 relates to income from management or professional fees, royalties, interest and rents. These are all positive incomes that do not arise from a penalty or inefficiencies.

The Bill proposes the definition of demurrage charges as penalties paid for exceeding the period allowed for taking delivery of goods or returning of any equipment used for transportation of goods. Similarly, this definition serves to show that demurrage charges do not qualify as income similar to management, professional fees, royalties, interest and rents.

They stated that in Kenya, importers incur demurrage costs as ‘unavoidable costs’, mostly due to inefficiency at the Kenyan Ports and government agencies charged with managing inbound cargo processes such as;

1. Kenya Ports Authority does not have enough berths to manage the number of vessels calling into Mombasa with bulk cargo especially
2. Kenya Revenue Authority frequent downtime of their systems slows down cargo clearance
3. KEBS sampling and testing cycle time delays release of cargo to importers as most tests must be done in Nairobi

They argued that the effect of such demurrage costs being recognised as income, is that such costs shall be passed to citizens who are already paying taxes to enable improvement of services. Charging tax on an inefficiency cost only makes the situation worse for the common citizenry.

The action of recognising inefficiency as an income may encourage an even a higher level of inefficiency from Government agencies in order to enhance or increase the new revenue stream.

Clause 4

KAM proposed an inclusion of a proviso under the new Section 7A to provide clarity on how already taxed dividends will be implemented to ensure that double taxation is not imposed as follows;

- (i) Replace the new proposed clause 7A with the following:

“Where a dividend distributed out of gains or profits excluding dividend income, on which no tax is paid under the provisions of this Act, the person distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the applicable resident corporate rate.

Provided that this section shall not apply to registered collective investment schemes.”

Justification

1. The Government has been offering tax credit for dividends paid out by a company from dividends. The new provision proposes that distribution of such dividends will trigger additional tax.
2. This proposal may cause double taxation and increase administrative costs if the provisions are not clearly provided for. As it is, the provisions are ambiguous as to how proof of the same will be done.

Clause 6

KAM proposed the deletion of clause 22 (1) introducing presumptive income tax.

Justification

1. The proposal of presumptive income tax seems to be tied to County Governments and their function of issuing business permits. This therefore means that the tax should be subjected by County Governments as opposed to the national level.
2. There is need for separation of income tax from national and county government.

Clause 7

KAM proposed the inclusion of the conditions proposed to be set by the Ministry of Energy for approval of thirty percent of electricity cost.

Justification

They stated that manufacturers laud the Government for this incentive to the manufacturing sector. However, there was need to understand what are the conditions set by the Ministry prior to the approval of the incentive. In addition, the conditions should be clearly defined in the law to provide certainty in the law. The lack of conditions being included may lead to delays and even not being achieved despite that it has been included in the law. They also noted that the the Ministry of Energy should be tasked to provide the conditions in consultation with the manufacturing sector to be included in the Income Tax Act.

Clause 11

KAM proposed the inclusion of a definition of Special Operating Framework Arrangement (SOFA)

Justification

They cited that the term SOFA is proposed to be introduced in the Income Tax Act and hence the need to defined it to ensure clarity as to its extent. Ambiguity on the same may be misused.

Section 42 A of the Tax Procedures Act

In the above mentioned section, KAM proposed the introduction of new provisions in the Bill amending section 42A of the Tax Procedures Act to reduce the period of twenty four months required to demonstrate being in a continuous credit position as follows:

By deleting the words “twenty four” and replace with “three months” under Section 4A of the Tax Procedures Act.

Justification

The argue that the 6% is prohibitively a double tax. Effectively registered taxpayers/manufacturers are being forced to pay an additional 6% Withholding VAT (WHVAT). Further in the case of refunds, there is no provision to claim the refund of the 6% WHVAT.

The Second Schedule to the Value Added Tax Act, 2013

KAM proposed the introduction of new provisions in the Bill to zero rate select building materials which are locally manufactured for use in construction of affordable housing VAT rate from 16% to 0% as follows:

The Second Schedule to the Value Added Tax Act, 2013, is amended—

(i) Amendment of Second Schedule to No 35 of 2013.

(a) in Part C, by inserting the following new paragraphs —

- 6810.11.00 and 6810.19.00 Blocks (paving)
- 6801.00.00 Big square slabs
- Concrete (semi-product)

2517.10.00 Aggregates

Justification

They argued that one of the Big four Agenda priorities is housing. By zero rating the above mentioned building materials it will play a key role in supporting construction manufacturing sector which is part of the Big four agenda. Some of the materials manufactured by the sector are subjected to 16% VAT thereby increasing overall costs of building and which will in turn affect the housing agenda.

They further proposed the zero rating of the following items to allow for the sector to be able to claim their VAT costs;

- 6810.11.00 and 6810.19.00 Blocks (paving)
- 6801.00.00 Big square slabs

- Concrete (semi-product)
- 2517.10.00 Aggregates

The Second Schedule to the Value Added Tax Act, 2013

KAM proposed the introduction of new provisions in the Bill to zero rate Laboratory equipment for soil analysis as follows;

The Second Schedule to the Value Added Tax Act, 2013, is amended—

(i) Amendment of Second Schedule to No 35 of 2013.

(a) in Part C, by inserting the following new paragraphs —

9027.80.00 - Laboratory equipment for soil analysis.

Justification

Common External Tariffs rate rate is 0%**If the above is adopted, KAM argued that there are several** direct and indirect effects including helping farmers to grow the economy by being able to claim VAT on farm inputs and hence reducing cost of production and increased yield. . The resultant effect would also help to create more jobs for the youth.

Agricultural sector; Animal feeds (Finished product of animal feeds)

In the above mentioned sector, KAM proposed the introduction of new provisions in the Bill to zero rate finished product of animal feeds as follows;

The Second Schedule to the Value Added Tax Act, 2013, is amended—

(i) Amendment of Second Schedule to No 35 of 2013.

(a) in Part C, by inserting the following new paragraphs —

9027.80.00 - Laboratory equipment for soil analysis.

Justification

They stated that currently finished product of animal feeds are exempt from VAT while the manufacturer incurs VAT on CAPEX, raw materials, packing materials, services and any other goods and services (e.g. consultancy, architect, premises, leases, etc.). This becomes a cost to the manufacturer.

Proposal on capital equipment for animal feeds as follows:

They further proposed that the sale of animal feeds to be classified as zero rated for VAT. Registered Animal Feed Manufacturers with Ministry of Agriculture and Treasury be granted VAT Zero rated status on all CAPEX and inputs (system similar to Export Processing Zones).

They stated that if feeds sales are Zero Rated, then the manufacturer will be able to claim a refund of the VAT paid and suppliers are not impacted on supplies they make and the level of Input tax they are able to claim. If manufacturer is zero rated then suppliers supply at zero rate VAT. Thus, no impact on input tax claim.

Pharmaceutical/metal sector

KAM propose the introduction of new provisions in the Bill to impose 16% VAT on Aluminum Closure Sheet (Foil) unprinted not exceeding 0.20mm thickness as follows:-

The Second Schedule to the Value Added Tax Act, 2013, is amended—

(i) Amendment of Second Schedule to No 35 of 2013.

(a) in Part C, by inserting the following new paragraphs —

7607.19.10 - Aluminium Closure Sheet (Foil) unprinted not exceeding 0.20mm thickness.

8309.90.90

ROPP Aluminium Closure – description in tariff is “OTHERS”

Justification

They proposed the amendment so that it does not coincide with the foil paper imported for packing food. The specific description should change to Aluminum Closure Sheet unprinted not exceeding 0.20mm thickness and a new code can be generated for this specific item or include not exceeding 0.23mm thickness.

KAM proposed the zero rating of input and output of VAT for non-EPZ registered Textiles and Apparels manufacturers as follows: -

The Second Schedule to the Value Added Tax Act, 2013, is amended—

(i) Amendment of Second Schedule to No 35 of 2013.

(a) in Part C, by inserting the following new paragraphs —

Local input and output registered Textiles and Apparels manufacturers

Justification

They stated that there exists an un-level playing field with EPZ based textiles and apparels manufacturers when accessing the Kenyan market. Local manufacturers pay full VAT, and duties unlike the textile manufacturers under the EPZ scheme. Additionally, due to the stay of application, the non-EPZ manufacturers are not benefiting from preferential tariff treatment yet the products confer origin. The proposal will bridge the un-level playing field between EPZ based manufacturers and Local manufacturers. It will also make local manufacturers competitive against imports.

Clause 18

KAM proposed the deletion of clause 18 to allow for maize corn seed to be exempt by re-inserting paragraph 28 under the First Schedule to the Value Added Tax Act, 2013 with the following item, Maize (corn) seed of tariff no. 1005.10.00.

Justification

They justified their proposal by stating that the agriculture sector is the backbone of Kenya's economy and hence its significance in the country. Additionally, the Government has recently included it as a priority agenda for the government under the Big Four pillar. They argued that the introduction of VAT on Maize (corn) Seed would be detrimental to not only food security but also will make farmers less competitive compared to farmers in the East Africa region. The effect of this will be increased imports which is a direct impact of Vegetable Seeds being Vatable. Kenya will be one of the few countries in Africa that charges VAT on seeds.

Clause 24

KAM proposed the deletion of clause 24 and replacing the provisions under section 10 of the excise Act imposing inflation as follows;

(2) Each rate of excise duty specified in column 2 of the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula —

$$A(1 + (0.3)B)$$

where —

A is the rate of excise duty on the day immediately before the adjustment day; and B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.

Justification

They stated that inflation adjustment formula should be changed to reflect the impact inflation has on the alcohol subsector. Firstly, inflation is impacted by the cost-push inflation that's affects cost of production that impacts manufacturers. Secondly, 40% of the products included in the basket of goods used to calculate in the Consumer Price Index (CPI) are excisable goods; i.e. alcohol, tobacco, non-alcoholic beverages, airtime, fuel and financial transactions. When excise duty is increased on excisable goods, inflation increases in the preceding months, thus causing a double jeopardy as it becomes an

inflationary accelerator by itself, which will impact the CPI. Thirdly, the inflation adjustment does not take into account that food prices have the biggest impact on the CPI. Food account for 30% of the CPI, meaning that in times of drought and famine, inflation is bound to go up impacting the disposable incomes of consumers and this has a direct effect on demand of excisable goods which are largely discretionary spend to consumers. The change will lead to more predictable tax environment that encourages investments and job creation, more stable inflation rate thus creating conducive economic environment and revenue growth for government in line with GDP growth

First schedule of the Excise Act – Part 1

KAM proposed that the First Schedule to the Excise Act be amended by introducing a new provision as follows—

(i) Amendment of First Schedule

(a) in Part 1, by inserting the following new paragraphs —

2009.19.00 - Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter-other

Excise duty 5 Ksh per litre

Justification

They argued that Excise Duty on juices is Kshs. 10 which is affecting the competitiveness of the sub sector manufacturing juices. The sub sector complements the Agricultural sector through getting its raw materials to manufacture from the sector. The Government needs to incentivize the sector in order to promote healthy living by citizens through the juices. The proposal to reduce the excise rate will contribute to the following:

1. It will give time for the industry to grow and create backward linkage in the sector in line with Big 4 Agenda on food security and manufacturing.
2. Excise tax creates an imbalance in the economy since fresh squeezers of juice in cafes etc are not taxed.
3. The administrative costs of collecting tax on juices and water is too high; no excise procedures for water and juices.
4. Fruit based beverages are a healthier option and thus should not be adversely taxed.
5. Increased turnover will lead to more excise duty and VAT will increase revenue to the government.

6. To enhance value addition on production of related by-product which generates additional tax (VAT + Corporate Tax)
7. Increased employment and hence more income tax

First schedule of the Excise Act – Part 1

KAM proposed the amendment to the First Schedule to the Excise Act by inserting a new provision as follows—

- (i) *Amendment of First Schedule*
 - (a) *in Part 1, by inserting the following new paragraphs —*
Spirits of un-denatured ethyl alcohol; spirits
liqueurs and other spirituous beverages of
alcoholic strength exceeding 10%
Shs. 100 per litre

Justification

They stated that Excise duty in Kenya for Un-denatured ENA is Kshs. 200 per litre. This amount is higher compared to EAC counterparts especially in Uganda which is at the rate of UShs 60% and in Tanzania it is 0%.

This has resulted in smuggling of illicit alcohol from the two countries into Kenya and a great loss to ENA producers and to the Exchequer. With the reduction in the excise duty, there will be an increase in sales resulting in increase in employment, investment attraction, the country will go towards meeting the increase in manufacturing as per the “Big Four” and KRA will maximize on revenue.

First Schedule to the Excise Act

KAM proposed that the First Schedule to the Excise Act, be amended as follows—

- (i) *Amendment of First Schedule*
 - (a) *in Part 1, by inserting the following new paragraphs —*
cigarettes containing tobacco or tobacco substitutes" Shs. 2500 per mille

Justification

They stated that Kenya until last year imposed a single tier excise rate on cigarettes. The move to a two tier specific excise rate has seen a major decline in volumes (volumes dropped 12% in 2016 and 9% in 2017) due to reduced consumer affordability. In addition, the proposal will see stability and predictability in the excise environment by applying minimal increases using the current excise rate of

Kshs 2,500 per mille for filter cigarettes as the base rate. The excise shock of 2015(a 50% increase on previous weighted average) was unprecedented and has contributed to the major decline in volumes. Having minimal steady excise increases based on inflation adjustment as provided in the Excise Duty Act, 2015 prevents occurrence of excise shocks. Illicit trade in cigarettes has gone up from an average of 3.5% in 2016 to 12.4% in November 2017. Government effort to introduce second specific excise tier for cigarettes without filters to cater for lower income consumers has not gained acceptance with consumers leading to a 10% drop in volumes and an excise revenue drop of 20%(Kshs 150 Million). If government effects a 10% inflationary adjustment in 2018, our volumes will recover at 3% which will translate to increased contribution to government excise revenue to Ksh. 14.3 Billion in 2019.

First Schedule to the Excise Act

KAM proposed that the First Schedule to the Excise Act, be amended as follows—

(i) Amendment of First Schedule

(a) in Part 1, by deleting the words “per unit” and replacing with the words “ml” as follows

Cartridge for use in electronic cigarettes @ Kshs. 3/ml

(b) in Part 1, on Electronic cigarettes by deleting “KShs. 3000 per unit” and replacing with “KShs. 2000 per unit” as follows ;

Electronic cigarettes @ KShs. 2000 per unit.

(c) in part 1, on Cartridge for use in electronic cigarettes by deleting “KShs. 2000 per unit” and replacing with “KShs. 3/ml” as follows;

Cartridge for use in electronic cigarettes @ KShs. 3/ml

Justification

They stated that electronic cigarettes do not contain tobacco products and are significantly less risky alternatives to conventional cigarettes. Their proposal was for the excise base to be related to the weight/volume of the consumable and not the delivery device. This will increase manufacturer’s profitability and consequently increase corporate and excise revenue for the government.

First Schedule to the Excise Act

KAM proposed that the First Schedule to the Excise Act be amended as follows—

(i) Amendment of First Schedule

(a) in Part 1, by deleting the words Cosmetics and Beauty products of tariff

heading No. 3303, 3304, 3305 and 3307 and the rate thereof of 10%.

Justification

1. They justified their amendment by stating that the local manufacturer was losing competitiveness vs major foreign player. The local industries are manufacturing basics products with low Gross margin compare to most foreign players who can support the duty costs. Local player had to increase their prices (around 5%), and it is the final consumer that will pay the final bill. This in turn was jeopardizing local employment. Removal of excise duty will increase competitiveness of local cosmetics manufacturers. This will lead to creation of new jobs and attract new investments. In addition, the removal of tax will also be a source of foreign exchange because of export revenue and enhance affordability of basic hygiene products.

Clause 31

KAM proposed the deletion of the provision imposing Kshs. 20 per kg on sugar confectionery under clause 31 and amend by introducing new provisions as follows;

- (a) in Part 1 - IMPORTED Sugar confectionery of **tariff heading 17.04 @ KShs. 20 per Kg**
- (b) in Part 1 - IMPORTED White chocolate **in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00 @ KShs. 200 per Kg**

Justification

They stated that there were at least eight (8) main confectionery manufacturers in Kenya directly employing about 3,459 people and 16,000 indirectly. Through planned investments, the sub-sector anticipates to create additional jobs of about 4,500 by 2022. They state the reasons why the excise tax should not be imposed by arguing that:-

- i) Majority of consumers of these products are aged between 2 to 18 years of age and this amounts to taxing them ex-ante (that is before becoming “real” income earners);
- ii) Today, thousands of unemployed youths are in hawking business for sweets and chocolates, hence imposing an excise tax on these products is likely to render them jobless. This is because not only will working capital requirement increase, but also profit margin will shrink due to anticipated decline in sales;
- iii) Other EAC countries such as Uganda have lifted the imposition of equivalent excise tax on locally manufactured confectionery and chocolates citing increase of smuggling, counterfeits and disincentive to attract sector investment. Imposing the excise tax on domestic confectionery manufacturers will likely create a replica of Uganda’s post-excise tax regime on confectioneries.

- iv) Investment in to the sector started during pre-independence period and number of confectioneries manufacturers entering the sector has been on an increasing trend. The latest entrant into the sector was Rok Industries Ltd in 2018 (see Table 2). Imposing the excise will act as a disincentive to potential investors.
- v) In 2017, merchandise trade deficit continued to widen from KSh 853.7 billion in 2016 to KSh 1,131.5 billion. However, as indicated Table 3, confectioneries export have been on increasing trend, from 0MT in 2000 to about 23,000 MT in 2017 (about 50% of local production). Imposing excise tax will destabilize domestic base which should act as a bedrock for export production.
- vi) The amount of revenue to be collected by imposing the excise tax will be about 0.07% and 0.05% of the projected revenue and total budget for 2018/2019.
- vii) Globally, confectioneries have never being in the blanket for excise tax.

Impact on manufacturers

1. Increased cost of production hence high per unit price.
2. The excise tax is to be imposed on production; this compounding effect on liquidity position of manufacturers. This is because, first, liquidity is already constrained by Withholding VAT and Export Refund formula. Second, most of the sales are on credit which extends to about 100 days.
3. Recovery from the aftermath of 2017 general election will be greatly undermined.
4. Imposing the excise tax will likely reverse the gains that the sector has accrued over time through value chain integration.
5. Imposing the same excise tax on confectioneries and chocolates amounts to making a strong assumption that the two products are of similar value

By imposing an excise tax of Ksh. 20 on imported confectionery and Ksh. 200 on imported chocolate, the government will collect almost similar amount of tax revenue as imposing it on both domestic sales and imports of confectionery and chocolates. This is important for local manufacturers because:

1. It will go a long way in supporting the local industries in sustaining the current employment and creating more employment opportunities through planned investments;
2. It will be a progressive tax because imported confectionery and chocolates target high-end consumers
3. Enhance value chain integration;
4. It will be in sync with the spirit of the Big 4 agenda.

KAM proposed the deletion of the provisions under clause 31 (b) ii 6.

Justification

They stated that this will be a major expense to companies that have a large number of transactions, including manufacturers. The proposed tax goes against the big four agenda aspirations since the tax will make the local manufactured goods to be less competitive and face stiff competition from cheaper imports, or in the export markets.

In addition, companies especially manufacturing are closely monitored by KRA, and hence majority of them comply with KRA in declaring and paying their due taxes.

They cited some of the effects that are likely to occur due to the proposed tax as follows;

1. Discourage technological advancement in the financial sector and revert citizens back to paper transactions.
2. This will also discourage employment, as companies will be under pressure to keep overheads down.
3. It could lead to increased scope for fraud and delayed settlement of debts as payments are split to avoid the additional cost.
4. The proposed tax could reduce the total volume traded in financial products, with negative consequences on employment and also loss of average tax.
5. The tax could end up being a stealth tax as the affected companies may end up passing the tax to the final consumer with no guaranteed transparency about who exactly should bear the costs.
6. The tax has also an effect of double taxation for the companies; Example a company borrows a loan to facilitate its operations, this means it will be taxed when receiving the loan from the bank then taxed again when paying its suppliers, receiving money from its customers and also when repaying for the loan.

They stated that in the event that the Government imposes the tax, there was need for clarification whether of transfer would include cheque payments, payments to the KRA, internal company transfers between accounts, transfers to third parties within the same bank etc.

NEW PROVISIONS

KAM proposed the introduction of a new clause to remove IDF on raw materials and intermediate inputs or have a scheme for export outside Kenya to refund IDF for the quantum of the export and a mechanism can be worked out for refund or offset against other taxes for industrial inputs used for manufacturing

Justification

They argued that the Import Declaration Fee continues to make the manufacturing sector less competitive. This was because local goods were subjected to import declaration fee in addition to duties that are expected to be paid. The history of the IDF fee was that it was to be a service fee to facilitate importation. However, this fee is being used to stifle trade since importers are still charged by several other agencies for their services.

The cited some of the effects of IDF on the manufacturing sector;

1. IDF increases the cost of imported raw materials and thus increases the unit cost of production and ultimately the prices at which the consumers get the products.
2. A Waiver of IDF on imported raw materials and intermediate inputs will increase competitiveness
3. Increased competitiveness of local manufacturers
4. Growth of the current companies and import substitution.
5. Save foreign exchange and create jobs.
6. Discourages and disincentivizes exports.

KAM proposed a new provision to remove RDL on raw materials and intermediate inputs or have a scheme for export outside Kenya to refund RDL for the quantum of the export and a mechanism to be worked out for refund or offset against other taxes for industrial inputs used for manufacturing

Justification

They justified their proposal by stating that Railway Development Fund is an additional tax that manufacturers have to pay in the importation of the raw materials and inputs. They stated tax makes local goods less competitive compared to other EAC countries and also from cheaper imports.

1. RDL increases the cost of imported raw materials and thus increases the unit cost of production and ultimately the prices at which the consumers get the products.
2. A Waiver of RDL on imported raw materials and intermediate inputs will increase competitiveness
3. Increased competitiveness of local manufacturers
4. Growth of the current companies and import substitution.
5. Save foreign exchange and create jobs

Clause 25 (3)

KAM proposed the Inclusion of the word “writing” under clause 25 (3) as follows;

The Commissioner may grant an application under this section if satisfied that there is reasonable cause and shall notify the applicant accordingly in writing at least five days before the due date:

Justification

They stated that the previous provision include the requirement of the notification to be in writing.

Clause 37

KAM proposed the deletion of the reference to the commissioner as “he”

Justification

They argued that there was need for the use of gender sensitive language in the Bill and avoidance of gender sensitive language.

Clause 46

KAM proposed the replacing of the conditions provided for under clause 46 seeking to amend section 89 (7) of the Tax Procedures Act with the following;

- (a) being absent from the country.
- (b) Uncertainty as to the question of fact or law
- (c) sickness absence from country or other disability that may have occasioned the cause of the oversight
- (d) Such other similar reasonable ground as the Commissioner may deem fit

Justification

They stated that Section 89 of the Tax Procedures Act 2015. Section 89(7) as it stands now states that mitigation for waiver of penalties and interest will be considered for waive by the Commissioner if occasioned by:

- a. Uncertainty as to the question of fact or law.
- b. Consideration of hardship or equity, or
- c. Impossibility or undue difficult or expense of recovery of tax.

They stated that it was unlikely that taxpayers would be able to satisfy the thresholds to qualify for the waiver and it maybe another way of saying there is no remission. In view of the above, KAM proposed the following grounds;

- i. Being absent from the country’.

- ii. Uncertainty as to the question of fact or law
- iii. sickness absence from country or other disability that may have occasioned the cause of the oversight
- iv. Such other similar reasonable ground as the Commissioner may deem fit

Clause 68

KAM proposed the removal of the levy from private sector to finance the housing agenda from national pool. They proposed that the section of the Bill should not to be enacted due to the following arguments.

THAT,

1. There was need for stakeholder consultation with all the relevant players on the proposal before enacting it.
2. The Housing fund deduction was another cost on employees and employers, and will discourage potential investors and employment. It will lead to an increase in the cost of employment reflecting to an incremental cost on the operation of business to the employer reducing the demand for labour.
3. The proposed fund is likely to be abused if proper framework is not implemented. Therefore, the need for a proper structure of the National Housing Fund.
4. By using “lottery” to allocate houses, this may lock out people who genuinely need the houses and diligently contribute to the fund.

Clause 66

KAM proposed the inclusion of provision under clause 66 of the Bill seeking to amend section 34 of the Retirement Benefits Act stating that the provisions should only apply to individual trustees, and not Corporate trustees.

Justification

1. In June 2015 the Retirement Benefits (Occupational Retirement benefits) Schemes Regulations were amended to limit the term of office of a trustee to 3 years, subject to a renewal of a further term of 3 years. This regulation has been applied to individual as well as Corporate Trustees.
2. A Corporate trustee is a completely separate entity from the founder of a scheme, and there are rigorous checks and balances to ensure that the appointed Corporate trustee carries out its duties and responsibilities as a trustee correctly, and to ensure that pension funds are completely ring fenced from both the founder and the appointed Corporate trustee.

3. To limit the appointment of a Corporate trustee will discourage long term commitment and continuity of Schemes, and in our opinion will increase the cost of scheme management to the detriment of members. Currently there are few Corporate trustees in Kenya thus limiting the choice; we believe that the onus on individuals to carry out the duties and responsibilities of being a trustee in their spare time is too onerous and detrimental to the members of schemes.

3.5 MR. ERNEST MUGUKU MURIU

Mr. Muriu appeared before the Committee on Friday 3rd August and made his submissions as follows, THAT,

Clause 6

Clause 6 of the Bill be amended by deleting the word all as it appears in subsection 12(C)(2)

(2) The presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

Justification

He stated that the proposal as contained in the Bill appears to contradict itself by stating the presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income, yet the tax is applicable to those who have a turnover of less than Kshs. 5 million.

All tax sections

He also noted that the Bill does not provide a definition of what is a '**special operating framework arrangement**'

Justification

He therefore noted the need to include a definition so that its clear how such an arrangement is initiated and who eligible for a **special operating framework arrangement** e.g. is it a PPP e.t.c.

Clause 37

He further proposed that the Bill in Clause 37 by inserting the words "within thirty days of receiving the application" after the words "with the reasons for such rejection"

Justification

He stated that this will ensure that the proposed the amendment gives a time period within which the commissioner should respond.

Clause 39

Mr. Ernest Muguku proposed the deletion of Clause 39 of the Bill.

Justification

He noted that the Tax late payment interest has been increased from 1% per month to 2% effective 1st July, 2018. This will be very punitive given the tough economic times businesses face.

Clause 46

He proposed the amendment of the Bill by inserting the paragraph (c) after the paragraph (b) impossibility or undue difficulty or expense, of recovery of the tax

As follows:

(c) uncertainty as to any question of law or fact

Justification

He stated that the remission for reason of uncertainty as to any question of law or fact has been removed. He noted that there were instances where hardship is created by uncertainty as to any question of law or fact.

Clause 53

He proposed an amendment to Clause 53 of the Bill by deleting the proposed section 69B and replacing it with

69B. Application of Tax Procedures Act.

69B. The Tax Procedures Act, 2015 apply for the purposes of the administration, collection of taxes, penalties and interest and offences in this Act.

Justification

This will ensure that there is uniformity of administration procedures.

Clause 58

He proposed the deletion of Clause 58 of the Finance Bill

Justification

Repealing section 33B of Banking Act is premature and has no sound reason or basis. Interest which the borrower can afford to pay is in proportion to the clear profit only. The lowest ordinary rate of interest must, in the same manner, be something more than sufficient to compensate the occasional losses to

which lending, even with tolerable prudence, is exposed. The proportion which the usual market rate of interest ought to bear to the ordinary rate of clear profit

Clause 68

He proposed the deletion of Clause 68 of the Bill by arguing that the amendment was only targeting one section of the people to contribute to the National Housing Development Fund i.e. employees which was unfair. If such a tax should be imposed, it should be applied to all the persons in the Income Tax Act.

Section 72D - Income Tax Act

He proposed an amendment to Section 72 by deleting it given that the 20% penalty has been imposed in the tax procedures act section 83A.

Justification

He stated that the amendment that the amendment would ensure that there was no duplication of the penalty.

Section 5(4)(c) - VAT Act

He proposed an amendment to Section 5 (4) (C) by inserting an insertion of the words “or special economic zones” after the words export processing zones.

Justification

He stated that the amendment would serve to include removal of goods in the treatment of importation.

Section 8 - VAT Act

He further proposed and amendment to Section 8 of the VAT Act by inserting a new subsection 8 (4)
4. A non-resident person to whom subsection 2 applies shall apply for registration in accordance with the requirements of section 34.

Justification

He stated that the amendment is meant to make it clear that registration for VAT is mandatory for any person who makes supplies provided in section 8(2) of the Act.

This will also give an enabling framework for section 15A (1) of the Tax Procedures Act. Section 8 has no mandatory provision for the non-resident to register i.e. in the case where a non-resident person with no fixed place of business in Kenya is required to register under a tax law, the non-resident person shall appoint a tax representative in Kenya in writing.

Section 8A - VAT Act

He further proposed an amendment to Section 8 of the VAT Act by inserting a new section 8A 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 or irrespective of whether the supply was made to a recipient who was not physically in Kenya
- (e) the services are radio or television broadcasting services received at an address in Kenya, or
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.

Justification

He stated that the amendment would give clarity on the treatment for exportation of services. This will also ensure any services enjoyed in Kenya are subject to VAT in Kenya.

Section 12 – VAT Act

He proposed a further amendment in Section 12 of the VAT Act as follows:-

Accounting for VAT on a cash basis.

Section 12(1) (c) of the VAT Act, insert the word “tax” before the word invoice

Insert 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.

Justification

1. To allow tax payers to account for tax based on cash collected.
2. This will make section 12(1)(c) consistent with section 42 which requires any invoice to be a tax invoice.

3. This will ensure VAT is not payable until the transfer of building is complete. This will be consistent with the court ruling that stated Capital Gains Tax should not be paid before the transfer is complete.
4. A supply of a building happens only when the transfer of the building has taken place. VAT should not be paid on deposits paid by the customers received but on an actual transfer of the building.
5. In some instances, the transfer does not take place and refunds need to be made, currently the VAT act does not allow for credit notes to be issued after 6 months. Therefore, we need to change the time for supply for buildings.

Section 21 - VAT Act

He proposed an amendment to Section 21(1) of the VAT Act by inserting the word “immediately” after the words land or water shall

Before unloading or disposing of the vehicle or of any goods therein

Justification

He stated that the amendment will provide a timeline for presentation of imported goods at the nearest customs station.

Section 34(4) - VAT Act

He proposed an insertion of the following paragraph (e) in section 34. (4) of the VAT Act.

(e) the person is not registered for turnover tax under section 12C of the Income Tax Act.

Justification

He stated that the amendment would ensure that one is not required to register for VAT and turnover tax at the same time.

Section 34(5A) - VAT Act

He proposed an insertion of the following new subsection 34. (5A) as follows:-

The Commissioner cancel the registration of a person who has registered for turnover tax under section 12C of the Income Tax Act.

Justification

He stated that the amendment would ensure that one is not required to register for VAT and turnover tax at the same time.

Section 16(6) of the VAT Act

Mr. Muguku proposed an amendment to replace the words ‘of the name, address and personal identification number of the person to whom it is issued’ with the words ‘with the prescribed details of a tax invoice as provided in section 42(1).

Justification

He stated that the amendment would ensure Section 16 (6) is consistent with section 42(2) on the details of the tax invoice.

First Schedule Exempt Supplies - VAT Act

He further proposed an amendment to the First Schedule of the VAT Act as follows:-

In paragraph 39(2) by deleting the words paragraph (1) and replacing it with paragraph (1)(a)

The First Schedule be amended by inserting the following new items -
100% electric cars.

Any specialized cables and accessories for electric car charge points
the First Schedule be amended—

(b) in Part II, by—

(i) inserting the words “and flower auction services” immediately after the words “coffee brokerage services” in paragraph 10;

Justification

He stated that the amendment would ensure that the restriction is made to individuals in 39(1)(a) not to the organizations in 39(1)(b). The second proposed amendment will encourage the purchase and use of battery electric cars. This will also ensure all new homes are built with the right cables and accessories for electric car charge points. In addition, it will also ensure we encourage use of green sources of energy and environmental protection and ultimately reduce Kenya’s dependence on oil. The third amendment will ensure that with the perceived transfer pricing risks involved in the flower export business, it will be easier to route flowers from Kenya. This will in turn position Kenya as a global hub for the flower trade and ultimately be part of the value addition process away from been flower producers.

Second Schedule S. 7(2) Zero-Rating Part A – Zero Rated Supplies

He proposed that the Second Schedule of the VAT Act be amended in paragraph 4 by inserting the words ‘flowers’ immediately after the words coffee everywhere the word coffee appears in the paragraph.

Justification

With the perceived transfer pricing risks involved in the flower export business, it will be easier to route flowers from Kenya. Kenya should be set up as a global hub for the flower trade. This will be part of the value addition process away from been flower producers.

First Schedule Exempt Supplies

The First Schedule be amended— in Part I by inserting new paragraph 22 A

22A. Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage of Chapter 6 excluding those of tariff heading 06.03 and 06.04

Justification

This is to encourage agriculture by reducing cost of inputs. This inputs include live trees and goods (including seedling vegetables) of a kind commonly supplied by nursery gardeners for planting.

The item covered herein are:

06.01 Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading 12.12.

0601.10.00 - Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant

0601.20.00 - Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, in growth or in flower; chicory plants and roots

06.02 Other live plants (including their roots), cuttings and slips; mushroom spawn.

0602.10.00 - Unrooted cuttings and slips

0602.20.00 - Trees, shrubs and bushes, grafted or not, of kinds which bear edible fruit or nuts

0602.30.00 - Rhododendrons and azaleas, grafted or not

0602.40.00 - Roses, grafted or not

0602.90.00 - Other

Section 42

Amend section 42. (1) of the Tax Procedures Act to insert the words “after all Objections And Appeals under PART VIII are exhausted” after the words “when a taxpayer is, or will become liable to pay a tax”

Justification

This will ensure that the power to collect tax from person owing money to a taxpayer is exercised only after after all Objections and Appeals under PART VIII are exhausted.

Entire Act - Provisional Collection of Taxes and Duties

Repeal the Act in its entirety.

Justification

The powers provided within this Act are unconstitutional given the procedure for enacting money bills in the Constitution. Any money bill cannot be operational until the time set out under Article 116(2) of the constitution has come.

Section 3A

Insert new section 3A as follows:

In accordance with Article 23. (2) of the Constitution of Kenya, 2010, the Tax Appeals Tribunal shall have original jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights arising from any decision made or not made by the Commissioner

Justification

To give the Tax Appeals Tribunal Act original on any breach in the Bill of Rights

The First Schedule to the Excise Duty Act, 2015 in Part I

Amend the First Schedule to the Excise Duty Act, 2015 in Part I to add 100% electric powered Motor Vehicles Duty rate 10%.

Justification

To provide for a lower rate for electric powered Motor Vehicles Duty which will reduce greenhouse emissions and will encourage further investment in the grid as the offtake of power will increase, noting that Kenya is investing heavily in geothermal energy and wind and solar energy.

3.6 KENYA BANKERS ASSOCIATION

The C.E.O of the Kenya Bankers Association, Mr. Habil Olaka submitted that:-

ON THE REPEAL OF SECTION 33B OF THE BANKING (AMENDMENT) ACT, 2016

He made reference to Section 33B of the Banking (Amendment) Act, 2016 pertaining to bank interest rates. He stated that Kenya has had interest rate caps in the past. The credit market was liberalised in the 1990s. Other countries in Africa, including Tanzania, Uganda, Ghana and South Africa have experienced similar “spikes” in interest rates occasioned by inflation, currency devaluation, excessive

government borrowing, and other macroeconomic factors. In all cases, rates normalised when market dynamics improved.

Unintended Consequences of Banking (Amendment) Act 2016

In support of the repeal of Section 33B, the Kenya Bankers Association made the following observations regarding the unintended consequences of this legislation:-

1. Ordinary Kenyan has not benefitted from the capping because:-

- i. Loan Accounts have reduced by 1.2 million accounts which means that the law has not increased access to finance from banks.
- ii. At the same time, the size of loans has increased by 47 percent, an indication that those who already had a bank loan have been able to increase their borrowing.
- iii. Because the average Kenyan earns approximately Sh53,000 per month, disposable incomes are low and therefore Kenyans' ability to save is limited.
- iv. Moreover, according to Nairobi Securities Exchange, Kenya's Gross Savings Rate has dropped by almost a half from 11.7 per cent in 2007 to 6.2 per cent in 2017, meaning that most Kenyans are living from hand to mouth. Therefore, even though government introduces an incentive to save by legislating deposit rates, the country's savings to GDP ratio will remain low until employment and income levels improve.
- v. This legislation therefore has helped wealthy who have more savings and disposable income; and also established businesses, and not Wanjiku.

2. Government is Crowding Out Private Sector

- i. Banks have lowered their credit risk tolerance in an effort to preserve shareholder value. Therefore, lending to Government which is considered "risk free" is preferred.
- ii. In addition, private sector lending has settled on short-term contracts, which means that investment capital available to the private sector is limited.
- iii. Following the enactment of the law, the credit market saw a skewed lending approach with sectors, which are critical to the Big 4 Agenda, such as Manufacturing, and Real Estate and Construction witnessing reduced lending.

- iv. While the rate of private sector lending was already on the decline on account of market disruptions, the Banking Act has not helped to reversed the declining rate. If anything, it has in fact prolonged downward trend.

3. More than Kshs. 13 Billion Redirected from Micro and Small Enterprises

- i. The difficult operating environment (drought; 2017 elections; delayed government payments) has caused a rise in Non-Performing Loans (now in double-digit levels) as a proportion of gross loans.
- ii. According to Central Bank of Kenya (CBK), reduced lending to micro, small and medium-sized companies (MSMEs) contributed to a 1.4 percent decline in the growth of GDP in 2017 and will further reduce economic growth in 2018.
- iii. In a separate report, CBK stated that bank lending to SMEs, which are a core driver of the economy, fell by as much as 5.7 percent or Kshs. 13 billion.

4. Banks are Accelerating Digitization Resulting in Staff and Branch Rationalization at Constituency Level

- i. Banks provide an ecosystem for business development and employment creation. the Instead of a gradual transition to digital banking, the sector has accelerated the rate of branch closures and staff redundancies which has adversely affect constituencies.
- ii. Previously, banks would commit Kshs. 1.9 billion annually via their Community Corporate Social Responsibility programs; with smaller branch footprints, local communities will experience lower levels of financial support.

The Kenya Bankers Association made the following proposals to the National Treasury and Central Bank of Kenya on the following measures that will lead to a *low and sustainable* interest rates regime. The realization of low and sustainable rates will consequently spur credit to all segments of the economy; and especially those that are critical to output and employment growth but which are constrained by access to financial services. This will have the ultimate effect of supporting the economy's growth and development aspirations.

In order to cushion customers from oppressive and unfair lending practices the KBA stated that in collaboration with the National Treasury and the CBK they were coming up with the following proposals: -

- (i). Enhance Pricing Transparency and Promote Industry Competition on Retail Lending by expanding features of KBA/CBK Cost of Credit platform (costofcredit.co.ke) to stimulate competition and promote pricing transparency. Increase awareness of the site.
- (ii). Enhancing Consumer Protection and Financial Literacy by Enactment of Financial Services Consumer Protection law to introduce office of the Ombudsman for Financial Services.
- (iii). Ensure Fair Practice Post-Repeal via KBA Code of Ethics and Self-Regulatory Framework including Whistleblowing Hotline; and Loan Pricing Disclosures by reinforcing regulatory efforts to improve banking practice while promoting industry competition through pricing transparency.
- (iv). Lower Cost of Borrowing and Promote Risk-Based Loan Pricing by ensuring that fees for legal services are market-based and not prescribed by law, enhancement of data quality and use of risk-based pricing to ensure cost of loans is aligned to risk profile of borrower, acceleration of implementation of Moveable Properties Security Rights Act 2017 to diversify collateral sources for borrowers towards promoting more lending and facilitating use of Leasing and Factoring products; enhance efficiency of horizontal repo market.
- (v). Enhancing Inuka SME Capacity Development and Loaning Program to support MSMEs to access Kshs. 30 Billion fund. This will ensure that 15,000 MSMEs will access micro and small business loans of up to Kshs. 10 million for business development, total fund committed is Kshs. 30 Billion.
- (vi). Tax exemption on the income earned by investors of bonds issued targeting Big 4 Agenda of Affordable Housing. This will ensure that Ksh 250 Billion raised over 5 years for construction of affordable housing

CLAUSE 31 EXCISE DUTY ON MONEY TRANSFER BY FINANCIAL INSTITUTIONS (ROBIN HOOD TAX)

The CEO stated that the Finance Bill, 2018 has introduced Excise Duty on money transfers by banks through amendment of the First Schedule to the Excise Duty Act, 2015.

He stated that the Banking fraternity was gravely concerned that the proposed tax will greatly undermine Government's efforts of financial deepening and widening of financial inclusion, as it is anticipated that there are likely to be adverse implications as customers resort to measures to avoid the cost associated with the new tax, including the use of cash in place of bank transfers and transfers and transaction smurfing (splitting of payments to avoid tax).

He stated that the industry was not in support of the proposal due to the following reasons:-

1. Effective date – the tax is earmarked to take effect as from 1st July, 2018. The minimum period that banks require to adjust banking systems to comply with this requirement is between 3 to 6 months based on the core banking system in use. KBA has requested service providers to provide representation on this challenge and they will forward the representations to the Committee as they receive them. Based on these, they sought for a deferral of the implementation date in line with the recommendation of the system vendors.
2. Lack of guidelines – He noted with profound concern that the Finance Bill, 2018 had not provided any guidelines on how the duty is to be applied and no specific exclusions from the duty is provided. Furthermore, no definition of money transfer was provided to appropriately guide banks on application of the duty.

In the absence of clarification and clear guidelines on application of the duty, their members identified the following uncertain areas and possible challenges to apply the duty on the under listed transactions:-

- i. Payment of salaries
- ii. Operations of diplomats and diplomatic missions and other tax exempt multilateral institutions
- iii. The incidence and burden of the tax is not certain as there is no guide on who is the payer of the tax between the remitter or the beneficiary.
- iv. Bankers drafts
- v. Ordinary cheques
- vi. Foreign exchange – is the duty applicable to forex transactions (including derivatives transactions), are both legs liable to the tax and what is the base for conversion of the tax to the local currency
- vii. Dividend payments
- viii. Payment of pension benefits and death benefits

He proposed that certain transfers should be excluded from the ambit of this duty based on international best practice, practical application and equity in tax provisions. He therefore recommended exclusion of the following transactions from application of the tax: -

1. Money transfers between banks, non-bank financial institutions and Government.
2. Payment of interest or principal to the bank by bank customers on loans.
3. Payment of fees for any form of financial service rendered by bank customers to the bank.
4. Transfers by banks as well as by customers between domestic branches of the same bank.

5. Payment of all forms of taxes by taxpayers to KRA collection accounts.
6. Transfers by banks of taxes collected to KRA's Central Bank account.
7. Interbank transfers i.e. bank to bank transfers money from one bank to another bank, bank to non-bank financial institution and vice versa.
8. Transfers between two accounts belonging to same parties including credit card payments.
9. International transfers including the settlement of international trade and other transactions.

Economic Impact

He stated that with the expected introduction of "robin hood" Excise Duty, financial investment stakeholders were projecting that this duty will lead to erosion in investment returns of between 1 to 5% depending on the nature of the fund and investment strategy. Further, the proposed duty will significantly hamper the country's Vision 2030 aspirations which aim to position Nairobi as the financial hub for the region due to unattractiveness of cost of carrying out transactions in Kenya as a result of the tax.

He cited that in the recent past, the Kenya interbank market had suffered liquidity distribution challenges emanating from closure of some banks. With the introduction of Robin Hood duty, all interbank products (FX, derivatives, interest rate products etc.) will have an added cost estimated at 18% annualized on each transaction. This will contribute to erosion of interbank development of the financial markets in Kenya that has been achieved to date.

He further stated that there had been concerns from foreign investors in the equities market who are contemplating exiting the market due to fear of additional transactional costs in view of the cost of the multiple transfers that are an inherent part of the investment cycle. This will have a negative impact on foreign currency inflows.

He gave an example of Tanzania which attempted to introduce a similar tax in 2013 but it was scrapped after one year of implementation due to significant negative impact caused in the financial markets.

3.7 TRADE UNIONS CONGRESS OF KENYA

Trade Unions Congress of Kenya (TUC-Ke) is a registered federation (labour centre) of trade unions representing interests of over one million workers in the public service of Kenya. It brings together *inter alia* the following trade unions.

1. Kenya National Union of Teachers
2. Kenya Universities Staff Union
3. Union of Kenya Civil Servants

4. Universities Academic Staff Union
5. Dock Workers Union
6. Kenya Tertiary and Schools Workers Union
7. Kenya Independent Commissions Workers Union

TUC proposed the following amendments, THAT,

Clause 67

Clause 67 of the Finance Bill, 2018 proposes to insert a new Section 53B in The Retirement Benefits Act, 1997 (No. 2 of 1997): Powers to recover unremitted contributions

Section 53B (iii)

They proposed that Section 53B (iii) be amended as follows; *“where there is failure by an employer to comply with a direction to remit deductions/contributions from employee’s emoluments under this provision, the Authority shall take the necessary action or issue such other directions as it may deem necessary and expedient in protecting the interests of the members, including instituting summary proceedings to recover the amounts due to the scheme.”*

Similarly, they proposed to delete (b) entirely

Clause 68 of the Finance Bill, 2018 proposes an amendment of Section 31 of the Employment Act, 2007 (No. 11 of 2007): National Housing Development Fund

TUC-Ke stated that there were fully in support of the Government’s Big Four Agenda and in particular provision of affordable housing to Kenyans. However, they were strongly opposed to the proposed amendment and the resultant establishment of the National Housing Development Fund due to the following reasons: -

1. International Labour Standards on Housing

The proposed amendment to create a housing fund blatantly violates Workers’ Housing Recommendation, 1961 (No. 115) *“...Governments, employers’ and workers’ organizations should encourage co-operative and similar non-profit housing societies...”* which Kenya has ratified.

2. No civic education/consultation

Other than scant media reports on the proposed National Housing Development Fund, there was no requisite civic education conducted to sensitize the primary contributors (read workers) or TUC-Ke leadership that would in turn educate the general membership about the need to establish the fund. As a result, workers/employees have and continue to remain in the dark on matters surrounding the Fund.

Consequently, TUC-Ke does not understand what the Fund stands for and what it intends to achieve hence the questions as to what will be employee's' legitimate expectations, any direct benefit for each contributing employee, any guarantee that all contributing employees will acquire a low cost housing unit, benefit when an employee retires, about to retire, or those whose contract does not allow reasonable contribution and the ability for contributing employees to choose their preferred location of the low cost housing facility and

3. Parameters

TUC-Ke and its entire membership do not know if there was any survey conducted that informed establishment of such a fund. Similarly, TUC did not know the parameters that were used and methodology that was applied to arrive at this decision.

4. Tax burden

With 30% tax on their gross income plus a further 16% VAT charged on procured goods and services, public servants in Kenya are among the most highly taxed workers in the world. The proposed amendment “(2A)...*An employer shall pay to the National Housing Development Fund in respect of each employee in his or her employment subject to a maximum of five thousand shillings...*” will not only increase but worsen the tax burden already shouldered by workers.

It is therefore their considered view that the proposed mandatory deduction at 0.5% of the employee's monthly **gross** emoluments to support the proposed National Housing Development Fund was not well thought out. They viewed the deduction as tax to be paid by workers.

5. Management of the Fund

With the history of gross mismanagement and perennial corruption scandals that surround the National Social Security Fund (NSSF) they were skeptical that the same will bedevil the National Housing Fund

TUC-Ke argues that any establishment of such a fund must also make clear and transparent provision on management of the same where workers are allowed to manage the fund.

Recommendations

Based on the above observations, and after a careful consideration, analysis and comparison with other countries with similar housing projects and with a view to bench mark with the best practices, TUC-Ke made the following **recommendations**;

- 1) Shelve the section of the Finance Bill, 2018 on housing until adequate civic education has been conducted to sensitize workers on the proposed Fund
- 2) Involve key stakeholders in establishing and management of the proposed National Housing Development Fund.
- 3) Alternatively, a tax credit equivalent to the proposed rate should be given to each contributor to the Fund.

3.8 MR. TIMOTHY OMONDI

Mr. Timothy Omondi submitted as follows: -

That: -

The Committee should consider facilitating the granting of tax exemption on severance pay by way of amendments to the taxation laws and regulations as it will help to spur economic growth and improve the welfare of mwananchi. For example, if someone is retrenched and is paid a service pay of Kshs. 200,000, he/she remains with about Kshs. 150,000 after tax having lost around a quarter of the money to tax. However, if the person was to get the whole Kshs. 200,000 it would empower him/her to do more with the money. For instance, they can set up an income generating project with the exempted amount hence creating job opportunities.

He requested the Committee to consider his proposal urgently as there were many people losing jobs from institutions like Uchumi, Nakumatt, Uniliver and many other institutions.

He also requested the Committee to amend the labor laws to make pay on years of service pro-rated so that all the time in terms of years and months that a person works are taken into account. This is in contrast to reference to each completed year of service in the Employment Act, 2007; 40(1)(g) where only years and not months are considered.

3.9 COMMISSION ON REVENUE ALLOCATION

The CRA submitted proposed the following amendments:-

Clause 6

Under sub-clause 2, the presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

This proposal should consider introducing a minimum exemption.

Justification

These will include the informal business that include hawkers and traders in the markets e.g. mama mboga whose turnover is below five million.

Clause 28

They proposed that taxes collected under this proposal should be paid into the Consolidated Fund.

Justification

Considering that health is a concurrent function, it is unclear how the counties will benefit from this Fund. Further, when the taxes are paid into the Consolidated Fund as opposed to the Sports Fund, the counties get to benefit from the equitable share of revenue.

Clause 52

They proposed that taxes collected under this proposal should be paid into the Consolidated Fund.

Justification

Betting is a concurrent function and when the taxes are paid into the Consolidated Fund as opposed to the Sports Fund, the counties get to benefit from the equitable share of revenue.

Clause 68

They proposed that if the proposal is for employees who want to own homes, then it should be made optional.

Justification

It is not clear whether it is a national savings scheme or a housing development scheme. It is also unclear how employees, subject of the deductions will benefit from the fund. In addition, it is not clear on what happens to an employee if they are not interested in the scheme yet the deductions are mandatory.

3.10 MR. HENRY OGOYE

Mr. Ogoye opposed the amendment to Cap 475 to include the Tourism Promotion Fund for the following reason:-

Proposal**Clause 56**

He proposed the deletion of "*the Tourism Promotion Fund.*"

Justification

He stated that the International Civil Aviation Organisation (ICAO) provides policy guidance on the levying of Airports and Air Navigation Charges including the Air Passenger Service Charge (APSC). The policy provides that passengers incur charges for providing the airport and its essential ancillary services. It further states that end users should not be charged for facilities and services that they do not use. The proposed charge does not benefit airport users in any way.

He stated that the charge was mooted through Legal Notice No. 98 of 24th June, 2016 from US\$40 to US\$50 for international counter and from Kshs. 500 to Kshs. 600 for domestic counter to support marketing activities of the Kenya Tourism Board which does not fall within ICAO policy guidance on aeronautical charges as stated above. This made Kenya's services some of the most expensive in Africa.

3.11 BRITAM HOLDINGS PLC

A representative of Britam proposed the following amendments on behalf of the company, That:-

Clause 31

Clause 31(b)(ii) should be amended by deleting the proposed paragraphs (5) and (6) for inclusion in the Excise Duty Act in entirety.

Justification

The proposed new additions of paragraph (5) and (6) introduce an excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers at a rate of 10% of the excisable value as well as on money transferred by banks, money transfer agencies and other financial service providers at a rate of 0.05% of the amount transferred in any money transfer of Kshs. 500,000 or more.

Due to the nature of their business which involves payment of claims, maturities, benefits and investment income this proposal will have a huge impact on their overall business costs as well as the return payable to their clients.

In addition, the provision creates ambiguity as it does not define the nature of money transfer, does it include:- cheque transactions? Cash withdrawals and deposits? Loan withdrawals? Are statutory payments such as taxes included in the definition of transfers? What about bank to bank transfer? Or a transfer between different accounts of the same person? Further clarity is required.

Clause 57B

They proposed insertion of a new clause 57B which proposes an amendment to the Stamp Duty Act by introducing a new Section 82A as follows:-

82A. Payment of Stamp Duty for “policy of life insurance” and “policy of insurance accident”

for purposes of this Act, the stamp duty payable for “policy of life insurance” and “policy of insurance accident” shall be payable monthly as an aggregate of all policies issued within the said month.

Justification

This provision is aligned to all government levies or taxes payable on a monthly basis such as VAT, Withholding Tax, Sugar Levies, standard levies amongst others. The franking of policy documents is administratively cumbersome and difficult to comply with. The proposed amendment seeks to correspond to the use of technology such as I-tax as rolled out by the government collecting agency, Kenya Revenue Authority, as stamp duty will be payable monthly via I-tax.

In addition, they proposed the amendment as it lacks alignment with the Income Tax Act and the Kenya Information's and Communications Act.

3.12 MR. PATRICK MATE N'NDEI

Mr. N'ndei submitted that:-

The current Retirement Benefits Act was not friendly to government workers when they retire from public service and as a result, many have suffered a lot due to non-compliance by those left in service especially the senior government officers. Retirees especially those of lower grades suffer a lot waiting for their lump sum and monthly payments.

He requested the Committee to make changes to the Act so that those who are yet to be paid their dues are considered through the amended Act, those retiring from the service after the amendment get their pay just as they proceed to retirement and that lump sum and monthly retirement benefit is calculated before one goes on retirement. For instance, teachers who retired between 1997 and 2007 are still suffering waiting for their pay which was agreed on through TSC circular no.13 of 1997, Legal Notice No. 180 of 1997 and Kenya Gazette Notice No. 534 of 1997. This was further supported by the HCC No. 65 of 2005 at Nakuru High Court in 2008.

He concluded by requesting Parliament to ask the TSC to publish the names of all teachers benefitting from the claim stating when each teach retired and from which sub-county and county within a specified period of time for accountability. He also stated that State Officers should not deprive senior teachers their property as cited in CAP 4 Article 40(2)(a) and (3). State Officers should be reminded that CAP 6 Article 73 and 75 are very clear to those who want to serve the nation to higher standards and reputation i.e. honor for the office and nation.

3.13 FUND MANAGERS ASSOCIATION

A representative of the FMA made the following submission:-

He made reference to the proposal in Section 31 (b) (ii) (6) of the Finance Bill, 2018.

The proposed excise duty is applicable to all money transfers including the following:

1. All payments including supplier payments, standing orders, direct debits and online transfers, for as long as the bank is moving money from one account to another;
2. Local and foreign currency transfers, within the bank and even remittances beyond borders;
3. Financial markets transfers such as interbank transactions, securities purchases/sales and investment activities.

They stated that they acknowledge and appreciate the Government's support for the capital markets in Kenya, and the interventions and incentives that the industry enjoys and also appreciate that the Government recognizes that capital markets play a critical role in the economy and facilitate investment growth in the country.

However, they hold the view that, while there were good and noble intentions in introducing the tax, including funding the Big 4 Agenda, there are certain potential debilitating downstream effects on the economy that this tax was likely to instigate in the capital markets industry including:-

1. There will be a significant reduction in liquidity of key capital market assets such as Treasury Bills, Treasury Bonds and Equities. This is because the tax will force a reduction in trading and investment activity and reduce institutional and professional investor participation in securities markets.
2. The reduced liquidity shall result in considerable reduction in demand for these capital markets assets.
3. It will result in the addition of a risk premium to financial market asset prices and reduce the attractiveness of our capital markets to foreign/external investment.
4. Investment funds such as Pension Funds shall witness reduced trading and investment thereby reducing the returns and depressing the growth of these funds.
5. The proposed tax may also result in a high level of attrition in the market by foreign investors, who currently contribute to 70% of trading volumes on average and may witness their exit to more cost effective markets. This may lead to a depression in the market leading to a decline in both the index and market capitalization.

The very nature of the investment process in capital markets transactions involves the continuous movement and transfer of funds across the financial system to facilitate optimal investment of client funds. Typically, these transactions are high volume, low margin transactions.

The above outcomes are clearly in stark contradiction to the Government's financial market development agenda and reforms to deepen the financial markets that the Treasury has laboriously worked to implement in conjunction with the Central Bank of Kenya (CBK), the Capital Markets Authority (CMA), Retirement Benefits Authority (RBA) and other stakeholders in the financial services sector.

They noted that this comes at a time when our domestic investment environment is already challenging. The likely impact of this action is asset shrinkage, reduction in private savings and, because it actually incentivizes investors to minimize trading activity, a decline in the liquidity of our capital markets.

Owing to the devastating impact of the proposed excise duty on the financial markets that will significantly raise transaction costs, he urged the Committee to reconsider the decision to introduce the tax, and more specifically, in the capital markets industry. The association was cognizant and worried of the implementation date of this proposed amendment which was 1st of July 2018.

They reiterated their deepest concern about the debilitating impact that the proposed excise duty will have on the entire capital markets industry and sought the Committee's kind intervention and guidance.

3.14 MR. VINCENT OMBAKA

Mr. Ombaka proposed an amendment to section 58 of the Finance Bill, 2018 to disallow the repeal of section 33B of the Banking Act or in the alternative, amend section 58 of the Finance Bill, 2018 to allow applicability of interest capping only for persons with good credit ratings who are currently servicing loans. He further proposed that there was need to develop a Bill to regulate of non-interest costs imposed on borrowers and eligibility of individuals with good credit ratings for interest rate protection.

3.15 MRS. AGNES L. WACEKE MWANIKI

Mrs. Mwaniki submitted that:-

The Finance Bill 2018 proposes that all Kenyan employees in both private and public sector are to be deducted 0.5% of their salary every month to fund the National Housing Development Fund. She was opposed to this proposal citing that it was unconstitutional, an introduction of socialism and communism

in the country and Kenyans are already over taxed so adding this deduction will not be burdensome to them.

3.16 MR. BRIAN MBUGUA

Mr. Brian Mbugua appeared before the Committee to make his comments on the Finance Bill. He was proposing amendment to Section 20 (2) of the Limitation of Actions Act Cap 22 of the Laws of Kenya relating to actions concerning trust property.

Section 20 (2)

(1) "None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action-

(a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.

(2) subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued

Mr. Mbugua was proposing that the period considered under subsection 2 be increased from six (6) years to twenty (20) years. He noted the amendment was meant to protect beneficiaries of trusts who are not aware of having been beneficiaries and claim through the unclaimed assets. The amendment will also cater for minors and give them adequate time to mature to and later make a claim in the trusts to which they are beneficiaries.

3.17 THE EAST AFRICA TAX AND GOVERNANCE NETWORK (EATGN)

The East Africa Tax and Governance Network (EATGN) was established to 'increase stakeholder engagement and public debate on tax and governance in Kenya.

The EATGN memoranda comprised of contributions from five organizations working with other civil society organizations towards building a Kenya Tax Justice Platform namely: Development Initiative (DI), the East African Tax and Governance Network (EATGN), Institute for Economic Affairs Kenya

(IEA-Kenya), International Institute for Legislative Affairs (IILA), National Taxpayers Association (NTA) and Dr. Eric Kibet an academic in Constitutional Law.

They submitted their memoranda on the Finance Bill, 2018 as it relates to the Income Tax Act. EATGN proposed the following amendments: -

Clause 6: Presumptive tax

There was need to review the base on which the said tax may be inferred rather than use the amount paid for business permit as proposed in Clause 11 since this may provide a good inference of income that ought to be taxed. This is because tax is charged on income and not on costs like business permit. The proposed law has therefore not explored possible methods on estimating the likely income that will be realized by the businesses. In line with the Bill this may be treated as an additional levy to the County Governments rather than a tax as the proposed law gives room for estimating the inferred income on which tax may be levied.

Clause 7:

The amendment introduces an additional tax deduction of 30% of electricity cost incurred by manufacturers in addition to the normal electricity expense subject to conditions set by the Ministry of Energy. This effectively allows manufacturer a deduction of 130% of their electricity costs.

EATGN noted that the proposal should be dropped unless there was clarity on how its success could be evaluated and the conditions for which one must meet to enjoy the incentive. They further noted that the Finance Act, 2009 introduced an investment allowance of 150% for any investment outside the municipality of Nairobi and Mombasa. The proposal has not significantly changed the trends of investment taking noting that there were other factors that drive investments. In addition, the proposed 130% allowance is not sustainable and may not achieve the desired result considering the current electricity cost already is a deductible expense in determination of tax liability. EATGN observed that it was not clear how the benefit will be transferred to the consumer and how effective can the impact be measured.

Clause 11

The Bill introduces a new provision under the Third Schedule of the ITA for the taxation of persons engaged in business under framework agreements with the government. The businesses will be subject to tax based on the rates provided for under the agreement.

EATGN submitted that the amendment should either be dropped or the phrase “subject to approval by Parliament” should be inserted immediately after the word arrangement. They noted that as currently stated the amendment provides an avenue of abuse unless it is well monitored. In addition, there were no clear guidelines as to the extent which such companies will be subject to this arrangement especially with increasing Public Private Partnerships thereby making it open for abuse.

Clause 28

The Bill proposes to amend Section 36 of the Excise Duty Act to make it mandatory for the Commissioner to pay into Sports, Arts and Social Development Fund established under the Public Finance Management Act to support social development and universal health care, excise duty collected from certain sectors.

EATGN was proposing that the amendment be dropped. This is because

Justification

This should be read with arguments in the next issues in Clause 31 on raising excise duty on mobile money transfer.

Clause 31 Amendment on the First Schedule of the Excise Duty, 2015 Act

EATGN argued that the increase should be dropped due to :-

- (i). The use of Excise Tax has remained unpopular as it is mainly geared towards deterring the use of goods that have been deemed to be luxurious, risk to health or ruin moral in the society if their use is not well controlled. This explains why it is often referred to as “Sin Tax”.

- (ii). The proposal to increase excise tax on mobile money speaks to the fact that use of mobile money transfer services can be labelled as a sin that ought to be deterred because financial transactions through banks are partially 'holy' and thus there was on change in the excise tax rate.
- (iii). This proposal is discriminatory to the users of mobile money transfer services as compared to their counterparts in other financial institutions.
- (iv). The proposal is oppressive to the poor who have just started enjoying the benefits of financial inclusion as an essential service and as such it is geared towards promoting equality in Kenya.
- (v). To bring this into context. Marginalized people (poor, women, low income earners, the elderly, youth and other vulnerable persons) benefit from different streams of cash transfers under the National Safety Net Program. Often these transfers are made via mobile money hence an increase in the cost of transferring money ultimately reduces the amount of cash transfers that beneficiaries receive thereby severely affecting their livelihoods.
- (vi). Even with the intention of raising revenues to finance the Big Four Agenda the increase depicts the use of mobile money transfer as an evil that should be discouraged from the society.
- (vii). Read together with Clause 28 the increment of 2% is seemingly linked to the proposal of 16% portion that should be transferred to Sports, Arts and Social Development Fund. Does it mean the understanding of all revenue generation from mobile money transfers is associated with betting/gaming taxes?

Proposal

Water should be excluded from excise duty. They instead propose an increase in excise duty on tobacco products whose increased consumption had severe health effects.

Justification

1. This provision limits people's choices in accessing clean water and further worsens government failure to provide access to clean water.
2. Use of excise duty to deter use of risk goods as tobacco has proved a success in both revenue raising and maintaining a healthy society by:-
 - i. Simplification of tobacco tax structure by re-introduction of a uniform specific tax rate for all cigarettes.
 - ii. Increase of the flat tax rate from Kshs. 2,500 per mille to Kshs. 3,100 per mille of cigarettes.

Proposal

1. 0.05% excise on any amount above Kshs. 500,000 should be dropped.
2. They proposed that excise duty should be based on the transaction (service) fees charged by the bank and not the amount being transacted.

Justification

1. This 'Robin Hood Tax' will cause a Kenyan reversal back into a cash economy by projecting the use of banks as unnecessary evil which needs to be restricted as depicted by the proposed Bill.
2. RHT will make the cost of transaction extremely high hence discouraging transactions through banking systems.
3. Reading the Excise Act, Excise tax should be on the value of service rendered; with this understanding in mind the question arising is whether the excisable value proposed by the Bill is the amount transacted or the transaction fee charged?
4. The amount transacted cannot be considered as a service for excise duty purposes. This premise is therefore misinformed.
5. Finally, as much as the government needs to raise revenue to fund the 'Big Four' there is need to consider the effect of the various proposals as they may wipe out all current progress being made.

Clause 38

1. Amend Clause 38 by dropping a proposed provision in Section 37B(4) of the Tax Procedures Act, 2015 seeking to exempt remittances eligible for tax amnesty under Section 37B.
2. To keep out money laundering and entry of proceeds of crime into Kenya, it is important that all money, including money eligible for amnesty as proposed in the Bill continue to be subjected to the Proceeds of Crime and Anti-Money Laundering Act and other laws and regulations relating to financial reporting.

Justification

1. This is because Proceeds of Crime and Anti-Money Laundering Act, 2009 is intended to safeguard against entry of suspect money that could be proceeds of crime and which could also be used to fund crimes such as terrorism.
2. While the proposed S.37B(4) of the Tax Procedures Act, 2015 excludes funds derived from proceeds of terrorism, poaching and drug trafficking, this is not helpful because money does not come with labels. It is only upon inquiry as provided for in the Proceeds of Crime and Anti-

Money Laundering Act, 2009 and CBK Prudential Guidelines that the suspect origin of funds can be discerned.

3. Retaining this proposed exemption poses many risks:-
 - a. Security threats: this blanket exemption will weaken the current know-your-customer rules and disclosure procedures under the Proceeds of Crime and Anti-Money Laundering Act and CBK Prudential Guidelines. This will in turn open ways for entry of suspect funds that could fund terrorism and similar organized crimes.
 - b. Economic distortion: The blanket amnesty threatens safeguards against money laundering which will in turn open the Kenyan economy to risks of money laundering including economic and political instability.
 - c. The exemption is also inconsistent with Kenya's international legal obligations relating to controlling transnational and international money laundering and terrorism financing, for example, under the United Nations Convention against Corruption to which the country is party.

Clause 68

1. This proposal should be dropped.
2. The Bill should explore alternative options like the proposed mortgage refinancing as indicated through proposed amendments to Clauses 61, 62 and 63 of the Bill.
3. Further, the government may provide subsidies towards the adoption of Tenant Purchase Scheme which can cater for even low income earners.

Justification

1. The proposal will put more burden on the employees and employers in terms of the added tax obligation. Further, it is likely to bring about reduction in gross salaries by employers so that they spare an amount to contribute to the proposed fund. This means that the employee take-home will be drastically affected considering the government will not be offering housing following the deduction.
2. There are no clear benefits linked to the amount to be deducted. Is the government proposing to standardize and pay rent for the employees involved if the proposal is read in tandem with Section 31 of the Employment act? This may be unrealistic considering the administration costs and the possibilities surrounding its sustainability.

3. The CS has not clearly demonstrated how such a fund will be operationalized and how or who benefits from it. Provision of housing may be a good agenda though the generic nature of this proposal is a concern of how it can be a solution to the housing problem.
4. Based on a recent publication by the World Bank there are more options that Kenya can explore to bridge the gap in housing instead of this proposal is which in itself will propagate poverty.

Conclusion

The discussions, contribution and passage of the Bill should aim to clarify and tighten implementation that seeks to broaden the tax base rather than deepen it as proposed. They urged the National Assembly to help prevent the glaring policy reversals that seek to expand the regime of exemptions that offer unnecessary exemptions that may lead to serious economic distortions. They therefore warned against proposals on excise duty that are aimed at boosting tax revenue and environmental protection but are likely to have the opposite effect through increased transaction costs. This is therefore likely to slow down activities, reversing gains from cash transfers particularly for the poor and vulnerable.

3.18 KENYA OIL AND GAS ASSOCIATION

KOGA noted that there are many positives contained in the Bill that they were seeking to gain further clarity on such as the introduction of the Special Operating Framework arrangement in relation to VAT, RDL and IDFs. The Bill has introduced two new WHT charges on insurance premiums and demurrage costs.

They proposed the following amendments:-

Clause 11(a)

To include in the Section 2(1) of the Income Tax Act a definition as follows:-

“Special Operating Framework means an agreement made and entered by and between the Government of Kenya and a person for the agreed business need to be granted on the recommendation of the responsible CS to the Commissioner.”

Justification

1. Their understanding of the use of the term ‘Special Operating Frameworks’ is that through this the Finance Bill recognizes the need to provide fiscal support to government projects that are carried out in partnership with the private sector.

2. The Bill does not provide the meaning and scope of application of “special operating frameworks” which may result in ambiguity and uncertainty in its interpretation.

Clause 18(a)(xi) and 18(b)(ii)

To include definition in the First Schedule Part I and II that Special Operating Frameworks carry the meaning as defined in the Income Tax Act.

Justification

1. Similar as above, this amendment sought to bring clarity in interpretation and application of the Special Operating Framework.
2. It was their appeal that the oil and gas projects currently running under various production sharing contracts with the government are expressly included under the special operating framework and guidelines issued for the application of exemption under this regime.
3. This will allow projects to benefit from relief from VAT through VAT exemption in as much as this was not the position at the signing of the PSCs where supplies to the sector were zero rated for VAT.
4. Their request was very critical because with effect from 1st September, 2018 the transition clauses under Section 68(4) of the VAT Act, 2013 that provided for VAT remission come to an end thus all services consumed by the Oil and Gas Sector become subject to VAT.
5. If no relief is provided for VAT, costs of petroleum operations in the country are likely to increase compared to other countries in the region.

Clause 51(a) and (b)

To include definition in Part A and B of the Miscellaneous Fees and Levies Act, 2016 that Special Operating Frameworks carry the meaning as defined in the Income Tax Act.

Justification

1. This request seeks clarity in definition. Without definition, this will result in a similar situation as currently worded where there exist no guidelines as to what ‘public interest’ as alluded to in part A(xxii) and B(iv) of the Miscellaneous Fees and Levies Act, 2016 refers.
2. The disregard of PSCs whose provisions include exemption of RDL and IDF reduces investor confidence and trust in agreements signed with the Government of Kenya.

3. The cumulative additional cost on importation to the customs value of goods and equipment imposes a significant additional cost on the industry and diverts capital from core exploration and development activities.

Clauses 5, 9, 10(a) and 11(b)

Demurrage charges should be exempted from WHT by deleting Sections 34(n), 35 (m) and paragraph 3(o) of the Third Schedule to the Income Tax Act.

Justification

1. The shipping business is dependent on port efficiency
2. Applying WHT on demurrage charges has the potential of discouraging shipping lines from transporting oil from Kenya and increasing the cost to contractors exporting oil.

Clauses 5, 9, 10(a) and 11(b)

Insurance premium paid to a non-resident person be exempted from WHT by deleting Sections 34(o), 35(n) and Paragraph 3(o) of the Third Schedule to Income Tax Act.

Justification

1. Insurance is a major component of business. Imported goods must be covered by insurance which often will be taken at the place of shipping.
2. The imposition of WHT on insurance premium creates an additional layer of tax which translates into higher costs.

They proposed insertion of the following new provisions

1. Introduce a proviso to the definition of NRI in Section 2 of the Income Tax Act to read as follows:-

“Provided that:

In the case of the extractive sector i.e. oil and gas mining activities and/or sectors for which the taxation is determined under the Ninth Schedule to the Income Tax Act this definition shall only apply to farm out transactions that includes an over-riding royalty or its equivalent as part of the consideration for the farm out transaction and as captured in the sale agreement.”

Justification

Inclusion of farm out transactions in the definition of NRI for the O & G sector is contrary to the farm down legislation and policy and since there is already a framework for taxation of farm out transactions.

2. Introduction of sub-paragraph 16(e) to exclude mobilization and demobilization fees from service fees. The sub-paragraph will read as follows:

“For purposes of this paragraph, service fee does not include reimbursement of costs, mobilization and demobilization fees.”

They further proposed introduction of sub-paragraph 16(f) to define mobilization and demobilization fees as follows:-

“mobilization and demobilization means the movement of men and equipment to Kenya prior to operating and from Kenya after completion thereof, provided the movement is not to a third party but does not include movement of men and equipment in Kenya during operations.”

Justification

Taxation of sub-contractors’ mobilization and demobilization fees

- i. Currently, both mobilization and demobilization are subject to WHT under the ITA.
 - ii. The imposition of WHT on both mobilization and demobilization costs creates an additional layer of tax which translates into higher costs.
 - iii. Mobilization and demobilization are not services provided to the O&G company but they are movement of “people and equipment or machinery” in preparation for provision of services for petroleum operations.
 - iv. Mobilization and demobilization costs are supported by invoices issued to the O & G Company. These invoices are separate from the service fee invoices and the costs can be independently verified to curb any instance of abuse.
 - v. KOGA believes that government agencies such as Ministry of Mining & Petroleum and the National Treasury can verify these costs to ensure that they are within range of the international benchmarks.
3. Introduction of sub-paragraph 16(e) to exclude reimbursements from service fees. The sub-paragraph should read as follows:-

“For purposes of this paragraph, service fee does not include reimbursement of costs, mobilization and demobilization fees.”

They further proposed introduction of sub-paragraph 16(f) to define reimbursements as follows:-

“reimbursement of expenses” means payment by a petroleum company to a petroleum service sub-contractor to reimburse that sub-contractor for payments made to a third party on behalf of the petroleum company in respect of goods and services which are incidental to the sub-contract and would not normally, in the international petroleum industry, be included in the service fee but does not include a charge for handling or administration.

Justification

Taxation of reimbursement of costs

- i. The reimbursement of costs on global or local service provision Pre-Finance Act, 2014 were not subject to WHT but now are. It is unusual for the reimbursement of costs to be subject to WHT given there is no profit to tax.
 - ii. This principle is intentionally accepted and is acknowledged under Kenya tax law for VAT purposes. In addition, imposing withholding tax on third party costs increases the cost of sub-contracting which in turn discourages local content.
4. Amendment to paragraph 16 of Schedule Nine of the Income Tax Act to delete the provision on deemed interest in relation to the O&G sector. The deemed interest is already addressed under the current transfer pricing rules that regulate related party transactions.

Justification

- i. Upstream pre-development activities are considered high risk given chances of success in exploration drilling are relatively low and therefore debt financing is not normally available.
- ii. Such activities are therefore normally financed via quasi-equity in the form of interest free debt from the parent company and other affiliates.
- iii. The deemed interest provisions unfairly penalize the O&G sector given its usual financing structure because of the inherent risks mentioned above. Subjecting the funds made available through quasi-equity to taxation would limit the funds directly available

for petroleum operations and we recommend that all pre-development activities are exempt from the deemed interest provisions.

3.19 BDO EAST AFRICA LTD

They submitted that: -

They presentation was on behalf of Kenya Vehicle Manufacturers Association (KMVA) which represented motor vehicle assemblers and manufacturers. Kenya Vehicle Manufacturers Association. This proposal is endorsed and supported by the following institutions, Isuzu East Africa Limited, Toyota East Africa Limited, Associated Vehicle Assemblers and Kenya Vehicle Manufacturers.

They proposed the following amendments:-

Section 15 of the Income Tax Act

To provide a 70% electricity rebate on the cost incurred on the purchase of electricity from the National Grid in order to bring down the cost incurred for electricity to approximately 5US cents per Kwh which is at par with continental lowest competing regime.

Paragraph 24 of the Second Schedule to Income Tax

To allow a 150% capital deduction on capital expenditure incurred in establishing or expanding or improving facilities used in automotive manufacturing and assembly.

Second Schedule to the VAT Act

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 zero rating is recommended by the Cabinet Secretary responsible for Industrialization, in consultation with the Cabinet Secretary for the National Treasury.

First Schedule to the VAT Act

To exempt locally manufactured or assembled motor vehicles and parts.

First Schedule to the Excise Duty Act

To introduce a 30% excise duty on imported public service vehicles PSV buses, trucks, pick-ups and second-hand vehicles.

Background and Justification

1. In Kenya, the main vehicles assembled are commercial vehicles especially trucks and buses, which are well designed to meet the tough Kenyan and African Tropical conditions. Totally installed capacity for assembly of motor vehicles in Kenya is 34,000 units per year on single shift alone. There exists, before even expansion, to increase output of at least fivefold. But the country needs a tax policy framework that would put it at par with major competition like South Africa and Morocco. The two give a raft of tax and fiscal incentives that have seen them succeed.
2. For every job on an automobile or light-truck assembly line, ten additional jobs are created or supported in the economy (Centre for Automotive Research (CAR), USA). Putting this in Kenyan context, 3,000 people currently employed on assembly lines have a multiplier of 3,960 jobs in downstream sector, as well as over 5000 jobs in support sectors to downstream automotive sector. Any additional production triggers more jobs and job spinoffs; to the extent that at 100% currently installed capacity production of existing assemblers, a total of 79,635 jobs can be created by commercial assembly alone. Passenger car segment if protected can create over 77,000 jobs.
3. Automotive industry in Kenya under the right policy and investment environment has the capacity to create over 150,000 jobs (direct and indirect).

Economic Value Add of Component Manufacturing in Kenya

4. Each componentsector player in Kenya currently is estimated to employ on average 2,561 people and contributes over KES 40 Million annually in tax revenues to government.
5. Given the right incentives and stable predictable auto policy environment, auto parts have the capacity to employ a lot more people, create further spin-offs, and spur growth of the iron and steel industry due to the high consumption of steel. Regional supply chains can be built, joint ventures can be attracted and Kenya can become a regional continental hub of auto parts supplying both assembly and aftersales markets in EAC and Africa at large.

3.20 BRITISH AMERICA TOBACCO (K)

BAT Kenya submitted the following recommendations for the changes to the existing tax laws applying to cigarettes:-

1. Annual rather than biennial inflationary excise adjustments

They welcomed the proposal contained in Clause 24 of the Bill amending the current inflationary adjustment cycle from biennial to annual.

However, in order to provide certainty for business and enhance government revenue predictability, they urged that this adjustment be done in a timely manner. As at 18th July, 2018, they had not received formal communication for the new inflationary adjusted rate 2018/19 which was meant to take effect

from 1st July 2018 as provided in the Excise Duty Act 2015. This delay will lead to the loss in government revenue.

Justification

They stated that steady and predictable increases in tax create stability in industry performance and result in stable growth in government revenue. They noted that in December 2015, a cigarette price increase of 25-30% following from an unexpected 50% excise increase resulted in:-

- i. Consumer affordability challenges resulting in higher sales of the low category and subsequent reduction in government revenues.
- ii. A circa 10% increase in illicit trade from 2.6% year ending 2015 to 12.4% in Q4 2017.
- iii. A 21% decline in duty paid cigarette volumes between 2015-2017 – down 12% in 2016 and a further 9% in 2017.
- iv. Lower government tax payments by Kshs. 1.2Bn from BAT alone in 2017.

2. Tax Stamp Costs

They proposed a repeal of the Excisable Goods Management System (EGMS) Regulations 2017 which have resulted in disproportionate and unjustified 87% increase in the cost of excise stamps for tobacco products.

This increase was implemented in total disregard of the due process set out in the Statutory Instruments Act 2013.

Justification

They stated that Government indicates that the purpose of tax stamp is to track production, safeguard excise revenue and authenticate excisable products being sold in the market. However, tax stamps are neither meant to come at a significant cost to the manufacturer nor become a revenue generating measure as the current cost appears to be.

- i. Based on 2017 BAT Kenya volume, they estimate that this unprecedented increase has as a result in an increase in the annual compliance costs of Kshs. 351 Million. Without clear and demonstrable benefits to the government in terms of reducing the threat of illicit trade. In real terms, since December 2015, illicit trade in cigarettes has grown from 2.6% to 12.4%, half of the illicit products being cigarettes with counterfeit stamps.
- ii. Contrary to the defined legal process, the increase from Kshs. 1.50 to Kshs 2.80 per stamp (87%) in 2017 was unilateral and did not include industry consultation nor regulatory impact assessment.

- iii. The increase has been disproportionately applied on cigarettes in comparison to similarly valued excisable goods.
- iv. The cost of stamps in Kenya is now at least 3 times the cost of tax stamps in neighboring countries.

A reversal of the cost of stamps and proportionate apportionment of EGMS costs would level the playing field for all companies while reducing lost revenue from illicit trade.

3. Revert to the single tier specific exercise structure

They requested the Committee to revert to a single tier specific excise system at the higher rate which will apply to filtered cigarettes post 2018/19 inflation adjustment as the base rate for any excise increase in 2018. Specifically they recommended: -

Amending the First Schedule to the Excise Duty Act, 2015 in Part 1 by deleting the description “Cigarette with filters (Hinge Lind and soft cap)” and “Cigarettes without filters (plain cigarettes)” and the corresponding rates of excise duty and substituting it with the following:-

Cigarettes containing tobacco or tobacco substitutes	Kshs. 2630 per mille (as informed/instructed by KRA)
--	--

Justification

They stated that the Finance Act 2017 introduced a second excise tier of Kshs. 1,800 for filterless cigarettes. In his budget reading, the Cabinet Secretary, Treasury said that this category would address affordability changes.

However, both the government and the industry have not benefited from this change:

- i. A single specific excise structure provides benefits of transparency for the industry, greater predictability in terms of revenue levels of government as well as ease of administration for both manufacturers and for government.
- ii. Any concerns on affordability can be addressed through a review of the rate within a single tier structure.
- iii. The filterless tier has resulted in reduction in both filterless cigarettes volumes and government revenue by about 20% for BAT product only (Kshs. 150M)

They also stated that a single tier specific system would recoup the revenue lost from the reduced volumes of filterless cigarettes sold in 2017 as well as enhance the predictability of and enable gradual increases in government revenues.

4. Supply of Excise and VAT exempt cigarettes to Kenya Defense Forces Canteen Organization (DEFECO)

They recommended that the changes in the Bill amending the existing Excise Duty Act and VAT Acts, to allow alcohol and non-alcoholic beverages to be supplied to DEFECO without charging excise duty, should also include tobacco products as tax exempt products. They specifically recommended:-

- i. Amending clause 32 in the Finance Bill 2018 to read “Tobacco and tobacco products, alcoholic and non-alcoholic beverages supplied to Kenya Defense Forces Canteen Organization”
- ii. Amending Clause 18 (xi) in the Finance Bill 2018 to read “Tobacco and tobacco products, alcoholic and non-alcoholic beverages supplied to Kenya Defense Forces Canteen Organization”

Justification

KRA and National Treasury indicated that cigarettes cannot be deemed to be for “Official Use” by Kenya Defense Forces (KDF). As a result, their products cannot be tax exempt unlike alcohol and non-alcoholic beverages. Accordingly, BAT Kenya has been unable to supply DEFECO without charging excise duty and Value Added Tax (VAT) since July.

As a local manufacturer and a leading contributor to the economy through their local tax payments of Kshs. 18Bn in 2017, their support to over 5000 farmers; their trade partners contributing to the livelihood of circa 61,000 people; and their 470 direct employees, they are disadvantaged by this current arrangement which does not level the playing field, goes against government’s commitment to support local manufacturers, whilst also increasing expenses incurred by DEFECO.

Benefits of their proposal to the Government

Based on their proposals as outlined above, they projected that their contribution to government excise revenue will increase annually by circa 6% over the next 5 years. This will be in line with the government’s objective to increase the contribution of manufacturing from 9% to 15% of GDP in 5 years.

3.21 ASSOCIATION OF COLLECTIVE INVESTMENT SCHEMES

The Association of Collective Investment Schemes (ACIS) is a member organization mandated to steer the operations of Collective Investment Schemes (CIS’) to ensure investment protection and equitable transparency in a bid to deepen financial inclusion and drive savings for investments.

They proposed the following amendments:-

Clause 31(b)(ii)

- a. Delete paragraph 6 of Clause 31(b)(ii)
- b. Replace “ten” with “twelve” in paragraph 5 of Clause 31(b)(ii)

Justification

They stated that the proposal targets the flow of money through the financial institutions. ACIS considered the proposal and its impact on the operations of the Collective Investment Schemes (CIS) in Kenya and the expected returns to the unit holders. If one has multiple transactions, the 0.05% Robin Hood tax applies at every stage of the funds movement, negatively impacting the expected return to the customers. This ultimately impacts on the saving culture and savings mobilization.

In their view, increasing the excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers from 10% to 12% will still earn the government the desired revenue without imposing the ruinous 0.05% Robin Hood tax.

3.22 KTDA MANAGEMENT SERVICES LIMITED

KTDA is Kenya's premier organization providing management services to the small-scale tea sector for effective production, processing and marketing of high quality teas. Currently, KTDA manages 67 factories in the small-scale tea sub-sector in Kenya. The small holder tea factories are separate legal entities from KTDA and are owned by farmers who are also suppliers of green leaf.

KTDA Management Services Ltd submitted that:-

Clause 3

The above mentioned clause seeks to amend Section 7 of Cap 470 of the Laws of Kenya to enhance the definition of dividends for the purposes of taxation to include the following:-

- i. Any cash or asset distributed or transferred to or for the benefit of the shareholder or persons related to the shareholder;
- ii. A discharge of obligation measurable in money which is owed to the company by the shareholder or related person;
- iii. Debts owed by the shareholder or related person that is paid off by the company;
- iv. Any transactions with a shareholder that has the effect of reducing the present taxable income or reduced assessed losses of the company.

Implication

They stated that the tax implication of this expanded definition is that any payment made to shareholder including that made in respect of supplies made will be considered as a dividend and attract tax at the relevant rate. In particular, payments made in respect of supplies made by shareholders will be considered as dividends paid out of untaxed profits and thus subject to tax.

This will affect the small holder tea farmers who are shareholders of the tea factories they supply to adversely as any payments made in respect of green leaf supplied may be construed to be dividends paid out of untaxed profits and thus subject to tax. The same farmers will then be required to declare the same payments received for income tax purpose; a move which will result in double taxation to the farmer.

Proposal

They proposed that Section 7(1) be the following:-

Section 7 of the Income Tax Act is amended by deleting sub-section (1) and substituting therefor the following new subsection-

(1) For the purpose of section 3(2)(b)-

- a) a dividend paid by a resident company shall be deemed to income of the year of income in which it was payable;
- b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where-
 - i. any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any person related to the shareholder;
 - ii. the shareholder or any person related to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person;
 - iii. the amount is used by that company in any other manner for the benefit of the shareholder or any related person to that shareholder;
 - iv. any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company;
 - v. the amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such a shareholder resulting from an adjustment.

For the purposes of this section, the amounts distributed, transferred or paid shall not include payments in respect of supplies made by the shareholder or any related person to that shareholder.

Justification

KTDA stated that this would ensure that there will be no double taxation for suppliers who are also shareholders.

3.23 ANJARWALLA & KHANNA

A representative of Anjarwalla & Khanna submitted the following proposals:-

1 Income Tax (The ITA)

A. Deemed dividend income

Clause 3(3)(b)(v)

The intention of the provisions was to deem any transaction between a company and a shareholder to be a distribution of a dividend to such shareholder where the resulting adjustment reduces taxable income or increases taxable income or increases assessed losses of that company.

Further, the term dividend is defined under Section 2 of the ITA as follows:

“dividend” means any distribution (whether in cash or property, and whether made before or during a winding up) by a company to its shareholders with respect to their equity interest in the company, other than distributions made in complete liquidation of the company of capital which was originally paid directly into the company in connection with the issuance of equity interest.”

The proposed amendment seeks to introduce a new provision in the ITA for certain transactions to be deemed as a dividend without amending the definition of the term ‘dividend’ under section 2 of the ITA. This may result to lack of clarity on what constitutes a dividend which may lead to disputes between taxpayers and the Kenya Revenue Authority.

The Bill also seeks to amend section 7 of the ITA by providing that an amount shall be deemed to be a dividend distributed by a company to a shareholder where such a dividend is paid to or on behalf of a shareholder or any person related to the shareholder. We would however point out that a dividend is only made by a company to its shareholders. Payments to persons related to the shareholder cannot be regarded as dividends.

Recommendation

They proposed an amendment to sub-section (v) to read as follows:

“(v) the amount represents reduced taxable income or additional assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment.”

They proposed that the definition of the term dividend under **section 2** of the ITA is amended to insert the words, “...including an amount deemed as a dividend under Section 7 of the ITA” after the word ‘interest’

The Bill should amend the proposed **section 7(1)(b)** by deleting any references to a person related to the shareholder.

B. Compensating tax

They noted that Clause 4 of the Bill has proposed to repeal the current compensating tax provisions by deleting section 7A of the ITA and replacing it with a new tax on untaxed distributions. Any dividends paid out of taxes that have not been subjected to tax shall be chargeable to tax at the corporation tax rate of 30%.

They stated that this was likely to give rise to the following challenges:-

- i. Under section 7 of the ITA, a dividend paid by a company which holds directly or indirectly more than 12.5% of the shares of the underlying company shall not be deemed income chargeable to tax. Further, income such as interest income from an infrastructure bond is generally earned tax free by an investing company. When the recipient company then seeks to pay a dividend, would it be subjected to 30% corporation tax on this amount if its initial source is itself tax free? It is not clear in the Bill;
- ii. Furthermore, what of a Kenyan company which has non-Kenyan subsidiaries (say in Uganda, Tanzania etc)? Will dividends received in Kenya from the non-Kenyan subsidiaries, and which dividends will have already been taxed in the relevant country, then subjected to tax under section 7A of the Bill when paid out of the Kenyan holding company? As currently drafted, this income will be subjected to 30% tax in Kenya, in addition to the taxes already suffered in the other country. This will make Kenya an unattractive destination for regional investments and may make regional groups of companies such as Equity Bank and Kenya Commercial Bank (which have non-Kenyan subsidiaries) to migrate their head offices to elsewhere. In short, this tax leakage at the group level would make Kenya less attractive as a holding company jurisdiction;
- iii. What of a company that disposes off a property and pays CGT at the appropriate rate? Will it have to pay taxes under section 7A of the Bill given the fact that the rate of the CGT is lower than the tax rate set out under section 7A? Indeed, this same argument can be applied for companies whose corporate tax rate is lower than 30%, for instance recently NSE listed companies and development companies investing in affordable or low cost housing. It should be clarified how this new provision applies to these unique circumstances; and

- iv. Also will a distribution of foreign dividends received by a Kenyan company (and which are not subjected to tax in Kenya) or distribution of untaxed gains or profits arising as a result of claiming tax incentives such as 150% capital allowance granted to manufacturing entities amount to “untaxed distribution”.

Recommendation

They proposed that guidance is provided on these issues to avoid potential disputes in the future, arising from different interpretations of these new provisions. For example:

- i. Dividends received by a Kenyan company of which tax has been paid can be distributed upwards with no further tax;
- ii. Clarification that where tax has been paid at a rate lower than 30%, such dividends can be paid with no further tax (for example, where a company has paid CGT at the appropriate rate);
- iii. clarification that where the dividend has been received from income which is not accrued or derived from Kenya, such a dividend can be paid without triggering taxes under section 7A of the Bill; and
- iv. Where a company is in a tax loss position on account of claiming applicable capital allowances, and has made accounting profits which can be freely distributed to shareholders, such as a distribution ought not to trigger compensating tax.

C. Withholding tax on demurrage charges and insurance premiums

The Bill introduces WHT at the rate of 20% and 5% of the gross amount payable on the demurrage charges and insurance premiums (except insurance premiums paid for the insurance of an aircraft) respectively. Demurrage charges have been defined in the Bill “...as the penalty payable for exceeding the period allowed for taking delivery of goods, or returning any equipment used for the transportation of goods...”

It is unlikely that non-resident recipients of demurrage charges and insurance premiums will agree to bear the WHT burden as this will result in reduction of their income, especially if they are based in a jurisdiction which does not have a double tax treaty with Kenya and cannot claim a credit for the tax withheld in Kenya.

It is therefore likely that the cost associated with the introduction of WHT on demurrage charges and insurance premium paid out to non-residents will be passed on to the end consumer through a “tax gross-up” mechanism and this will result in an increase in the cost of doing business.

Recommendation

They recommended that the provisions relating to WHT on demurrage charges and insurance premium are deleted.

2. Excise Duty Act, 2013

A. Excise Duty on Money Transfer

The Bill proposes to amend the Excise Duty Act, 2015 (the Excise Duty Act) by introducing excise duty at a rate of 0.05% of the amount transferred by banks, money transfer agencies and other financial service providers in case of money transfer of KES 500,000 or more.

It was their view that the provision raises the following challenges:

- i. As an effective date of the excise duty was 1 July 2018, merely two weeks after the publication on the Bill, there is an administrative challenge to the financial institutions in rolling out the systems for collective of the excise duty. This could make it difficult and expensive to collect and remit the excise duty.
- ii. Secondly, it has been opined that the excise duty may lead to investor apathy. On 24th August 2016, the President assented to the Banking (Amendment) Act, 2016 with the aim of introducing a cap (the Interest Rate Cap) on the maximum interest rate chargeable on a credit facility. The Bill proposes to repeal the Interest Rate Cap with effect from 1st October 2018. These measures by the government of repealing existing laws and introducing new laws in the banking sector have been viewed as overregulation in the industry. Due to overregulation and uncertainty in Kenya's taxation policy, investors may adopt a wait-and-see attitude that may lead to stunted economic growth.
- iii. The excise duty will have a negative impact on the liquidation of the economy as it is likely to discourage people from transferring money using financial institutions, thereby reversing the gains that the banking and financial sector have had over the years. People may subsequently resort to other methods of money transfer which is likely to lead to low circulation of money in the economy thus affecting development.
- iv. There will be unintended consequences in the financial sector including significant reduction in investor returns, potential compression of corporate profit margins particularly for high turnover companies, reduction in liquidity of key capital market assets such as treasury bills and bonds, amongst others.
- v. The Bill does not outline clear guidelines and definitions of key terms including the definition of '*money transfer*', '*money transfer agencies*' and '*other financial service providers*'. It is therefore unclear what transactions are amenable to the excise duty.
- vi. Further, there is no clarity on whether:
 - a) This loan would include cheque transactions, cash withdrawals and deposits and loan transactions would be captured by the excise duty.

- b) The excise duty would be charged on money transfer services by cellular phone service providers. In the event that the excise duty will be applicable on mobile money transfer services (where the allowable limit is Kshs 500,000 or more), this would discourage people from using mobile money transfer services thus slowing down the government's push towards a cash-light economy;
- c) Statutory payments for example capital gains tax, stamp duty and other tax payments would be captured if such taxes are in the amount of KES 500,000 or more;
- d) The excise duty applies to transfers of money between unrelated banks or whether it also envisages transfers between accounts of the same bank; and
- e) The excise duty covers transfers between different accounts held by a single person.

Recommendation

They proposed that the proposed introduction of excise duty on money transfer of KES 500,000 or more be shelved.

B. Excise duty on bottled water

The Bill proposes to subject all bottled water to excised duty at the rate of KES 5 per litre, breaking away from the earlier distinction made between excisable "waters" (aerated, natural/ artificial mineral water) and "other water". In addition, by virtue of the Kenya Gazette Vol. CXX- No. 81 dated 6th July 2018, the rate is proposed to be increased to KES 5.20 per litre subject to National Assembly approval.

While it may be important to tax luxury goods to fund government projects, a distinction ought to be made for water that is not of a luxury nature especially water provided by social enterprises which seek to improve health and sanitation in informal settlements. As such, the action of "bottling", in and of itself does not make the water a luxurious product.

Recommendation

The proposal to delete the expression "Waters (excluding water of tariff No. 2201.90.00) and other non-alcoholic beverages not including fruit or vegetable juices" appearing in paragraph 1 of the First Schedule to the Excise Duty Act ought to be shelved. This is because bottling natural or ordinary water in itself does not make the water luxurious. Tariff 2201.10.00 clearly distinguished the water of a luxurious nature as "mineral waters and aerated waters" and all other water excluded from this category ought to be exempted from excise duty. Such a carve out would shield the less fortunate members of society (who do not have access to piped water) from a sin tax on bottled water ordinarily used for recreational purposes.

3. The Employment Act

The Bill (Section 68) proposes to amend the Employment Act by inserting a provision that will require contributions of 0.5% of the employee's monthly gross earnings subject to a maximum of KES 5,000 per month for both employers and employees to the new National Social Development Fund (the Fund). In order to have transparency on the activities of the Fund and use of the money paid into the Fund, it is important that the fund is formed in a similar manner and go through the same process as other similar funds (such as the National Hospital Insurance Fund and the National Social Security Fund). As such, a Bill forming the Fund must be tabled in Parliament and subject to public participation.

It should be clear to every Kenyan exactly how the funds will be put to use and who will be accountable in the event that the intended objectives are not achieved. Only after the Funds has been legally formed under a law and the objectives for the Fund well set out, can the amendment to require employers and employees to pay this amount into the Fund.

Recommendation.

They proposed that the entire section is deleted until the Fund is properly constituted following public participation upon enactment of a law in respect of the Fund.

4. Special Operating Framework Arrangements (SOFA)

The Bill proposes a raft of amendments to the ITA, the Excise Duty Act, the Value Added Tax Act, 2013 and the Miscellaneous Fees and Levies Act, 2016 in relation to transactions involving SOFA. There is however, no definition on what a SOFA is or statute that governs SOFA in Kenya. This creates ambiguity regarding the purpose of a SOFA, which investments are considered as SOFA, which ministry regulates SOFA, which type of projects are targeted by SOFA etc.

Article 201(b)(i) of the constitution provides that the burden of taxation should be shared fairly. This is in line with the principles of taxation that call for fairness and certainty in revenue tax policy. The proposed provisions in the Bill, in the absence of a SOFA enabling statute, are in contravention of both the Constitution and International best practice with regards to revenue laws.

Recommendation

They stated that there was need to reconsider whether there was any need for the creation of SOFA given the existence of already highly incentivized regimes such as the SEZs and EPZs. If necessary, a specific statute that gives guidelines on the establishment and taxation of SOFA should be enacted.

5. Other provisions they would have expected to be proposed by the Bill

A. Group Taxation

They stated that Under the ITA, each company in a group is taxed independently. This leads to a situation where some companies within a group are in a tax paying position, while other companies in the same group have tax losses and are therefore not required to pay tax. At a group level, this has an impact on cash-flows and reduces funds which would have been available for expansion of operations and investment.

They proposed the following, THAT :-

- a) A group taxation regime should be introduced and would be applicable (subject to an election to be made by the group) if certain thresholds in shareholding are met, in which case all the profits of the companies in the group would be aggregated and tax assessed on the holding company.

For example, the provisions could be drafted in such a way that, if a Kenyan company holds 90% or more of the shares of one or more Kenyan companies, the group may choose to be taxed as a single entity. Hence, the subsidiaries would be treated as “branches” of the parent company, and corporate tax is payable only by the parent company. To prevent abuse of such a system, it could be mandatory for the holding company to be a Kenyan Company for the group taxation regime to be applicable.

- b) Consolidated groups should also be allowed to file a single tax return to make it administratively easier to comply with annual filing obligations. This recommendation would be in line with the current position as regards Value Added Tax, and can be an opportunity to harmonize the general tax requirements that trigger group taxation across tax heads.

The Companies Act, 2015 already imposes an obligation on directors of a parent company to prepare consolidated group accounts. This should be extended for income tax purposes for companies that elect to be taxed as a single entity.

B. Tax treatment on shares buy-backs

The Companies Act 2015, introduced share buy-back provisions. A limited company having a share capital may purchase its own shares, including any redeemable shares, provided that such buy-back is undertaken in accordance with the Companies Act. A share buy-back ought to be financed out of capital, out of distributable profits or from the proceeds of a fresh issue of shares made for the purpose of financing the share buy-back. Under the provisions of the Eighth Schedule, a share buy-back amounts to a transfer on which capital gains tax will be chargeable at the rate of 5%. The CGT would be payable by the shareholder who is selling the shares to the company and broadly, CGT would be computed as the difference between the cost paid by the shareholder to acquire the shares from the shareholder.

There is a risk that capital gains arising from a share buy-back may be deemed to be a “distribution”. In addition, if the buy-back is characterized as a dividend, it would be subject to withholding tax at the rate of either 5% for residents or 10% for non-residents.

Recommendation

They recommended that the Bill should clarify the treatment of share buy-back transactions. Further, they recommended that in the hands of the company, a share buy-back should not be treated as a distribution as it is merely a transaction where a company is re-purchasing its shares. However, any gain accruing to the shareholder on sale of the shares to the company should be subject to CGT.

3.24 GREEN BONDS PROGRAMME KENYA (GBPK)

GBPK is a public-private partnership that aims at developing Kenya’s Domestic Green Bonds Market. The Kenya Bankers Association (KBA), Nairobi Securities Exchange (NSE), Climate Bonds Initiative (CBI), the Financial Sector Deepening Africa (FSD Africa) and the Dutch Development Bank FMO convened the GBPK to accelerate the take-up of green bonds as a tool for Kenya to tap into international and domestic capital markets to finance green projects and assets. The GBPK is endorsed by the Central Bank of Kenya (CBK), Capital Markets Authority (CMA) and the National Treasury. The program is also supported by the international and regional partners IFC and African Development Bank.

The submission was made in collaboration with;

- i. Kenya Bankers Association (KBA)
- ii. Nairobi Securities Exchange (NSE)
- iii. Kenya Association of Stockbrokers and Investment Banks (KASIB)
- iv. The Central Depository & Settlement Corporation Limited (CDSC)
- v. The Fund Managers Association (FMA)
- vi. Association of Collective Investment Schemes (ACIS)

They stated that their representations reflected the views of the parties listed above on fiscal policy interventions that they believed would be for the long term benefit of the Capital Market, its various stakeholders and the National Economy by accelerating its transition to a National Green Economy.

Legal Intervention Sought: Fiscal incentive for Green Bonds (withholding tax exemption)

GBPK submitted that:-

Clause 18

They were proposing an amendment to the First Schedule, of the Income Tax Bill 2018 to provide for Fiscal incentive for Green Bonds so as to enjoy withholding tax exemption.

Current provision in the Bill: FIRST SCHEDULE (18) Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

Issue of Concern: This provision recognizes that bonds issued for purposes that relate to improving infrastructure and the social wellbeing of the country be exempt from tax. It however fails to recognize green bonds which would qualify in this category.

Proposed amendment : FIRST SCHEDULE (18): Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, the green economy and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

Justification: Inclusion of Green Bonds in this exemption shall encourage the uptake of the bonds.

Additional amendments/definitions:

- i) Insert the following definition into Part I, Section 2 of the Capital Markets Act:

“Green Bond” means a debt security listed and issued on a securities exchange and independently certified by a recognised verifier. The proceeds are used to finance or refinance new or existing green projects that generate climate and / or other environmental benefits, societal and sustainable development co-benefits that conforms to the Green Guidelines and Standards and approved by the Authority; The instrument can be issued either by the National Government, County Government or a Company to enable capital-raising and investment for new and existing projects with environmental and social benefits.”

“Verifier” refers to an entity, independent of the issuer, its directors, senior management and advisers,

accredited under the Climate Bonds Standard and Certification Scheme or any other professional body acceptable to the Nairobi Securities Exchange and the Capital Markets Authority, appointed by the issuer to confirm the green status of the Green Instrument.

ii) Insert the following definition into Part I, Section 2 (1) of the Income Tax Act:

“Green Economy” is one in which the production of goods (and services), is optimized to ensure minimum negative impact on the environment and maximum socio-economic benefits for the population.

3.25 ECONOMIC RENAISSANCE CHAMBERS LTD

They submitted that:-

The Bill proposes to introduce a new excise tax on ‘sugar confectionary and chocolate (including white chocolate)’ of Kshs. 20 per kg. The reason why and the rationale for this change appears to be a generalized statement in the budget statement thus:-

“confectionary and chocolate are rich in sugar content and expose consumers to adverse effects on their health due to sugar related diseases”.

It is too simplistic and scientifically grossly inaccurate to make a generalized inference of ‘adverse effects’ on health without regard to the relevant metabolic facts about sugar. The Committee should reject this amendment.

3.26 KENYA PRIVATE SECTOR ALLIANCE

KEPSA recommended the following proposals:-

Housing Sector

Increase of Duty on Steel from 25 to 35%

Proposals

1. Reduce or completely remove the import duty on steel used in construction of housing
2. Consider alternatives to stimulate efficient manufacturing of steel away from subsidies
3. Address value chains for efficient production and reduced costs.
4. Address cost of power as a main factor of production and overall cost of commodities
5. Review importation cycle as the non-financial costs reflect on the price imports

Justification

1. These taxation proposals will make steel costly and increase the cost of housing construction.

This defeats the purpose of the housing aspirations on the Big Four Agenda.

2. Currently, steel duties have gone up by 5% despite the fact that steel is one of the major costs in construction of housing and almost half of the building cost is steel related.
3. The local capacity is not able to meet the current demand, a situation that is to be compounded by the rise in construction because of the Housing targets from the Big Four Agenda.
4. The government tax policy does not support the housing plan under the big 4 agenda.

Increase in the duty of Particle Board & Medium Density Board to USD 120/MT or 35% and increase in the duty of ply wood and block boards to USD 230/MT or 35%

Proposals

1. The government should reduce the tax to encourage imports of the deficit and to save the forests. The recent price increases are so high that this will affect the plan to deliver the government's low-cost housing pledge.
2. To reduce or completely remove the import duty on particle boards.
3. Explore policy alternatives to stimulate manufacturing of timber products away from tariffication.
4. Address value chain efficiencies to reduce costs from inefficient production.
5. High cost of power, a main factor of production reflects in the high prices
6. Suspend this proposal until such a point as when the housing agenda which will have been realized with a view to save trees during this period of spurred housing construction from the Big Four Agenda.

Justification

1. An increase in import duty will increase cost of construction for components for affordable housing.
2. As is the case with steel, taxing of these timber products will increase the cost of the otherwise cheaper timber imports thereby making housing construction costly. This therefore also defeats the purpose of the housing aspirations on the Big Four Agenda bearing in mind that almost 10% of building cost is related.
3. Government has increased taxes for MDF, particle board, plywood and block board from 25% to 35%.
4. Furniture manufacturers are now increasing their prices.
5. With a ban on logging in Kenya, the cost of forest products has substantially gone up and in some instances by 50%.

6. Kenya has a major shortage of timber and ways of conserving the same should be sought by encouraging the importation of timber raw material used in the timber industry which will also encourage local value addition manufacturing.
7. Adverse environmental implications are also likely to arise as local supply may resort to logging and illegal legal activities.

Employers and employees to contribute 1% of the employees' emoluments to a National Housing Development Fund (max. Kshs. 5,000)

Proposals

1. Strengthen the National Housing Corporation as opposed to setting up NHDF
2. Suspend the proposal until and allow wide stakeholder engagement on this proposal. This will give room for setting up well structured, NHDF has and development of operational guidelines and the governance structure has been set up.

Justification

1. There is need for stakeholder engagement on this proposal as it has not been received positively by all the stakeholders.
2. The employee-employer contribution to the NHDF is a burden to employers. This burden will further reflect in increased costs of employment and the demand for labor will automatically come down (reduced employment).
3. The actual benefit is not commensurate to the establishment of the fund as the cost of running institutions is estimated to be as high as 40% (NHIF).
4. Housing Fund not properly structured and is a Robin Hood Tax to affect the mere 27% employed Kenyans.
5. Establishment of another institution for housing when we have an existing NHC which is poorly funded is ill advised.

Supplies imported or purchased for the direct and exclusive use in development of affordable housing by licensed SEZ is exempt from VAT. This is subject to the following conditions:-

1. Recommendation of the CS for Housing
2. A minimum of 5,000 units to qualify
3. Currently Vatable at 16%

Proposal

1. Establishment of more SEZ's across the nation is required
2. Reduce the number of units to benefit from lower corporation tax from 5,000 units to 25 units to incentivize small scale contractors.

Justification

1. Currently there are only 2 licensed SEZ in the country therefore making this condition very difficult to achieve.
2. A threshold of 5,000 units is too high and should be reduced to 25 units.
3. 5 year period to offload unsold unit stocks is too long considering the turn-around for financing.

AGRICULTURE

First Schedule to the VAT Act is amended by deleting paragraph 45 and substituting therefor the following new paragraph-

1. Delete paragraph 45 part 1 (v) and make consideration for solar home system kits.
2. Also clarify around solar home lanterns which have the battery included in the lantern.

Justification

1. They wanted clarity on whether maize seed was still tax exempt from VAT under paragraph 25 which excludes cereals under chapter 10
2. Delete paragraph 45 part 1(v) and make consideration for solar home system kits. Also clarify around solar home lanterns which have the battery included in the lantern.

Clarification of Paragraph 92 on transport implication within EA region

Proposal

Reconsider this in the spirit of East African integration.

Justification

They believed that this amendment will hinder trade within the EAC region and could possibly shift importation to ports outside Kenya.

Amend paragraph 93 by inserting the words "and equipment" immediately after the word "materials"

Proposal

To promote food security and enhance objective of post-harvest management.

Justification

They are pleased to see continued support for exempting post-harvest loss/storage technologies and ask the government to consider extending the exemption to Hermetically Sealed Storage Bags (such as PICS bags) which are critical for small holder home and warehouse storage.

BANKING SECTOR

Excise Duty on money transferred by banks, money transfer agencies and other financial service providers shall be 0.05% of the amount transferred in case of money transfer of Kshs 500,000 or more.

Proposal

1. Delete section 31 Part B of the Finance Bill 2018.
2. Explore alternative tax measures that are less disruptive to raise targeted revenues such as consideration of increasing Excise duty on money transfer services from the current rate of 10% to 12% perhaps.

Justification

- The Excise Duty is to take effect as from 1st July 2018. No guidelines have been provided on how the tax is to be implemented in addition to lack of definition of “money transfer”.
- This will lead to double taxation across jurisdictions.
- Financial cost of doing business in Kenya is expected to increase with all the gains recorded in the past in pursuit of financial inclusion bound to be eroded.
- Adverse economic impact is expected if the tax is applied on transactions such as interbank transactions, international trade transactions, capital market trades, forex transactions, tax collection, dividends etc. Kenya be rendered an unattractive financial destination.

ENERGY SECTOR

Proposal

Consider classifying LPG as Zero-rated Gas made cheap and available will save forests.

Justification

1. By re-classifying LPG from zero-rate to VAT tax exempt, LPG players will have to bear the cost of VAT on both operational and capital expenditure which in reality means that both LPG investment and operating costs will increase thereby adversely impacting on to the final consumer's costs.
2. Against health conditions resulting from indoor pollution.
3. Spurring of LPG will manufacturing from the zero-rate will result in increased jobs and provide export opportunities to other African countries.

Proposal

Briquettes and pellets made of waste materials are subject to VAT of 16%, which can make them more expensive than charcoal or firewood.

VAT zero-rating on briquettes and pellets made of agricultural or forestry waste.

Justification

1. Briquettes and pellets made of waste materials are subject to VAT of 16%, which can make them more expensive than charcoal or firewood.
2. Zero-rating VAT on briquettes and pellets will make them 16% cheaper and therefore more affordable for households and schools and charities. Informal charcoal and firewood suppliers do not charge VAT and therefore there will be very little loss in revenue.
3. The Government of Kenya has committed to ending deforestation. Briquettes and pellets provide a viable alternative to charcoal and firewood.
4. Briquettes and pellets are made of agricultural waste, sawdust, or charcoal dust and do not require any trees to be cut in the process.

Proposal

Denatured Technical Alcohol (Ethanol) for cooking is subject to VAT at 16%, which adds around 12/= per litre to the retail price that customers are faced with.

VAT Zero-rating on Denatured Technical Alcohol Domestic Cooking Fuel

Justification

The Government of Kenya has evidenced its commitment to transitioning Kenyan households to clean cooking fuel. Providing technical alcohol with zero-rating VAT status will enable the lower income mass-market to access clean cooking fuel, and also enable rural distribution to occur. The government currently earns no revenue from this category so the impact to government revenue is NIL.

Proposal

Imported Ethanol fuel is subject to an import Tariff of 25%. This equates to a higher price to customers of 10-12/= per litre.

Removal of Import Tariffs on Denatured Technical Alcohol for Domestic Cooking Fuel, so that reliable supply of quality ethanol cooking fuel can be made available to customers in the short term.

Justification

Achieving mass market uptake of liquid ethanol cooking fuel requires imports of Denatured Technical Alcohol, because of insufficient local quantities produced. Treasury currently derives no revenue from imports of denatured technical alcohol, and so this proposal will be revenue-neutral to Treasury, with regards to current revenue projections.

VAT Exempt on HSC code 7321 1900 and 7321 8900

Proposal

Consider zero-rating

Justification

1. The HS Codes for finished goods and knock-down kits are exempt from VAT, which gives importers an advantage in the marketplace vs. local manufacturers who have to pay VAT on raw materials. In the 2016 Finance Act, GoK made raw materials being made into improved jikos with a special process, however, implementing this has not been realistic. Zero-rate would make manufactures more competitive.
2. Treasury would not lose significant revenue in shifting from exempt to zero-rated (estimated 30Mn KES per year).

TRANSPORT SECTOR

Proposal

Demurrage Charge to be defined to mean:

“Demurrage charges” means the penalty paid for exceeding the period allowed for taking delivery of goods or returning of any instrument used for transportation of goods; and for the purpose of this Act, demurrage charges shall only relate to cargo exported from Kenya and cargo imported into Kenya.

Justification

1. Currently the demurrage charges relating to the export are taxed under section 9 of the ITA as part of the gross amounts received by a non-resident ship-owner from the carriage of cargo which is embarked in Kenya. Implementing the amendment as is will result to double taxing the export component of the charges under section 9 and at the same time under the new provisions introduced by the Finance Bill.
2. In addition, demurrage collected by a Kenyan ship Agent on delays that happen in other countries is not income incurred in or derived from Kenya.

Proposal

Insert another Clause after Clause 4 of the Finance Bill that reads as follows:

4. The income tax Act is amended by repealing section 9(1) and replacing it with the following new section-

9(1) Where a non-resident person carries on the business of ship-owner, charterer or air transport operator or a ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from that business from eh carriage of the passengers who embark, or cargo or mail which is embarked, in Kenya, shall be the gross amount received on account of the carriage and demurrage charges; and those gains and profits shall be deemed to be income derived from Kenya, but this shall not apply to gains or profits from the carriage of the passengers who embark or cargo or mail which is embarked, in Kenya solely as a result of transshipment.

Justification

1. **Demurrage charges relating to** cargo imported into Kenya will be accorded same treatment as demurrage exported from Kenya and freight tax. This will harmonize the taxation in the shipping business in Kenya and provide simplicity.
2. It will be clear on whose obligation to withhold and remit tax is on, which in this case will be the local shipping agent.
3. In addition, this will also ensure the Government realize the tax revenue it expects to collect from this new tax given that the big tax compliance burden created on the numerous small-scale traders who do not import/export consignments frequently will now rest with the local shipping agents and not on the small scale traders.

Proposal

Clause 10, Section 35 of the ITA

Inserting the following new subsection immediately after subsection 1(A)-1(B) for the purposes of demurrage charges, the shipping tax shall be responsible for the deduction of tax.

Justification

1. By expressly assigning the obligation to withhold and remit tax to the local shipping agents, potential misinterpretations of the law that could arise will be cured and the much needed clarity will be provided.
2. This will also ensure the Government realize the tax revenue it expects to collect from this new tax given that the big tax compliance burden created on the numerous small-scale traders who do not import or export consignments frequently will now rest with the local shipping agents and not on the small scale traders.

Proposal

Sub-clause 11(b) of the Finance Bill

Clause to be amended to read as follows- (b) in paragraph (3), by inserting the following new subparagraph immediately after subparagraph (n)-

(o) demurrage charges, paid to ship operators, two and a half percent of the gross amount payable;

Proposal

Clause (1) (b) of the Finance Bill

Clause 1(b) of the Finance Bill be amended to read as follows: (b) Section 4, 5, 6, 7, 9, 10(c), 11(a), 11(b), 11(c) and 68, on the 1st January 2019.

Justification

1. A reduction of the tax rate from 20% to 2.5% will reflect a fair decrease of costs to the importers/exporters and thus maintain a competitive edge to the Port of Mombasa and Kenya at large. This is because, subjecting demurrage to withholding tax at the proposed rate of 20% would certainly see the Shipping lines add the additional cost to the freight charges passing the same on to the consignees.
2. The postponement of the effective date of the amendment to 1st January 2019 will allow the shipping agents time to configure their systems and put proper controls in place to ensure full compliance with the requirement of the law.
3. In addition, this will give KRA time to reconfigure their iTax system allowing agents to properly account for the tax using the system as opposed to making manual interim payments.

3.27 THE WRIGLEY COMPANY EAST AFRICA LTD

A representative of the company submitted that:-

Their concerns with regards to the proposed excise duty are premised on the adverse ramifications the tax will have both on their business and industry as a whole.

1. Impact of the proposed excised duty on Wrigley Company (EA) Limited business

The proposed excise duty on sugar confectionery and chocolate at Kshs. 20 per Kilo if implemented will have a profoundly negative impact on their business. In particular:

1. The proposed tax will increase the cost of sales yet their industry/business is characterized by low margins. This will seriously affect their ability to remain in business. The proposed duty will have serious consequences not just for Wrigley but also for thousands of retailers and entrepreneurs engaged through their business value chain.
2. The proposed duty will significantly increase the cost of doing business and possibly lead to job cuts and significant scaling down of their operations. Their Kenyan operation serves the domestic and regional markets and the effects of any scale down would be felt beyond the borders. The proposed tax will send a wrong signal to foreign firms keen to invest in the domestic and regional market.
3. The proposed tax will hamper their ability to expand their business value chain in Kenya and the region. Wrigley Company (EA) Limited only recently invested Kshs. 7Bn to build a new factory in Athi River, Machakos County. The said factory is expected to generate hundreds of jobs in Kenya.

4. The budget Statement has not set out the rationale and logic in support of the proposed duty nor have their views been taken into account regarding the quantum and implementation mechanism for the said tax, yet it will seriously affect our business.

2. Their proposal to the National Assembly.

In light of the foregoing, they urged the Government to reconsider the proposed excise duty on sugar confectionaries and chocolate by **amending the Finance Bill 2018 to remove the applicable clauses and thus reinstate the status quo**. This, they believe will not only cushion their business from the shocks and proposed duty to the industry but also act as incentive for further investment in capacity and job creation in line with the Government's Big 4 Agenda.

3. Wrigley Company East Africa contribution to Kenyan's Economy

Wrigley Company (EA) Limited is keen on supporting the Government's Big Four Agenda for inclusive growth. The manufacturing pillar is of great significance to them as a business. During her recent visit to Kenya, one of the shareholders and immediate former Chairperson of their parent company Mars Incorporated, Mrs. Victoria Mars, reassured the president His Excellency Uhuru Kenyatta of their commitment to working with his government to realize the Big Four Agenda especially in building a robust manufacturing sector in Kenya.

As already mentioned, they are putting up a state of the art factory at a cost of Kshs 7 Billion. This investment is expected to generate thousands of jobs through direct employment at the factory and from the anticipated expansions of their sales, distribution and retail ecosystem throughout the country. Wrigley has also created thousands of indirect jobs as a part of the employment value it has added to Kenya's economy.

Additional taxation will stifle their ability to invest in further growing the country's economy and achieving the Big Four Agenda.

Wrigley Company Limited (EA) is also a major contributor to the National Exchequer through taxation. Additional taxation by way of the excise duty on sugar confectionary and chocolate will burden their business and their ability to operate. Wrigley wishes to reiterate that a **zero excise duty on sugar confectionary and chocolate and will safeguard significant investments and thousands of jobs in the economy.**

4. Wrigley EA contribution to Kenya's Social-Economic Development Fund

As a responsible corporate citizen. Wrigley Company (EA) Limited has spearheaded numerous social investment initiatives. They are committed to enhancing the social well-being of the communities where they do business in partnership with the government and other actors.

Wrigley has invested in an entrepreneurship development initiative, Maua, to expand income and business opportunities for hundreds of Kenyans in the country. This initiative targets low income urban and rural areas. Mars Inc., their parent company is also currently supporting the agriculture sector and more than 20,000 farmers through the Livelihood Fund for Family Farming and looking into the future of food security through the African Orphan Crops Consortium.

Additionally, Wrigley has been on the forefront of partnering with the Ministry of Health in the development of the Kenya National Oral Health Public Policy through the Wrigley Oral Health Program (WHOP). They are also working with the Ministry of Education in developing the new school curriculum piloted this year. As an outreach initiative, Wrigley launched a program that will cater for more than 20,000 children across the country in giving free dental checks and oral health education.

The value addition for Wrigley EA as an investor and manufacturer in Kenya for the past 50 years is therefore significant, impactful and comprehensive in addressing the social-economic needs of Kenya.

3.28 KENYA ASSOCIATION OF STOCKBROCKERS AND INVESTMENT BANKS

Section 31(b)(ii)(6)

Objective of the proposed tax

The aim of the tax is to increase the tax base and achieve greater social equality through the redistribution of resources and to raise money to finance the Big 4 Agenda. They support this objective to raise money to finance the Big 4 Agenda.

High volumes low margins

The capital markets industry is typically one of high volumes and low margins e.g.;

1. The NSE earns from 0.0004% to 0.12% of the value of a transaction.
2. The CMA earns from 0.0004% to 0.12% of the value of a transaction.
3. The Central Depository and Settlement Corporation earns from 0.0002% to 0.08% of the value of a transaction.
4. Stockbrokers earn from 0.024% to 1% of the value of a transaction, depending on the volume and nature of the trade.

Proposal

Removal of the Robin Hood Tax or exemption of capital market transactions from the Robin Hood Tax.

They suggested that public participation should be done prior to budget preparation.

Adverse effects of the proposed tax

1. Lack of competitiveness: investors may prefer to invest in more competitive and cost effective markets.
2. Reduced liquidity in capital market products like Treasury Bonds, Treasury Bills and shares. This shall result in reduced demand.
3. The reduced demand shall adversely affect the value and share price of listed securities.
4. Depressed growth of investments. The inability to move money from one vehicle to another shall result in stunted growth of investments and the economy in general.
5. Eroding retirement benefit schemes.
6. If the movement of money is taxed, the likely effect is that money shall not move and therefore there shall be no trade.

Justification

1. The RHT shall inevitably lead to reduced trading at the NSE.
2. Reduced trading shall mean depressed returns for:-
 - i. Investments (collective and individual)
 - ii. Retirement benefit schemes
3. The country's capital markets shall not attract investors and funds. Currently, trading at the NSE is 70% by foreign investors.
4. As a country, we shall not achieve our national objective of making Nairobi an International Financial Centre.
5. The proposed tax may not achieve the objective of taxing the rich, so as to provide services for the poor.
6. This tax has not been implemented in any other jurisdiction successfully.

Other options

So as to meet the funding gap created by the removal of this tax, they proposed an increase in excise duty on banking services from 10%.

Conclusion

The RHT with regard to capital markets transactions is NOT targeting the rich for the benefit of the poor as the name may suggest. It is affecting all Kenyans that save and invest, all pensionable Kenyans and prospective foreign investors.

They reiterated their support for the Big 4 Agenda but this tax may not achieve the goal of funding this noble agenda.

3.29 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

They proposed the following amendments to the Bill:-

Clause 3

Issue of concern/implication

The provision of the clause comes to effect in 1st July 2018. The definition of dividend is expanded to include transactions between a company and its shareholders. This amounts to transfer pricing adjustments that result in additional taxable income, including instances where the related party transactions in question do not involve the shareholder. Effectively, transfer pricing adjustments will be subject to corporation tax at 30% and withholding tax on deemed dividends at 10%. This can further be misinterpreted and discourage Foreign Direct Investment.

ICPAK's Comment

Issue of shares and debentures that are sold to related parties at less than market value – in CAP 470. Whilst we recommended for it to be repealed, the section was left out in the draft Finance Bill. Consider inclusion and repealing.

Clause 4

Issue of concern/implication

Comes to effect in January 2019. Whilst the provision indicates section 7A is repealed, the provision therein reintroduces compensating tax which was repealed.

The proviso

“Provided that this section shall not apply to registered collective investment schemes” might be misinterpreted

ICPAK's Comment

Delete Clause 12 entirely

Clause 6

Issue of concern/implication

To increase the uptake of presumptive tax and encourage formalization of business there is need to relook at the inclusion of incorporated companies.

ICPAK's Comment

Remove incorporated entities from the list of excluded entities so that small businesses that are incorporated are also roped into the tax net.

Clause 7

Issue of concern/implication

This proposal introduces an allowable deduction for manufacturers from January 2019. It is meant to incentivize manufacturers by reducing their cost of production. In line with the pillar of the Big Four agenda on manufacturing, a reduction in electricity cost will boost their profitability. However, the formula and regulations to determine “normal electricity expense” need to be carefully drafted to avoid ambiguity. Need to clarify and define the cost of electricity. What is “normal” electricity cost after taking into account inflationary adjustment. To avoid ambiguity.

ICPAK’s Comment

The Institute welcomes this move as it will enhance improved economic productivity and recommends a consultative approach in setting up of qualifying conditions by the Ministry of Energy.

Clause 10

Issue of concern/implication

The proposal to establish the fund and treatment of winnings is provided for under the Tax Laws (Amendment) Bill, 2018 which is currently before the National Assembly for consideration. Effectively, the proposal refers to a non-existent provision, calling into question its implementation especially if the relevant provisions in the Tax Laws (Amendment) Bill, 2018 are not passed by 30 June 2018.

There is further no explanation on the rationale as to why the gains should only go into one kitty (Sports, Arts and Social Development Fund)

Furthermore, the attendant regulations and guidelines for the management of the fund have not been developed, subjected to stakeholder participation and passed by parliament in line with the constitution.

ICPAK’s Comment

Reset the effective time period to September 2018 to allow for the passage of necessary legislation, establishment of the fund and attendant implementation guidelines.

The attendant regulations and guidelines for the management of the fund should be subjected to stakeholder participation and passed by parliament in line with the constitution.

For impact to be felt, the fund should be targeted the various sports, arts and social development activities that are under-developed.

Clause 11

Issue of concern/implication

1. The ship owners who are non-resident will be subjected to a demurrage charge of 20% and insurance premium of 5% of the gross amount payable
2. To curb inefficiencies by government, no demurrage should be charged until after 14 days.
3. The ship owners are likely to increase freight costs arising from the tax and pass it to importers.
4. There is the likelihood that the cost will be pushed to the final consumer since the importers will be obliged to pay withholding taxes on demurrage payments at 20%.

ICPAK's Comment

1. The proposal on demurrage charges seeks to bring the non-residents into the tax net.
2. With increased focus on the Big Four, there is projected increased demand for import of machinery and production inputs and export of surplus produced locally.

Whilst this is welcome, they recommended measures to be put in place to cushion the tax payers against high cost of doing freight and shipping business. Further, there should be collaboration between KRA and the ship owners to sort out the administrative challenges in implementing it.

Clause 11, Amendment of Third schedule to Cap 470.

Issue of concern/implication

The proposal is welcome in expanding the tax base. Effective January 2018, the proposal may pose administrative challenges as it is not clear whether the taxes will be collected by the County Government or the KRA will update the iTax platform to facilitate payment of the tax.

ICPAK's Comment

1. There is need to address the administrative challenges that the new law potent.
2. Borrow from the best international practices on presumptive tax regime.

New Tax exemptions

Issue of concern/implication

The Government policy has been geared towards discouraging harmful consumption of illicit brews. The rationale for exempting KDF canteens only amounts to discrimination and is prone to be abused as has been before by unscrupulous vendors creating unfair advantage in the market.

ICPAK's Comment

Delete the provision to encourage the defense forces to stay alert and create a level playing field

Zero Rating

Issue of concern/implication

Whilst it is potent to reduce VAT refund claims to KRA, the provision will lead to an increase in price as suppliers are not eligible to claim input VAT and will increase the prices of basic commodities. The move is bound to increase the prices of commodities to the chagrin of consumers.

ICPAK's Comment

The Institute recommended that the National Treasury comes up with tax measures that will not injure the suppliers and cushion the taxpayers.

The country is not benefitting from zero-rating of products. The move has not achieved the intended purpose. Zero rating should be limited to exports.

Section 31 a (i)

Issue of concern/implication

1. This is meant to deter the use of kerosene which is considered as harmful fuel that causes pollution. Similarly, it is also to encourage the use of other forms of fuels that are environmentally safe and friendly.
2. The harmonization of excise duty on illuminating kerosene and gas oil serves to circumvent fuel adulteration
3. However, this move may punish people in the lower income bracket

ICPAK's Comment

1. The move was intended to avert adulteration of fuel. Whilst a good policy in promoting environmental conservation, the unintended consequences are far-fetching. The poor are punished on the inefficiencies by Government to deal with adulteration.
2. Notwithstanding, measures should be put in place to ensure that other sources of fuel are made affordable for the low-income earners who are the majority using kerosene fuel

Section 31 (a) (ii)

Issue of concern/implication

1. This is targeted at having a piece of the profits that these companies make to increase the revenue streams for the government.
2. However, it will not augur well with the consumer who will be forced to bear the burden of increased cost. The rise in bottled water has arisen from the state's failure to provide safe and clean water in adequate quantities as provided for under Article 43(1)(d) of the Constitution.
3. With the proliferation of bottled water and juice manufacturers, the move will ensure that they all pay requisite taxes.
4. The stamp will also deter counterfeiting through tracking of the stamps and excisable goods to account for the production.

ICPAK's Comments

1. These are basic consumables for common citizen and targeting them for taxation is a punishment to the citizens.
2. They proposed that provision of water be zero rated in all its forms to make it more accessible to all Kenyans both poor and rich.
3. In addition, just like it is the policy of zero rating the importation of agricultural machinery, the same should be extended to water purification machines and their accessories. This will ensure that as many Kenyans as possible access safe and affordable drinking water as we move towards realization of Article 43 of the Constitution, vision 2030 and the SDGs

Section 31 b (3)

Issue of concern/implication

1. The excise duty is a sin tax that is likely to discourage the hitherto thriving sector of the economy that has employed many people.
2. The rationale for having a different tariff for same commodity is not defined (10% bank transfers and 12% on cellular phone transfers). There's need for equity. Need similar treatment across the board. Need to encourage mobile money in terms of financial inclusion. Instead of Robin Hood Tax, harmonize taxation for banks to 12% like mobile transfers.

Section 31 (b) (6)

Issue of concern/implication

Has unintended consequences to the banking sector and the economy at large.

ICPAK's Comment

The government needs to shelve this tax provision. Think of other alternatives.

Section 38: Extension of tax amnesty deadline

Issue of concern/implication

1. Tax amnesty has been extended from 30th June 2018 to 30th June 2019.
2. Whilst the extension is aimed at improving or promoting the uptake of amnesty, the provision of funds transferred under the amnesty shall be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 is flawed as it may be used by perpetrators of economic crimes to sanitize their actions. We are of considered opinion that a Voluntary Disclosure Programme should be introduced instead.

Voluntary Disclosure Programme

The objective of the VDP is to encourage taxpayers who have made errors in their tax matters due to ignorance or negligence, and without willful intent to evade taxes, to come forward and inform the revenue authority on voluntary basis.

A voluntary disclosure under the VDP is one which is timely, accurate, complete and self-initiated by the taxpayer. The taxpayer is also expected to cooperate fully with the revenue authority. Under the VDP, the voluntary disclosure would be considered self- initiated and timely if:

1. It is made before the revenue authority queries the tax payer in relation to his tax assessment;
2. It is made before the taxpayer receives notification from the revenue authority in respect of the commencement of an audit or an investigation; and
3. For cases already under revenue authority's query, audit or investigation, the disclosure must not be within the immediate scope of the query, audit or investigation.

International Best Practice

On 8 March 2009, Singapore through Inland Revenue Authority of Singapore (IRAS) issued an e-Tax Guide on its VDP. The programme has recorded a huge success by enhancing tax compliance and improving revenue collection to government.

ICPAK's Comments

1. Need to introduce a Voluntary Disclosure Programme. This will promote compliance as opposed to rewarding non-compliance and crime. The VDP shall be extended to everyone in the economy as opposed to a select few people as the proposed amnesty.
2. The VDP should be taxpayer initiated and made before the taxpayer receives a query from KRA or notification from KRA of the commencement of an audit or investigation.
3. For a taxpayer who has already received a query or is already under a KRA audit or investigation, in order to qualify for reduced penalties, the voluntary disclosure must not be directly related to the scope of query, audit or investigation.
4. Second time repeat offenders can only be entitled to 40% waiver if the disclosure was similar to previous one. Thereafter no waiver will be granted.

Section 45

Issue of concern/implication

1. This will enforce compliance and deter late filing of returns.
2. The interest should be maintained at 1% and not 2% as proposed in the Finance Bill

ICPAK's Comment

It will guarantee total compliance since people fear being surcharged.

Section 53

Issues of concern/implication

1. The intentions of increasing the rates of tax was to deal with the negative social effect on the youth.
2. It was also meant to generate revenues that the Government would use to fund the budget and promote sporting activities in the country.
3. However, the objectives have not been met. There is re-emergence of background betting, rise of social ills, drugs and pyramid schemes.

ICPAK's Comments

1. Extension of tax incentives for sport betting companies who spend 40% of their income to sponsor sporting activities.
2. Sports tourism and development be exempted from corporation tax.
3. Provide 10-15% of revenue generated to be utilized specifically in promoting social services and sports development.
4. This will spur growth of sport industry, talent development and increase employment opportunities for the youth

Section 68

Issues of concern/implication

1. It is expected that this initiative will provide sufficient funds to create more job opportunities and implement the Big Four Agenda.
2. However, it is bound to strain both the employers and employees who already feel the pain of taxation regime currently in force.
3. It will increase the cost of employment and lock many people who need employment as well as impending layoffs.

ICPAK's Comments

1. They proposed wide consultations with the various stakeholders to come up with a resolution that will benefit all.
2. Key players in the Labour sector, Workers' Union like COTU, and employees themselves.
3. The kitty could potentially be subject to mismanagement such as has been witnessed with similar kitties such as NSSF, NHIF, Housing Corporation, AFC among others.

3.30 ASSOCIATION OF GAMING OPERATORS OF KENYA

The Association of Gaming Operators were proposing the amendment of Section 29A (1), 44A (1) and 55A (1), 53 B AND 53C of the Betting , Lotteries and Gaming Act to set the gaming tax rate at 15 %.

This will enable a sustainable and viable gaming industry and preserve the economic and social contributions of the sector to the Kenyan people. The 15% tax if effected would ensure that the Kenyan gaming industry survives and continues to the Kenyan economy; retaining the jobs, sponsorship of local sports, economic contribution and taxes. They argued that the betting companies enjoys a gross margin of 7 %. A further 35 % will reduce the gross profit to 4.5%. This is before accounting for other overhead costs relating to advertising, mobile money service fees, platform license, interest expense sponsorships among other costs. When those costs are factored in, the net margin would only be 1%. Over and above the betting tax, the Companies also pay corporation tax at 30 %. Conversely, wins will be affected by the reduction in business and thereby local demand for products may opt for products offered by foreign companies via online and mobile applications as they offer more returns to the winnings and yet are untaxed.

In summary AGOK proposed insertion of the following new section:-

Section 53A, 53B and 53C

Section 53A: Expression ‘thirty five’ and substituting therefore the word ‘fifteen’

Section 53B: Section 44A(1) of the Betting, Lotteries and Gaming Act is amended by deleting the expression ‘thirty five’ and substituting therefor the word ‘fifteen’

Section 53C: Section 55A(1) of the Betting, Lotteries and Gaming Act is amended by deleting the expression ‘thirty five’ and substituting therefor the word ‘fifteen’

Justification

The proposal is aligned with the best economic and social interest of the country.

Kenya Charity Sweepstake proposed an amendment to Section 79(2) of the Finance Act, 2016 by deleting the word “turnover” and replacing it with “net revenue”.

Justification

All the other players such as gaming and bookmakers are deducted on gaming revenues thus making the Kenya Charity Sweepstake disadvantaged.

They also proposed an amendment to Section 30 of the Finance Act, 2017 by deleting the expression “thirty five” and replacing it with the word “fifteen”.

A representative of Oxygen 8 proposed the following amendments:-

Oxygen 8 proposed that the Bill be amended by inserting the following: -

S.29A Delete the expression “thirty five” and substitute therefore the word “fifteen”

S. 36(1) Delete the words “twenty five” appearing in paragraph (b) and substitute therefore the word “five”

Delete the words “twenty five” and substitute with “five”

Delete the words “forty five” and substitute with “twenty five”

s. 36(2) Delete the expression “twenty-five” and substitute with “five”

S.44A(1) Delete the expression “thirty –five” and substitute with “fifteen”

Representatives of AFC Leopards Football Club, Gor Mahia Football Club and the Chairperson of the Boxing Association of Kenya submitted that:-

It was good that the Sports Fund was being set up in the Bill but in their opinion, the fund will only be beneficial to sports persons that represent the country in international sports like Olympians. They noted that betting companies like Sportpesa had helped grow and nurture talent of sportsperson and thus impressed upon the Committee to reduce tax from thirty five percent to fifteen percent in order to encourage them to continue giving their support. They stated that the betting companies reduced their support to sporting activities when the taxes were raised.

3.31 PRICE WATERHOUSE COOPERS

PWC made the following submissions:-

They proposed the following amendments on behalf of KBA:-

Issue

Need for definition of the phrase ‘return on loan’ under the Excise Duty Act, 2015.

Proposal

The definition of the phrase return on loan under the Excise Duty act, 2015 should be introduced as follows: *“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”*

Justification

Lack of definition of return on loan under the Excise Duty Act, 2015 has led to uncertainty on what constitutes return on loan for excise duty purposes.

Issue

A case for exempting derived income earned by banks from excise duty under the Excise Duty Act, 2015.

Proposal

They proposed that the Excise Duty Act, 2015 be amended to define the term “charged” to include “to bill or issue an invoice in respect of a sale or supply of a service.”

Justification

The commissions derived from these derived incomes such as agency fees, international card companies and commissions from CBK are not ‘charged’ but ‘earned’ by the banks. Excise duty should only apply to fees actually charged by financial institutions as opposed to derived income.

Issue

A case of introducing tax rebates in relation to excisable services acquired by banks to avoid double taxation of excisable services similar to the rebates applicable to excisable goods.

Proposal

They proposed that a section should be introduced under the Excise Duty Act, 2015 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 services”*.

Justification

There is no provision under the Excise Duty Act, 2015 providing for offsetting excise duty incurred on purchase of services against excise duty charged on sales of services as is the case with excisable goods. This creates inequality in the application of the law as the input-output mechanism should ideally be applicable to both goods and services.

Issue

A case of exemption from excise duty of non-licensed services offered by the banks to provide equity in taxation of similar services regardless of their supplier.

Proposal

They proposed the Excise Duty Act, 2015 should be worded 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 on loan or return on loan or an insurance premium or premium based or related commissions.

Justification

The term ‘other fees’ under the Excise Duty Act, 2015 is so wide that it captures almost every activity (including non-core banking services) undertaken by banks. Based on this, the excise duty law creates

inequity and goes against the canon of equity since the KRA seeks to tax all activities of licensed financial institutions including services such as financial and general advisory services as well as rental income which when supplied by non-financial institutions are not subject to excise duty.

They proposed the following amendments for spirituous beverages sector:-

The Excise Duty Act, 2015 imposes excise duty on alcoholic spirits of alcoholic strength exceeding 10% at the rate of Kshs. 200 per litre and those not exceeding 10% at the rate of Kshs. 100 per litre.

Issues

1. The current excise duty charged per litre of the spirituous beverages at Kshs. 200 per litre for alcoholic strength exceeding 10% and those not exceeding 10% at the rate of Kshs. 100 per litre is too high.
2. The effective excise duty charged per litre on a base amount of 1000 litres of 96% alcoholic strength diluted by addition of water to 6400 litres of 10% alcoholic strength is Kshs. 1000 per litre which is punitive.
3. This definition of manufacture is not clear on whether dilution of ready to drink excised products amounts to manufacturing.
4. The excise law does not distinguish between the alcoholic products that target the low income category from those that target other drinkers; it imposes the same excise duty rate for spirits above 10% alcohol by volume irrespective of their alcohol content.

Proposals

1. An amendment of the definition of the term manufacture to exclude a mere addition, dilution or mixing of water with ready to drink spirituous beverage on which excise duty has already been charged,
2. A lower excise duty rate of Kshs. 70 per litre for pre-mixed ready to drink spirits or,
3. An excise duty remission scheme for products targeting the low end market like is the case with some beer brands targeting the same lower marketing segment.
4. A change in the basis for computation of excise duty on alcoholic beverages from a flat rate to multiple rates that correlate to the alcohol content of the beverage.
5. Introduction of a multiple rate taxation regime that correlates to the alcohol content to the beverages as follows:-
 - i. $\geq 40\%$ alcoholic content: Kshs. 200 per litre
 - ii. $< 40\%$ alcoholic content $10\% \geq$ Kshs. 45 per litre
 - iii. 10% alcoholic content \leq : Kshs. 30 per litre

Their proposals on solar equipment and accessories:-

Issues

1. Lack of clarity on the scope of exemption: the phrase “specialized solar equipment and accessories which exclusively use or store solar power” is open to subjective interpretations as technological innovation continue to unveil new solar equipment that exclusively use solar power.
2. Increased VAT costs associated with the exemption: Input VAT costs accruing throughout the supply chain are non-deductible thereby increasing the cost of supplies to the final consumer.

Proposal

Amendment to paragraph 45 of Part 1 of the First Schedule to the VAT Act, 2013 by inserting the following:-

“Solar equipment including composite solar home system kits, water pumps, solar LED lights, solar refrigerators and solar deep cycle-sealed batteries which exclusively use or store solar power or any other specialized solar equipment as approved from time to time by the CS for the National Treasury, upon recommendation by the CS for Energy.”

Solar home kits include solar powered televisions, radios, phone chargers and torches imported together as one kit.

Justification

1. The above clause will provide clarity and fairness to the industry as it will take into account key solar equipment and accessories in exemption. It will also allow the implementing authorities to draw a line between the gadgets that qualify as solar equipment and accessories and those that do not. This will seal the loop hole that currently exists that allows for equipment that does not exclusively use or store solar power to be submitted to the tax authorities for approval purposes.
2. The proposed amendment takes cognizance of the innovations and new technologies which allows for pairing of several equipment which has been specifically designed to exclusively use or store solar power as well as access by low income families to clean power and appliances to utilize the power bundled together in one kit.
3. Ensuring en-masse availability of clean energy aligns with the government’s goal under the National Energy Policy (2012) to enable the provision of “viable energy supply options” and “appropriate technology to meet energy demand” as well as the Renewable Energy Master Plan.

3.32 ENERGY REGULATORY COMMISSION

The CEO, ERC submitted the following proposed amendment:-

Amend Clause 31(a)(i) as follows;

Tariff No.	Tariff Description	Rate
2710.19.22	Illuminating Kerosene	Kshs. 28,305 per 1000l@ 20degC

Justification

This will lead to a reduction in fuel adulteration which has many effects including:-

Loss of government tax revenue, increased vehicle maintenance costs, safety risk due to stalled vehicles on the highway, wasted man hours, pollution, poor health, loss of Kenya's traditional export market and unfair trade practices.

3.33 LAW SOCIETY OF KENYA

Officials from LSK submitted as follows:-

1. They questioned the Constitutionality of the Provisional Collection of Taxes and Duty since public participation was not employed on the same.
2. The issue of VAT on fuel was not captured in the Bill and this meant that the cost of fuel will go up as fuel will move from being Exempt to vatable. Resultantly, the cost of living will go high as fuel affects almost everything in the country. They proposed that fuel remains exempt as is currently.

They proposed the following amendments:-

Clause 3

Proposal

3(1)(b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where:-

- i. Any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder;
- ii. The shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder;
- iii. The amount is used by that company in any other manner for the benefit of the shareholder;
- iv. Any debt owed by the shareholder to any third party is paid or settled by that company; and
- v. The amount results in a reduction in taxable income or increased assessed loss of that company by virtue of any transaction with the shareholder resulting from an adjustment.

Justification

Dividends can only be what is paid to or on behalf of a shareholder. Payments to another person cannot constitute a dividend.

Clause 4

The proviso should be amended to read as follows:-

Provided that this section shall not apply to:

- i. Registered collective investment schemes; and
- ii. Income that is paid out of dividend received, foreign earned income and profits that are not taxed due to investment deductions or similar tax allowances under this Act.

Justification

1. While the removal of compensating tax is a positive step, the dividend tax provision may result in juridical double taxation and will still result in a claw back of the incentives intended to encourage investment into Kenya.
2. The dividend received by a resident company from its wholly-owned subsidiary will now be considered to be untaxed income and any distribution of such dividend will trigger tax at 30%. This will effectively subject the holding company groups to a combined corporation tax of 51%.
3. If the proposal is implemented, Kenya will become unsuitable environment for holding companies. This may result in the relocation of holding companies to jurisdictions that have favorable tax practices.
4. Foreign sourced dividends will be subject to tax at 30%. This provision contradicts section 3(1) of the ITA which provides that only income accrued and derived in Kenya should be subject to tax.
5. It will be impractical for a company to separate the dividend that it receives from different sources of income in order to determine the dividend that arises from non-taxed profits.
6. Companies that have claimed capital allowance will be taxed if they distribute dividend when they are in a tax loss position.
7. Due to the repeal of the dividend tax account, a company will not be able to carry forward or utilize its tax credits.

Clauses 9 & 10

1. Consider scrapping the introduced WHT on demurrage.
2. Consider narrowing the definition of demurrage to application to ship operators only.

Justification

1. It is likely that the cost associated with the introduction of WHT on demurrage paid out to non-residents will be passed on to the end consumer thereby making the port of Mombasa non-competitive.
2. The description of demurrage as the Income Tax is currently worded is quite wide and may even apply to delay of taking delivery of goods from an inland warehouse.

Clauses 11, 18(a)(ix), 18(b)(ii), 32 and 51(a)

1. There is need to interrogate whether indeed there is need for the creation of SOFAs given the existence of already highly incentivized regimes such as SEZs and EPZs. Where deemed necessary, the issues with these provisions as drafted can be cured by having specific statute that deals with SOFA.
2. There is therefore need to draft an enabling legislation dealing with SOFAs similar to the one on EPZ/SEZ.
3. This legislation would provide guidelines on the scope of SOFAs; define which activities/investments qualify for the SOFA rates, the administration and operations of SOFAs as well as a range of pre-determined tax rates depending on sector/industry, amounts of investment e.t.c. or a combination of factors.
4. There is need to have public participation in the formulation of the law on SOFAs in compilation with the Constitutions.

Justification

1. There is no statute that governs SOFA in Kenya. This creates ambiguity in regard to what SOFAs are, their purpose which investments fall there under which Ministry they fall under, which type of projects they target etc.
2. There is a lacuna in law with regards to the envisaged administration and operation of SOFA. The provision as drafted is wide and all-encompassing. If implemented as proposed, its likely that it's application will be subjective which will lead to loss of accountability and abuse. This will then lead to the loss of public funds.
3. Without clear legislation on the rates of tax that a SOFA may be granted or the range of rates that will be available to different SOFAs based on pre-determined criteria, there's likely to be discrimination within the SOFAs which would lead to abuse of the provisions as drafted. Some SOFAs may be subject to lower/higher taxes than others, yet they are engaged in the same sector/industry. This will result in creating an unfair competition environment.

4. Article 201(b)(i) of the Constitution provides that the burden of taxation is to be shared fairly. This is in line with the principals of taxation that call for fairness and certainty in revenue tax policy. The proposed provisions as drafted and in the absence of a SOFA enabling statute are in contravention of both the Constitution and international best practice with regard to revenue laws.

Clause 31

They proposed a deletion of the entire provision.

Justification

The proposed provision as it stands will result in massive instances of multiple taxation of the same amount of money. For example:-

1. Advocate's client accounts: where the selling price is deposited in the case of a conveyancing transaction, the amount will be subjected to the RHT on transfer into the advocate's account and on transfer to the seller's account by the advocate.
2. Collective investment funds: fund managers usually carry out various transactions in the execution of their role. When the fund manager seeks to invest money say in treasury bonds or bills, this money will be subject to the tax on transfer, when it is purchasing shares, the same money will be subject to the RHT.
3. When banks as collecting agents of the tax are remitting the tax to KRA collection account, they will be subjected to the RHT.

Clause 38

1. Delete Clause 37B(4)
2. Alternatively, an amendment prescribing measures for a direct benefit to Kenyans should be included e.g. subjecting the repatriated funds to a tax not more than 10% or forcing those who repatriate to invest the money in governments for a minimum of 5 years.

Justification

1. The proposed amendments seek to exempt funds declared under the amnesty from the provisions of the POCAMLA and any other or any other Act relating to reporting and investigation of financial transactions. The exception to this is proceeds of poaching, drug trafficking and terrorism. It is not clear exactly how the Government will be able to tell one source of funds from the other. This proposed amendment is likely to create an avenue for people to clean their

money especially bearing in mind that there is nothing preventing the removal of the money from Kenya once the amnesty has been granted.

2. Another foreseeable problem is that the amendments proposed in the Bill seek to amend a myriad of laws in one sweep. The amendment as currently drafted only applies to the TPA. An argument could be made that each of the statutes should be independently amended if Section 37B(4) is to have force of law. This is especially so, given the fact that certain sections of POCAMLA are drafted so as to supersede all other written laws, including in certain cases, the provisions of the ITA.
3. Additionally, the proposed amendments do not have any foreseeable benefit for the people of Kenya. It simply creates an opportunity for those who have money from questionable sources to clean it.

Clause 68

Proposed that the entire clause should be deleted until the Fund is properly constituted following public participation.

Justification

1. The NHDF has been improperly introduced into the Employment Act.
2. In order to have transparency on the activities of the fund and use of the money paid into the Fund, it is important that the Fund is formed in a similar manner and go through the same process as other similar funds e.g. NHIF and NSSF have undergone.
3. A Bill forming the NHDF must be tabled in Parliament and subjected to public participation.
4. It should be clear to every Kenyan that will be subjected to this tax exactly how the funds will be put to use and who would be held accountable in the event that the intended objectives are not followed.
5. Only after the Fund has been legally formed under a law and the objectives for the fund well set out can the amendment to require employers and employees to pay this amount into the Fund.

3.34 MR. NJOROGE WAWERU

Mr. Waweru stated that Import duty of 35% on paper which attracts excise and VAT (both on paper and textbooks) makes text books expensive and this makes books unaffordable. He requested that some taxes on paper are removed.

3.35 WATER BOTTLERS ASSOCIATION OF KENYA

A representative from the Water Bottlers Association of Kenya proposed the following amendment:-

Clause 31(a)(ii)

Bottled water should be removed from the list of commodities that excise duty should be paid on.

Justification

1. Sin tax is a tax placed on items whose prolonged and unregulated use is harmful to human health and by extension national health like alcohol, beer and cigarettes. Water on the other hand is beneficial and a must for proper health thus surprising that a deterrent tax would be imposed on an essential good.
2. Not every person in Kenya enjoys the convenience of safe and clean drinking water, only 55% enjoys this luxury.
3. Even tap water provided by most city councils is not trusted. Families prefer bottled water, either refill or packaged because it is purified and treated as certified by KEBS.
4. Most rivers have been polluted with improper dumping of industrial chemicals and also through seepage of farm chemicals to the rivers.
5. Most Kenyans are now on the move, mobility necessitates that bottled water is served to Kenyans.
6. Fear of waterborne diseases and ailments like cholera and typhoid.

3.36 KENYA AIRWAYS PLC

The CEO, KQ proposed the following amendments:-

Clause 31(b)(ii)(6)

1. Delete provisions to exempt money transfer.
2. Exempt payment of Government services from Excise Duty
3. Exempt payment of goods and services from tax.

Justification

1. KQ's monthly payments in excess of Kshs. 500,000 are Kshs. 2.2 billion. Introduction of RHT means additional monthly costs of Kshs. 1.1 million. Most of the transfers are for payment of taxes, landing and parking fees to the Government.
2. Provision not clear on inter-account transfers, banks likely to charge for funding of own accounts.
3. Government should reward tax payers for agency services in collecting and remitting of taxes by facilitating payments.

Excise Duty Act, 2015

Amend tariff 2710.19.21 kerosene type Jet Fuel per 10001 @ 20degC from Kshs. 5755 to Kshs. 0.00

Justification

Exempting Jet A1 fuel from Excise Duty will reduce the cost of travel hence positioning Kenya as an attractive tourist destination.

Miscellaneous Fees and Levies Act, 2015

1. Amend the Second Schedule Part A as follows:- *“Goods exempted from import Declaration Fees to include aircraft engines, aircraft spare parts and Jet A1 fuel.”*
2. Amend Second Schedule Part B as follows:- *“Goods exempted from RDL to include aircraft, aircraft engines, aircraft spare parts and Jet A1 fuel.”*
3. Amend Second Schedule Part B as follows:- *“Goods exempted from RDL to include goods destined for approved SEZ’s”*

Justification

1. 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.
2. Loss of maintenance, repair operations (MRO) to Middle East carriers and ET. This has in effect led to brain drain of experts and highly trained technical staff to other countries.
3. To harmonise tax exemption for Free Zones in Kenya to the international standards which are exempted from all taxes and levies.

VAT Act, 2013

Exemption from VAT on jet fuel to harmonise the practice with other jurisdictions globally.

Justification

1. Jet A1 Fuel constitutes over 40% of the cost of operation for air operators. Charging VAT on income that is exempted from VAT will increase the cost of operation hence making Kenyan operators less competitive.
2. Domestic landing costs like landing, parking, navigation charges are all taxable at 16%. Any further increase in cost will negatively impact on air travel within the country.

3.37 NACADA

In their memorandum, NACADA proposed the following amendments:-

Clause 28

Insert the following amendment to Clause 28 as follows:-

Section 36 of the Excise Duty Act, 2015 is amended by inserting the following new subsection immediately after subsection (4):-

(6) The Commissioner shall pay into the Alcoholic Drinks Control Act, 2010 five shillings per kilogram or litre in respect of powdered beer, spirit, wine and beer to support implementation of the Act including treatment and rehabilitation and enforcement.

Justification

1. Despite the challenges posed by alcohol and drug abuse and the serious implications on the country's universal health care, the Authority is not able to finance its programs.
2. The nexus between Alcohol and Drug abuse and the Big Four is very clear. The country cannot achieve its goal of universal health care without investment in programmes to reverse the negative effects of alcoholism and drug abuse. In addition, the productive and healthy workforce that is critical to drive manufacturing industry and agricultural production for food security will not be realized without focusing on the negative effects of alcohol and drug abuse.

3.38 MR. ANDREW WANG'OMBE

Mr. Wang'ombe proposed the following amendments on VAT on export of services:-

Issues – Contradiction by the VAT Regulations, 2017

1. No guidelines on use, consumption or enjoyment outside Kenya.
2. Additional requirement – recipient must be outside Kenya.
3. Excludes existence of export of services where paid for by a person who is not a resident in Kenya.
4. However, proof of export of services: invoice showing the recipient of the supply to be a person outside Kenya.

Proposals

The VAT Regulations, 2017 is amended as follows:-

1. In regulation 2 by inserting the following new definitions in proper alphabetical sequence
For purposes of Regulation 13: "Business agreements" will include but not limited to legally enforceable contracts, general correspondence, purchase orders, invoices, payment instruments, receipts and other electronic forms such as emails, online ordering records and payments that are likely to emerge as technology develops.
"Location" of the "user or consumer" Means:-
 - a. Where the user or consumer is incorporated, the registered place of business;

- b. Notwithstanding the provision in (a) above:-
- i. The location of his business establishment; or
 - ii. Where services are used or consumed at a place other than the place of incorporation or business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - iii. Where services are used or consumed at more than one establishment, whether registered, business or fixed, the establishment most directly concerned with the use or consumption of the service; or
 - iv. In the absence of such places, the usual place of residence of the user or consumer or the billing address of the user or consumer.

“User or consumer” means the person who seeks performance of services pursuant to a business agreement.

2. In regulation 13(1)(b) by deleting the paragraph “*provided to a recipient outside Kenya.*”
3. In the proviso to Regulation 13(1)(b) by deleting paragraph (b) which reads “taxable services provided in Kenya but paid for by a person who is not a resident in Kenya.”
4. In Regulation 13(2)(a) by deleting the paragraph “*a copy of the invoice showing the recipient of the supply to be a person outside Kenya*”; and substituting therefor the following new clause “*tax invoice.*”
5. In Regulation 13(2)(c) by deleting the paragraph “*for services, such other documents as the Commissioner may require as proof that the services had been used or consumed outside Kenya*” and substituting therefor the following new paragraph: “*for services, such other documentary proof that the services have been used or consumed outside Kenya*”
6. In regulation 13 by inserting the following new Regulation immediately after Regulation 13(2)(d): “*Determination of the place of use, consumption or enjoyment of services.*”

13A. Except as is otherwise provided in the Regulations, the place of use, consumption or enjoyment of a service supplied from Kenya shall be the location of the user or consumer of the services.

He proposed the following amendments to the VAT remission on capital goods.

Issues

1. The five year period is set to lapse on 2nd September, 2018.
2. Some of the entities granted remission are yet to exhaust their remission allowances due to cash flow limitations and the impossibility of completing the purchases before 2nd September, 2018.

3. Beneficiaries of the remissions are apprehensive that lapsing of the VAT remissions scheme will curtail their expansion plans by causing a sudden and sharp increase in their expansion costs.

Proposal

The VAT remission extension currently under Section 68(4) of the VAT Act, 2013 should be extended to 10 years. Section 68(4) of the VAT Act should be amended to read as follows:-

“where a remission of tax was granted under the repealed Act on any taxable goods or services, such remission shall continue to remain in force for a period of ten years from the date of commencement of this Act.”

Justification

A further VAT remission extension of five (5) years, if granted would provide sufficient time for investors who are yet to utilize the VAT remission to utilize the remission for the ongoing projects and save significant amount of the funds that would have been spent on VAT payments. Additionally, the extension would convince investors to stay in country and continue to invest and contribute to the economy.

3.39 HON. T. J. KAJWANG, MP

Hon. Kajwang requested to appear before the Committee to share his thoughts and proposed amendments to with the Committee.

3.40 MS. LYDIA DA COSTA

In her memorandum, Ms. Da Costa submitted that:-

1. 16% VAT on business rents are not a sustainable solution and are extremely un-affordable.
2. To charge 16% on VAT on business rents and also on residential rents is very punitive. Fortunately, the residential rents were reduced to 10% by calling it WHT (though this is still unaffordable).
3. Inflation has greatly reduced business sales making business persons unable to pay their management expenses, business stock, workers' salaries, marketing travel expenses, trade licenses which are also continually increasing because of the VAT on sales.
4. Reduced taxes are a better and sustainable solution to prevent businesses from closing down.

3.41 GENGHIS CAPITAL INVESTMENT BANK

Genghis Capital Investment Bank is an investment Bank licensed by the Capital Markets Authority (CMA) offering a portfolio of financial services including Securities(Equity/Debt) Trading and Wealth Management services, among others.

They proposed the inclusion of Investment Banks licensed under the Capital Markets Act (CMA) in the list of approved institutions allowed to operate a Registered Home Ownership Savings Plan (HOSP). The stated that an amendment should be effected under the Income Act Section 22C (8).

“Approved Institutions” as outlined below in bold; Approved institutions means a bank or financial statement institution registered under the Banking Act (Cap. 488), an insurance company licensed under the Insurance Act (Cap 487), a building society registered under the Building Societies Act (Cap. 489) **or an investment Bank licensed under the Capital Markets Act (CMA) (Cap 485).**

They justified their proposal by stating the following reasons: -

- a. Home ownership: The inclusion will allow for other regulated players to structure products that will deepen home ownership in Kenya. We also note that home ownership is integral to the government’s BIG 4 agenda;
- b. National savings rate: The HOSP product, if structured, will increase the national savings rate which currently stands at a low of 6% whilst it should ideally be at similar to other developing counties.
- c. Financial Markets Deepening: This would support the entities that deal with the retail financial investors and greatly assists in deepening financial markets reaching into all the underserved sectors of the society; and
- d. Utilization of existing laws: The provision currently exists but has not been adequately utilized by the existing market players. The inclusion of investment banks will broaden the investor base and ensure that the current laws are fully utilized thus meeting the investor’s needs. Furthermore, the laws, regulations and guidelines provided by the CMA ensures that the players in the sector manage investments under very strict conditions.

They also proposed the exemption of Investment Banks licensed under the CMA Act from remitting Withholding Tax charged on discount they receive when buying Government Bonds. The stated that the proposed amendment should be effected under the Fourth Schedule of the Act as outlined below:-

“Fourth Schedule

Financial Institutions

1. A bank or financial institution or mortgage finance company licensed by the Banking Act (Cap. 488)
2. An insurance company licensed under the Insurance Act
3. The Kenya Reinsurance Corporation established by the Reinsurance Corporation Act
4. A building Society registered under the Building Society Act
5. The National Housing Corporation registered under the Co-operative Societies Act
6. The national Housing Corporation established under the Housing Act
7. The Kenya Post Office Savings Bank established by the Kenya Post Office Savings Bank Act
8. The Agricultural Finance Corporation established by the Agricultural Finance Corporation Act
9. **An Investment Bank licensed under the Capital Markets Act (Cap 485)...**

Justification: Investment Banks are discouraged from participating more actively in the Fixed Income Primary Market due to the disadvantage in pricing and yield. Investment Banks act as wholesalers and market makers for the Bond market and this amendment will allow for a more effective participation in the Bond Market.

3.42 JOCKEY CLUB OF KENYA

They requested to be provided with a “waiver” or “exemption” from the 35% tax on betting and gaming that was levied in the Finance Act 2017. Because they are a non-profit organization that was established in Kenya over 100 years ago and they provide a professional and well managed sports facility for both horse racing and golf.

The impact of the 35% betting tax has absolutely devastated their financial structure resulting in huge losses; which in turn threaten the viability of the Kenyan horse racing industry and will impact and result in the loss of livelihood for well over 1000 Kenyan families.

While they appreciate the concerns about the youth becoming addicted to gambling, they stated that the youth are not exposed to their in-house betting as it is not online and strict measures are taken to ensure that they cannot participate in any way.

As the betting tax is for the purpose of supporting sports and cultural concerns in Kenya they requested for a waiver from paying this tax on the grounds that their betting activities are already solely with the purpose of supporting a sporting industry. Failure to grant this will seriously jeopardize the continued existence of horse racing in Kenya.

3.43 CAPITAL MILLERS ASSOCIATION

The Cereal Millers Association (CMA) is an association that represents the interests of cereal millers in the country. The member entities are millers who are responsible for converting cereals including maize and wheat into a variety of products such as maize meal and sifted flour.

They submitted their views by stating both products are widely consumed in the Kenya. On average, every Kenyan consumes about 98 kilograms of maize every year. This is largely consumed in form of maize meal. Consumption of wheat in 2017 was approximately 2 million metric tonnes per year. Further analysis indicates that the lowest income quartile of the Kenyan population spends close to a staggering 30% of its income on maize alone.

The importance of cereal products to the average Kenyan is manifest in the caloric supply by main food groups. This measure indicates the main food sources from which people generate energy. 2017 statistics indicate that cereals (excluding beer) account for 40.9% of the caloric supply. This means that cereals are the main source of food from which Kenyans obtain their nutritional requirements. Kenya 2017 caloric supply by main food groups (Source: Economic Survey 2017).

The Tax Laws (Amendment) Act 2018 changed the status of Maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight from taxable status (at zero rate) to exempt. The legislated amendments affect the Cereal Industry in the following ways:

1. Increase in the final costs to the end-consumer.
2. Impact on local farming.
3. Reduced investment in the grain mills products sub-sector
4. Competition from the neighboring countries.
5. Revenue leakage for VAT and black market effects.

In view of the above and considering that manufacturing and agro processing are key pillars of the Big Four agenda of the this government, they proposed **amendment of the Second Schedule of the VAT Act, 2013 to zero rate wheat flour and maize flour.**

3.44 THE NATIONAL TREASURY

The Cabinet Secretary submitted as follows:-

INTRODUCTION OF THE ‘ROBIN HOOD TAX’ – CLAUSE 31

He informed the meeting that the ‘Robin Hood Tax’ was introduced in order to fund the universal health care which is one of the pillars in the Big Four Agenda.

He proposed that the Clause 31(b)(ii)(6) is further amended as follows:-

1. Proposed Definition of “money transferred by banks”:

“Money transferred” means money transferred from one;

- (i). account to another either within a bank or from one bank to another bank; or
- (ii). person to another through money transfer agency or other financial service providers”

2. Proposed Exclusions/Exemptions

- (i). Transfer of taxes to or tax refund from Kenya Revenue Authority;
- (ii). Transfers from Kenya Revenue Authority’s collection accounts to the Central Bank of Kenya;
- (iii). Transfers by or to the National Government, County Governments or Central Bank of Kenya;
- (iv). Transfers relating to the purchase and sale of shares and securities on the Nairobi Securities Exchange;
- (v). Transfer to or from the registered retirement benefits schemes;
- (vi). Interbank transfers or banks and non-bank financial institutions or between non-bank financial institutions;
- (vii). Transfers between accounts belonging to the same person within same bank or financial institution; and
- (viii). Any other category of money transfer that the Cabinet Secretary may specify through a Gazette notice.

PRESUMPTIVE TAX – CLAUSE 6

He informed the meeting that the presumptive tax is used in many jurisdictions especially in Latin America to expand the tax base especially in countries where there is a large informal sector which are hard to tax. The purpose of the tax is to ensure that the tax system is easy to monitor and effect.

It excludes rental income and incorporated entities. Businesses with a turnover of Kshs. 5,000,000 and above are required to file their tax returns with KRA.

A business that falls in this category has the option of filing their returns with KRA provided they inform KRA of the same.

NATIONAL HOUSING DEVELOPMENT FUND – CLAUSE 68

The CS stated that the intention of the fund is to operationalize the Housing Act whose intent is to provide affordable housing to the citizenry.

The CS informed the meeting that after wide consultations with stakeholders, it had been agreed that both the employer and the employee contribute 1.5% each and not 0.5% of the salary as proposed in the Bill.

Through this fund the Government will reduce the cost of land and servicing. Once the fund is set up, the private sector will be invited to build the houses on a turn-key basis. The houses will then be allocated to the contributors on a first come first serve or lottery basis. The contributors will pay a mortgage of Kshs. 1,500,000 to 3,000,000 on the house.

INTEREST RATE CAPPING – CLAUSE 58

The CS stated that the introduction of interest rate capping had led to the following:-

1. Decline in bank credit to small and medium sized firms especially in trade and agriculture.
2. Disproportionate hit on lending activity and profitability of small banks.
3. Banks have shied away from borrowers they consider riskier.
4. Banks have concentrated on either building non-interest earning deposit accounts or reclassifying interest earning deposit accounts to transaction accounts which do not earn interest.
5. Monetary policy effectiveness has been reduced while financial access and economic growth have been adversely impacted.
6. Banks have shifted lending to Government and large corporates. Demand for credit increased immediately after the capping of lending rates, credit to the private sector has continued to decline.
7. Rationing out micro, small and medium enterprises from the credit market by the commercial banks.
8. The proportion of new borrowers has fallen by more than half likely impacting entrepreneurship and new job creation.

He further stated that the National Treasury had put in place the following measures to mitigate the negative effects:-

1. Working jointly with the private sector and development partners to introduce a National Credit Guarantee Scheme as a policy tool to direct MSMEs.

2. Establishment of Kenya Development Bank by merging Industrial and Commercial Corporation, IDB Capital and Tourism Finance Corporation to strengthen Development Finance Institutions to play a greater role in providing credit to our credit to MSMEs.
3. Cabinet has approved Biashara Kenya Fund by merging Uwezo fund, Youth Enterprise Development Fund and Women Enterprise Development Fund into Biashara Kenya Fund to increase efficiency, resolve overlaps and make better use of resources to achieve economies of scale.
4. Financial Markets Conduct Bill, 2018 has been developed to deal with inadequacies in consumer protection and unregulated lending in the financial sector.

He concluded by saying that due to the adverse impact of interest rate capping on credit growth, the Finance Bill 2018 has proposed to amend the Banking (Amendment) Act, 2016 by repealing Section 33B. This will enhance access to credit and strengthen monetary policy effectiveness.

In conclusion, the CS noted that there has been a revenue shortfall in the past two years and discussions were ongoing with KRA to establish the challenges hampering revenue collection. He added that the National Treasury was working on ways of making tax regime stable so that the Finance Bill can be considered once in every three years.

4.0 COMMITTEE STAGE AMENDMENTS

Having considered the memoranda on each of the Clauses, the Committee wishes to propose the following amendments;

CLAUSE 6

THAT, clause 6 of the Bill be amended in the proposed new section 12C by deleting the word “all” appearing in subsection (2).

CLAUSE 18

THAT, clause 18 of the Bill be amended in paragraph (a)—

(a) by deleting sub-paragraph (xi) and substituting therefor the following new subparagraph-

(xi) by adding the following new paragraphs immediately after paragraph 100—

101. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

102. Goods Imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the government.

103. Hearing aids of tariff No. 96.9021.40.00, excluding parts and accessories.

(b) by inserting the following new sub- paragraph immediately after sub-paragraph (xi)—

(xii) by deleting paragraph 98.

CLAUSE 19

THAT, the Bill be amended by deleting clause 19 and substituting therefor the following new clause—

Amendment of
Second
Schedule to
No.35 of
2013. **19.** The Second Schedule to the Value Added Tax Act, 2013 is amended in—
(a) Part A by inserting the following new paragraph immediately after paragraph 13A—

13B. The supply of maize (corn) flour, cassava flour, wheat or meslin

flour and maize flour containing cassava flour by more than ten per cent in weight.

(c) Part C by deleting tariff No. 3004.40.00 and the corresponding description and inserting the following—

<i>Tariff No.</i>	<i>Description</i>
3004.41.00	Containing ephedrine or its salts
3004.42.00	Containing pseudoephedrine (INN) or its salts
3004.43.00	Containing norephedrine or its salts
3004.49.00	Other

CLAUSE 31

THAT, clause 31 of the Bill be amended—

(a) in paragraph (a)(iii) by deleting the proposed new item—

Sugar Confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1808.31.00, 1806.32.00, 1806.90.00	Shs. 20. per Kg
---	-----------------

(b) by inserting the following new paragraph immediately after paragraph (b)—

(c) in Part III by inserting the following new definition in proper alphabetical sequence—

“money transferred” means money transferred from one account to another account either within a bank or from one bank to another bank or from a person to another person through a money transfer agency or other financial service providers, but does not include—

- (a) transfer of taxes to or tax refunds from the Kenya Revenue Authority;
- (b) transfers from the Kenya Revenue Authority’s collection accounts to the Central Bank of Kenya;
- (c) transfers by or to the National Government, County Governments or Central Bank of Kenya;
- (d) transfers relating to the purchase and sale of shares and securities on the Nairobi Securities Exchange by banks or financial service providers on behalf of customers;
- (e) transfers between accounts belonging to the same person; or

- (f) any other category money transfer that the Cabinet Secretary may specify through a gazette notice.

CLAUSE 37

THAT, clause 37 of the Bill be amended in the proposed new subsection (3) by inserting the words “within thirty days of receiving the application” immediately after the words “such rejection”.

CLAUSE 39

THAT, Clause 39 of the Bill be deleted.

CLAUSE 45

THAT, Clause 45 of the Bill be in amended in the proposed new section 83A by deleting the word “twenty” and substituting therefor the word “five”.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 52—

Amendment of **52A.** Section 29A of the Betting, Lotteries and Gaming Act is amended in section 29 A of subsection (1) by deleting the expression “thirty-five” and substituting therefor Cap. 131. the expression “fifteen”.

Amendment of **52B.** Section 36 of the of the Betting, Lotteries and Gaming Act is amended section 36 of Cap. in— 131.

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

(b) at least five per centum of the gross proceeds of which is to be devoted to the object for which the lottery is promoted:

Provided that the Board may require as a condition that a specified proportion of greater than -five per centum of the proceeds be devoted to the object for which the lottery is promoted, but in no case shall the Board require a proportion greater than twenty-five per centum of the gross proceeds.

(b)subsection (2) by deleting the expression “twenty-five” and substituting the expression “five”.

Amendment of section 44A of Cap. 131. **52C.** Section 44A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

Amendment of section 55A of Cap. 131. **52D.** Section 55A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

Amendment of section 59B of Cap. 131. **52E.** Section 59B of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

CLAUSE 53

THAT, Clause 53 of the Bill be in amended in the proposed new section 69B(1)—

- (a) in paragraph (a) by deleting the expression “twenty” and substituting therefor the expression “five”; and
- (b) in paragraph (b) by deleting the expression “two” and substituting therefor the expression “one”.

NEW CLAUSE 56A

THAT, the Bill be amended by inserting the following new clause immediately after clause 56—

Insertion of new section 82A in Cap. 480.

56A. The Stamp Duty Act is amended by inserting the following new section immediately after section 82—

Payment of stamp duty for policy “policy of life insurance” and “policy of insurance against accident”

82A. For purposes of this Act, the stamp duty payable for “policy of life insurance” and “policy of insurance against accident” shall be payable monthly as an aggregate of all policies issued within the month.

NEW CAUSE CLAUSE 57A

THAT, the Bill be amended by inserting the following new clauses immediately after clause 57—

Insertion of new section 31A in Cap. 488. **57A.** The Banking Act is amended by inserting the following new clause immediately after clause 31—

Information on **31A.** A bank or financial institution licensed under this

next of kin.

Act shall, in respect of all accounts operated at the institution, maintain a register containing particulars of the next of kin of all customers operating such accounts, and shall update this register on an annual basis.

CLAUSE 58

THAT, the Bill be amended by deleting clause 58 and substituting therefor the following new clause—

Amendment of section 33B of Cap.488.

58. Section 33B of the Banking Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

(1)A bank or financial institution shall set—

- (a) the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the base rate set and published by the Kenya Banks' Reference Rate; and
- (b) the minimum interest rate granted on a deposit held in interest earning in Kenya at the base rate set and published by the Kenya Banks' Reference Rate.

NEW CAUSE CLAUSE 58A

THAT, the Bill be amended by inserting the following new clauses immediately after clause 58—

Insertion of new section 33C in Cap. 488.

58A. The Banking Act is amended by inserting the following new clause immediately after clause 33B—

Power of Central Bank to prescribe conditions on deposits or withdrawals.

33B. (1) The Central Bank may prescribe, in regulations, conditions on deposits or withdrawals by customers in banks and financial institution.

(2) The Central Bank shall prescribe the regulations under sub-section (1) within thirty days of coming into force of this section.

(3) For avoidance of doubt no other person shall purport to make regulations required under this section and any existing guidelines or regulations prescribing conditions on deposits or withdrawals by customers shall cease to be operational within fourteen days of the coming into force of the regulations made

under this section.

CLAUSE 59

THAT, clause 59 of the Bill be deleted.

CLAUSE 69

THAT, clause 69 of the Bill be amended—

(a) by inserting the following new paragraph immediately after paragraph (a)—

(aa) deleting the definition of the word “accountant” and substituting therefor the following new definition—

“accountant” is a person registered as an accountant under Section 24 of this Act and is a member as defined in section 4 (2) (a) and (b) with expertise achieved through formal education and practical experience, and shall be held to a high professional standard in respect to—

- (a) demonstrating and maintaining competence in accountancy in line with International Accounting standards;
- (b) compliance with the Institute's code of ethics;
- (c) maintaining good standing status; and
- (d) subject to enforcement of the rules and regulations of the Institute;

(b) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) by inserting the following new definitions in proper alphabetical sequence—

“company” has the meaning assigned to it under section 2 of the Companies Act, 2015;

“accountancy” means practice in accounting, financial reporting, control systems, systems auditing, auditing, assurance, forensic accounting and auditing, finance, financial management, public finance management, taxation, financial risk management, management accounting and advisory services related thereto; and

“trainee accountant” means a person registered by the Examinations Board and who has commenced professional accountancy education or training or is practicing accountancy as part of initial professional development required for qualification as an accountant.

CLAUSE 68

THAT, clause 68 of the Bill be amended in the proposed new subsection (2A) in —

(a) paragraph (a) by deleting the expression “zero point five” and substituting the expression “one point five”; and

(b) paragraph (b) by deleting the expression “zero point five” and substituting the expression “one point five”.

CLAUSE 69

THAT, clause 69 of the Bill be amended—

(a) by inserting the following new paragraph immediately after paragraph (a)—

(aa) deleting the definition of the word “accountant” and substituting therefor the following new definition—

“accountant” is a person registered as an accountant under Section 24 of this Act and is a member as defined in section 4 (2) (a) and (b) with expertise achieved through formal education and practical experience, and shall be held to a high professional standard in respect to—

- (a) demonstrating and maintaining competence in accountancy in line with International Accounting standards;
- (b) compliance with the Institute's code of ethics;
- (c) maintaining good standing status; and
- (d) subject to enforcement of the rules and regulations of the Institute;

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

(b)by inserting the following new definitions in proper alphabetical sequence—

“company” has the meaning assigned to it under section 2 of the Companies Act, 2015;

“accountancy” means practice in accounting, financial reporting, control systems, systems auditing, auditing, assurance, forensic accounting and auditing, finance, financial management, public finance management, taxation, financial risk management, management accounting and advisory services related thereto; and

“trainee accountant” means a person registered by the Examinations Board and who has commenced professional accountancy education or training or is practicing accountancy as part of initial professional development required for qualification as an accountant.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 69—

Amendment of
section 5 of No.
15 of 2008.

69A. Section 5 of the Accountants Act is amended by—

(a) renumbering section 5 as section 5(1); and

(b) inserting the following new subsection immediately after subsection (1)—

(2) Despite subsection (1), a trainee accountant, student or a

person required by the Institute to be registered as a member prior to attaining the qualifications under section 26 shall not be required to pay any fees or subscriptions.

Amendment of section 8 of No. 15 of 2008.

69B. Section 8 of the Accountants Act is amended by inserting the following new paragraph immediately after paragraph (f)—

(fa) prescribe the remuneration order for the accountancy profession with the approval of the Cabinet Secretary responsible for finance.

Amendment of section 17 of No. 15 of 2008.

69C. Section 17 of the Accountants Act is amended by inserting the following new subsection immediately after subsection (2)—

(2A) The Examinations Board shall, prior to registering a person to undertake an examination in accounting, require that the person be registered as a member of the Institute.

Amendment of section 18 of No. 15 of 2008.

69D. Section 18 of the Accountants Act is amended in subsection (2) by deleting the words “one hundred thousand” and substituting therefor the words “five hundred thousand”.

Amendment of section 19 of No. 15 of 2008.

69E. Section 19 of the Accountants Act is amended by inserting the following new subsection immediately after subsection (3) —

(4) An entity in either the private or public sector shall not employ a person to practice accountancy unless the person is a member of the Institute.

Amendment of section 21 of No. 15 of 2008.

69F. Section 21 of the Accountants Act is amended in subsection (8) by deleting the words “five thousand” and substituting therefor the words “five hundred thousand”.

Amendment of section 24 of No. 15 of 2008.

69G. Section 24 of the Accountants Act is amended in subsection (5) by deleting the words “fifty thousand” and substituting therefor the words “five hundred thousand”.

Amendment of section 30 of No. 15 of 2008.

69H. Section 30 of the Accountants Act is amended by inserting the following new subsections immediately after subsection (2)—

(2A) An accountant shall observe the ethical guidelines and applicable standards in the discharge of duty.

(2B) The ethical guidelines and applicable standards of the accountancy profession shall take precedence over any instructions from a client or other person.

(2C) An accountant shall not be liable for taking such actions or decisions or rejecting instructions from a client if such action, decision or rejection is in pursuance of the provisions of subsections (2A) and (2B).

Amendment of section 41 of

69I. Section 41 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

(4) A person who commits an offence under this section is liable on

No. 15 of 2008.

Amendment of
Fifth Schedule
to No. 15 of
2008.

conviction to a fine not exceeding two million shillings, and, in the case of a continuing offence, a further fine not exceeding two thousand shillings for each day on which the offence continues

69J. The Fifth Schedule to the principal Act is amended in—

- (a) paragraph (4) by deleting the words “one hundred thousand” appearing in subparagraph (1)(d) and substituting therefor the words “one million”; and
- (b) paragraph (8) by deleting the words “twenty thousand” appearing in subparagraph (3) and substituting therefor the words “five hundred thousand”.

CLAUSE 71

THAT, clause 71 of the Bill be deleted.

NEW CLAUSE 71A

THAT, the Bill be amended by inserting the following new clause immediately after clause 71—

71A. Section 20 of the Limitation of Actions Act is amended in subsection (2) by deleting the expression “six years” and substituting therefor the expression “twenty years”.

SIGNED.......... DATE.....*22/8/18*.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

**DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE FINANCE
BILL, 2018**

DATE: 22ND AUGUST, 2018

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. ALFRED W. SAMBU, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	

1

2

3

4

5

6

7

8

9

10

MINUTES OF THE 60TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 22ND AUGUST, 2018 IN 2ND FLOOR CONTINENTAL HOUSE AT 9.30 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. David M. Mboni, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Lydia H. Mizighi, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Samuel Atandi, MP
13. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Joshua C. Kandie, MP
5. Hon. Purity Ngirici, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Ms. Lynette Otieno | - | Legal Counsel |
| 5. Ms. Debora Mupusi | - | Media Relations Officer |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Ms. Catherine Waireri | - | Intern |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Adoption of the report on the consideration of Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/340: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.45a.m. with prayer from the Chairperson. He then welcomed the meeting to deliberate on the day's agenda

MIN.NO.NA/F&NP/2018/341: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/342: ADOPTION OF THE REPORT ON THE CONSIDERATION OF FINANCE BILL, 2018

The Committee was taken through the Committee Stage Amendments of the Bill and agreed on the following amendments before adopting the report.

THAT, Clause 31(b)(c) be amended as follows: -

(c)in Part III by inserting the following new definition in proper alphabetical sequence—

“money transferred” means money transferred from one account to another account either within a bank or from one bank to another bank or from a person to another person through a money transfer agency or other financial service providers, but does not include—

- (a) transfer of taxes to or tax refunds from the Kenya Revenue Authority;
- (b) transfers from the Kenya Revenue Authority's collection accounts to the Central Bank of Kenya;
- (c) transfers by or to the National Government, County Governments or Central Bank of Kenya;
- (d) transfers relating to the purchase and sale of shares and securities on the Nairobi Securities Exchange by banks or financial service providers on behalf of customers;
- (e) transfers between accounts belonging to the same person; or
- (f) any other category money transfer that the Cabinet Secretary may specify through a gazette notice.

CLAUSE 58

THAT, the Bill be amended by deleting Clause 58 and substituting therefor the following new clause—

58. Section 33B of the Banking Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

(1) A bank or financial institution shall set—

- (a) the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the base rate set and published by the Kenya Banks' Reference Rate; and
- (b) the minimum interest rate granted on a deposit held in interest earning in Kenya at the base rate set and published by the Kenya Banks' Reference Rate.

NEW CLAUSE 71A

THAT, the Bill be amended by inserting the following new clause immediately after clause 71—

71A. Section 20 of the Limitation of Actions Act is amended in subsection (2) by deleting the expression “six years” and substituting therefor the expression “twenty years”.

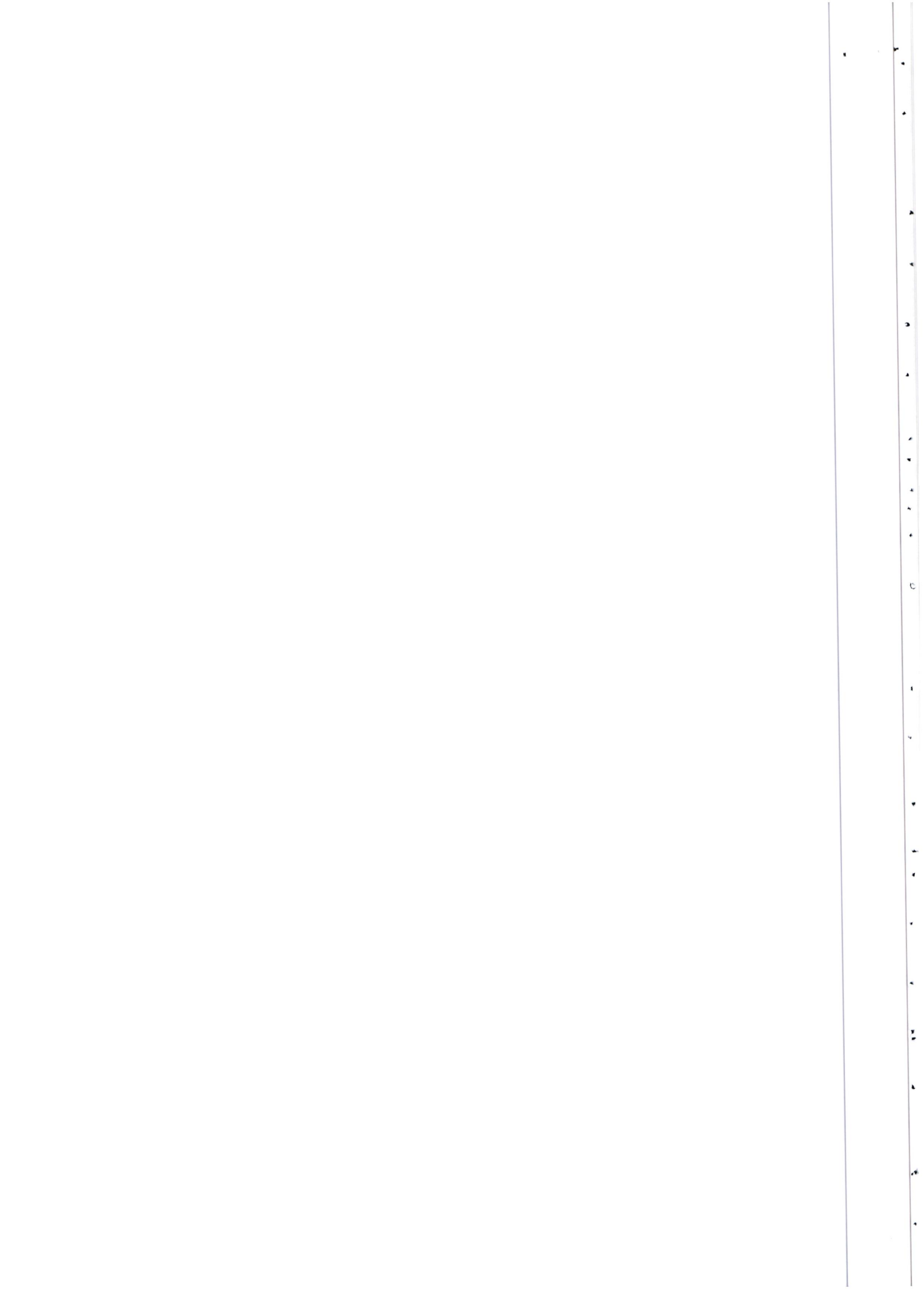
The Committee adopted the report having been proposed and seconded by Hon. Andrew Okuome, MP and Hon Francis Kimani, MP respectively.

MIN.NO.NA/F&NP/2018/343: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 10.45am.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED  DATE.. 21/8/2018



**MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON SATURDAY, 18TH AUGUST, 2018
AT ENGLISH POINT MARINA AT 3.00 PM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Purity Ngirici, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------------------|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Committee Services |
| 2. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 3. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 4. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 5. Ms. Lynette Otieno | - | Legal Counsel |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | - | Office Assistant |
| 9. Ms. Catherine Waireri | - | Intern |

Agenda

1. Prayers
2. Preliminaries/Introductions

3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to consider Committee stage amendments to the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/032: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 3.30p.m. with prayer from Hon. Andrew Okuome, MP. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2018/033: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/034: MEETING TO CONSIDER COMMITTEE STAGE AMENDMENTS TO THE FINANCE BILL, 2018

Clause 22 – Agreed to

Clause 23 – Agreed to

Clause 24 – Agreed to

Clause 25 – Agreed to

Clause 26 – Agreed to

Clause 27 – Agreed to

Clause 28 – Agreed to

Clause 29 – Agreed to

Clause 30 – Agreed to

Clause 31 – Agreed to

BAT's proposal was not adopted because the provision in the Act is fair to all players in the market.

Clause 32 – Agreed to

Clause 33 – Agreed to

Clause 34 – Agreed to

Clause 35 – Agreed to

Clause 36 – Agreed to

Clause 37

Amend Clause 37 by inserting the words “within thirty days of receiving the application” after the words “with the reasons for such rejection”

Clause 39 – Rejected because 2% per month is too high.

Clause 40 – Agreed to

Clause 41 – Agreed to

Clause 42 – Agreed to

Clause 43 – Agreed to

Clause 44 – Agreed to

Clause 45 – amend by deleting ‘*twenty percent*’ and replacing with ‘*five percent*’

Clause 46 – Agreed to

Clause 47 – Agreed to

Clause 48 – Agreed to

Clause 49 – Agreed to

Clause 50 – Agreed to

Clause 51 – Agreed to

Clause 52 – Agreed to

Clause 53 – Agreed to

Clause 54 – Agreed to

Clause 55 – Agreed to

Clause 57 – Amend by inserting the following new clause.

Clause 57B

They propose insertion of a new clause 57B which proposes an amendment to the Stamp Duty Act by introducing a new Section 82A as follows:-

82A. Payment of Stamp Duty for “policy of life insurance” and “policy of insurance accident”

for purposes of this Act, the stamp duty payable for “policy of life insurance” and “policy of insurance accident” shall be payable monthly as an aggregate of all policies issued within the said month.

Clause 58

NEW CLAUSE

THAT the Bill be amended by inserting the following new clauses immediately after clause 58—

58A. The Banking Act is amended by inserting the following new section immediately after section 31A—

31B. A bank or financial institution shall keep a record of the next of kin on all accounts held by a customer and shall update the record annually.

58B. The Banking Act is amended by inserting the following new section immediately after section 33A—

33B. (1) The Central Bank may prescribe, in regulations, the minimum and maximum deposits or withdrawals that a customer can make to an account in a bank or financial institution. (Mr. Nyaga was asked to redraft)

(2) The Central Bank shall prescribe the regulations under sub-section (1) within ninety days of coming into force of this section.

(3) For avoidance of doubt no other person shall purport to make regulations required under this section and any existing guidelines prescribing the minimum and maximum deposits or withdrawals that can be made by a customer shall cease to be operational within fourteen days of coming into force of the regulations made under this section.

Clause 59 – Rejected because deposit taking is not the core function of Saccos.

Clause 60 – Agreed to

Clause 61 – Agreed to

Clause 62 – Agreed to

Clause 63 – Agreed to

Clause 64 – Rejected because all the documents that have been mentioned can be covered in the regulations.

Clause 65 – Agreed to

Clause 66 – Agreed to

Clause 67 – consult further

Clause 69

THAT, clause 69 of the Bill be amended—

(a) by inserting the following new paragraph immediately after paragraph (a)—

(aa) deleting the definition of the word “accountant” and substituting therefor the following new definition—

“accountant” is a person registered as an accountant under Section 24 of this Act and is a member as defined in section 4 (2) (a) and (b) with expertise achieved through formal education and practical experience, and shall be held to a high professional standard in respect to—

- (a) demonstrating and maintaining competence in accountancy in line with International Accounting standards;
- (b) compliance with the Institute's code of ethics;
- (c) maintaining good standing status; and
- (d) subject to enforcement of the rules and regulations of the Institute;

(b) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) by inserting the following new definitions in proper alphabetical sequence—

“company” has the meaning assigned to it under section 2 of the Companies Act, 2015;

“accountancy” means practice in accounting, financial reporting, control systems, systems auditing, auditing, assurance, forensic accounting and

auditing, finance, financial management, public finance management, taxation, financial risk management, management accounting and advisory services related thereto; and

“trainee accountant” means a person registered by the Examinations Board and who has commenced professional accountancy education or training or is practicing accountancy as part of initial professional development required for qualification as an accountant – The meeting noted that it would be important to consult further on this proposal.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 69—

69A. Section 5 of the Accountants Act is amended by—

- (a) renumbering section 5 as section 5(1); and
- (b) inserting the following new subsection immediately after subsection (1)—

(2) Despite subsection (1), a trainee accountant, student or a person required by the Institute to be registered as a member prior to attaining the qualifications under section 26 shall not be required to pay any fees or subscriptions.

69B. Section 8 of the Accountants Act is amended by inserting the following new paragraph immediately after paragraph (f)—

(fa) prescribe the remuneration order for the accountancy profession with the approval of the Cabinet Secretary responsible for finance.

69C.Section 17 of the Accountants Act is amended by inserting the following new subsection immediately after subsection (2)—

(2A) The Examinations Board shall, prior to registering a person to undertake an examination in accounting, require that the person be registered as a member of the Institute – The meeting noted that it will be important to consult further on this proposal.

69D.Section 18 of the Accountants Act is amended in subsection (2) by deleting the words “one hundred thousand” and substituting therefor the words “five hundred thousand”.

69E.Section 19 of the Accountants Act is amended by inserting the following new subsection immediately after subsection (3) —

(4) An entity in either the private or public sector shall not employ a person to practice accountancy unless the person is a member of the Institute.

69F.Section 21 of the Accountants Act is amended in subsection (8) by deleting the words “five thousand” and substituting therefor the words “five hundred thousand”.

69G.Section 24 of the Accountants Act is amended in subsection (5) by deleting the words “fifty thousand” and substituting therefor the words “five hundred thousand”.

69H.Section 30 of the Accountants Act is amended by inserting the following new subsections immediately after subsection (2)—

(2A) An accountant shall observe the ethical guidelines and applicable standards in the discharge of duty.

(2B) The ethical guidelines and applicable standards of the accountancy profession shall take precedence over any instructions from a client or other person.

(2C) An accountant shall not be liable for taking such actions or decisions or rejecting instructions from a client if such action, decision or rejection is in pursuance of the provisions of subsections (2A) and (2B).

69I. Section 41 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding two million shillings, and, in the case of a continuing offence, a further fine not exceeding two thousand shillings for each day on which the offence continues.

69J.The Fifth Schedule to the principal Act is amended in—

(a) paragraph (4) by deleting the words “one hundred thousand” appearing in subparagraph (1)(d) and substituting therefor the words “one million”; and
paragraph (8) by deleting the words “twenty thousand” appearing in subparagraph (3) and substituting therefor the words “five hundred thousand”.

Clause 70 – Agreed to

Clause 71 – Rejected

Clause 1 – the Chairperson to consult on 1(c)

MEMBERS' DELIBERATIONS

The meeting deliberated on Hon. Jude Njomo's proposals to Clause 58 and agreed as follows:-

1. On the proposal that, clause 58 be deleted – the Committee was yet to make a decision on the clause.
2. On the proposal that every bank or financial institution should reserve at least ten per cent of its loan portfolio for lending to small and medium scale enterprises, the Committee noted that this will be difficult to implement.
3. On the proposal that every bank or financial institution licensed under this Act shall, in respect of each savings, current or fixed-deposit account operated at the institution, maintain a register containing particulars of the next of kin of all customers operating such accounts, and shall update this register on an annual basis, the Committee had already made the amendment.
4. On the proposal that a bank or financial institution that contravenes the above proposal commits an offence and shall be liable, for each account in which there is default, to a fine not exceeding one million shillings, in every year or part of the year during which the default persists, the Committee noted that this will be difficult to implement.

5. On the proposal that a core capital of at least five Kshs. 5bn by 31st December, 2021 in the case of a bank or mortgage financing company, the secretariat was tasked to research on this.

MIN.NO.NA/F&NP/2018/035: ANY OTHER BUSINESS

The Chairperson informed the meeting that the report on the Bill was supposed to be tabled in the House on Wednesday, 22nd August, 2018. He therefore requested Members to avail themselves for a meeting on the afternoon of Tuesday, 21st August, 2018 even though it will be a public holiday in order to adopt the report.

MIN.NO.NA/F&NP/2018/036: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 6.57pm. The next meeting will be held on Tuesday, 21st August at 2.00 pm.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED  DATE 22/8/18



MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON SATURDAY, 18TH AUGUST, 2018 AT ENGLISH POINT MARINA AT 9.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Purity Ngirici, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------------------|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Committee Services |
| 2. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 3. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 4. Ms. Lauren Wesonga | - | Third Clerk Assistant |
| 5. Ms. Lynette Otieno | - | Legal Counsel |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | - | Office Assistant |
| 9. Ms. Catherine Waireri | - | Intern |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes

9. Matters Arising

10. **Meeting to consider Committee stage amendments to the Finance Bill, 2018**

11. Adjournment

MIN.NO.NA/F&NP/2018/028: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.20a.m. with prayer from the Chairperson. He then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2018/029: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/030: MEETING TO CONSIDER COMMITTEE STAGE AMENDMENTS TO THE FINANCE BILL, 2018

Clause 2 – Agreed to

Clause 3 – Agreed to

Clause 4 – Agreed to

Clause 5 – Agreed to because demurrage charges will encourage efficiency

Clause 8 – Agreed to

Clause 9 – Agreed to

Clause 10 – Agreed to

Clause 11 – Agreed to

Clause 12 – Agreed to

Clause 13 – Agreed to

Clause 14 – Agreed to

Clause 15 – Agreed to

Clause 16 – Agreed to

Clause 17 – Agreed to

Clause 18 – the secretariat was directed to research on sub-clauses (a)(i) to (iv)

Sub-clauses (a)(v) to (xi) were agreed to.

Amend by inserting the following new paragraph after sub-clause (a)(xi)

'96.9021.40.00 – hearing aids, excluding parts and accessories'

Clause 18(b) – Agreed to

Clause 19 – Amend by including maize and wheat flour to the list

Clause 20 – Agreed to

Clause 21 – Agreed to

Clause 56 – Agreed to

Mr. Henry Ogoye's proposal was not adopted because tourism is the biggest contributor to the aviation industry and should therefore benefit from the same.


MEMBERS' DELIBERATIONS

1. On NACADA's proposal for the funding of the alcohol fund, the meeting agreed that more consultation should be made on the same.
2. The meeting noted the comments made by Mr. Francis Korage on the repeal of the interest rate capping law.
3. The committee noted Mr. Timothy Omondi's comments on removing tax on severance pay and agreed that severance pay is an income and it should therefore be taxed.
4. Mr. Ernest Muguku was recognized by the Committee for the grasp that he had on tax matters. The Chairperson stated that it would be important for Parliament to consider him if they need expert advice on tax matters.
5. Mr. Brian Mbugua's proposal on increasing the number of years in which one can claim their inheritance after the demise of their parents was supported by the Committee but it is not related to the Finance Bill. The secretariat was directed to find out if it can be considered in the Miscellaneous Amendment Bill.
6. The meeting noted that Mr. Patrick N'dei's proposal on fast tracking of pension is very important but does not relate to Finance Bill. The secretariat was directed to identify the law and find out if it can be amended.
7. Mr. Njoroge Waweru's proposal to reduce taxes on textbooks was supported by the Committee.
8. Ms. Agnes Waceke's comments on the National Housing Development Fund were noted by the Committee.
9. The Committee agreed to carry out more research on the proposal by Genghis Capital to include Investment Banks licensed under the Capital Markets Act (CMA) in the list of approved institutions allowed to operate a Registered Home Ownership Savings Plan (HOSP) for consideration in future.

MIN.NO.NA/F&NP/2018/031: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.37pm. The next meeting will be held the same day at 3.00 pm.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED  DATE..... *22/8/18*

MINUTES OF THE 6TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 17TH AUGUST, 2018 AT ENGLISH POINT MARINA AT 4.00 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|-------------------------------------|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Committee Services |
| 2. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 3. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 4. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 5. Ms. Lynette Otieno | - | Legal Counsel |
| 6. Ms. Beatrice Auma | - | Administrative Assistant |
| 7. Mr. Collins Mahamba | - | Audio Officer |
| 8. Mr. John Njoro | - | Serjeant-At-Arms |
| 9. Mr. Vitalis Augo | - | Office Assistant |
| 10. Ms. Catherine Waireri | - | Intern |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes

- 9. Matters Arising
- 10. **Meeting to consider Committee stage amendments to the Finance Bill, 2018**
- 11. Adjournment

MIN.NO.NA/F&NP/2018/024: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 4.15p.m. with prayer from the Chairperson. He then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2018/025: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2018/026: MEETING TO CONSIDER COMMITTEE STAGE AMENDMENTS TO THE FINANCE BILL, 2018

The meeting resumed their deliberations on Clause 58 of the Bill but they were not able to agree on the amendment.

They resolved to conclude on the Clause before adopting the report on the afternoon of Tuesday, 21st August, 2018.

They deliberated on Clause 31(b)(ii)5 but they were not able to conclude on it. They resolved to conclude on the Clause on Tuesday, 21st August, 2018.

MIN.NO.NA/F&NP/2018/027: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 6.55pm. The next meeting will be held the following day at 9.00 am.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED  DATE. 21/8/18

MINUTES OF THE 5TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 17TH AUGUST, 2018 AT ENGLISH POINT MARINA AT 9.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|-------------------------------------|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Committee Services |
| 2. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 3. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 4. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 5. Ms. Lynette Otieno | - | Legal Counsel |
| 6. Ms. Beatrice Auma | - | Administrative Assistant |
| 7. Mr. Collins Mahamba | - | Audio Officer |
| 8. Mr. John Njoro | - | Serjeant-At-Arms |
| 9. Mr. Vitalis Augo | - | Office Assistant |
| 10. Ms. Catherine Waireri | - | Intern |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes

- 9. Matters Arising
- 10. **Meeting to consider Committee stage amendments to the Finance Bill, 2018**
- 11. Adjournment

MIN.NO.NA/F&NP/2018/020: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.30a.m. with prayer from the Chairperson. He then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2018/021: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/022: MEETING TO CONSIDER COMMITTEE STAGE AMENDMENTS TO THE FINANCE BILL, 2018

Clause 31(b)(ii) on the 'Robin Hood Tax' was recommitted to the Committee by the Chairperson. Hon. Ndirangu Waihenya, MP and Hon. David Mboni, MP proposed and seconded the recomittal respectively.

The Committee deliberated extensively on the Clause but a consensus was not reached. Members agreed to conclude on the matter before adopting the report.

Clause 38 – Agreed to

The Committee deliberated extensively on Clause 58 but they were not able to conclude on it. They agreed to resume deliberations on the same after lunch.

MIN.NO.NA/F&NP/2018/023: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 2.50pm. The next meeting will be held the same day at 4.00 pm.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED



DATE.....



MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 16TH AUGUST, 2018 AT ENGLISH POINT MARINA AT 2.30 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|-------------------------------------|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Committee Services |
| 2. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 3. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 4. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 5. Mr. Josephat Motonu | - | Fiscal Analyst |
| 6. Ms. Lynette Otieno | - | Legal Counsel |
| 7. Ms. Beatrice Auma | - | Administrative Assistant |
| 8. Mr. Collins Mahamba | - | Audio Officer |
| 9. Mr. John Njoro | - | Serjeant-At-Arms |
| 10. Mr. Vitalis Augo | - | Office Assistant |
| 11. Ms. Catherine Waireri | - | Intern |

STATE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. Mr. Charles H. Mwaura - Principal Secretary
2. Mr. Cassius Kusienya

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair

4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to be briefed on the affordable housing program by the Principal Secretary, State Department of Housing and Urban Development**
11. Adjournment

MIN.NO.NA/F&NP/2018/015: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.30p.m. with prayer from the Chairperson. He then called for introductions of those present before inviting the PS, State Department of Housing and Urban Development to make his submission.

MIN.NO.NA/F&NP/2018/016: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/017: MEETING TO BE BRIEFED ON THE AFFORDABLE HOUSING PROGRAM BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The PS briefed the meeting as follows, That:-

1. There are less than 25,000 mortgages in the country out of which 18,000 mortgages have been taken from banks.
2. The State Department has been engaging with stakeholders i.e. housing cooperatives, financial institutions and insurance companies, pension scheme managers, county governments, COTU, FKE and relevant government ministries and departments since September, 2017 on the affordable housing program.
3. The President convened a team comprising of COTU, the National Assembly Committee on Transport, Public Works and Housing and the Senate Committee on Roads and Transportation. In the meeting, it was agreed that the contribution of 0.5% from the employer and employee would not be sufficient to actualize the program. The meeting therefore agreed to raise the percentage to 1.5%.
4. The program will focus on people earning between kshs. 0 to Kshs. 99,999 who will be classified into three groups:-
 - i. Income range of Kshs. 0 to Kshs. 14,999 will be considered for social housing.
 - ii. Income range of Kshs. 15,000 to Kshs. 49,999 will be considered for low cost housing
 - iii. Income range of Kshs. 50,000 to Kshs. 99,999 will be in the mortgage gap.
5. There will be two categories of housing, social which will target people living in slum areas and affordable housing. They will be priced as follows:-
 - i. Social housing: 1 room at Kshs. 600,000 and 2 rooms at Kshs. 1,000,000
 - ii. Affordable housing: Bedsitter at Kshs. 800,000, 1 bedroom at Kshs. 1,000,000, 2 bedroom at Kshs. 2,000,000 and 3 bedroom at Kshs. 3,000,000.

6. A water tight ICT program has been put in place to ensure that the houses are allocated to those who deserve them. The system will ensure that only one house is allocated to an individual. Those who apply for the houses will be given a house through lottery. Through the system, an applicant will give details of the kind of house they want and their preferred location. The mortgage will have an interest rate of between 7% and 8% per annum.
7. The affordable housing scheme will have many positive impacts to the economy of the country including creating employment and creating market for construction materials.
8. After contributing for 15 years, one can cash their money, get it as pension or assign it to someone of their choice.

MEMBERS' DELIBERATIONS

1. Members were concerned that though the program was good, it might not take off as it has been the case with other projects in the country. The PS assured them that the program will happen since it has immense positives to the country's GDP.
2. Members noted that it will be important if everyone including those who are not formally employed is included in the program. The PS informed them that plans are in place to include everyone in the program at a later stage.
3. On the fate of contributors who earn Kshs. 100,000 and above, the PS informed the Members that such contributors can borrow from the fund to build or buy houses of their choice.
4. On how people would be stopped from getting the houses and selling them at market prices, the PS stated that measures will be put in place to ensure that houses bought through the fund can only be sold to the fund and not to the market.
5. Once the program takes off, developers will have no option but to lower the price of houses in the country.
6. The PS informed the meeting that currently, the National and County Government own 586 hectares of land in Eastlands which currently has only 42,000 government houses. The government intends to put up 210,000 housing units in Eastlands.
7. On how the slum dwellers have been catered for, the PS informed Members that plans were in place to build 200,000 units in slums. Currently, infrastructure is being improved in the slums.
8. On good governance of the program, the PS informed the meeting that they are committed to good governance. They have proposed the formation of the board of governance that is representative of all stakeholders. The board members will be competitively picked and the management will also be competitively hired. In addition, some functions will be run by the private sector in order to minimize on the number of employees and maximize on results.
9. On how the government intends to work with the County Governments on the program, the PS stated that the national government will give conditional grants to counties that will be oversighted by Parliament to put up infrastructure in counties.
10. On how the issue of communal land will be addressed, the meeting was informed that the State Department is working on issues of titling in collaboration with the Ministry of Lands.
11. On why the program cannot be made optional, the PS noted that many people will not contribute to the fund. Those who do not get a house should look at it as a saving since

they will be able to get their money after 15 years of contribution. The contributions are also tax deductible.

12. On why a contributor cannot be given the employer's contribution when they leave the scheme after 15 years, the PS stated that the employer's contribution will be the core capital of the fund.

MIN.NO.NA/F&NP/2018/018: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE FINANCE BILL, 2018

Clause 68 is amended in sub-clause (a) and (b) by replacing 'zero point five percent' with 'one point five percent'

Clause 28 is amended by deleting sub-clause 5(b)

Clause 53 – Agreed to

Amend by inserting the following:-

S.29A by deleting the expression "thirty five" and substituting therefor the word "fifteen"

S.36(1)(b) by deleting the words "twenty five and replacing with the word "five"

S.36(2) delete the expression "twenty five" and substitute with "five" and "forty five" with "fifteen"

S.44A(1) Delete the expression "thirty five" and substitute with "fifteen"

MIN.NO.NA/F&NP/2018/019: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 6.48pm. The next meeting will be held the following day at 9.00 am.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED



DATE.....

21/8/18

MINUTES OF THE 3RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 16TH AUGUST, 2018 AT ENGLISH POINT MARINA AT 9.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|-------------------------------------|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Committee Services |
| 2. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 3. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 4. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 5. Mr. Josephat Motonu | - | Fiscal Analyst |
| 6. Ms. Lynette Otieno | - | Legal Counsel |
| 7. Ms. Beatrice Auma | - | Administrative Assistant |
| 8. Mr. Collins Mahamba | - | Audio Officer |
| 9. Mr. John Njoro | - | Serjeant-At-Arms |
| 10. Mr. Vitalis Augo | - | Office Assistant |
| 11. Ms. Catherine Waireri | - | Intern |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)

8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to consider Committee Stage Amendments to the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/009: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.23a.m. with prayer from Hon. Andrew Okuome, MP. The Chairperson then invited the Parliamentary Budget Office to make their submissions on the Finance Bill, 2018.

MIN.NO.NA/F&NP/2018/010: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/011: MEETING TO BE BRIEFED BY THE PARLIAMENTARY BUDGET OFFICE ON THE FINANCE BILL, 2018

PBO briefed the Committee as follows:-

1. They noted that the purpose of the Finance Bill is to finance the budget. The Finance Bill, 2018 gives proposals on how the funding of the budget of this fiscal year will be done. They informed Members that even before the enactment of the Finance Bill into law, the country will continue collecting revenue because there is the Income Tax Act, Excise Duty Act and the VAT Act.
2. They stated that the fiscal deficit of the country has continued to rise and the deficit in the current Fiscal Year is Kshs. 562 billion. The country will therefore have to borrow in order to finance the deficit.
3. In the last few years, the government borrowed externally in order to set up projects in the country. New tax measures have therefore been introduced in order to pay back the loans.
4. They noted that a good Finance Bill should have measures targeting to enhance or improve revenue.
5. They noted that the National Treasury had not thought through the operationalization of the presumptive tax. In their opinion, it would be easier for one to declare their turnover when they go to seek for their business permits from the County Governments.
6. They noted the following on the 'Robin Hood Tax':-
 - i. The tax has been wrongly designed.
 - ii. The tax is common in very developed markets because banks in such countries make money from various products.
 - iii. The tax should be charged on banks from incomes received from transactions and not on customers.
 - iv. The National Treasury should do an impact analysis of the tax before introducing it in the country.
 - v. Volumes of transfers in banks are huge and this will affect the economy.
7. They noted as follows on the interest rate capping:-

Interest caps cannot be removed without providing protection to the consumer. This can be done by removing the deposit floor, delinking the lending rate from the CBR but linking the top lending rate with the Kenya Bankers Reference Rate (KBRR).

8. They noted as follows on the National Housing Development Fund:-
 - i. There was a likelihood of defaults to pay the fund.
 - ii. The provision of affordable housing should be made easier by collecting the money, building the houses and offering mortgages to those who want to buy the houses.
 - iii. The Committee should consider whether housing is a public good or an externality.
 - iv. The Committee should involve itself in the housing fund and understand it better.
9. They noted that if demurrage charges are imposed, it is likely to increase efficiency but if it does not then it is likely to increase importation costs.
10. On the increase of tax on high end vehicles, they noted that the codes on the Clause are not for the high-end vehicles.
11. Petroleum products have been removed from the exempted list. They will therefore start attracting VAT from 1st September, 2018. The Committee should look into this.
12. They noted that it might be difficult to identify exemptions in Clause 38. The provision should be looked at to ensure that it does not compromise on the way that the amnesty money is flowing into the country.
13. They informed the Committee that it was important for them to find out where taxes from betting that were collected in the last financial year were being held before Clause 53 is operationalized since they had been exempted from being paid into the consolidated fund.
14. They also informed the meeting that Kenya's air passenger service charge is higher than that of its competitors. It would be important for the Committee to interrogate whether tourism promotion is relevant to aviation.
15. They stated that the introduction of the allowable deduction of 30% of the electricity bill to the manufacturers from their corporate profit is a good move but it was important to note that the government had recently offered lower electricity tariffs to large manufacturers operating during off peak hours.
16. They supported the introduction of the Capital Gains Tax on the transfer of property by general insurance businesses as it will ensure that gains from property investments by companies in the insurance business do not go untaxed.

MEMBERS' DELIBERATIONS

1. In 2013, the CBK reduced the reserve ratio resulting to an increase in the number of loans in the market.
2. One of CBK's key goal is to ensure that inflation is between 7.5% and 2.5%. To do this, it has to affect the lending and exchange rate. If inflation goes up, CBK can increase the reserve or increase the lending rates.
3. On why the KBRR should be used to determine the interest rate and not the CBR, PBO informed the meeting that KBRR is a more direct way of determining where the lending rate can be. It is a more realistic rate for pricing money and is determined by the CBR and Treasury Bills.

4. On why there is a low uptake of loans despite the lowering of the interest rate, PBO informed the meeting that this is because the setting of the deposit floor has limited banks from giving loans to high risk clients.
5. On the introduction of the capital gains tax, the meeting was informed that the tax has been there since 2015 but is only being introduced for insurance companies.

MIN.NO.NA/F&NP/2018/012: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE FINANCE BILL, 2018

Clause 6 – Agreed to

Clause 7 – Agreed to

Clause 31(a)(i) – Rejected

Justification

An alternative has not been provided for those who use kerosene for cooking and lighting.

Clause 31(a)(ii) – Agreed to

Clause 31(a)(iii): Excise duty on motor vehicles – Agreed to but the tariff numbers should be checked.

Clause 31(a)(iii): Excise duty on sugar confectionary – Rejected.

Clause 31(iv) – Agreed to

Clause 31(v) – Agreed to

Clause 31 (b)(i) is amended by deleting sub-clauses (i) and (ii) and replacing them as follows:-

‘Excise duty on fees charged for money transfer services by cellular phone service providers, banks, money transfer agencies and other financial service providers shall be twelve percent of their excisable value’.

MIN.NO.NA/F&NP/2018/013: ANY OTHER BUSINESS

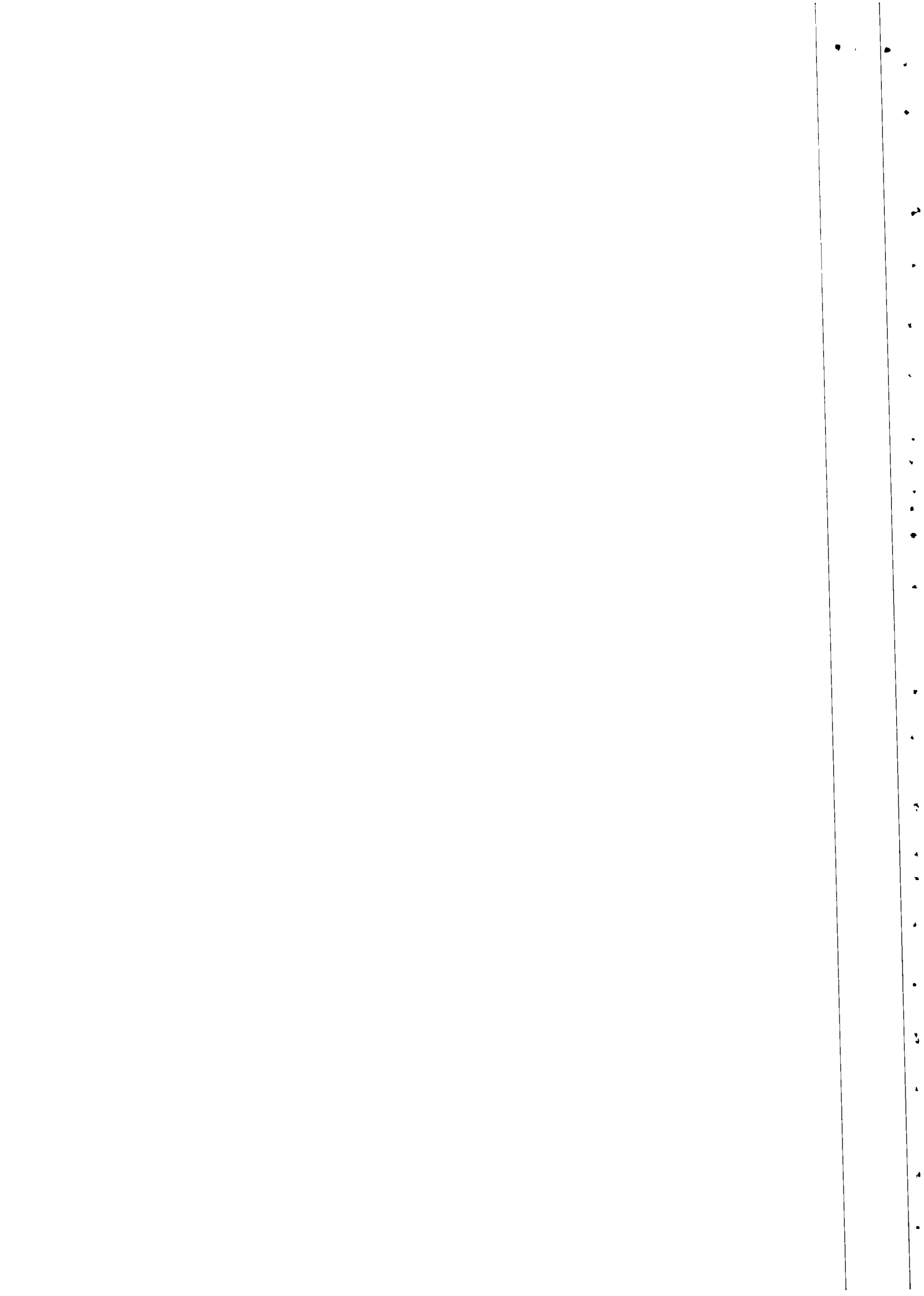
Hon. Joseph Oyula, MP briefed the Committee that Hon. Dr. Enoch Kibunguchy, MP had been attacked at a hotel luckily police officers were close by and they were able to rescue him. His driver died on the spot and will be laid to rest on Friday, 24th August, 2018. Members were requested to contribute towards the driver’s funeral and to help his family.

MIN.NO.NA/F&NP/2018/014: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.30pm. The next meeting will be held the same day at 2.30 pm.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED.....DATE..........



MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 15TH AUGUST, 2018 AT ENGLISH POINT MARINA AT 3.30 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|------------------------------------|
| 1. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 2. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Ms. Lynette Otieno | - | Legal Counsel |
| 6. Ms. Beatrice Auma | - | Administrative Assistant |
| 7. Mr. Collins Mahamba | - | Audio Officer |
| 8. Mr. John Njoro | - | Serjeant-At-Arms |
| 9. Mr. Vitalis Augo | - | Office Assistant |
| 10. Ms. Catherine Waireri | - | Intern |

NATIONAL TREASURY

- | | | |
|--------------------------|---|-------------------|
| 1. Mr. Henry Rotich | - | Cabinet Secretary |
| 2. Mr. Donald Murgor | | |
| 3. Mr. Joseph Z. Ngugi | | |
| 4. Mr. Musa Kathanje | | |
| 5. Mr. Johnstone Oltetia | | |
| 6. Mr. Cromwel Pkomo | | |
| 7. Mr. Benard Apiud | | |

KENYA REVENUE AUTHORITY

1. Mr. Maurice Oray
2. Mr. Moses Maina
3. Mr. Ephraim Munene

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting with the National Treasury and Ministry of Planning on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/005: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 3.30p.m. with prayer from the Chairperson. He then welcomed the CS to continue with his presentation.

MIN.NO.NA/F&NP/2018/006: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/007: MEETING WITH THE NATIONAL TREASURY ON THE FINANCE BILL, 2018

The Cabinet Secretary submitted as follows:-

PRESUMPTIVE TAX – CLAUSE 6

He informed the meeting the presumptive tax is used in many jurisdictions especially in Latin America to expand the tax base especially in countries where there is a large informal sector which are hard to tax. The purpose of the tax is to ensure that the tax system is easy to monitor and effect.

It excludes rental income and incorporated entities. Businesses with a turnover of Kshs. 5,000,000 and above are required to file their tax returns with KRA.

A business that falls in this category has the option of filing their returns with KRA provided they inform KRA of the same.

MEMBERS' DELIBERATIONS

1. On why rental income is included from the presumptive tax, the CS informed the meeting that rental income is filed annually.
2. On whether the tax will be collected by the County Governments or KRA, the CS informed Members that modalities on how it will be done are being worked on by KRA

and County Governments and that they will be ready by October, 2018. The tax will start being collected in January, 2019. The National Treasury is also working on a Bill to streamline all income from County Governments. County Governments will be required to work with KRA in order to raise their revenue collection.

3. Members were concerned that introducing presumptive tax could result in double taxation. The CS assured them that this could not happen as those who pay presumptive tax will not be required to file their returns.
4. On why incorporated entities cannot be included in this bracket, the CS stated that incorporated entities are formalized and thus required to file their returns. They can also be easily located.
5. On why the tax is being collected by the National and not the County Governments, the CS informed the meeting that the Constitution of Kenya assigns Income, VAT and Excise Tax to the National Government.
6. The CS informed Members that the tax will become irrelevant when the country achieves a certain level of tax collection.
7. Both the tax and permit will be collected at one point by either the County Governments or KRA.

NATIONAL HOUSING DEVELOPMENT FUND – CLAUSE 68

The intention of the fund is to operationalize the Housing Act whose intent is to provide affordable housing to the citizenry.

The CS informed the meeting that after wide consultations with stakeholders, it had been agreed that both the employer and the employee contribute 1.5% each and not 0.5% of the salary as proposed in the Bill.

Through this fund the Government will reduce the cost of land and servicing. Once the fund is set up, the private sector will be invited to build the houses on a turn-key basis. The houses will then be allocated to the contributors on a first come first serve or lottery basis. The contributors will pay a mortgage of Kshs. 1,500,000 to 3,000,000 on the house.

MEMBERS' DELIBERATIONS

1. On whether employees can contribute to the fund voluntarily, the CS informed the meeting that if made voluntary, no one might participate in it and thus the agenda may not be achieved.
2. The CS informed the meeting that pricing will be different depending on the location and size of the houses. The contributor will choose the location and type of house that they want.
3. The CS noted that the fund is well structured unlike the National Housing Corporation which might not have been well structured.
4. If one retires before they get the house, they will get their money back as pension. However, they'll only get back their contribution and not the employer's contribution.
5. The Kenya Mortgage Finance Company has already been set up. It will provide mortgages to contributors as soon as the houses are ready.
6. The PS Housing will have a meeting with the Committee the following day at 2pm to shed more light on the fund.

INTEREST RATE CAPPING – CLAUSE 58

The introduction of interest rate capping has led to the following:-

1. Decline in bank credit to small and medium sized firms especially in trade and agriculture.
2. Disproportionate hit on lending activity and profitability of small banks.
3. Banks have shied away from borrowers they consider riskier.
4. Banks have concentrated on either building non-interest earning deposit accounts or reclassifying interest earning deposit accounts to transaction accounts which do not earn interest.
5. Monetary policy effectiveness has been reduced while financial access and economic growth have been adversely impacted.
6. Banks have shifted lending to Government and large corporates. Demand for credit increased immediately after the capping of lending rates, credit to the private sector has continued to decline.
7. Rationing out micro, small and medium enterprises from the credit market by the commercial banks.
8. The proportion of new borrowers has fallen by more than half likely impacting entrepreneurship and new job creation.

The National Treasury has put in place the following measures to mitigate the negative effects:-

1. Working jointly with the private sector and development partners to introduce a National Credit Guarantee Scheme as a policy tool to direct MSMEs.
2. Establishment of Kenya Development Bank by merging Industrial and Commercial Corporation, IDB Capital and Tourism Finance Corporation to strengthen Development Finance Institutions to play a greater role in providing credit to our credit to MSMEs.
3. Cabinet has approved Biashara Kenya Fund by merging Uwezo fund, Youth Enterprise Development Fund and Women Enterprise Development Fund into Biashara Kenya Fund to increase efficiency, resolve overlaps and make better use of resources to achieve economies of scale.
4. Financial Markets Conduct Bill, 2018 has been developed to deal with inadequacies in consumer protection and unregulated lending in the financial sector.

He concluded by saying that due to the adverse impact of interest rate capping on credit growth, the Finance Bill 2018 has proposed to amend the Banking (Amendment) Act, 2016 by repealing Section 33B. This will enhance access to credit and strengthen monetary policy effectiveness.

MEMBERS' DELIBERATIONS

1. Members were concerned that the repeal of Section 33B of the Banking (Amendment) Act, 2016 could be the IMF's or World Bank's idea. The CS assured them that the National Treasury had decided to repeal the Section after assessing its impacts to the country's economy.
2. On the country's borrowing, the CS informed the meeting that they had looked at the benefits of borrowing to set up the Standard Gauge Railway, roads and electrification. He stated that the country is borrowing sustainably and they are bringing down the debt level which was at 10% and is currently at 5.7%. The country is borrowing more externally and does not therefore put pressure on the local market.

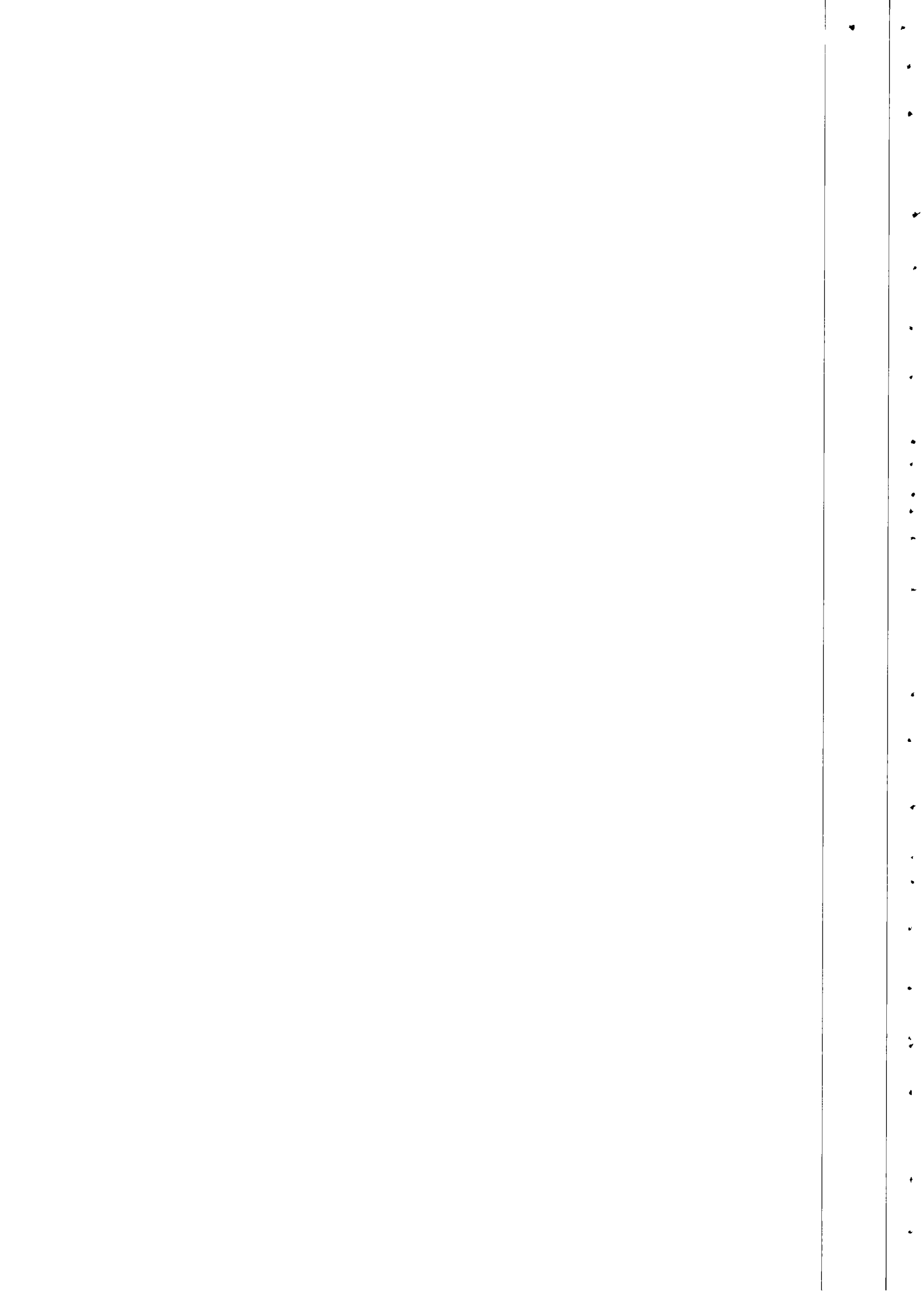
3. Members suggested that instead of borrowing, the Government should sell some parastatals. The CS informed the meeting that the National Treasury is working on a law to fast track privatization of government parastatals in sectors where the government does not need to be.
4. Setting of interest capping does to give banks a chance to give loans depending on one's risk level thus the banks opt for low risk clients.
5. On why non performing loans have gone up, the CS stated that the gross loans have not been growing compared to loans that have been provided. Banks have less profitability because of the caps and are not able to lend more.
6. Lending to private sector activities went down globally in 2014 because the US tightened their monetary policy affecting the exchange rate which made lending expensive hence a low uptake to loans.
7. Members were concerned that mobile lending by banks has become common and the interest rates are very high. They requested the National Treasury to come up with regulations for the same.
8. Members commended the National Treasury for bringing down the Treasury Bill rates.
9. Members were concerned that CBK had been issuing circulars to banks and this might be against to the law. The CS stated that the Statutory Instruments Act should address the matter. He said that he would check on whether the circulars issued fall within the definition of the Act.

MIN.NO.NA/F&NP/2018/008: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 7.30pm. The next meeting will be held the following day at 9.00 am.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED.....DATE...*22/8/18*.....



**MINUTES OF THE 1ST SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 15TH AUGUST,
2018 AT ENGLISH POINT MARINA AT 9.00 AM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|------------------------------------|
| 1. Mr. Robert Nyaga | - | Deputy Director, PBO |
| 2. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 3. Ms. Lauren Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Ms. Lynette Otieno | - | Legal Counsel |
| 6. Ms. Beatrice Auma | - | Administrative Assistant |
| 7. Mr. Collins Mahamba | - | Audio Officer |
| 8. Mr. John Njoro | - | Serjeant-At-Arms |
| 9. Mr. Vitalis Augo | - | Office Assistant |
| 10. Ms. Catherine Waireri | - | Intern |

NATIONAL TREASURY

- | | | |
|--------------------------|---|-------------------|
| 1. Mr. Henry Rotich | - | Cabinet Secretary |
| 2. Mr. Donald Murgor | | |
| 3. Mr. Joseph Z. Ngugi | | |
| 4. Mr. Musa Kathanje | | |
| 5. Mr. Johnstone Oltetia | | |
| 6. Mr. Cromwel Pkomo | | |
| 7. Mr. Benard Apiud | | |

KENYA REVENUE AUTHORITY

1. Mr. Maurice Oray
2. Mr. Moses Maina
3. Mr. Ephraim Munene

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting with the National Treasury and Ministry of Planning on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/001: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.25a.m. with prayer from the Chairperson. He thanked Members for attending the meeting. He also informed Members that Hon. Dr. Enoch Kibunguchy, MP had been attacked over the weekend and his driver had been shot dead. He did not have details of the incident and therefore tasked Hon. Joseph Oyula, MP to get the details from Hon. Kibunguchy and report to the Committee. Members were requested to contribute towards the driver's funeral expenses through Hon. Oyula. He then invited the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2018/002: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/003: MEETING WITH THE NATIONAL TREASURY ON THE FINANCE BILL, 2018

The Chairperson informed the meeting that the Kenya Revenue was not collecting any additional taxes currently and it was therefore important that the Finance Bill, 2018 is dispensed with as soon as possible.

The Chairperson called for introductions of those present before inviting the CS to make his submission on the Bill on the following areas that had elicited a lot of interest from the public:-

1. Repeal of interest rate capping law
2. Introduction of the 'Robin Hood Tax'
3. Introduction of the National Housing Development Fund
4. Introduction of the presumptive tax.

The Cabinet Secretary submitted as follows:-

He informed the meeting that there has been a revenue shortfall in the past two years and discussions were ongoing with KRA on the cause of this.

He added that the National Treasury was working on ways of making taxes stable so that the Finance can be considered once in every three years. He stated that most taxes had been cleaned up and the only remaining one was the Income Tax Act which will be brought to Parliament soon for consideration.

He further stated that they were working on the Insurance Bill to modernize the current Act and the CBK Bill to ensure that the CBK Act is aligned to the Constitution.

He informed the Members that the intent of the Finance Bill, 2018 was to actualize the Big Four Agenda, advancing taxing with technology and to broaden the tax net.

INTRODUCTION OF THE 'ROBIN HOOD TAX' – CLAUSE 31

He informed the meeting that the 'Robin Hood Tax' was introduced in order to fund the universal health care which is one of the pillars in the Big Four Agenda.

He proposed that the Clause 31(b)(ii)(6) is further amended as follows:-

1. Proposed Definition of "money transferred by banks":

"Money transferred" means money transferred from one;

- (i). account to another either within a bank or from one bank to another bank; or
- (ii). person to another through money transfer agency or other financial service providers"

2. Proposed Exclusions/Exemptions

- (i). Transfer of taxes to or tax refund from Kenya Revenue Authority;
- (ii). Transfers from Kenya Revenue Authority's collection accounts to the Central Bank of Kenya;
- (iii). Transfers by or to the National Government, County Governments or Central Bank of Kenya;
- (iv). Transfers relating to the purchase and sale of shares and securities on the Nairobi Securities Exchange;
- (v). Transfer to or from the registered retirement benefits schemes;
- (vi). Interbank transfers or banks and non-bank financial institutions or between non-bank financial institutions;
- (vii). Transfers between accounts belonging to the same person within same bank or financial institution; and
- (viii). Any other category of money transfer that the Cabinet Secretary may specify through a Gazette notice.

MEMBERS' DELIBERATIONS

1. On whether both taxes (12% excise duty on cellular money transfer and 0.05% for every bank transfer of Kshs. 500,000 and above) will go to universal health care fund, the CS informed the meeting that both taxes would go to the fund due to the huge funding required to run the program thus the need to dedicate funds.
2. On whether the RHT will increase the banks' expenses, the CS informed the meeting that the Excise Duty will be paid by the person making the transfer and not the bank.
3. Members were concerned that the increase in Excise Duty on cellular money transfer might discourage innovation. The CS informed them that they had put that into consideration that is why the increase was small.
4. The CS noted that it is important to collect these taxes since they will ensure that there is better health care in the country thus growth to the economy.
5. On increasing the Excise Duty from 10% to 12% instead of introducing the RHT, the CS informed the meeting that introducing the RHT will enable them to collect more taxes compared to increasing the Excise Duty. A good tax system also provides that those who transact more should be taxed more.
6. On how the program will be rolled out, the CS informed the meeting that piloting will be done in four counties (Nyeri, Kisumu, Isiolo and Machakos) from August, 2018 to June 2019. Lessons learnt from the piloting will then be applied in the remaining forty three (43) counties in the next four to five years. The Ministry of Health is in charge in collaboration with County Governments and NHIF.

MIN.NO.NA/F&NP/2018/004: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 2.13pm. The next meeting will be held the same day at 3.30 pm.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED.....DATE. 22/8/18.....

MINUTES OF THE 58TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 3RD AUGUST, 2018 IN TAIFA HALL, KENYATTA INTERNATIONAL CONVENTION CENTRE AT 2.30 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Joshua C. Kandie, MP
6. Hon. Purity Ngirici, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Alfred Sambu, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Lydia H. Mizighi, MP
10. Hon. Mohamed A. Mohamed, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Lauren Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Mr. Collins Mahamba | - | Audio Officer |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | - | Office Assistant |
| 8. Ms. Catherine Waireri | - | Intern |

LAW SOCIETY OF KENYA

1. Ms. Muchoki Catherine
2. Mr. Caleb Lagat
3. Ms. Rose Nyongesa

WATER BOTTLERS ASSOCIATION OF KENYA

1. Mr. Robert Irungu

INTERNATIONAL INSTITUTE OF LEGISLATIVE AFFAIRS

1. Mr. Ken Chemain
2. Mr. Bryant Rotich

KENYA AIRWAYS

- | | | |
|-------------------------|---|-----------------------------|
| 1. Mr. Sebastian Mikosz | - | CEO |
| 2. Ms. Beatrice Njagi | - | Manager Tax |
| 3. Ms. Hellen Mwariri | - | Chief Finance Officer |
| 4. Mr. John Gakena | - | Head of Government Industry |
| 5. Mr. Polycarp Otieno | - | Project Assistant |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Public hearings on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/325: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.30p.m. with prayer from Hon. Ndirangu Waihenya, MP. The Chairperson then called for introduction of those present before welcoming the Law Society of Kenya to present their memorandum to the Committee.

MIN.NO.NA/F&NP/2018/326: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/327: MEETING WITH THE LAW SOCIETY OF KENYA ON THE FINANCE BILL, 2018

Officials from LSK submitted as follows:-

1. They questioned the Constitutionality of the Provisional Collection of Taxes and Duty since public participation is not employed on the same.
2. The issue of VAT on fuel was not captured in the Bill and this means that the cost of fuel will go up as fuel will move from being Exempt to vatable. Resultantly, the cost of living will go high as fuel affects almost everything in the country. They proposed that fuel remains exempt as is currently.

They proposed the following amendments:-

Clause 3

Proposal

3(1)(b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where:-

- i. Any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder;
- ii. The shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder;
- iii. The amount is used by that company in any other manner for the benefit of the shareholder;
- iv. Any debt owed by the shareholder to any third party is paid or settled by that company; and
- v. The amount results in a reduction in taxable income or increased assessed loss of that company by virtue of any transaction with the shareholder resulting from an adjustment.

Justification

Dividends can only be what is paid to or on behalf of a shareholder. Payments to another person cannot constitute a dividend.

Clause 4

The proviso should be amended to read as follows:-

Provided that this section shall not apply to:

- i. Registered collective investment schemes; and
- ii. Income that is paid out of dividend received, foreign earned income and profits that are not taxed due to investment deductions or similar tax allowances under this Act.

Justification

1. While the removal of compensating tax is a positive step, the dividend tax provision may result in juridical double taxation and will still result in a claw back of the incentives intended to encourage investment into Kenya.
2. The dividend received by a resident company from its wholly-owned subsidiary will now be considered to be untaxed income and any distribution of such dividend will trigger tax

at 30%. This will effectively subject the holding company groups to a combined corporation tax of 51%.

3. If the proposal is implemented, Kenya will become unsuitable environment for holding companies. This may result in the relocation of holding companies to jurisdictions that have favorable tax practices.
4. Foreign sourced dividends will be subject to tax at 30%. This provision contradicts section 3(1) of the ITA which provides that only income accrued and derived in Kenya should be subject to tax.
5. It will be impractical for a company to separate the dividend that it receives from different sources of income in order to determine the dividend that arises from non-taxed profits.
6. Companies that have claimed capital allowance will be taxed if they distribute dividend when they are in a tax loss position.
7. Due to the repeal of the dividend tax account, a company will not be able to carry forward or utilize its tax credits.

Clauses 9 & 10

1. Consider scrapping the introduced WHT on demurrage.
2. Consider narrowing the definition of demurrage to application to ship operators only.

Justification

1. It is likely that the cost associated with the introduction of WHT on demurrage paid out to non-residents will be passed on to the end consumer thereby making the port of Mombasa non-competitive.
2. The description of demurrage as the Income Tax is currently worded is quite wide and may even apply to delay of taking delivery of goods from an inland warehouse.

Clauses 11, 18(a)(ix), 18(b)(ii), 32 and 51(a)

1. There is need to interrogate whether indeed there is need for the creation of SOFAs given the existence of already highly incentivized regimes such as SEZs and EPZs. Where deemed necessary, the issues with these provisions as drafted can be cured by having specific statute that deals with SOFA.
2. There is therefore need to draft an enabling legislation dealing with SOFAs similar to the one on EPZ/SEZ.
3. This legislation would provide guidelines on the scope of SOFAs; define which activities/investments qualify for the SOFA rates, the administration and operations of SOFAs as well as a range of pre-determined tax rates depending on sector/industry, amounts of investment e.t.c. or a combination of factors.
4. There is need to have public participation in the formulation of the law on SOFAs in compilation with the Constitutions.

Justification

1. There is no statute that governs SOFA in Kenya. This creates ambiguity in regard to what SOFAs are, their purpose which investments fall there under which Ministry they fall under, which type of projects they target etc.
2. There is a lacuna in law with regards to the envisaged administration and operation of SOFA. The provision as drafted is wide and all-encompassing. If implemented as proposed, its likely that it's application will be subjective which will lead to loss of accountability and abuse. This will then lead to the loss of public funds.
3. Without clear legislation on the rates of tax that a SOFA may be granted or the range of rates that will be available to different SOFAs based on pre-determined criteria, there's likely to be discrimination within the SOFAs which would lead to abuse of the provisions as drafted. Some SOFAs may be subject to lower/higher taxes than others, yet they are engaged in the same sector/industry. This will result in creating an unfair competition environment.
4. Article 201(b)(i) of the Constitution provides that the burden of taxation is to be shared fairly. This is in line with the principals of taxation that call for fairness and certainty in revenue tax policy. The proposed provisions as drafted and in the absence of a SOFA enabling statute are in contravention of both the Constitution and international best practice with regard to revenue laws.

Clause 31

They proposed a deletion of the entire provision.

Justification

The proposed provision as it stands will result in massive instances of multiple taxation of the same amount of money. For example:-

1. Advocate's client accounts: where the selling price is deposited in the case of a conveyancing transaction, the amount will be subjected to the RHT on transfer into the advocate's account and on transfer to the seller's account by the advocate.
2. Collective investment funds: fund managers usually carry out various transactions in the execution of their role. When the fund manager seeks to invest money say in treasury bonds or bills, this money will be subject to the tax on transfer, when it is purchasing shares, the same money will be subject to the RHT.
3. When banks as collecting agents of the tax are remitting the tax to KRA collection account, they will be subjected to the RHT.

Clause 38

1. Delete Clause 37B(4)
2. Alternatively, an amendment prescribing measures for a direct benefit to Kenyans should be included e.g. subjecting the repatriated funds to a tax not more than 10% or forcing those who repatriate to invest the money in governments for a minimum of 5 years.

Justification

1. The proposed amendments seek to exempt funds declared under the amnesty from the provisions of the POCAMLA and any other or any other Act relating to reporting and

investigation of financial transactions. The exception to this is proceeds of poaching, drug trafficking and terrorism. It is not clear exactly how the Government will be able to tell one source of funds from the other. This proposed amendment is likely to create an avenue for people to clean their money especially bearing in mind that there is nothing preventing the removal of the money from Kenya once the amnesty has been granted.

2. Another foreseeable problem is that the amendments proposed in the Bill seek to amend a myriad of laws in one sweep. The amendment as currently drafted only applies to the TPA. An argument could be made that each of the statutes should be independently amended if Section 37B(4) is to have force of law. This is especially so, given the fact that certain sections of POCAMLA are drafted so as to supersede all other written laws, including in certain cases, the provisions of the ITA.
3. Additionally, the proposed amendments do not have any foreseeable benefit for the people of Kenya. It simply creates an opportunity for those who have money from questionable sources to clean it.

Clause 68

Proposed that the entire clause should be deleted until the Fund is properly constituted following public participation.

Justification

1. The NHDF has been improperly introduced into the Employment Act.
2. In order to have transparency on the activities of the fund and use of the money paid into the Fund, it is important that the Fund is formed in a similar manner and go through the same process as other similar funds e.g. NHIF and NSSF have undergone.
3. A Bill forming the NHDF must be tabled in Parliament and subjected to public participation.
4. It should be clear to every Kenyan that will be subjected to this tax exactly how the funds will be put to use and who would be held accountable in the event that the intended objectives are not followed.
5. Only after the Fund has been legally formed under a law and the objectives for the fund well set out can the amendment to require employers and employees to pay this amount into the Fund.

MEMBERS' DELIBERATIONS

1. On the repealing of the provisional collection of taxes, the Committee advised them to formally request the committee to rework on the law if they feel that it is unfair to Kenyans. The Legal Notice 128 allows for the collection of taxes for public interest.
2. If the law was in place to operationalize the National Housing Development Fund, they would fully support it.

MIN.NO.NA/F&NP/2018/328: MEETING WITH WATER BOTTLERS ASSOCIATION OF KENYA ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting a representative of Water Bottlers Association of Kenya to make their submissions.

A representative from the Water Bottlers Association of Kenya proposed the following amendment:-

Clause 31(a)(ii)

Bottled water should be removed from the list of commodities that excise duty should be paid on.

Justification

1. Sin tax is a tax placed on items whose prolonged and unregulated use is harmful to human health and by extension national health like alcohol, beer and cigarettes. Water on the other hand is beneficial and a must for proper health thus surprising that a deterrent tax would be imposed on an essential good.
2. Not every person in Kenya enjoys the convenience of safe and clean drinking water, only 55% enjoys this luxury.
3. Even tap water provided by most city councils is not trusted. Families prefer bottled water, either refill or packaged because it is purified and treated as certified by KEBS.
4. Most rivers have been polluted with improper dumping of industrial chemicals and also through seepage of farm chemicals to the rivers.
5. Most Kenyans are now on the move, mobility necessitates that bottled water is served to Kenyans.
6. Fear of waterborne diseases and ailments like cholera and typhoid.

MEMBERS' DELIBERATIONS

1. The meeting was informed that currently, an excise duty of 5/= per litre, stamp duty of 0.5% and 16% VAT is paid on bottled water. WBAK proposed that the excise duty should be reduced to 2/= per litre.
2. The representative of WBAK informed the meeting that the association was two months old, incorporated small water bottlers only and had a membership of 200.

MIN.NO.NA/F&NP/2018/329: MEETING WITH KENYA AIRWAYS ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting Kenya Airways to make their submissions.

The CEO, KQ proposed the following amendments:-

Clause 31(b)(ii)(6)

1. Delete provisions to exempt money transfer.
2. Exempt payment of Government services from Excise Duty
3. Exempt payment of goods and services from tax.

Justification

1. KQ's monthly payments in excess of Kshs. 500,000 are Kshs. 2.2 billion. Introduction of RHT means additional monthly costs of Kshs. 1.1 million. Most of the transfers are for payment of taxes, landing and parking fees to the Government.
2. Provision not clear on inter-account transfers, banks likely to charge for funding of own accounts.
3. Government should reward tax payers for agency services in collecting and remitting of taxes by facilitating payments.

Excise Duty Act, 2015

Amend tariff 2710.19.21 kerosene type Jet Fuel per 10001 @ 20degC from Kshs. 5755 to Kshs. 0.00

Justification

Exempting Jet A1 fuel from Excise Duty will reduce the cost of travel hence positioning Kenya as an attractive tourist destination.

Miscellaneous Fees and Levies Act, 2015

1. Amend the Second Schedule Part A as follows:- *"Goods exempted from import Declaration Fees to include aircraft engines, aircraft spare parts and Jet A1 fuel."*
2. Amend Second Schedule Part B as follows:- *"Goods exempted from RDL to include aircraft, aircraft engines, aircraft spare parts and Jet A1 fuel."*
3. Amend Second Schedule Part B as follows:- *"Goods exempted from RDL to include goods destined for approved SEZ's"*

Justification

1. 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.
2. Loss of maintenance, repair operations (MRO) to Middle East carriers and ET. This has in effect led to brain drain of experts and highly trained technical staff to other countries.
3. To harmonise tax exemption for Free Zones in Kenya to the international standards which are exempted from all taxes and levies.

VAT Act, 2013

Exemption from VAT on jet fuel to harmonise the practice with other jurisdictions globally.

Justification

1. Jet A1 Fuel constitutes over 40% of the cost of operation for air operators. Charging VAT on income that is exempted from VAT will increase the cost of operation hence making Kenyan operators less competitive.
2. Domestic landing costs like landing, parking, navigation charges are all taxable at 16%. Any further increase in cost will negatively impact on air travel within the country.

MEMBERS' DELIBERATIONS

1. If the taxes are increased, the cost will be transferred to the passenger making KQ services expensive compared to other airlines. This will in turn reduce the number of passengers using the airline.
2. Members noted that there was a big improvement in KQ services and encouraged them to keep it up.

3. The CEO informed the meeting that they were hoping for improved performance of the airline.

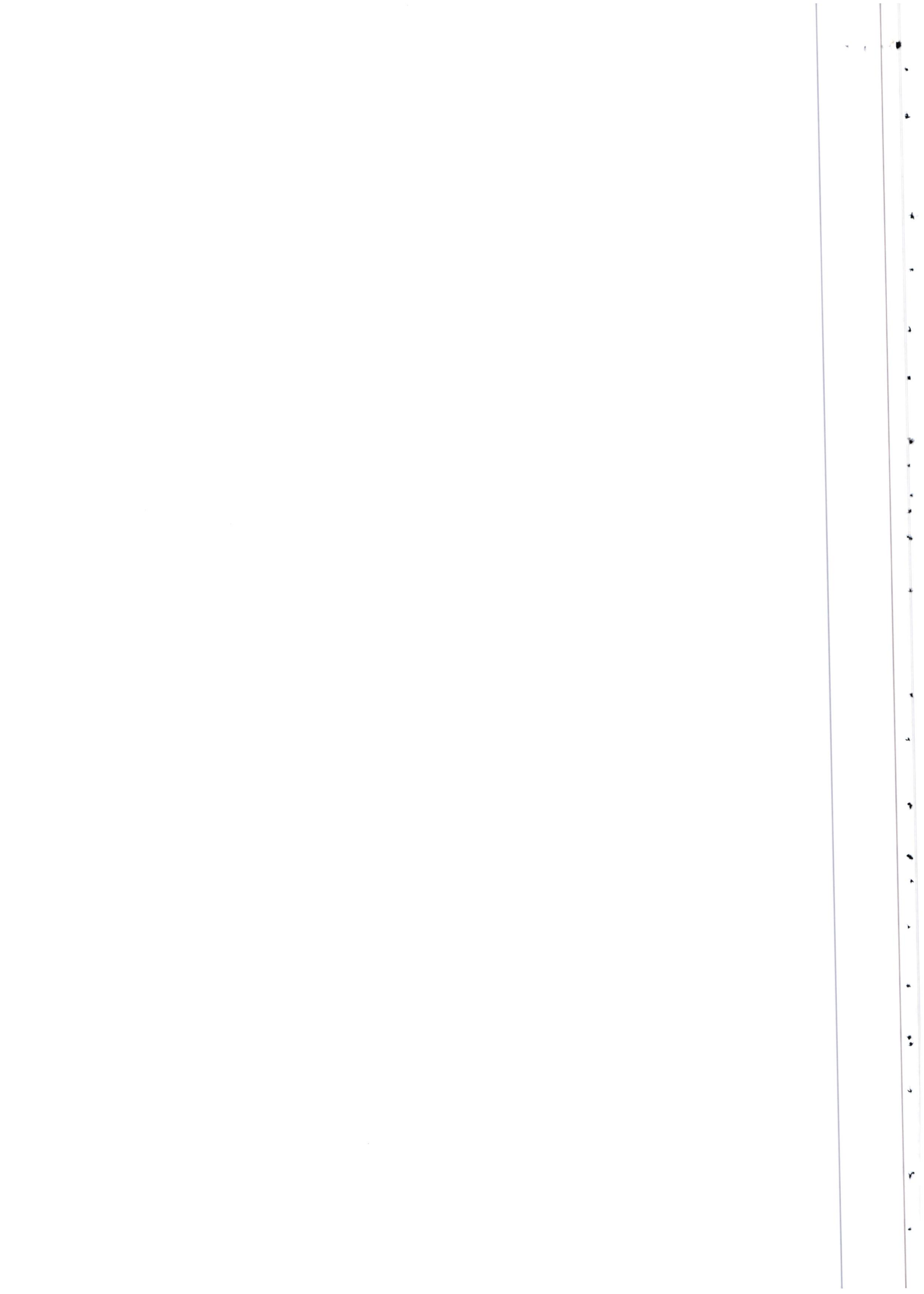
MIN.NO.NA/F&NP/2018/330: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 4.30pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 22/8/18



MINUTES OF THE 57TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 3RD AUGUST, 2018 IN TAIFA HALL, KENYATTA INTERNATIONAL CONVENTION CENTRE AT 9.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Joshua C. Kandie, MP
6. Hon. Purity Ngirici, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Alfred Sambu, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Lydia H. Mizighi, MP
10. Hon. Mohamed A. Mohamed, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Mr. Collins Mahamba | - | Audio Officer |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | - | Office Assistant |
| 8. Ms. Catherine Waireri | - | Intern |

MEMBERS OF THE PUBLIC

1. Mr. Brian Mbugua

2. Mr. Ernest Muguku
3. Mr. Henry Ogoye
4. Mr. Njoroge Waweru
5. Mr. Brian Mbugua

ENERGY REGULATORY COMMISSION

1. Mr. Paul Oimeke - Director General
2. Mr. Edward Kinyua - AG. Director Petroleum

PRICE WATERHOUSE COOPERS

1. Mr. Maurice Mwaniki - Associate Director
2. Mr. Andrew Wang'ombe
3. Ms. Imelda Mutiso
4. Ms. Priscilla Githinji
5. Mr. Deogratius Amasy

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Public hearings on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/316: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.26a.m. with prayer from the Chairperson. He then called for introduction of those present before welcoming Mr. Brian Mbugua to present his memorandum to the Committee.

MIN.NO.NA/F&NP/2018/317: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/318: MEETING WITH MR. BRIAN MBUGUA ON THE FINANCE BILL, 2018

Mr. Mbugua made the following submission to the Committee:-

Section 20: Actions concerning trust property

1. None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action-
 - a. In respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or
 - b. To recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.
2. Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued

He proposed that the period should be amended from six years to twenty years.

Justification

This is to protect beneficiaries of trusts who are not aware of having been beneficiaries and claim through the unclaimed assets. This also caters for minors and gives them adequate time for maturation to understand and later make a claim in the trusts to which they are beneficiaries.

MEMBERS' DELIBERATIONS

The Chairperson thanked him for his good presentation which did not require clarity.

MIN.NO.NA/F&NP/2018/319: MEETING WITH MR. ANDREW WANG'OMBE ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting Mr. Wang'ombe to make his submissions.

Mr. Wang'ombe proposed the following amendments on VAT on export of services:-

Issues – Contradiction by the VAT Regulations, 2017

1. No guidelines on use, consumption or enjoyment outside Kenya.
2. Additional requirement – recipient must be outside Kenya.
3. Excludes existence of export of services where paid for by a person who is not a resident in Kenya.
4. However, proof of export of services: invoice showing the recipient of the supply to be a person outside Kenya.

Proposals

The VAT Regulations, 2017 is amended as follows:-

1. In regulation 2 by inserting the following new definitions in proper alphabetical sequence
For purposes of Regulation 13: "Business agreements" will include but not limited to legally enforceable contracts, general correspondence, purchase orders, invoices, payment instruments, receipts and other electronic forms such as emails, online ordering records and payments that are likely to emerge as technology develops.
"Location" of the "user or consumer" Means:-

- a. Where the user or consumer is incorporated, the registered place of business;
- b. Notwithstanding the provision in (a) above:-
 - i. The location of his business establishment; or
 - ii. Where services are used or consumed at a place other than the place of incorporation or business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - iii. Where services are used or consumed at more than one establishment, whether registered, business or fixed, the establishment most directly concerned with the use or consumption of the service; or
 - iv. In the absence of such places, the usual place of residence of the user or consumer or the billing address of the user or consumer.

“User or consumer” means the person who seeks performance of services pursuant to a business agreement.

2. In regulation 13(1)(b) by deleting the paragraph “*provided to a recipient outside Kenya.*”
3. In the proviso to Regulation 13(1)(b) by deleting paragraph (b) which reads “taxable services provided in Kenya but paid for by a person who is not a resident in Kenya.”
4. In Regulation 13(2)(a) by deleting the paragraph “*a copy of the invoice showing the recipient of the supply to be a person outside Kenya*”; and substituting therefor the following new clause “*tax invoice.*”
5. In Regulation 13(2)(c) by deleting the paragraph “*for services, such other documents as the Commissioner may require as proof that the services had been used or consumed outside Kenya*” and substituting therefor the following new paragraph: “*for services, such other documentary proof that the services have been used or consumed outside Kenya*”
6. In regulation 13 by inserting the following new Regulation immediately after Regulation 13(2)(d): “*Determination of the place of use, consumption or enjoyment of services.*”

13A. Except as is otherwise provided in the Regulations, the place of use, consumption or enjoyment of a service supplied from Kenya shall be the location of the user or consumer of the services.

He proposed the following amendments to the VAT remission on capital goods.

Issues

1. The five year period is set to lapse on 2nd September, 2018.
2. Some of the entities granted remission are yet to exhaust their remission allowances due to cash flow limitations and the impossibility of completing the purchases before 2nd September, 2018.
3. Beneficiaries of the remissions are apprehensive that lapsing of the VAT remissions scheme will curtail their expansion plans by causing a sudden and sharp increase in their expansion costs.

Proposal

The VAT remission extension currently under Section 68(4) of the VAT Act, 2013 should be extended to 10 years. Section 68(4) of the VAT Act should be amended to read as follows:-
“where a remission of tax was granted under the repealed Act on any taxable goods or services, such remission shall continue to remain in force for a period of ten years from the date of commencement of this Act.”

Justification

A further VAT remission extension of five (5) years, if granted would provide sufficient time for investors who are yet to utilize the VAT remission to utilize the remission for the ongoing projects and save significant amount of the funds that would have been spent on VAT payments. Additionally, the extension would convince investors to stay in country and continue to invest and contribute to the economy.

MIN.NO.NA/F&NP/2018/320: MEETING WITH MR. ERNEST MUGUKU ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting Mr. Muguku to make his submissions.

Mr. Muriu submitted that:-

Section 2

Amend section 2 of the finance bill by deleting the word all as it appears in subsection 12(c)(2)

(2) The presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

Justification

The bill appears to contradict itself by stating the presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income, yet the tax is applicable to those who have a turnover of less than Kshs. 5 million.

All tax sections

The finance bill does not provide a definition of what is a ‘**special operating framework arrangement**’

Justification

Include a definition so that its clear how such an arrangement is initiated and who eligible for a **special operating framework arrangement** e.g. is it a PPP e.t.c.

Section 37

Amend the finance bill in section 37 by inserting the words “within thirty days of receiving the application” after the words “with the reasons for such rejection”

Justification

This will ensure that the proposed the amendment gives a time period within which the commissioner should respond. Currently should be within thirty days of receiving the application

Section 39

Delete section 39 of the Finance Bill

Justification

Tax late payment interest has been increased from 1% per month to 2%. Wef: 1st July, 2018. This will be very punitive given the tough economic times businesses face. Increase in the rate will have the government of Kenya becoming like bank who want to charge high interest rates.

Section 46

Amend the Finance Bill by inserting the paragraph (c) after the paragraph (b) impossibility or undue difficulty or expense, of recovery of the tax

As follows:

(c) uncertainty as to any question of law or fact

Justification

Remission for reason of uncertainty as to any question of law or fact has been removed. There are instances where hardship is created by uncertainty as to any question of law or fact.

Section 53

Amend section 53 of the finance bill by deleting the proposed section 69B and replacing it with

69B. Application of Tax Procedures Act.

69B. The Tax Procedures Act, 2015 apply for the purposes of the administration, collection of taxes, penalties and interest and offences in this Act.

Justification

This will ensure that the there is uniformity of admiration procedures.

Section 58

Delete section 58 of the Finance Bill

Justification

Repealing section 33B of Banking Act is premature and has no sound reason or basis. Interest which the borrower can afford to pay is in proportion to the clear profit only. The lowest ordinary rate of interest must, in the same manner, be something more than sufficient to compensate the occasional losses to which lending, even with tolerable prudence, is exposed. The proportion which the usual market rate of interest ought to bear to the ordinary rate of clear profit

Section 68

Delete section 68 of the Finance Bill

Justification

Targeting only one section of the people of Kenya to contribute to the National Housing Development Fund i.e. employees is unfair. If such a tax should be imposed it should be applied to all the persons in the Income Tax Act.

Section 72D - Income Tax Act

Delete section 72D of the income tax act now that a 20% penalty has been imposed in the tax procedures act section 83A.

Justification

This will ensure that there is no duplication of the penalty.

Section 5(4)(c) - VAT Act

Insert the words “or special economic zones” after the words export processing zones.

Justification

To include removal of goods in the treatment of importation.

Section 8 - VAT Act

Insert a new subsection 8 (4)

4. A non-resident person to whom subsection 2 applies shall apply for registration in accordance with the requirements of section 34.

Justification

To make it clear that registration for VAT is mandatory for any person who makes supplies provided in section 8(2) of the Act.

This will also give an enabling framework for section 15A (1) of the Tax Procedures Act. Section 8 has no mandatory provision for the non-resident to register i.e. in the case where a non-resident person with no fixed place of business in Kenya is required to register under a tax law, the non-resident person shall appoint a tax representative in Kenya in writing.

Section 8A - VAT Act

Insert a new section 8A

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 or irrespective of whether the supply was made to a recipient who was not physically in Kenya
- (e) the services are radio or television broadcasting services received at an address in Kenya, or
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.

Justification

This will give clarity on the treatment for exportation of services. This will ensure any services enjoyed in Kenya are subject to VAT in Kenya.

Section 12 – VAT Act

Accounting for VAT on a cash basis.

Section 12(1) (c) of the VAT Act, insert the word “tax” before the word invoice

Insert 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.

Justification

1. To allow tax payers to account for tax based on cash collected.
2. This will make section 12(1)(c) consistent with section 42 which requires any invoice to be a tax invoice.
3. This will ensure VAT is not payable until the transfer of building is complete. This will be consistent with the court ruling that stated Capital Gains Tax should not be paid before the transfer is complete.
4. A supply of a building happens only when the transfer of the building has taken place. VAT should not be paid on deposits paid by the customers received but on an actual transfer of the building.
5. In some instances, the transfer does not take place and refunds need to be made, currently the VAT act does not allow for credit notes to be issued after 6 months. Therefore, we need to change the time for supply for buildings.

Section 21 - VAT Act

Section 21(1) insert the word “immediately” after the words land or water shall
Before unloading or disposing of the vehicle or of any goods therein

Justification

This will provide a timeline for presentation of imported goods at the nearest customs station.

Section 34(4) - VAT Act

Insert the following paragraph (e) in section 34. (4)

(e) the person is not registered for turnover tax under section 12C of the Income Tax Act.

Justification

To ensure that one is not required to register for VAT and turnover tax at the same time.

Section 34(5A) - VAT Act

Insert the following new subsection 34. (5A)

The Commissioner cancel the registration of a person who has registered for turnover tax under section 12C of the Income Tax Act.

Justification

To ensure that one is not required to register for VAT and turnover tax at the same time.

Section 16(6)

Replace the words ‘of the name, address and personal identification number of the person to whom it is issued’ with the words ‘with the prescribed details of a tax invoice as provided in section 42(1).

Justification

This is to ensure Section 16 (6) is consistent with section 42(2) on the details of the tax invoice.

First Schedule Exempt Supplies - VAT Act

The First Schedule be amended—

In paragraph 39(2) by deleting the words paragraph (1) and replacing it with paragraph (1)(a)

The First Schedule be amended by inserting the following new items -
100% electric cars.

Any specialized cables and accessories for electric car charge points

the First Schedule be amended—

(b) in Part II, by—

(i) inserting the words “and flower auction services” immediately after the words “coffee brokerage services” in paragraph 10;

Justification

1. This will ensure that the restriction is made to individuals in 39(1)(a) not to the organizations in 39(1)(b).
2. To encourage the purchase and use of battery electric cars.
This will ensure all new homes are built with the right cables and accessories for electric car charge points.
This will also ensure we encourage use of green sources of energy and environmental protection.
This will reduce Kenya's dependence on oil.
3. With the perceived transfer pricing risks involved in the flower export business, it will be easier to route flowers from Kenya. We should set up Kenya as a global hub for the flower trade. This will be part of the value addition process away from been flower producers.

Second Schedule S. 7(2) Zero-Rating Part A – Zero Rated Supplies

Be amended in paragraph 4 by inserting the words 'flowers' immediately after the words coffee everywhere the word coffee appears in the paragraph.

Justification

With the perceived transfer pricing risks involved in the flower export business, it will be easier to route flowers from Kenya. Kenya should be set up as a global hub for the flower trade. This will be part of the value addition process away from been flower producers.

First Schedule Exempt Supplies

The First Schedule be amended— in Part I by inserting new paragraph 22 A

22A. Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage of Chapter 6 excluding those of tariff heading 06.03 and 06.04

Justification

This is to encourage agriculture by reducing cost of inputs. This inputs include live trees and goods (including seedling vegetables) of a kind commonly supplied by nursery gardeners for planting.

The item covered herein are:

06.01 Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading 12.12.

0601.10.00 - Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant

0601.20.00 - Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, in growth or in flower; chicory plants and roots

06.02 Other live plants (including their roots), cuttings and slips; mushroom spawn.

0602.10.00 - Unrooted cuttings and slips

0602.20.00 - Trees, shrubs and bushes, grafted or not, of kinds which bear edible fruit or nuts

0602.30.00 - Rhododendrons and azaleas, grafted or not

0602.40.00 - Roses, grafted or not

0602.90.00 - Other

Section 42

Amend section 42. (1) of the Tax Procedures Act to insert the words "after all Objections And Appeals under PART VIII are exhausted" after the words "when a taxpayer is, or will become liable to pay a tax"

Justification

This will ensure that the power to collect tax from person owing money to a taxpayer is exercised only after after all Objections and Appeals under PART VIII are exhausted.

Entire Act - Provisional Collection of Taxes and Duties

Repeal the Act in its entirety.

Justification

The powers provided within this Act are unconstitutional given the procedure for enacting money bills in the constitution. Any money bill cannot be operational until the time set out under Article 116(2) of the constitution has come.

Section 3A

Insert new section 3A as follows:

In accordance with Article 23. (2) of the Constitution of Kenya, 2010, the Tax Appeals Tribunal shall have original jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights arising from any decision made or not made by the Commissioner

Justification

To give the Tax Appeals Tribunal Act original on any breach in the Bill of Rights

The First Schedule to the Excise Duty Act, 2015 in Part I

Amend the First Schedule to the Excise Duty Act, 2015 in Part I to add 100% electric powered Motor Vehicles Duty rate 10%.

Justification

To provide for a lower rate for electric powered Motor Vehicles Duty which will reduce greenhouse emissions and will encourage further investment in the grid as the offtake of power will increase, noting that Kenya is investing heavily in geothermal energy and wind and solar energy.

MEMBERS' DELIBERATIONS

1. Mr. Muguku dropped his proposed amendments to Clause 34.
2. The Committee thanked him for his clear presentation and for presenting his memorandum to the Committee.

MIN.NO.NA/F&NP/2018/321: MEETING WITH MR. HENRY OGOYE ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before welcoming Mr. Ogoye to make his submissions.

Mr. Ogoye opposed the amendment to Cap 475 to include the Tourism Promotion Fund for the following reason:-

Proposal

Clasue 56

Delete "*the Tourism Promotion Fund.*"

Justification

The International Civil Aviation Organisation (ICAO) provides policy guidance on the levying of Airports and Air Navigation Charges including the Air Passenger Service Charge (APSC). The policy provides that passengers incur charges for providing the airport and its essential ancillary services. It further states that end users should not be charged for facilities and services that they do not use. The proposed charge does not benefit airport users in any way.

This charge was mooted through Legal Notice No. 98 of 24th June, 2016 from US\$40 to US\$50 for international counter and from Kshs. 500 to Kshs. 600 for domestic counter to support marketing activities of the Kenya Tourism Board which does not fall within ICAO policy

guidance on aeronautical charges as stated above. This made Kenya's services some of the most expensive in Africa.

MEMBERS' DELIBERATIONS

1. Mr. Ogoye stated that the provision should be deleted so that flight costs for local carriers especially Kenya Airways do not go up further.
2. He was requested to provide a document in his possession (Communication from the Cabinet Secretary National Treasury to the Clerk of the National Assembly) to the Committee.

MIN.NO.NA/F&NP/2018/322: MEETING WITH THE ENRGY REGULATORY COMMISSION ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before welcoming Mr. Oimeke, the Director General, ERC to make his submission.

The Director General, ERC submitted the following proposed amendment:-

Amend Clause 31(a)(i) as follows;

Tariff No.	Tariff Description	Rate
2710.19.22 20degC	Illuminating Kerosene	Kshs. 28,305 per 10001@

Justification

This will lead to a reduction in fuel adulteration which has many effects including:-
Loss of government tax revenue, increased vehicle maintenance costs, safety risk due to stalled vehicles on the highway, wasted man hours, pollution, poor health, loss of Kenya's traditional export market and unfair trade practices.

MEMBERS' DELIBERATION

1. Members were concerned that increasing the excise duty on kerosene would make it unaffordable to most Kenyans who depend on it for cooking and lighting. Mr. Oimeke stated that the extra revenue to KRA could be used to subsidize the cost of LPG cylinders and fund the last mile connectivity project in order to provide electricity to those who do not have it.
2. On why the subsidized LPG cylinder project had not rolled out, Mr. Oimeke informed the meeting that unscrupulous dealers bought the subsidized LPG cylinders at the subsidized rate and sold it at the market price. The CS Energy stopped the project because of that but it will be rolled out soon.
3. Mr. Oimeke informed the meeting that the Commission had benchmarked with Tanzania who were able to reduce the rate of adulteration of fuel from 78% to 4% by increasing the excise duty of kerosene.
4. The Committee tasked ERC to do proper research through public participation in order to understand kerosene usage in the country and consult with the relevant ministry on how

the revenue collected will address the fear of Kenyans using kerosene and save vehicles. They were directed to provide their findings to the Clerk of the National Assembly by Wednesday 8th August, 2018.

5. The Committee informed them that the best way of distributing the subsidized LPG cylinders is to map out areas in urban slums and rural areas where most of the population use kerosene.

MIN.NO.NA/F&NP/2018/323: MEETING WITH MR. NJOROGE WAWERU ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting Mr. Waweru to make his submission.

Mr. Waweru made the following submission:-

1. He stated that he was concerned about Kenya's tax regime which is oppressive, punitive and retrogressive. Import duty of 35% on paper which attracts excise and VAT (both on paper and textbooks) makes text books expensive and this makes books unaffordable. He requested that some taxes on paper are removed.
2. The proposals made by the CS on RHT tax and excise duty on money transfer became effective on 1st July which he feels is illegal as taxes are supposed to be levied only after legislation.

MEMBERS' DELIBERATIONS



Regarding the legality of the CS, National Treasury to collect taxes before the consideration of the Finance Bill, Mr. Waweru was informed that Legal Notice 128 on the Provisional Collection of Duties allows for the cabinet Secretary is to collect taxes provisionally before enactment of the law. This was however challenged in court and reversed. The matter was still in court.

MIN.NO.NA/F&NP/2018/324: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.50pm. The next meeting will be held at 2.30pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED.....DATE..........

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 2ND AUGUST, 2018 IN TAIFA HALL, KENYATTA INTERNATIONAL CONVENTION CENTRE AT 3.00 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Alfred Sambu, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Francis K. Kimani, MP
6. Hon. Lydia H. Mizighi, MP
7. Hon. Purity Ngirici, MP
8. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Ms. Catherine Burure | - | Fiscal Analyst |
| 5. Mr. Collins Mahamba | - | Audio Officer |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | - | Office Assistant |
| 8. Ms. Catherine Waireri | - | Intern |

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA

1. CPA Fredrick Riaga - Chief Manager
2. CPA Gerald Githuku - Member, Public Finance Committee
3. FCPA Philip Muema - Convener
4. CPA Fred Omondi - Member
5. Mr. Hillax Onami

BDO EAST AFRICA

1. Mr. Steve Okoth
2. Hon. Stazo Omung'ala

ASSOCIATION OF GAMING OPERATORS OF KENYA

1. Mr. Abisai Jacob - CEO, AFC Leopards
2. Mr. John Kameta - President, Boxing Association of Kenya
3. Mr. Patrick Tonui

PRICE WATERHOUSE COOPERS

1. Ms. Cynthia Mayaka - Senior Manager
2. Mr. Gideon Rotich - Senior Manager
3. Mr. Deogratius Francis - Senior Associate
4. Ms. Lorna Onduu
5. Mr. Boaz Langat
6. Mr. Edger Liabuya - Azuri
7. Ms. Margaret Githinji - Azuri
8. Mr. Davies Aken
9. Ms. Pauline Githugu - M-Kopa
10. Ms. Irene Auma - D. Light
11. Ms. Myra Mukulu - Advisor, Clean Cooking Association

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes

9. Matters Arising
10. **Public hearings on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/310: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 3.05p.m. with prayer from the Chairperson. He then called for introduction of those present before welcoming the Institute of Certified Public Accountants of Kenya to present their memorandum to the Committee.

MIN.NO.NA/F&NP/2018/311: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/312: MEETING WITH THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA ON THE FINANCE BILL, 2018

Representatives of ICPAK proposed the following amendments:-

Clause 3

Issue of concern/implication

The provision of the clause comes to effect in 1st July 2018. The definition of dividend is expanded to include transactions between a company and its shareholders. This amounts to transfer pricing adjustments that result in additional taxable income, including instances where the related party transactions in question do not involve the shareholder. Effectively, transfer pricing adjustments will be subject to corporation tax at 30% and withholding tax on deemed dividends at 10%. This can further be misinterpreted and discourage Foreign Direct Investment.

ICPAK's Comment

Issue of shares and debentures that are sold to related parties at less than market value – in CAP 470. Whilst we recommended for it to be repealed, the section was left out in the draft Finance Bill. Consider inclusion and repealing.

Clause 4

Issue of concern/implication

Comes to effect in January 2019. Whilst the provision indicates section 7A is repealed, the provision therein reintroduces compensating tax which was repealed.

The proviso

“Provided that this section shall not apply to registered collective investment schemes” might be misinterpreted

ICPAK's Comment

Delete Clause 12 entirely

Clause 6

Issue of concern/implication

To increase the uptake of presumptive tax and encourage formalization of business there is need to relook at the inclusion of incorporated companies.

ICPAK's Comment

Remove incorporated entities from the list of excluded entities so that small businesses that are incorporated are also roped into the tax net.

Clause 7

Issue of concern/implication

This proposal introduces an allowable deduction for manufacturers from January 2019. It is meant to incentivize manufacturers by reducing their cost of production. In line with the pillar of the Big Four agenda on manufacturing, a reduction in electricity cost will boost their profitability. However, the formula and regulations to determine “normal electricity expense” need to be carefully drafted to avoid ambiguity. Need to clarify and define the cost of electricity. What is “normal” electricity cost after taking into account inflationary adjustment. To avoid ambiguity.

ICPAK's Comment

The Institute welcomes this move as it will enhance improved economic productivity and recommends a consultative approach in setting up of qualifying conditions by the Ministry of Energy.

Clause 10

Issue of concern/implication

The proposal to establish the fund and treatment of winnings is provided for under the Tax Laws (Amendment) Bill, 2018 which is currently before the National Assembly for consideration. Effectively, the proposal refers to a non-existent provision, calling into question its implementation especially if the relevant provisions in the Tax Laws (Amendment) Bill, 2018 are not passed by 30 June 2018.

There is further no explanation on the rationale as to why the gains should only go into one kitty (Sports, Arts and Social Development Fund)

Furthermore, the attendant regulations and guidelines for the management of the fund have not been developed, subjected to stakeholder participation and passed by parliament in line with the constitution.

ICPAK's Comment

Reset the effective time period to September 2018 to allow for the passage of necessary legislation, establishment of the fund and attendant implementation guidelines.

The attendant regulations and guidelines for the management of the fund should be subjected to stakeholder participation and passed by parliament in line with the constitution.

For impact to be felt, the fund should be targeted the various sports, arts and social development activities that are under-developed.

Clause 11

Issue of concern/implication

1. The ship owners who are non-resident will be subjected to a demurrage charge of 20% and insurance premium of 5% of the gross amount payable
2. To curb inefficiencies by government, no demurrage should be charged until after 14 days.
3. The ship owners are likely to increase freight costs arising from the tax and pass it to importers.

4. There is the likelihood that the cost will be pushed to the final consumer since the importers will be obliged to pay withholding taxes on demurrage payments at 20%.

ICPAK's Comment

1. The proposal on demurrage charges seeks to bring the non-residents into the tax net.
2. With increased focus on the Big Four, there is projected increased demand for import of machinery and production inputs and export of surplus produced locally.

Whilst this is welcome, they recommended measures to be put in place to cushion the tax payers against high cost of doing freight and shipping business. Further, there should be collaboration between KRA and the ship owners to sort out the administrative challenges in implementing it.

Clause 11, Amendment of Third schedule to Cap 470.

Issue of concern/implication

The proposal is welcome in expanding the tax base. Effective January 2018, the proposal may pose administrative challenges as it is not clear whether the taxes will be collected by the County Government or the KRA will update the iTax platform to facilitate payment of the tax.

ICPAK's Comment

1. There is need to address the administrative challenges that the new law potent.
2. Borrow from the best international practices on presumptive tax regime.

New Tax exemptions

Issue of concern/implication

The Government policy has been geared towards discouraging harmful consumption of illicit brews. The rationale for exempting KDF canteens only amounts to discrimination and is prone to be abused as has been before by unscrupulous vendors creating unfair advantage in the market.

ICPAK's Comment

Delete the provision to encourage the defense forces to stay alert and create a level playing field

Zero Rating

Issue of concern/implication

Whilst it potent to reduce VAT refund claims to KRA, the provision will lead to an increase in price as suppliers are not eligible to claim input VAT and will increase the prices of basic commodities. The move is bound to increase the prices of commodities to the chagrin of consumers.

ICPAK's Comment

The Institute recommended that the National Treasury comes up with tax measures that will not injure the suppliers and cushions the taxpayers.

The country is not benefitting from zero-rating of products. The move has not achieved the intended purpose. Zero rating should be limited to exports.

Section 31 a (i)

Issue of concern/implication

1. This is meant to deter the use of kerosene which is considered as harmful fuel that causes pollution. Similarly, it is also to encourage the use of other forms of fuels that are environmentally safe and friendly.

2. The harmonization of excise duty on illuminating kerosene and gas oil serves to circumvent fuel adulteration
3. However, this move may punish people in the lower income bracket

ICPAK's Comment

1. The move was intended to avert adulteration of fuel. Whilst a good policy in promoting environmental conservation, the unintended consequences are far-fetching. The poor are punished on the inefficiencies by Government to deal with adulteration.
2. Notwithstanding, measures should be put in place to ensure that other sources of fuel are made affordable for the low-income earners who are the majority using kerosene fuel

Section 31 (a) (ii)

Issue of concern/implication

1. This is targeted at having a piece of the profits that these companies make to increase the revenue streams for the government.
2. However, it will not augur well with the consumer who will be forced to bear the burden of increased cost. The rise in bottled water has arisen from the state's failure to provide safe and clean water in adequate quantities as provided for under Article 43(1)(d) of the Constitution.
3. With the proliferation of bottled water and juice manufacturers, the move will ensure that they all pay requisite taxes.
4. The stamp will also deter counterfeiting through tracking of the stamps and excisable goods to account for the production.

ICPAK's Comments

1. These are basic consumables for common citizen and targeting them for taxation is a punishment to the citizens.
2. They proposed that provision of water be zero rated in all its forms to make it more accessible to all Kenyans both poor and rich.
3. In addition, just like it is the policy of zero rating the importation of agricultural machinery, the same should be extended to water purification machines and their accessories. This will ensure that as many Kenyans as possible access safe and affordable drinking water as we move towards realization of Article 43 of the Constitution, vision 2030 and the SDGs

Section 31 b (3)

Issue of concern/implication

1. The excise duty is a sin tax that is likely to discourage the hitherto thriving sector of the economy that has employed many people.
2. The rationale for having a different tariff for same commodity is not defined (10% bank transfers and 12% on cellular phone transfers). There's need for equity. Need similar treatment across the board. Need to encourage mobile money in terms of financial inclusion. Instead of Robin Hood Tax, harmonize taxation for banks to 12% like mobile transfers.

Section 31 (b) (6)

Issue of concern/implication

Has unintended consequences to the banking sector and the economy at large.

ICPAK's Comment

The government needs to shelve this tax provision. Think of other alternatives.

Section 38: Extension of tax amnesty deadline

Issue of concern/implication

1. Tax amnesty has been extended from 30th June 2018 to 30th June 2019.
2. Whilst the extension is aimed at improving or promoting the uptake of amnesty, the provision of funds transferred under the amnesty shall be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 is flawed as it may be used by perpetrators of economic crimes to sanitize their actions. We are of considered opinion that a Voluntary Disclosure Programme should be introduced instead.

Voluntary Disclosure Programme

The objective of the VDP is to encourage taxpayers who have made errors in their tax matters due to ignorance or negligence, and without willful intent to evade taxes, to come forward and inform the revenue authority on voluntary basis.

A voluntary disclosure under the VDP is one which is timely, accurate, complete and self-initiated by the taxpayer. The taxpayer is also expected to cooperate fully with the revenue authority. Under the VDP, the voluntary disclosure would be considered self-initiated and timely if:

1. It is made before the revenue authority queries the tax payer in relation to his tax assessment;
2. It is made before the taxpayer receives notification from the revenue authority in respect of the commencement of an audit or an investigation; and
3. For cases already under revenue authority's query, audit or investigation, the disclosure must not be within the immediate scope of the query, audit or investigation.

International Best Practice

On 8 March 2009, Singapore through Inland Revenue Authority of Singapore (IRAS) issued an e-Tax Guide on its VDP. The programme has recorded a huge success by enhancing tax compliance and improving revenue collection to government.

ICPAK's Comments

1. Need to introduce a Voluntary Disclosure Programme. This will promote compliance as opposed to rewarding non-compliance and crime. The VDP shall be extended to everyone in the economy as opposed to a select few people as the proposed amnesty.
2. The VDP should be taxpayer initiated and made before the taxpayer receives a query from KRA or notification from KRA of the commencement of an audit or investigation.
3. For a taxpayer who has already received a query or is already under a KRA audit or investigation, in order to qualify for reduced penalties, the voluntary disclosure must not be directly related to the scope of query, audit or investigation.
4. Second time repeat offenders can only be entitled to 40% waiver if the disclosure was similar to previous one. Thereafter no waiver will be granted.

Section 45

Issue of concern/implication

1. This will enforce compliance and deter late filing of returns.
2. The interest should be maintained at 1% and not 2% as proposed in the Finance Bill

ICPAK's Comment

It will guarantee total compliance since people fear being surcharged.

Section 53**Issues of concern/implication**

1. The intentions of increasing the rates of tax was to deal with the negative social effect on the youth.
2. It was also meant to generate revenues that the Government would use to fund the budget and promote sporting activities in the country.
3. However, the objectives have not been met. There is re-emergence of background betting, rise of social ills, drugs and pyramid schemes.

ICPAK's Comments

1. Extension of tax incentives for sport betting companies who spend 40% of their income to sponsor sporting activities.
2. Sports tourism and development be exempted from corporation tax.
3. Provide 10-15% of revenue generated to be utilized specifically in promoting social services and sports development.
4. This will spur growth of sport industry, talent development and increase employment opportunities for the youth

Section 68**Issues of concern/implication**

1. It is expected that this initiative will provide sufficient funds to create more job opportunities and implement the Big Four Agenda.
2. However, it is bound to strain both the employers and employees who already feel the pain of taxation regime currently in force.
3. It will increase the cost of employment and lock many people who need employment as well as impending layoffs.

ICPAK's Comments

1. They proposed wide consultations with the various stakeholders to come up with a resolution that will benefit all.
2. Key players in the Labour sector, Workers' Union like COTU, and employees themselves.
3. The kitty could potentially be subject to mismanagement such as has been witnessed with similar kitties such as NSSF, NHIF, Housing Corporation, AFC among others.

MEMBERS' DELIBERATIONS

1. They were against the repeal of the interest capping law because banks used to take advantage of citizens in the absence of the law.
2. The Committee tasked them to provide information on the effects of the interest rate in the country before the end of the following day.

MIN.NO.NA/F&NP/2018/313: MEETING WITH BDO EAST AFRICA AND ASSOCIATION OF GAMING OPERATORS OF KENYA ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting representatives of BDO East Africa and AGOK to make their submissions.

A representative of BDO East Africa submitted that:-

They were acting for Kenya Vehicle Manufacturers Association (KMVA) which represents motor vehicle assemblers and manufacturers. Kenya Vehicle Manufacturers Association. This proposal is endorsed and supported by the following institutions, Isuzu East Africa Limited, Toyota East Africa Limited, Associated Vehicle Assemblers and Kenya Vehicle Manufacturers.

They proposed the following amendments:-

Section 15 of the Income Tax Act

To provide a 70% electricity rebate on the cost incurred on the purchase of electricity from the National Grid in order to bring down the cost incurred for electricity to approximately 5US cents per Kwh which is at par with continental lowest competing regime.

Paragraph 24 of the Second Schedule to Income Tax

To allow a 150% capital deduction on capital expenditure incurred in establishing or expanding or improving facilities used in automotive manufacturing and assembly.

Second Schedule to the VAT Act

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 zero rating is recommended by the Cabinet Secretary responsible for Industrialization, in consultation with the Cabinet Secretary for the National Treasury.

First Schedule to the VAT Act

To exempt locally manufactured or assembled motor vehicles and parts.

First Schedule to the Excise Duty Act

To introduce a 30% excise duty on imported public service vehicles PSV buses, trucks, pick-ups and second-hand vehicles.

Background and Justification

1. In Kenya, the main vehicles assembled are commercial vehicles especially trucks and buses, which are well designed to meet the tough Kenyan and African Tropical conditions. Totally

installed capacity for assembly of motor vehicles in Kenya is 34,000 units per year on single shift alone. There exists, before even expansion, to increase output of at least fivefold. But the country needs a tax policy framework that would put it at par with major competition like South Africa and Morocco. The two give a raft of tax and fiscal incentives that have seen them succeed.

2. For every job on an automobile or light-truck assembly line, ten additional jobs are created or supported in the economy (Centre for Automotive Research (CAR), USA). Putting this in Kenyan context, 3,000 people currently employed on assembly lines have a multiplier of 3,960 jobs in downstream sector, as well as over 5000 jobs in support sectors to downstream automotive sector. Any additional production triggers more jobs and job spinoffs; to the extent that at 100% currently installed capacity production of existing assemblers, a total of 79,635 jobs can be created by commercial assembly alone. Passenger car segment if protected can create over 77,000 jobs.
3. Automotive industry in Kenya under the right policy and investment environment has the capacity to create over 150,000 jobs (direct and indirect).

Economic Value Add of Component Manufacturing in Kenya

4. Each components sector player in Kenya currently is estimated to employ on average 2,561 people and contributes over KES 40 Million annually in tax revenues to government.
5. Given the right incentives and stable predictable auto policy environment, auto parts have the capacity to employ a lot more people, create further spin-offs, and spur growth of the iron and steel industry due to the high consumption of steel. Regional supply chains can be built, joint ventures can be attracted and Kenya can become a regional continental hub of auto parts supplying both assembly and aftersales markets in EAC and Africa at large.

A representative of AGOK proposed the following amendments:-

They proposed insertion of the following new section:-

Section 53A, 53B and 53C

Section 53A: Expression 'thirty five' and substituting therefore the word 'fifteen'

Section 53B: Section 44A(1) of the Betting, Lotteries and Gaming Act is amended by deleting the expression 'thirty five' and substituting therefor the word 'fifteen'

Section 53C: Section 55A(1) of the Betting, Lotteries and Gaming Act is amended by deleting the expression 'thirty five' and substituting therefor the word 'fifteen'

Justification

The proposal is aligned with the best economic and social interest of the country.

Kenya Charity Sweepstake proposed an amendment to Section 79(2) of the Finance Act, 2016 by deleting the word “turnover” and replacing it with “net revenue”.

Justification

All the other players such as gaming and bookmakers are deducted on gaming revenues thus making the Kenya Charity Sweepstake disadvantaged.

They also proposed an amendment to Section 30 of the Finance Act, 2017 by deleting the expression “thirty five” and replacing it with the word “fifteen”.

A representative of Oxygen 8 proposed the following amendments:-

Amend by inserting the following

S.29A Delete the expression “thirty five” and substitute therefore the word “fifteen”

S. 36(1) Delete the words “twenty five” appearing in paragraph (b) and substitute therefore the word “five”

Delete the words “twenty five” and substitute with “five”

Delete the words “forty five” and substitute with “twenty five”

s. 36(2) Delete the expression “twenty-five” and substitute with “five”

S.44A(1) Delete the expression “thirty –five” and substitute with “fifteen”

Justification

It will help avoid reduce double taxation.

MEMBERS’ DELIBERATIONS

1. They informed the Committee that they wanted the taxes for gaming, lotteries and betting reduced from 35% to 15% because the monies from the government that go into the sports fund support Olympians while betting companies support talent and growth of small clubs which has changed lives of many players and the country too.
2. They stated that taxes on lotteries is based on their turnover yet in the rest of the gaming industry, the tax is deducted from their after sales.
3. BDO were tasked to provide an updated memorandum to the Committee.

MIN.NO.NA/F&NP/2018/314: MEETING WITH PRICE WATERHOUSE COOPERS ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting PWC to make their submissions.

PWC made the following submissions:-

They proposed the following amendments on behalf of KBA:-

Issue

Need for definition of the phrase ‘return on loan’ under the Excise Duty Act, 2015.

Proposal

The definition of the phrase return on loan under the Excise Duty act, 2015 should be introduced as follows: *“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”*

Justification

Lack of definition of return on loan under the Excise Duty Act, 2015 has led to uncertainty on what constitutes return on loan for excise duty purposes.

Issue

A case for exempting derived income earned by banks from excise duty under the Excise Duty Act, 2015.

Proposal

They proposed that the Excise Duty Act, 2015 be amended to define the term “charged” to include “to bill or issue an invoice in respect of a sale or supply of a service.”

Justification

The commissions derived from these derived incomes such as agency fees, international card companies and commissions from CBK are not ‘charged’ but ‘earned’ by the banks. Excise duty should only apply to fees actually charged by financial institutions as opposed to derived income.

Issue

A case of introducing tax rebates in relation to excisable services acquired by banks to avoid double taxation of excisable services similar to the rebates applicable to excisable goods.

Proposal

They proposed that a section should be introduced under the Excise Duty Act, 2015 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 services”*.

Justification

There is no provision under the Excise Duty Act, 2015 providing for offsetting excise duty incurred on purchase of services against excise duty charged on sales of services as is the case with excisable goods. This creates inequality in the application of the law as the input-output mechanism should ideally be applicable to both goods and services.

Issue

A case of exemption from excise duty of non-licensed services offered by the banks to provide equity in taxation of similar services regardless of their supplier.

Proposal

They proposed the Excise Duty Act, 2015 should be worded 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 on loan or return on loan or an insurance premium or premium based or related commissions.

Justification

The term 'other fees' under the Excise Duty Act, 2015 is so wide that it captures almost every activity (including non-core banking services) undertaken by banks. Based on this, the excise duty law creates inequity and goes against the canon of equity since the KRA seeks to tax all activities of licensed financial institutions including services such as financial and general advisory services as well as rental income which when supplied by non-financial institutions are not subject to excise duty.

They proposed the following amendments for spirituous beverages sector:-

The Excise Duty Act, 2015 imposes excise duty on alcoholic spirits of alcoholic strength exceeding 10% at the rate of Kshs. 200 per litre and those not exceeding 10% at the rate of Kshs. 100 per litre.

Issues

1. The current excise duty charged per litre of the spirituous beverages at Kshs. 200 per litre for alcoholic strength exceeding 10% and those not exceeding 10% at the rate of Kshs. 100 per litre is too high.
2. The effective excise duty charged per litre on a base amount of 1000 litres of 96% alcoholic strength diluted by addition of water to 6400 litres of 10% alcoholic strength is Kshs. 1000 per litre which is punitive.
3. This definition of manufacture is not clear on whether dilution of ready to drink excised products amounts to manufacturing.
4. The excise law does not distinguish between the alcoholic products that target the low income category from those that target other drinkers; it imposes the same excise duty rate for spirits above 10% alcohol by volume irrespective of their alcohol content.

Proposals

1. An amendment of the definition of the term manufacture to exclude a mere addition, dilution or mixing of water with ready to drink spirituous beverage on which excise duty has already been charged,
2. A lower excise duty rate of Kshs. 70 per litre for pre-mixed ready to drink spirits or,
3. An excise duty remission scheme for products targeting the low end market like is the case with some beer brands targeting the same lower marketing segment.
4. A change in the basis for computation of excise duty on alcoholic beverages from a flat rate to multiple rates that correlate to the alcohol content of the beverage.
5. Introduction of a multiple rate taxation regime that correlates to the alcohol content to the beverages as follows:-
 - i. $\geq 40\%$ alcoholic content: Kshs. 200 per litre
 - ii. $< 40\%$ alcoholic content $10\% \geq$ Kshs. 45 per litre
 - iii. 10% alcoholic content \leq : Kshs. 30 per litre

Their proposals on solar equipment and accessories:-

Issues

1. Lack of clarity on the scope of exemption: the phrase “specialized solar equipment and accessories which exclusively use or store solar power” is open to subjective interpretations as technological innovation continue to unveil new solar equipment that exclusively use solar power.
2. Increased VAT costs associated with the exemption: Input VAT costs accruing throughout the supply chain are non-deductible thereby increasing the cost of supplies to the final consumer.

Proposal

Amendment to paragraph 45 of Part 1 of the First Schedule to the VAT Act, 2013 by inserting the following:-

“Solar equipment including composite solar home system kits, water pumps, solar LED lights, solar refrigerators and solar deep cycle-sealed batteries which exclusively use or store solar power or any other specialized solar equipment as approved from time to time by the CS for the National Treasury, upon recommendation by the CS for Energy.”

Solar home kits include solar powered televisions, radios, phone chargers and torches imported together as one kit.

Justification

1. The above clause will provide clarity and fairness to the industry as it will take into account key solar equipment and accessories in exemption. It will also allow the implementing authorities to draw a line between the gadgets that qualify as solar equipment and accessories and those that do not. This will seal the loop hole that currently exists that allows for equipment that does not exclusively use or store solar power to be submitted to the tax authorities for approval purposes.
2. The proposed amendment takes cognizance of the innovations and new technologies which allows for pairing of several equipment which has been specifically designed to exclusively use or store solar power as well as access by low income families to clean power and appliances to utilize the power bundled together in one kit.
3. Ensuring en-masse availability of clean energy aligns with the government’s goal under the National Energy Policy (2012) to enable the provision of “viable energy supply options” and “appropriate technology to meet energy demand” as well as the Renewable Energy Master Plan.

MEMBERS’ DELIBERATIONS

1. They informed the Committee that they were representing Keroche Breweries Limited.
2. They were tasked to rework on their submission and present it to the Committee.

MIN.NO.NA/F&NP/2018/315: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 7.00pm. The next meeting will be held on 3rd August, 2018 at 9.00am.



22/8/18

MINUTES OF THE 55TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 2ND AUGUST, 2018 IN TAIFA HALL, KENYATTA INTERNATIONAL CONVENTION CENTRE AT 9.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. David M. Mboni, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Alfred Sambu, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Francis K. Kimani, MP
5. Hon. Lydia H. Mizighi, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Ms. Catherine Burure | - | Fiscal Analyst |
| 5. Mr. Collins Mahamba | - | Audio Officer |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | - | Office Assistant |
| 8. Ms. Catherine Waireri | - | Intern |

KENYA OIL AND GAS ASSOCIATION

1. Ms. Rehema Mohamed - Head of Secretariat
2. Mr. Emmanuel Asuma - Accountant
3. Mr. Gabriel Okoyo - Senior Tax Advisor
4. Ms. Evelyn Mwangi
5. Ms. Martha Wangui

FUND MANAGERS ASSOCIATION

1. Mr. Einstein Kihama - Chairman
2. Mr. Gideon Chokah - Head of Customs, SCB
3. Ms. Pauline Ndirangu - Secretariat

KENYA ASSOCIATION OF STOCKBROCKERS AND INVESTMENT BANKS

1. Mr. Willie Njoroge - CEO
2. Mr. Nick Thondeka - Managing Director, Co-Op trust
3. Ms. Gwendoline Kinyua - Product Manager, STANBIK Bank
4. Mr. Mohamed Abdi - Investments Manager, GENAFRICA
5. Mr. Dominic Njihia - Business Development Manager
6. Mr. Irungu Waggema - Head of Innovation & Project, NSE
7. Jacob Orioki - Finance Officer

KENYA PRIVATE SECTOR ALLIANCE

1. Ms. Teresa Barasa - Manager
2. Ms. Caroline Makeli
3. Ms. Mary Mailo
4. Mr. Francis Kinuthia
5. Mr. Tom Omariba
6. Ms. Amy Azania - Senior Policy Officer, One Acre Fund
7. Mr. H. M. Macharia - Director, Twiga

KENYA ASSOCIATION OF MANUFACTURERS

1. Ms. Caroline Mutuku - Legal Officer
2. Mr. Manoj K. Shah - CEO-OSHO
3. Mr. Reinhard Wanakacha - Fiscal Policy Officer
4. Mr. Bharat Shah - Kenafri Industries Ltd.
5. Ms. Jacqueline Osango - Tax Manager, Bamburi Cement
6. Mr. Job Wanjohi
7. Ms. Rosehilda Kamaya

KENYA BANKERS ASSOCIATION

1. Mr. Habil Olaka - CEO

2. Ms. Betty Chuma
3. Mr. Jared Osoro
4. Mr. Maurice Mwaniki

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Public hearings on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/301: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.25a.m. with prayer from Hon. Ndirangu Waihenya, MP. The Chairperson then called for introduction of those present before welcoming the Kenya Oil and Gas Association to present their memorandum to the Committee.

MIN.NO.NA/F&NP/2018/302: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/303: MEETING WITH THE KENYA OIL AND GAS ASSOCIATION ON THE FINANCE BILL, 2018

A representative of KOGA proposed the following amendments:-

Clause 11(a)

To include in the Section 2(1) of the Income Tax Act a definition as follows:-

“Special Operating Framework means an agreement made and entered by and between the Government of Kenya and a person for the agreed business need to be granted on the recommendation of the responsible CS to the Commissioner.”

Justification

1. Their understanding of the use of the term ‘Special Operating Frameworks’ is that through this the Finance Bill recognizes the need to provide fiscal support to government projects that are carried out in partnership with the private sector.
2. The Bill does not provide the meaning and scope of application of “special operating frameworks” which may result in ambiguity and uncertainty in its interpretation.

Clause 18(a)(xi) and 18(b)(ii)

To include definition in the First Schedule Part I and II that Special Operating Frameworks carry the meaning as defined in the Income Tax Act.

Justification

1. Similar as above, this amendment sought to bring clarity in interpretation and application of the Special Operating Framework.
2. It was their appeal that the oil and gas projects currently running under various production sharing contracts with the government are expressly included under the special operating framework and guidelines issued for the application of exemption under this regime.
3. This will allow projects to benefit from relief from VAT through VAT exemption in as much as this was not the position at the signing of the PSCs where supplies to the sector were zero rated for VAT.
4. Their request was very critical because with effect from 1st September, 2018 the transition clauses under Section 68(4) of the VAT Act, 2013 that provided for VAT remission come to an end thus all services consumed by the Oil and Gas Sector become subject to VAT.
5. If no relief is provided for VAT, costs of petroleum operations in the country are likely to increase compared to other countries in the region.

Clause 51(a) and (b)

To include definition in Part A and B of the Miscellaneous Fees and Levies Act, 2016 that Special Operating Frameworks carry the meaning as defined in the Income Tax Act.

Justification

1. This request seeks clarity in definition. Without definition, this will result in a similar situation as currently worded where there exist no guidelines as to what 'public interest' as alluded to in part A(xxii) and B(iv) of the Miscellaneous Fees and Levies Act, 2016 refers.
2. The disregard of PSCs whose provisions include exemption of RDL and IDF reduces investor confidence and trust in agreements signed with the Government of Kenya.
3. The cumulative additional cost on importation to the customs value of goods and equipment imposes a significant additional cost on the industry and diverts capital from core exploration and development activities.

Clauses 5, 9, 10(a) and 11(b)

Demurrage charges should be exempted from WHT by deleting Sections 34(n), 35 (m) and paragraph 3(o) of the Third Schedule to the Income Tax Act.

Justification

1. The shipping business is dependent on port efficiency
2. Applying WHT on demurrage charges has the potential of discouraging shipping lines from transporting oil from Kenya and increasing the cost to contractors exporting oil.

Clauses 5, 9, 10(a) and 11(b)

Insurance premium paid to a non-resident person be exempted from WHT by deleting Sections 34(o), 35(n) and Paragraph 3(o) of the Third Schedule to Income Tax Act.

Justification

1. Insurance is a major component of business. Imported goods must be covered by insurance which often will be taken at the place of shipping.
2. The imposition of WHT on insurance premium creates an additional layer of tax which translates into higher costs.

INSERT THE FOLLOWING NEW PROVISIONS

1. Introduce a proviso to the definition of NRI in Section 2 of the Income Tax Act to read as follows:-

“Provided that:

In the case of the extractive sector i.e. oil and gas mining activities and/or sectors for which the taxation is determined under the Ninth Schedule to the Income Tax Act this definition shall only apply to farm out transactions that includes an over-riding royalty or its equivalent as part of the consideration for the farm out transaction and as captured in the sale agreement.”

Justification

Inclusion of farm out transactions in the definition of NRI for the O & G sector is contrary to the farm down legislation and policy and since there is already a framework for taxation of farm out transactions.

2. Introduction of sub-paragraph 16(e) to exclude mobilization and demobilization fees from service fees. The sub-paragraph will read as follows:

“For purposes of this paragraph, service fee does not include reimbursement of costs, mobilization and demobilization fees.”

They further proposed introduction of sub-paragraph 16(f) to define mobilization and demobilization fees as follows:-

“mobilization and demobilization means the movement of men and equipment to Kenya prior to operating and from Kenya after completion thereof, provided the movement is not to a third party but does not include movement of men and equipment in Kenya during operations.”

Justification

Taxation of sub-contractors' mobilization and demobilization fees

- i. Currently, both mobilization and demobilization are subject to WHT under the ITA.
 - ii. The imposition of WHT on both mobilization and demobilization costs creates an additional layer of tax which translates into higher costs.
 - iii. Mobilization and demobilization are not services provided to the O&G company but they are movement of “people and equipment or machinery” in preparation for provision of services for petroleum operations.
 - iv. Mobilization and demobilization costs are supported by invoices issued to the O & G Company. These invoices are separate from the service fee invoices and the costs can be independently verified to curb any instance of abuse.
 - v. KOGA believes that government agencies such as Ministry of Mining & Petroleum and the National Treasury can verify these costs to ensure that they are within range of the international benchmarks.
3. Introduction of sub-paragraph 16(e) to exclude reimbursements from service fees. The sub-paragraph should read as follows:-

“For purposes of this paragraph, service fee does not include reimbursement of costs, mobilization and demobilization fees.”

They further proposed introduction of sub-paragraph 16(f) to define reimbursements as follows:-

“reimbursement of expenses” means payment by a petroleum company to a petroleum service sub-contractor to reimburse that sub-contractor for payments made to a third

party on behalf of the petroleum company in respect of goods and services which are incidental to the sub-contract and would not normally, in the international petroleum industry, be included in the service fee but does not include a charge for handling or administration.

Justification

Taxation of reimbursement of costs

- i. The reimbursement of costs on global or local service provision Pre-Finance Act, 2014 were not subject to WHT but now are. It is unusual for the reimbursement of costs to be subject to WHT given there is no profit to tax.
 - ii. This principle is intentionally accepted and is acknowledged under Kenya tax law for VAT purposes. In addition, imposing withholding tax on third party costs increases the cost of sub-contracting which in turn discourages local content.
4. Amendment to paragraph 16 of Schedule Nine of the Income Tax Act to delete the provision on deemed interest in relation to the O&G sector. The deemed interest is already addressed under the current transfer pricing rules that regulate related party transactions.

Justification

- i. Upstream pre-development activities are considered high risk given chances of success in exploration drilling are relatively low and therefore debt financing is not normally available.
- ii. Such activities are therefore normally financed via quasi-equity in the form of interest free debt from the parent company and other affiliates.
- iii. The deemed interest provisions unfairly penalize the O&G sector given its usual financing structure because of the inherent risks mentioned above. Subjecting the funds made available through quasi-equity to taxation would limit the funds directly available for petroleum operations and we recommend that all pre-development activities are exempt from the deemed interest provisions.

MEMBERS' DELIBERATIONS

1. Currently, withholding tax is paid on payments to third parties.

MIN.NO.NA/F&NP/2018/304: MEETING WITH THE KENYA ASSOCIATION OF STOCKBROKERS AND INVESTMENT BANKS ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting a representative of the Kenya Association of Stockbrokers and Investment Banks to make his submission.

They proposed the following amendments:-

Section 31(b)(ii)(6)

Objective of the proposed tax

The aim of the tax is to increase the tax base and achieve greater social equality through the redistribution of resources and to raise money to finance the Big 4 Agenda. They support this objective to raise money to finance the Big 4 Agenda.

High volumes low margins

The capital markets industry is typically one of high volumes and low margins e.g.:

1. The NSE earns from 0.0004% to 0.12% of the value of a transaction.
2. The CMA earns from 0.0004% to 0.12% of the value of a transaction.
3. The Central Depository and Settlement Corporation earns from 0.0002% to 0.08% of the

value of a transaction.

4. Stockbrokers earn from 0.024% to 1% of the value of a transaction, depending on the volume and nature of the trade.

Proposal

Removal of the Robin Hood Tax or exemption of capital market transactions from the Robin Hood Tax.

They suggested that public participation should be done prior to budget preparation.

Adverse effects of the proposed tax

1. Lack of competitiveness: investors may prefer to invest in more competitive and cost effective markets.
2. Reduced liquidity in capital market products like Treasury Bonds, Treasury Bills and shares. This shall result in reduced demand.
3. The reduced demand shall adversely affect the value and share price of listed securities.
4. Depressed growth of investments. The inability to move money from one vehicle to another shall result in stunted growth of investments and the economy in general.
5. Eroding retirement benefit schemes.
6. If the movement of money is taxed, the likely effect is that money shall not move and therefore there shall be no trade.

Justification

1. The RHT shall inevitably lead to reduced trading at the NSE.
2. Reduced trading shall mean depressed returns for:-
 - i. Investments (collective and individual)
 - ii. Retirement benefit schemes
3. The country's capital markets shall not attract investors and funds. Currently, trading at the NSE is 70% by foreign investors.
4. As a country, we shall not achieve our national objective of making Nairobi an International Financial Centre.
5. The proposed tax may not achieve the objective of taxing the rich, so as to provide services for the poor.
6. This tax has not been implemented in any other jurisdiction successfully.

Other options

So as to meet the funding gap created by the removal of this tax, they proposed an increase in excise duty on banking services from 10%.

Conclusion

The RHT with regard to capital markets transactions is NOT targeting the rich for the benefit of the poor as the name may suggest. It is affecting all Kenyans that save and invest, all pensionable Kenyans and prospective foreign investors.

They reiterated their support for the Big 4 Agenda but this tax may not achieve the goal of funding this noble agenda.

MEMBERS' DELIBERATIONS

They proposed that the government can increase the Excise Duty on banking services from 10% to 12% instead of the Robin Hood Tax. This proposal was agreed upon by most stakeholders in the banking sector.

**MIN.NO.NA/F&NP/2018/305: MEETING WITH FUND MANAGERS ASSOCIATION
ON THE FINANCE BILL, 2018**

The Chairperson called for introductions of those present before inviting representatives of FMA to make their submissions.

A representative of the association made the following submission:-

He made reference to the proposal in Section 31 (b) (ii) (6) of the Finance Bill, 2018.

The proposed excise duty is applicable to all money transfers including the following:

1. All payments including supplier payments, standing orders, direct debits and online transfers, for as long as the bank is moving money from one account to another;
2. Local and foreign currency transfers, within the bank and even remittances beyond borders;
3. Financial markets transfers such as interbank transactions, securities purchases/sales and investment activities.

They stated that they acknowledge and appreciate the Government's support for the capital markets in Kenya, and the interventions and incentives that the industry enjoys and also appreciate that the Government recognizes that capital markets play a critical role in the economy and facilitate investment growth in the country.

However, they hold the view that, while there were good and noble intentions in introducing the tax, including funding the Big 4 Agenda, there are certain potential debilitating downstream effects on the economy that this tax is likely to instigate in the capital markets industry including:-

1. There will be a significant reduction in liquidity of key capital market assets such as Treasury Bills, Treasury Bonds and Equities. This is because the tax will force a reduction in trading and investment activity and reduce institutional and professional investor participation in securities markets.
2. The reduced liquidity shall result in considerable reduction in demand for these capital markets assets.
3. It will result in the addition of a risk premium to financial market asset prices and reduce the attractiveness of our capital markets to foreign/external investment.
4. Investment funds such as Pension Funds shall witness reduced trading and investment thereby reducing the returns and depressing the growth of these funds.
5. The proposed tax may also result in a high level of attrition in the market by foreign investors, who currently contribute to 70% of trading volumes on average and may witness their exit to more cost effective markets. This may lead to a depression in the market leading to a decline in both the index and market capitalization.

The very nature of the investment process in capital markets transactions involves the continuous movement and transfer of funds across the financial system to facilitate optimal investment of client funds. Typically, these transactions are high volume, low margin transactions.

The above outcomes are clearly in stark contradiction to the Government's financial market development agenda and reforms to deepen the financial markets that the Treasury has laboriously worked to implement in conjunction with the Central Bank of Kenya (CBK), the Capital Markets Authority (CMA), Retirement Benefits Authority (RBA) and other stakeholders in the financial services sector.

This comes at a time when our domestic investment environment is already challenging. The likely impact of this action is asset shrinkage, reduction in private savings and, because it actually incentivizes investors to minimize trading activity, a decline in the liquidity of our capital markets.

Owing to the devastating impact of the proposed excise duty on the financial markets that will significantly raise transaction costs, he urged the Committee to reconsider the decision to introduce the tax, and more specifically, in the capital markets industry. The association was cognizant and worried of the implementation date of this proposed amendment which was 1st of July 2018.

They reiterated their deepest concern about the debilitating impact that the proposed excise duty will have on the entire capital markets industry and sought the Committee's kind intervention and guidance.

MIN.NO.NA/F&NP/2018/306: MEETING WITH KENYA PRIVATE SECTOR ALLIANCE ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting KEPSA to make their submissions.

KEPSA proposed the following amendments:-

HOUSING SECTOR

Increase of Duty on Steel from 25 to 35%

Proposals

1. Reduce or completely remove the import duty on steel used in construction of housing
2. Consider alternatives to stimulate efficient manufacturing of steel away from subsidies
3. Address value chains for efficient production and reduced costs.
4. Address cost of power as a main factor of production and overall cost of commodities
5. Review importation cycle as the non-financial costs reflect on the price imports

Justification

1. These taxation proposals will make steel costly and increase the cost of housing construction. This defeats the purpose of the housing aspirations on the Big Four Agenda.
2. Currently, steel duties have gone up by 5% despite the fact that steel is one of the major costs in construction of housing and almost half of the building cost is steel related.
3. The local capacity is not able to meet the current demand, a situation that is to be compounded by the rise in construction because of the Housing targets from the Big Four Agenda.
4. The government tax policy does not support the housing plan under the big 4 agenda.

Increase in the duty of Particle Board & Medium Density Board to USD 120/MT or 35% and increase in the duty of ply wood and block boards to USD 230/MT or 35%

Proposals

1. The government should reduce the tax to encourage imports of the deficit and to save the forests. The recent price increases are so high that this will affect the plan to deliver the government's low-cost housing pledge.
2. To reduce or completely remove the import duty on particle boards.

3. Explore policy alternatives to stimulate manufacturing of timber products away from tariffication.
4. Address value chain efficiencies to reduce costs from inefficient production.
5. High cost of power, a main factor of production reflects in the high prices
6. Suspend this proposal until such a point as when the housing agenda which will have been realized with a view to save trees during this period of spurred housing construction from the Big Four Agenda.

Justification

1. An increase in import duty will increase cost of construction for components for affordable housing.
2. As is the case with steel, taxing of these timber products will increase the cost of the otherwise cheaper timber imports thereby making housing construction costly. This therefore also defeats the purpose of the housing aspirations on the Big Four Agenda bearing in mind that almost 10% of building cost is related.
3. Government has increased taxes for MDF, particle board, plywood and block board from 25% to 35%.
4. Furniture manufacturers are now increasing their prices.
5. With a ban on logging in Kenya, the cost of forest products has substantially gone up and in some instances by 50%.
6. Kenya has a major shortage of timber and ways of conserving the same should be sought by encouraging the importation of timber raw material used in the timber industry which will also encourage local value addition manufacturing.
7. Adverse environmental implications are also likely to arise as local supply may resort to logging and illegal legal activities.

Employers and employees to contribute 1% of the employees' emoluments to a National Housing Development Fund (max. Kshs. 5,000)

Proposals

1. Strengthen the National Housing Corporation as opposed to setting up NHDF
2. Suspend the proposal until and allow wide stakeholder engagement on this proposal. This will give room for setting up well structured, NHDF has and development of operational guidelines and the governance structure has been set up.

Justification

1. There is need for stakeholder engagement on this proposal as it has not been received positively by all the stakeholders.
2. The employee-employer contribution to the NHDF is a burden to employers. This burden will further reflect in increased costs of employment and the demand for labor will automatically come down (reduced employment).
3. The actual benefit is not commensurate to the establishment of the fund as the cost of running institutions is estimated to be as high as 40% (NHIF).
4. Housing Fund not properly structured and is a Robin Hood Tax to affect the mere 27% employed Kenyans.
5. Establishment of another institution for housing when we have an existing NHC which is poorly funded is ill advised.

Supplies imported or purchased for the direct and exclusive use in development of affordable housing by licensed SEZ is exempt from VAT. This is subject to the following conditions:-

1. Recommendation of the CS for Housing

2. A minimum of 5,000 units to qualify
3. Currently Vatable at 16%

Proposal

1. Establishment of more SEZ's across the nation is required
2. Reduce the number of units to benefit from lower corporation tax from 5,000 units to 25 units to incentivize small scale contractors.

Justification

1. Currently there are only 2 licensed SEZ in the country therefore making this condition very difficult to achieve.
2. A threshold of 5,000 units is too high and should be reduced to 25 units.
3. 5 year period to offload unsold unit stocks is too long considering the turn-around for financing.

AGRICULTURE

First Schedule to the VAT Act is amended by deleting paragraph 45 and substituting therefor the following new paragraph-

1. Delete paragraph 45 part 1 (v) and make consideration for solar home system kits.
2. Also clarify around solar home lanterns which have the battery included in the lantern.

Justification

1. They wanted clarity on whether maize seed was still tax exempt from VAT under paragraph 25 which excludes cereals under chapter 10
2. Delete paragraph 45 part 1(v) and make consideration for solar home system kits. Also clarify around solar home lanterns which have the battery included in the lantern.

Clarification of Paragraph 92 on transport implication within EA region

Proposal

Reconsider this in the spirit of East African integration.

Justification

They believed that this amendment will hinder trade within the EAC region and could possibly shift importation to ports outside Kenya.

Amend paragraph 93 by inserting the words "and equipment" immediately after the word "materials"

Proposal

To promote food security and enhance objective of post-harvest management.

Justification

They are pleased to see continued support for exempting post-harvest loss/storage technologies and ask the government to consider extending the exemption to Hermetically Sealed Storage Bags (such as PICS bags) which are critical for small holder home and warehouse storage.

BANKING SECTOR

Excise Duty on money transferred by banks, money transfer agencies and other financial service providers shall be 0.05% of the amount transferred in case of money transfer of Kshs 500,000 or more.

Proposal

1. Delete section 31 Part B of the Finance Bill 2018.
2. Explore alternative tax measures that are less disruptive to raise targeted revenues such as consideration of increasing Excise duty on money transfer services from the current rate of 10% to 12% perhaps.

Justification

- The Excise Duty is to take effect as from 1st July 2018. No guidelines have been provided on how the tax is to be implemented in addition to lack of definition of “money transfer”.
- This will lead to double taxation across jurisdictions.
- Financial cost of doing business in Kenya is expected to increase with all the gains recorded in the past in pursuit of financial inclusion bound to be eroded.
- Adverse economic impact is expected if the tax is applied on transactions such as interbank transactions, international trade transactions, capital market trades, forex transactions, tax collection, dividends etc. Kenya be rendered an unattractive financial destination.

ENERGY SECTOR

Proposal

Consider classifying LPG as Zero-rated Gas made cheap and available will save forests.

Justification

1. By re-classifying LPG from zero-rate to VAT tax exempt, LPG players will have to bear the cost of VAT on both operational and capital expenditure which in reality means that both LPG investment and operating costs will increase thereby adversely impacting on to the final consumer’s costs.
2. Against health conditions resulting from indoor pollution.
3. Spurring of LPG will manufacturing from the zero-rate will result in increased jobs and provide export opportunities to other African countries.

Proposal

Briquettes and pellets made of waste materials are subject to VAT of 16%, which can make them more expensive than charcoal or firewood.

VAT zero-rating on briquettes and pellets made of agricultural or forestry waste.

Justification

1. Briquettes and pellets made of waste materials are subject to VAT of 16%, which can make them more expensive than charcoal or firewood.
2. Zero-rating VAT on briquettes and pellets will make them 16% cheaper and therefore more affordable for households and schools and charities. Informal charcoal and firewood suppliers do not charge VAT and therefore there will be very little loss in revenue.
3. The Government of Kenya has committed to ending deforestation. Briquettes and pellets provide a viable alternative to charcoal and firewood.
4. Briquettes and pellets are made of agricultural waste, sawdust, or charcoal dust and do not require any trees to be cut in the process.

Proposal

Denatured Technical Alcohol (Ethanol) for cooking is subject to VAT at 16%, which adds around 12/= per litre to the retail price that customers are faced with.

VAT Zero-rating on Denatured Technical Alcohol Domestic Cooking Fuel

Justification

The Government of Kenya has evidenced its commitment to transitioning Kenyan households to clean cooking fuel. Providing technical alcohol with zero-rating VAT status will enable the lower income mass-market to access clean cooking fuel, and also enable rural distribution to occur. The government currently earns no revenue from this category so the impact to government revenue is NIL.

Proposal

Imported Ethanol fuel is subject to an import Tariff of 25%. This equates to a higher price to customers of 10-12/= per litre.

Removal of Import Tariffs on Denatured Technical Alcohol for Domestic Cooking Fuel, so that reliable supply of quality ethanol cooking fuel can be made available to customers in the short term.

Justification

Achieving mass market uptake of liquid ethanol cooking fuel requires imports of Denatured Technical Alcohol, because of insufficient local quantities produced. Treasury currently derives no revenue from imports of denatured technical alcohol, and so this proposal will be revenue-neutral to Treasury, with regards to current revenue projections.

VAT Exempt on HSC code 7321 1900 and 7321 8900

Proposal

Consider zero-rating

Justification

1. The HS Codes for finished goods and knock-down kits are exempt from VAT, which gives importers an advantage in the marketplace vs. local manufacturers who have to pay VAT on raw materials. In the 2016 Finance Act, GoK made raw materials being made into improved jikos with a special process, however, implementing this has not been realistic. Zero-rate would make manufactures more competitive.
2. Treasury would not lose significant revenue in shifting from exempt to zero-rated (estimated 30Mn KES per year).

TRANSPORT SECTOR

Proposal

Demurrage Charge to be defined to mean:

“Demurrage charges” means the penalty paid for exceeding the period allowed for taking delivery of goods or returning of any instrument used for transportation of goods; and for the purpose of this Act, demurrage charges shall only relate to cargo exported from Kenya and cargo imported into Kenya.

Justification

1. Currently the demurrage charges relating to the export are taxed under section 9 of the ITA as part of the gross amounts received by a non-resident ship-owner from the carriage of cargo which is embarked in Kenya. Implementing the amendment as is will result to double taxing the export component of the charges under section 9 and at the same time under the new provisions introduced by the Finance Bill.
2. In addition, demurrage collected by a Kenyan ship Agent on delays that happen in other countries is not income incurred in or derived from Kenya.

Proposal

Insert another Clause after Clause 4 of the Finance Bill that reads as follows:

4. The income tax Act is amended by repealing section 9(1) and replacing it with the following new section-

9(1) Where a non-resident person carries on the business of ship-owner, charterer or air transport operator or a ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from that business from the carriage of the passengers who embark, or cargo or mail which is embarked, in Kenya, shall be the gross amount received on account of the carriage and demurrage charges; and those gains and profits shall be deemed to be income derived from Kenya, but this shall not apply to

gains or profits from the carriage of the passengers who embark or cargo or mail which is embarked, in Kenya solely as a result of transshipment.

Justification

1. **Demurrage charges relating to** cargo imported into Kenya will be accorded same treatment as demurrage exported from Kenya and freight tax. This will harmonize the taxation in the shipping business in Kenya and provide simplicity.
2. It will be clear on whose obligation to withhold and remit tax is on, which in this case will be the local shipping agent.
3. In addition, this will also ensure the Government realize the tax revenue it expects to collect from this new tax given that the big tax compliance burden created on the numerous small-scale traders who do not import/export consignments frequently will now rest with the local shipping agents and not on the small scale traders.

Proposal

Clause 10, Section 35 of the ITA

Inserting the following new subsection immediately after subsection 1(A)-1(B) for the purposes of demurrage charges, the shipping tax shall be responsible for the deduction of tax.

Justification

1. By expressly assigning the obligation to withhold and remit tax to the local shipping agents, potential misinterpretations of the law that could arise will be cured and the much needed clarity will be provided.
2. This will also ensure the Government realize the tax revenue it expects to collect from this new tax given that the big tax compliance burden created on the numerous small-scale traders who do not import or export consignments frequently will now rest with the local shipping agents and not on the small scale traders.

Proposal

Sub-clause 11(b) of the Finance Bill

Clause to be amended to read as follows- (b) in paragraph (3), by inserting the following new subparagraph immediately after subparagraph (n)-

(o) demurrage charges, paid to ship operators, two and a half percent of the gross amount payable;

Proposal

Clause (1) (b) of the Finance Bill

Clause 1(b) of the Finance Bill be amended to read as follows: (b) Section 4, 5, 6, 7, 9, 10(c), 11(a), 11(b), 11(c) and 68, on the 1st January 2019.

Justification

1. A reduction of the tax rate from 20% to 2.5% will reflect a fair decrease of costs to the importers/ exporters and thus maintain a competitive edge to the Port of Mombasa and Kenya at large. This is because, subjecting demurrage to withholding tax at the proposed rate of 20% would certainly see the Shipping lines add the additional cost to the freight charges passing the same on to the consignees.
2. The postponement of the effective date of the amendment to 1st January 2019 will allow the shipping agents time to configure their systems and put proper controls in place to ensure full compliance with the requirement of the law.
3. In addition, this will give KRA time to reconfigure their iTax system allowing agents to properly account for the tax using the system as opposed to making manual interim payments.

MEMBERS' DELIBERATIONS

1. They informed the Committee that LPG is currently zero-rated and status quo should be maintained in order to make it affordable.
2. They also informed the Committee that Briquettes are currently taxed at 16%. They proposed that they should be zero-rated in order to make them affordable to everyone.

MIN.NO.NA/F&NP/2018/307: MEETING WITH KENYA ASSOCIATION OF MANUFACTURERS ON THE FINANCE BILL, 2018

The Chairperson called for the introductions of those present before welcoming KAM to make their submissions

A representative from KAM submitted the following proposed amendments:-

Clauses 2, 5, 9 and 10

Deletion of the proposed provisions under clause 2 and 5 introducing demurrage charges.

Justification

Demurrage refers to the charges or penalties assessed for delay of operations of loading/unloading. Demurrage charges is therefore an inefficiency penalty and not an income that should not be classified under section 10 of Income Tax Act. Section 10 relates to income from management or professional fees, royalties, interest and rents. These are all positive incomes that do not arise from a penalty or inefficiencies.

The Bill proposes the definition of demurrage charges as penalties paid for exceeding the period allowed for taking delivery of goods or returning of any equipment used for transportation of goods. Similarly, this definition serves to show that demurrage charges do not qualify as income similar to management, professional fees, royalties, interest and rents.

In Kenya, importers incur demurrage costs as 'unavoidable costs', mostly due to inefficiency at the Kenyan Ports and government agencies charged with managing inbound cargo processes such as;

1. Kenya Ports Authority does not have enough berths to manage the number of vessels calling into Mombasa with bulk cargo especially
2. Kenya Revenue Authority frequent downtime of their systems slows down cargo clearance
3. KEBS sampling and testing cycle time delays release of cargo to importers as most tests must be done in Nairobi

The effect of such demurrage costs being recognised as income, is that such costs shall be passed to citizens who are already paying taxes to enable improvement of services. Charging tax on an inefficiency cost only makes the situation worse for the common citizenry.

The action of recognising inefficiency as an income may encourage an even a higher level of inefficiency from Government agencies in order to enhance or increase the new revenue stream.

Clause 4

Inclusion of a proviso under the new Section 7A to provide clarity on how already taxed dividends will be implemented to ensure that double taxation is not imposed as follows;

(i) Replace the new proposed clause 7A with the following:

“Where a dividend distributed out of gains or profits excluding dividend income, on which no tax is paid under the provisions of this Act, the person distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the applicable resident corporate rate.

Provided that this section shall not apply to registered collective investment schemes.”

Justification

1. The Government has been offering tax credit for dividends paid out by a company from dividends. The new provision proposes that distribution of such dividends will trigger additional tax.
2. This proposal may cause double taxation and increase administrative costs if the provisions are not clearly provided for. As it is, the provisions are ambiguous as to how proof of the same will be done.

Clause 6

Deletion of clause 22 (1) introducing presumptive income tax.

Justification

1. The proposal of presumptive income tax seems to be tied to County Governments and their function of issuing business permits. This therefore means that the tax should be subjected by County Governments as opposed to the national level.
2. There is need for separation of income tax from national and county government.

Clause 7

Inclusion of the conditions proposed to be set by the Ministry of Energy for approval of thirty percent of electricity cost.

Justification

1. Manufacturers congratulate the Government for this incentive to the manufacturing sector. However, there is need to understand what are the conditions set by the Ministry prior to the approval of the incentive.
2. The conditions should be clearly defined in the law to provide certainty in the law. The lack of conditions being included may lead to delays and even not being achieved despite that it has been included in the law.
3. The Ministry of Energy should be tasked to provide the conditions in consultation with the manufacturing sector to be included in the Income Tax Act.

Clause 11

Inclusion of a definition of special operating framework arrangement.

Justification

The term special operating framework arrangement is proposed to be introduced in the Income Tax Act. This term should be defined to ensure clarity as to its extent. Ambiguity on the same may be misused.

Section 42 A of the Tax Procedures Act

Introduction of new provisions in the Bill amending section 42A of the Tax Procedures Act to reduce the period of twenty four months required to demonstrate being in a continuous credit position as follows:

Delete the words “twenty four” and replace with “three months” under Section 4A of the Tax Procedures Act.

Justification

The 6% is prohibitively a double tax. Effectively registered taxpayers/manufacturers are being forced to pay an additional 6% Withholding VAT (WHVAT). Further in the case of refunds, there is no provision to claim the refund of the 6% WHVAT.

The Second Schedule to the Value Added Tax Act, 2013

Introduction of new provisions in the Bill to zero rate select building materials which are locally manufactured for use in construction of affordable housing VAT rate from 16% to 0% as follows:

The Second Schedule to the Value Added Tax Act, 2013, is amended—

- (i) Amendment of Second Schedule to No 35 of 2013.
- (a) in Part C, by inserting the following new paragraphs —
 - 6810.11.00 and 6810.19.00 Blocks (paving)
 - 6801.00.00 Big square slabs
 - Concrete (semi-product)

2517.10.00 Aggregates

Justification

One of the Big four Agenda priorities is housing. The construction manufacturing sector plays a key role in supporting Governments agenda. Some of the materials manufactured by the sector are subjected to 16% VAT thereby increasing overall costs of building and which will in turn affect the housing agenda.

They proposed the zero rating of the following items to allow for the sector to be able to claim their VAT costs;

- 6810.11.00 and 6810.19.00 Blocks (paving)
- 6801.00.00 Big square slabs
- Concrete (semi-product)
- 2517.10.00 Aggregates

The Second Schedule to the Value Added Tax Act, 2013

Introduction of new provisions in the Bill to zero rate Laboratory equipment for soil analysis as follows;

The Second Schedule to the Value Added Tax Act, 2013, is amended—

- (i) Amendment of Second Schedule to No 35 of 2013.
(a) in Part C, by inserting the following new paragraphs —
9027.80.00 - Laboratory equipment for soil analysis.

Justification

CET rate is 0%

The direct and indirect effect of the current situation. Eg;

1. Impact to business; Will help farmers to grow the economy
2. Impact on jobs; Create more jobs for the youth. The new change will help increase farmers yield in Kenya and hence their incomes.

Agricultural sector; Animal feeds (Finished product of animal feeds)

Introduction of new provisions in the Bill to zero rate Finished product of animal feeds as follows;

The Second Schedule to the Value Added Tax Act, 2013, is amended—

- (i) Amendment of Second Schedule to No 35 of 2013.
(a) in Part C, by inserting the following new paragraphs —
9027.80.00 - Laboratory equipment for soil analysis.

Justification

Currently finished product of animal feeds is exempt from VAT while the manufacturer incurs VAT on CAPEX, Raw Materials, packing materials, services and any other goods and services (e.g. consultancy, architect, premises, leases, etc.). This becomes a cost to the manufacturer.

Propose on capital equipment for animal feeds as follows:

The Sale of Animal Feeds to be classified as zero rated for VAT. Registered Animal Feed Manufacturers with Ministry of Agriculture and Treasury be granted VAT Zero rated status on all CAPEX and inputs (system similar to Export Processing Zones).

If feeds sales are Zero Rated, then the manufacturer will be able to claim a refund of the VAT paid and suppliers are not impacted on supplies they make and the level of Input tax they are able to claim. If manufacturer is zero rated then suppliers supply at zero rate VAT. Thus, no impact on input tax claim.

Pharmaceutical/metal sector

Introduction of new provisions in the Bill to impose 16% VAT on Aluminum Closure Sheet (Foil) unprinted not exceeding 0.20mm thickness;

The Second Schedule to the Value Added Tax Act, 2013, is amended—

- (i) Amendment of Second Schedule to No 35 of 2013.
(a) in Part C, by inserting the following new paragraphs —
7607.19.10 - Aluminium Closure Sheet (Foil) unprinted not exceeding 0.20mm thickness.
8309.90.90

ROPP Aluminium Closure – description in tariff is “OTHERS”

Justification

The material used to manufacture pharmaceutical caps and alcohol bottle closures. The description can be changed so that it does not coincide with the foil paper people import for packing food. The specific description should change to Aluminum Closure Sheet unprinted not

exceeding 0.20mm thickness and a new code can be generated for this specific item or include not exceeding 0.23mm thickness. In addition, exporting countries subsidize their similar products. There is also adequate capacity from local manufacturers.

Zero rating of input and output of VAT for non-EPZ registered Textiles and Apparels manufacturers.

The Second Schedule to the Value Added Tax Act, 2013, is amended—

(i) Amendment of Second Schedule to No 35 of 2013.

(a) in Part C, by inserting the following new paragraphs —

Local input and output registered Textiles and Apparels manufacturers

Justification

1. There exists an un-level playing field with EPZ based textiles and apparels manufacturers while accessing the Kenyan market. Local manufacturers pay full VAT, and Duties unlike the textile manufacturers under the EPZ scheme.
2. Because of the stay of application, the non-EPZ manufacturers are not benefiting from preferential tariff treatment yet the products confer origin. It will bridge the un-level playing field between EPZ based manufacturers and Local manufacturers. It will also make local manufacturers competitive against imports.

Clause 18

Deletion of clause 18 to allow for maize corn seed to be exempt by re-inserting paragraph 28 under the First Schedule to the Value Added Tax Act, 2013 with the following item, Maize (corn) seed of tariff no. 1005.10.00.

Justification

1. The Agriculture sector is the backbone of Kenya's economy and hence its significance in the country. The Government has recently included it as a priority agenda for the government under the Big Four pillar. Introduction of VAT on Maize (corn) Seed will be detrimental to Not only food security but also will make our farmers less competitive compared to farmers in the East Africa region.
2. The effect of this will be increased imports which is a direct impact of Vegetable Seeds being Vatable. Kenya will be one of the few countries in Africa that charges VAT on seeds.

Clause 24

Deletion of clause 24 and replacing the provisions under section 10 of the excise Act imposing inflation as follows;

(2) Each rate of excise duty specified in column 2 of the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula —

$$A (1 + (0.3)B)$$

where —

A is the rate of excise duty on the day immediately before the adjustment

day; and B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.

Justification

The inflation adjustment formula should be changed to reflect the impact inflation has on the alcohol subsector. Firstly, inflation is impacted by the cost-push inflation that's affects cost of production that impacts manufacturers. Secondly, 40% of the products included in the basket of goods used to calculate in the Consumer Price Index (CPI) are excisable goods; i.e. alcohol, tobacco, non- alcoholic beverages, airtime, fuel and financial transactions. When excise duty is increased on excisable goods, inflation increases in the preceding months, thus causing a double jeopardy as it becomes an inflationary accelerator by itself, which will impact the CPI. Thirdly, the inflation adjustment does not take into account that food prices have the biggest impact on the CPI. Food account for 30% of the CPI, meaning that in times of drought and famine, inflation is bound to go up impacting the disposable incomes of consumers and this has a direct effect on demand of excisable goods which are largely discretionary spend to consumers.

The issue is whether the manufacturing sector are agreeable to inflation being imposed.

Constant rate of inflation due to formula – does it reflect the market condition – low/high.

The change will lead to:

1. More predictable tax environment that encourages investments and job creation
2. More stable inflation rate thus creating conducive economic environment
3. Revenue growth for government in line with GDP growth

First schedule of the Excise Act – Part 1

The First Schedule to the Excise Act, is amended by introducing a new provision as follows—

(i) Amendment of First Schedule

(a) in Part 1, by inserting the following new paragraphs —

2009.19.00 - Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter- other

Excise duty 5 Ksh per litre

Justification

The Excise Duty on juices is Kshs. 10 which is affecting the competitiveness of the sub sector manufacturing juices. The sub sector complements the Agricultural sector through getting its raw materials to manufacture from the sector. The Government needs to incentivize the sector in order to promote health living by citizens through the juices. The proposal to reduce the excise rate will contribute to the following:

1. It will give time for the industry to grow and create backward linkage in the sector in line with Big 4 Agenda on food security and manufacturing.
2. Excise tax creates an imbalance in the economy since fresh squeezers of juice in cafes etc are not taxed
3. The administrative costs of collecting tax on juices and water is too high-no excise procedures for water and juices.

4. Fruit based beverages are a healthier option and thus should not be adversely taxed.
5. Increased turnover will lead to more excise duty and VAT will increase revenue to the government.
6. To enhance value addition on production of related by-product which generates additional tax (VAT + Corporate Tax)
7. Increased employment and hence more income tax

First schedule of the Excise Act – Part 1

The First Schedule to the Excise Act, is amended by inserting a new provision as follows—

(i) Amendment of First Schedule

(a) in Part 1, by inserting the following new paragraphs —

Spirits of undenatured ethyl alcohol; spirits
liqueurs and other spirituous beverages of
alcoholic strength exceeding 10%

Shs. 100 per litre

Justification

Excise duty in Kenya for Undenatured ENA is Kshs. 200 per litre. This amount is higher compared to EAC counterparts especially in Uganda which is at the rate of UShs 60% and in Tanzania it is 0%.

This has resulted in smuggling of illicit alcohol from the two countries into Kenya and a great loss to ENA producers and to the Exchequer. With the reduction in the excise duty, there will be an increase in sales resulting in increase in employment, investment attraction, the country will go towards meeting the increase in manufacturing as per the “Big Four” and KRA will maximize on revenue.

First Schedule to the Excise Act

The First Schedule to the Excise Act, is amended as follows—

(i) Amendment of First Schedule

(a) in Part 1, by inserting the following new paragraphs —

cigarettes containing tobacco or tobacco substitutes" Shs. 2500 per mille

Justification

1. Kenya until last year imposed a single tier excise rate on cigarettes. The move to a two tier specific excise rate has seen a major decline in volumes (volumes dropped 12% in 2016 and 9% in 2017) due to reduced consumer affordability.
2. Stability and predictability in the excise environment by applying minimal increases using the current excise rate of Kshs 2,500 per mille for filter cigarettes as the base rate.
3. The excise shock of 2015(a 50% increase on previous weighted average) was unprecedented and has contributed to the major decline in volumes.

4. Having minimal steady excise increases based on inflation adjustment as provided in the Excise Duty Act, 2015 prevents occurrence of excise shocks. Illicit trade in cigarettes has gone up from an average of 3.5% in 2016 to 12.4% in November 2017.
5. Government effort to introduce second specific excise tier for cigarettes without filters to cater for lower income consumers has not gained acceptance with consumers leading to a 10% drop in volumes and an excise revenue drop of 20% (Kshs 150 Million). If government effects a 10% inflationary adjustment in 2018, our volumes will recover at 3% which will translate to increased contribution to government excise revenue to Ksh. 14.3 Billion in 2019.

First Schedule to the Excise Act

The First Schedule to the Excise Act, is amended as follows—

(i) Amendment of First Schedule

(a) in Part 1, by deleting the words “per unit” and replacing with the words “ml” as follows
Cartridge for use in electronic cigarettes @ Kshs. 3/ml

(b) in Part 1, on Electronic cigarettes by deleting “KShs. 3000 per unit” and replacing with “KShs. 2000 per unit” as follows :

Electronic cigarettes @ KShs. 2000 per unit.

(c) in part 1, on Cartridge for use in electronic cigarettes by deleting “KShs. 2000 per unit” and replacing with “KShs. 3/ml” as follows :

Cartridge for use in electronic cigarettes @ KShs. 3/ml

Justification

Electronic cigarettes do not contain tobacco products and are significantly less risky alternatives to conventional cigarettes.

Their proposal was for the excise base to be related to the weight/volume of the consumable and not the delivery device. This will increase manufacturer’s profitability and consequently increase corporate and excise revenue for the government.

First Schedule to the Excise Act

The First Schedule to the Excise Act, is amended as follows—

(i) Amendment of First Schedule

(a) in Part 1, by deleting the words Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307 and the rate thereof of 10%.

Justification

1. Local manufacturer is losing competitiveness vs major foreign player. Our local industries are manufacturing basics products with low Gross margin compare to most foreign players who can support the duty costs. Local player had to increase their prices (around 5%), and it is the final consumer that will pay the final bill.
2. This is jeopardizing local employment. Removal of excise duty will increase competitiveness of local cosmetics manufacturers. This will lead to creation of new jobs and attract new investments.

3. The removal of tax will also be a source of foreign exchange because of export revenue and enhance affordability of basic hygiene products.

Clause 31

Deletion of the provision imposing KShs. 20 per kg on sugar confectionery under clause 31 and amend by introducing new provisions as follows;

- (a) in Part 1 - IMPORTED Sugar confectionery **of tariff heading 17.04 @ KShs. 20 per Kg**
- (b) in Part 1 - IMPORTED White chocolate **in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00 @ KShs. 200 per Kg**

Justification

There are at least eight (8) main confectionery manufacturers in Kenya directly employing about 3,459 people and 16,000 indirectly. Through planned investments, the sub-sector anticipates to create additional jobs of about 4,500 by 2022.

Reasons why the excise tax should not be imposed:

- i) Majority of consumers of these products are aged between 2 to 18 years of age and this amounts to taxing them ex-ante (that is before becoming “real” income earners);
- ii) Today, thousands of unemployed youths are in hawking business for sweets and chocolates, hence imposing an excise tax on these products is likely to render them jobless. This is because not only will working capital requirement increase, but also profit margin will shrink due to anticipated decline in sales;
- iii) Other EAC countries such as Uganda have lifted the imposition of equivalent excise tax on locally manufactured confectionery and chocolates citing increase of smuggling, counterfeits and disincentive to attract sector investment. Imposing the excise tax on domestic confectionery manufacturers will likely create a replica of Uganda’s post-excise tax regime on confectioneries.
- iv) Investment in to the sector started during pre-independence period and number of confectioneries manufacturers entering the sector has been on an increasing trend. The latest entrant into the sector was Rok Industries Ltd in 2018 (see Table 2). Imposing the excise will act as a disincentive to potential investors.
- v) In 2017, merchandise trade deficit continued to widen from KSh 853.7 billion in 2016 to KSh 1,131.5 billion. However, as indicated Table 3, confectioneries export have been on increasing trend, from 0MT in 2000 to about 23,000 MT in 2017 (about 50% of local production). Imposing excise tax will destabilize domestic base which should act as a bedrock for export production.
- vi) The amount of revenue to be collected by imposing the excise tax will be about 0.07% and 0.05% of the projected revenue and total budget for 2018/2019.
- vii) Globally, confectioneries have never being in the blanket for excise tax.

Impact on manufacturers

- 1. Increased cost of production hence high per unit price.

2. The excise tax is to be imposed on production; this compounding effect on liquidity position of manufacturers. This is because, first, liquidity is already constrained by Withholding VAT and Export Refund formula. Second, most of the sales are on credit which extends to about 100 days.
3. Recovery from the aftermath of 2017 general election will be greatly undermined.
4. Imposing the excise tax will likely reverse the gains that the sector has accrued over time through value chain integration.
5. Imposing the same excise tax on confectioneries and chocolates amounts to making a strong assumption that the two products are of similar value

By imposing an excise tax of Ksh. 20 on imported confectionery and Ksh. 200 on imported chocolate, the government will collect almost similar amount of tax revenue as imposing it on both domestic sales and imports of confectionery and chocolates. This is important for local manufacturers because:

1. It will go a long way in supporting the local industries in sustaining the current employment and creating more employment opportunities through planned investments;
2. It will be a progressive tax because imported confectionery and chocolates target high-end consumers
3. Enhance value chain integration;
4. It will be in sync with the spirit of the Big 4 agenda.

Deletion of the provisions under clause 31 (b) ii 6.

Justification

This will be a major expense to companies that have a large number of transactions, including manufacturers. The proposed tax goes against the President's big four agenda aspirations since the tax will make the local manufactured goods to be less competitive and face stiff competition from cheaper imports, or in the export markets.

Companies especially manufacturing are basically, very closely monitored by KRA, and majority of them do comply with KRA in declaring and paying their due taxes. As it is, they are already heavily taxed, and more levies and taxes will only discourage new investment.

Some of the effects of the proposed tax are;

1. Discourage technological advancement in the financial sector and revert citizens back to paper transactions.
2. This will also discourage employment, as companies will be under pressure to keep overheads down.
3. It could lead to increased scope for fraud and delayed settlement of debts as payments are split to avoid the additional cost.
4. The proposed tax could reduce the total volume traded in financial products, with negative consequences on employment and also loss of average tax.
5. The tax could end up being a stealth tax as the affected companies may end up passing the tax to the final consumer with no guaranteed transparency about who exactly should bear the costs.

6. The tax has also an effect of double taxation for the companies; Example a company borrows a loan to facilitate its operations, this means it will be taxed when receiving the loan from the bank then taxed again when paying its suppliers, receiving money from its customers and also when repaying for the loan.

In the event that the Government imposes the tax, there is need for clarification whether of transfer would include cheque payments, payments to the KRA, internal company transfers between accounts, transfers to third parties within the same bank etc.

NEW PROVISIONS

Introduction of a new clause to remove IDF on raw materials and intermediate inputs or have a scheme for export outside Kenya to refund IDF for the quantum of the export and a mechanism can be worked out for refund or offset against other taxes for industrial inputs used for manufacturing

Justification

Import Declaration Fee continues to make the manufacturing sector less competitive. This is because local goods are subjected to import declaration fee in addition to duties that are expected to be paid. The history of the IDF fee was that it was to be a service fee to facilitate importation. However this fee is being used to stifle trade since importers are still charged by several other agencies for their services.

The effects of IDF on the manufacturing sector;

1. IDF increases the cost of imported raw materials and thus increases the unit cost of production and ultimately the prices at which the consumers get the products.
2. A Waiver of IDF on imported raw materials and intermediate inputs will increase competitiveness
3. Increased competitiveness of local manufacturers
4. Growth of the current companies and import substitution.
5. Save foreign exchange and create jobs.
6. Discourages and disincentivizes exports.

New provision to remove RDL on raw materials and intermediate inputs or have a scheme for export outside Kenya to refund RDL for the quantum of the export and a mechanism can be worked out for refund or offset against other taxes for industrial inputs used for manufacturing

Justification

The Railway Development Fund is an additional tax that manufacturers have to pay in the importation of the raw materials and inputs. This tax makes local goods less competitive compared to other EAC countries and also from cheaper imports.

1. RDL increases the cost of imported raw materials and thus increases the unit cost of production and ultimately the prices at which the consumers get the products.
2. A Waiver of RDL on imported raw materials and intermediate inputs will increase competitiveness
3. Increased competitiveness of local manufacturers
4. Growth of the current companies and import substitution.

5. Save foreign exchange and create jobs

Clause 25 (3)

Inclusion of the word “writing” under clause 25 (3) as follows;

The Commissioner may grant an application under this section if satisfied that there is reasonable cause and shall notify the applicant accordingly in writing at least five days before the due date:

Justification

The previous provision include the requirement of the notification to be in writing.

Clause 37

Deletion of the reference to the commissioner as “he”

Justification

There is need for the use of gender sensitive language in the Bill and avoidance of gender sensitive language.

Clause 46

replacing the conditions provided for under clause 46 which seeks to amend section 89 (7) with the following;

- (a) being absent from the country.
- (b) Uncertainty as to the question of fact or law
- (c) sickness absence from country or other disability that may have occasioned the cause of the oversight
- (d) Such other similar reasonable ground as the Commissioner may deem fit

Justification

Section 89 of the Tax Procedures Act 2015. Section 89(7) as it stands now states that mitigation for waiver of penalties and interest will be considered for waive by the Commissioner if occasioned by:

- a. Uncertainty as to the question of fact or law.
- b. Consideration of hardship or equity, or
- c. Impossibility or undue difficult or expense of recovery of tax.

The Finance Bill is now being amended by removing a. and leaving 2 and 3. It is unlikely that taxpayers are going to satisfy the thresholds in these two and it maybe another way of saying there is no remission. In fact both of them are threshold for the commissioner and not the taxpayer. We propose the following grounds;

- a. Being absent from the country’.
- b. Uncertainty as to the question of fact or law
- c. sickness absence from country or other disability that may have occasioned the cause of the oversight
- d. Such other similar reasonable ground as the Commissioner may deem fit

Clause 68

Remove the levy from private sector and finance housing agenda from national pool. They proposed that the section of the Bill should not to be enacted.

1. There is need for stakeholder consultation with all the relevant players on the proposal before enacting it.
2. This is yet another cost on employees and employers, and will discourage potential investors and employment. It will lead to an increase in the cost of employment reflecting to an incremental cost on the operation of business to the employer reducing the demand for labour.
3. The proposed fund is likely to be abused if proper framework is not implemented. Therefore the need for a proper structure of the National Housing Fund.
4. By using "lottery" to allocate houses, this may lock out people who genuinely need the houses and diligently contribute to the fund.

Clause 66

Inclusion of provision under clause 66 of the Bill seeking to amend section 34 of the Retirement Benefits Act stating that the provisions should only apply to individual trustees, and not Corporate trustees.

Justification

1. In June 2015 the Retirement Benefits (Occupational Retirement benefits) Schemes Regulations were amended to limit the term of office of a trustee to 3 years, subject to a renewal of a further term of 3 years. This regulation has been applied to individual as well as Corporate Trustees.
2. A Corporate trustee is a completely separate entity from the founder of a scheme, and there are rigorous checks and balances to ensure that the appointed Corporate trustee carries out its duties and responsibilities as a trustee correctly, and to ensure that pension funds are completely ring fenced from both the founder and the appointed Corporate trustee.
3. To limit the appointment of a Corporate trustee will discourage long term commitment and continuity of Schemes, and in our opinion will increase the cost of scheme management to the detriment of members. Currently there are few Corporate trustees in Kenya thus limiting the choice; we believe that the onus on individuals to carry out the duties and responsibilities of being a trustee in their spare time is too onerous and detrimental to the members of schemes.

MEMBERS' DELIBERATIONS

1. In their submission, they had stated that those who are not taxed like MPs should be taxed in order to raise government revenue. The Committee was disappointed that such an organization was not aware that MPs are currently paying taxes. Though they apologized, the Chairperson informed them that the statement had not been taken lightly and that they should audit their secretariat on the same.
2. They informed the Committee that maize seeds are tax exempt, subjecting them to VAT will make them unaffordable to farmers.

MIN.NO.NA/F&NP/2018/308: MEETING WITH THE KENYA BANKERS ASSOCIATION ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before welcoming the representatives of KBA to make their submission.

The C.E.O of the Kenya Bankers Association, Mr. Habil Olaka submitted that:-

ON THE REPEAL OF SECTION 33B OF THE BANKING (AMENDMENT) ACT, 2016

He made reference to Section 33B of the Banking (Amendment) Act, 2016 pertaining to bank interest rates. He stated that Kenya has had interest rate caps in the past. The credit market was liberalised in the 1990s. Other countries in Africa, including Tanzania, Uganda, Ghana and South Africa have experienced similar “spikes” in interest rates occasioned by inflation, currency devaluation, excessive government borrowing, and other macroeconomic factors. In all cases, rates normalised when market dynamics improved.

Unintended Consequences of Banking (Amendment) Act 2016

In support of the repeal of Section 33B, the Kenya Bankers Association made the following observations regarding the unintended consequences of this legislation:-

1. Wanjiku Has Not Been Helped

- i. Loan Accounts have reduced by 1.2 million accounts which means that the law has not increased access to finance from banks.
- ii. At the same time, the size of loans has increased by 47 percent, an indication that those who already had a bank loan have been able to increase their borrowing.
- iii. Because the average Kenyan earns approximately Sh53,000 per month, disposable incomes are low and therefore Kenyans’ ability to save is limited.
- iv. Moreover, according to Nairobi Securities Exchange, Kenya’s Gross Savings Rate has dropped by almost a half from 11.7 per cent in 2007 to 6.2 per cent in 2017, meaning that most Kenyans are living from hand to mouth. Therefore, even though government introduces an incentive to save by legislating deposit rates, the country’s savings to GDP ratio will remain low until employment and income levels improve.
- v. This legislation therefore has helped wealthy who have more savings and disposable income; and also established businesses, and not Wanjiku.

2. Government is Crowding Out Private Sector

- i. Banks have lowered their credit risk tolerance in an effort to preserve shareholder value. Therefore, lending to Government which is considered “risk free” is preferred.
- ii. In addition, private sector lending has settled on short-term contracts, which means that investment capital available to the private sector is limited.
- iii. Following the enactment of the law, the credit market saw a skewed lending approach with sectors, which are critical to the Big 4 Agenda, such as Manufacturing, and Real Estate and Construction witnessing reduced lending.
- iv. While the rate of private sector lending was already on the decline on account of market disruptions, the Banking Act has not helped to reversed the declining rate. If anything, it has in fact prolonged downward trend.

3. More than Kshs. 13 Billion Redirected from Micro and Small Enterprises

- i. The difficult operating environment (drought; 2017 elections; delayed government payments) has caused a rise in Non-Performing Loans (now in double-digit levels) as a proportion of gross loans.

- ii. According to Central Bank of Kenya (CBK), reduced lending to micro, small and medium-sized companies (MSMEs) contributed to a 1.4 percent decline in the growth of GDP in 2017 and will further reduce economic growth in 2018.
- iii. In a separate report, CBK stated that bank lending to SMEs, which are a core driver of the economy, fell by as much as 5.7 percent or Kshs. 13 billion.

4. Banks are Accelerating Digitization Resulting in Staff and Branch Rationalization at Constituency Level

- i. Banks provide an ecosystem for business development and employment creation. Instead of a gradual transition to digital banking, the sector has accelerated the rate of branch closures and staff redundancies which has adversely affect constituencies.
- ii. Previously, banks would commit Kshs. 1.9 billion annually via their Community Corporate Social Responsibility programs; with smaller branch footprints, local communities will experience lower levels of financial support.

The Kenya Bankers Association made the following proposals to the National Treasury and Central Bank of Kenya on the following measures that will lead to a *low and sustainable* interest rates regime. The realisation of low and sustainable rates will consequently spur credit to all segments of the economy; and especially those that are critical to output and employment growth but which are constrained by access to financial services. This will have the ultimate effect of supporting the economy's growth and development aspirations.

Proposal

- i. Enhance Pricing Transparency and Promote Industry Competition on Retail Lending
- ii. Enhancing Consumer Protection and Financial Literacy
- iii. Ensure Fair Practice Post-Repeal via KBA Code of Ethics and Self-Regulatory Framework including Whistleblowing Hotline; and Loan Pricing Disclosures

Impact

- i. Expand features of KBA/CBK Cost of Credit platform (costofcredit.co.ke) to stimulate competition and promote pricing transparency. Increase awareness of the site
- ii. Enactment of Financial Services Consumer Protection law to introduce office of the Ombudsman for Financial Services
- iii. Reinforce regulatory efforts to improve banking practice while promoting industry competition through pricing transparency

Responsibility

- i. Banks – Implementation
- ii. CBK and National Treasury – Implementation & Oversight

Proposal

Lower Cost of Borrowing and Promote Risk-Based Loan Pricing

Impact

- i. Fees for legal services should be market-based and not prescribed by law.
- ii. Enhancement of data quality and use of risk-based pricing to ensure cost of loans is aligned to risk profile of borrower.
- iii. Accelerate implementation of Moveable Properties Security Rights Act 2017 to diversify collateral sources for borrowers towards promoting more lending.

- iv. Facilitate use of Leasing and Factoring products; enhance efficiency of horizontal repo market

Responsibility

- i. Banks – Implementation
- ii. CBK and National Treasury – Implementation & Oversight

Proposal

Inuka SME Capacity Development and Loaning Program to support MSMEs to access Kshs. 30 Billion fund.

Impact

15,000 MSMEs will access micro and small business loans of up to Kshs. 10 million for business development, total fund committed is Kshs. 30 Billion.

Responsibility

- i. KBA and Banks – Implementation
- ii. CBK – Oversight

Proposal

- i. Public-private partnership approach to priority sector lending (Big 4 Agenda)
- ii. Special Tax Incentive Program to unlock further bank lending to enterprises

Impact

- i. Introduce an Interest Rates Subsidy Schemes, including Credit Guarantees.
- ii. MSME Loan Rebates targets additional Ksh 300 Billion in finance for enterprises and broaden tax base

Responsibility

- i. Treasury & Parliament – Implementation
- ii. CBK & Ministry of Trade – Oversight

Proposal

Tax exemption on the income earned by investors of bonds issued targeting Big 4 Agenda of Affordable Housing.

Impact

Ksh 250 Billion raised over 5 years for construction of affordable housing.

Responsibility

- i. Banks, CMA, Treasury & Parliament – Implementation
- ii. CBK & Ministry of Housing – Oversight

SECTION 31 REGARDING ROBIN HOOD EXCISE DUTY ON MONEY TRANSFER BY FINANCIAL INSTITUTIONS

The CEO stated that the Finance Bill, 2018 has introduced Excise Duty on money transfers by banks through amendment of the First Schedule to the Excise Duty Act, 2015.

The Banking fraternity is gravely concerned that the proposed tax will greatly undermine Government's efforts of financial deepening and widening of financial inclusion, as it is anticipated that there are likely to be adverse implications as customers resort to measures to avoid the cost associated with the new tax, including the use of cash in place of bank transfers and transfers and transaction smurfing (splitting of payments to avoid tax).

As an industry, they don't support the proposal for the reasons outlined below:-

1. Effective date – the tax is earmarked to take effect as from 1st July, 2018. The minimum period that banks require to adjust banking systems to comply with this requirement is between 3 to 6 months based on the core banking system in use. KBA has requested service providers to provide representation on this challenge and they will forward the representations to the Committee as they receive them. Based on these, they sought for a deferral of the implementation date in line with the recommendation of the system vendors.
2. Lack of guidelines – He noted with profound concern that the Finance Bill, 2018 has not provided any guidelines on how the duty is to be applied and no specific exclusions from the duty is provided. Furthermore, no definition of money transfer is provided to appropriately guide banks on application of the duty.

In the absence of clarification and clear guidelines on application of the duty, their members identified the following uncertain areas and possible challenges to apply the duty on the under listed transactions:-

- i. Payment of salaries
- ii. Operations of diplomats and diplomatic missions and other tax exempt multilateral institutions
- iii. The incidence and burden of the tax is not certain as there is no guide on who is the payer of the tax between the remitter or the beneficiary.
- iv. Bankers drafts
- v. Ordinary cheques
- vi. Foreign exchange – is the duty applicable to forex transactions (including derivatives transactions), are both legs liable to the tax and what is the base for conversion of the tax to the local currency
- vii. Dividend payments
- viii. Payment of pension benefits and death benefits

He proposed that certain transfers should be excluded from the ambit of this duty based on international best practice, practical application and equity in tax provisions. He therefore recommended exclusion of the following transactions from application of the tax:-

1. Money transfers between banks, non-bank financial institutions and Government.
2. Payment of interest or principal to the bank by bank customers on loans.
3. Payment of fees for any form of financial service rendered by bank customers to the bank.
4. Transfers by banks as well as by customers between domestic branches of the same bank.
5. Payment of all forms of taxes by taxpayers to KRA collection accounts.
6. Transfers by banks of taxes collected to KRA's Central Bank account.
7. Interbank transfers i.e. bank to bank transfers money from one bank to another bank, bank to non-bank financial institution and vice versa.
8. Transfers between two accounts belonging to same parties including credit card payments.

9. International transfers including the settlement of international trade and other transactions.

Economic Impact

With the expected introduction of this duty, financial investment stakeholders project that this duty will lead to erosion in investment returns of between 1 to 5% depending on the nature of the fund and investment strategy. The proposed duty will significantly hamper the country’s Vision 2030 aspirations which aim to position Nairobi as the financial hub for the region due to unattractiveness of cost of carrying out transactions in Kenya as a result of the tax.

In the recent past, the Kenya interbank market has suffered liquidity distribution challenges emanating from closure of some banks. With the introduction of Robin Hood duty, all interbank products (FX, derivatives, interest rate products etc.) will have an added cost estimated at 18% annualized on each transaction. This will contribute to erosion of interbank development of the financial markets in Kenya that has been achieved to date.

A similar concern has also equally been raised by foreign investors in the equities market who are contemplating exiting the market due to fear of additional transactional costs in view of the cost of the multiple transfers that are an inherent part of the investment cycle. This will have a negative impact on foreign currency inflows.

Tanzania attempted to introduce a similar tax in 2013 but it was scrapped after one year of implementation due to significant negative impact caused in the financial markets. Besides the futile experience by Tanzania to tax financial transactions, he was not aware of any jurisdiction in the world that has pursued this tax approach.

MEMBERS’ DELIBERATIONS

They were of the opinion that capping interest rates is not the solution, the government should manage the macro-economic environment in order to bring down lending rates.

In a scenario where the government stopped borrowing from banks, banks will look at the risk level of a client seeking for a loan. High risk clients will find it hard to get loans from banks but low risk clients will get loans at the capped rate.

MIN.NO.NA/F&NP/2018/309: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 2.45pm. The next meeting will be held at 3.00pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED.....DATE.....

MINUTES OF THE 54TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 1ST AUGUST, 2018 IN TAIFA HALL, KENYATTA INTERNATIONAL CONVENTION CENTRE AT 2.00 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. David M. Mboni, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Samuel Atandi, MP
11. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Alfred Sambu, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Francis K. Kimani, MP
5. Hon. Lydia H. Mizighi, MP
6. Hon. Purity Ngirici, MP
7. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Ms. Catherine Burure | - | Fiscal Analyst |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | - | Office Assistant |

9. Ms. Catherine Waireri - Intern

EAST AFRICA TAX AND GOVERNANCE NETWORK

1. Mr. Leonard Wanyama - Co-ordinator
2. Ms. Joy Ndubani - Tax Dialogue Programme Officer
3. Ms. Riva Jalupa
4. Mr. Vincent Kimosop

ECONOMIC RENAISSANCE CHAMBERS LTD

Mr. Kiriro Wa Ngugi - Chairman

TRADE UNION CONGRESS OF KENYA

1. Dr. Charles Mukhwaya - AG. Secretary General
2. Dr. J. Kumba - Treasurer
3. Mr. Muiga Rugara - Delegate

KENYA TEA DEVELOPMENT AUTHORITY MANAGEMENT SERVICES

1. Mr. Benson Ngari
2. Mr. Alfred Njagi
3. Ms. Evaline Otindo

KENAFRIC INDUSTRIES LTD.

1. Mr. Bharat Shah
2. Mr. Job Wanjohi
3. Ms. Grace Mbogo

WRIGLEYS MARS

1. Ms. Wanja Mwangi
2. Ms. Betty Mutinda

BRITISH AMERICA TOBACCO

1. Mr. Sidney Wafula
2. Ms. Berveley Spencer
3. Mr. Simukai Muganganja
4. Mr. Darren Harris
5. Ms. Victoria Kagai
6. Mr. Zach Munyi

ASSOCIATION OF INSURANCE BROKERS OF KENYA

1. Mr. Eluid Adiedo CEO
2. Mr. Karanja Kabale
3. Mr. Dennis Nyongesa
4. Mr. Nelson Omolo

5. Mr. Anthony Mwangi
6. Mr. Ahmed Abdi
7. Mr. Muchemi Ndungu

INSURANCE REGULATORY AUTHORITY

- | | |
|-----------------------|-----------------------------|
| 1. Mr. Mathews Odero | Legal Officer |
| 2. Mr. Wilson Wachira | Head of Corporate Insurance |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Public hearings on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/290: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.05P.m. with prayer from Hon. Samuel Atandi, MP. The Chairperson then called for introduction of those present before welcoming the East African Tax and Governance Network to present their memorandum to the Committee.

MIN.NO.NA/F&NP/2018/291: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/292: MEETING WITH THE EAST AFRICAN TAX AND GOVERNANCE NETWORK ON THE FINANCE BILL, 2018

A representative of EATGN submitted that:-
Their submission comprised contributions from five organisations working with other civil society organisations towards building a Kenya Tax Justice Platform namely: Development Initiative (DI), the East African Tax and Governance Network (EATGN), Institute for Economic Affairs Kenya (IEA-Kenya), International Institute for Legislative Affairs (IILA), National Taxpayers Association (NTA) and Dr. Eric Kibet an academic in Constitutional Law.

They proposed the following amendments:-

Clause 6

There is need to review the base on which the said tax may be inferred rather than use the amount paid for business permit as proposed in Clause 11 since this may provide a good inference of income that ought to be taxed.

Justification

1. Tax is charged on income and not on costs like business permit. The proposed law has therefore not explored possible methods on estimating the likely income that will be realized by the businesses.
2. In line with the Bill this may be treated as an additional levy to the county government rather than a tax as the proposed law gives room for estimating the inferred income on which tax may be levied.

Clause 7

This proposal should be dropped unless there is clarity on how its success can be evaluated and the conditions for which one must meet to enjoy the incentive.

Justification

1. It should be recalled that through the Finance Act, 2009 investment allowance of 150% was granted for any investment outside the municipality of Nairobi and Mombasa. The previous proposal has not significantly changed the trends of investment taking note that there are other factors that drive investments.
2. The proposed 130% allowance is not sustainable and may not achieve the desired result considering the current electricity cost already is a deductible expense in determination of tax liability.
3. How will the benefit be transferred to the consumer and how effective can the impact be measured? This needs to be highlighted or else like other incentives which have failed the proposal may be in vain.

Clause 11

This amendment should either be dropped or the phrase “subject to approval by Parliament” should be inserted immediately after the word arrangement.

Justification

1. As currently stated the amendment provides an avenue of abuse unless it is well monitored.
2. There are no clear guidelines as to the extent which such companies will be subject to this arrangement especially with increasing Public Private Partnerships thereby making it open for abuse.

Clause 28

This should be dropped.

Justification

This should be read with arguments in the next issues in Clause 31 on raising excise duty on mobile money transfer.

Clause 31

The increase should be dropped.

Justification

1. The use of Excise Tax has remained unpopular as it is mainly geared towards deterring the use of goods that have been deemed to be luxurious, risk to health or ruin moral in the society if their use is not well controlled. This explains why it is often referred to as “Sin Tax”.

2. The proposal to increase excise tax on mobile money speaks to the fact that use of mobile money transfer services can be labelled as a sin that ought to be deterred because financial transactions through banks are partially 'holy' and thus there was on change in the excise tax rate.
3. This proposal is discriminatory to the users of mobile money transfer services as compared to their counterparts in other financial institutions.
4. The proposal is oppressive to the poor who have just started enjoying the benefits of financial inclusion as an essential service and as such it is geared towards promoting equality in Kenya.
5. To bring this into context. Marginalized people (poor, women, low income earners, the elderly, youth and other vulnerable persons) benefit from different streams of cash transfers under the National Safety Net Program. Often these transfers are made via mobile money hence an increase in the cost of transferring money ultimately reduces the amount of cash transfers that beneficiaries receive thereby severely affecting their livelihoods.
6. Even with the intention of raising revenues to finance the Big Four Agenda the increase depicts the use of mobile money transfer as an evil that should be discouraged from the society.
7. Read together with Clause 28 the increment of 2% is seemingly linked to the proposal of 16% portion that should be transferred to Sports, Arts and Social Development Fund. Does it mean the understanding of all revenue generation from mobile money transfers is associated with betting/gaming taxes?

Proposal

Water should be excluded from excise duty. They instead propose an increase in excise duty on tobacco products whose increased consumption had severe health effects.

Justification

1. This provision limits people's choices in accessing clean water and further worsens government failure to provide access to clean water.
2. Use of excise duty to deter use of risk goods as tobacco has proved a success in both revenue raising and maintaining a healthy society by:-
 - i. Simplification of tobacco tax structure by re-introduction of a uniform specific tax rate for all cigarettes.
 - ii. Increase of the flat tax rate from Kshs. 2,500 per mille to Kshs. 3,100 per mille of cigarettes.

Proposal

1. 0.05% excise on any amount above Kshs. 500,000 should be dropped.
2. They proposed that excise duty should be based on the transaction (service) fees charged by the bank and not the amount being transacted.

Justification

1. This 'Robin Hood Tax' will cause a Kenyan reversal back into a cash economy by projecting the use of banks as unnecessary evil which needs to be restricted as depicted by the proposed Bill.
2. RHT will make the cost of transaction extremely high hence discouraging transactions through banking systems.

3. Reading the Excise Act, Excise tax should be on the value of service rendered; with this understanding in mind the question arising is whether the excisable value proposed by the Bill is the amount transacted or the transaction fee charged?
4. The amount transacted cannot be considered as a service for excise duty purposes. This premise is therefore misinformed.
5. Finally, as much as the government needs to raise revenue to fund the 'Big Four' there is need to consider the effect of the various proposals as they may wipe out all current progress being made.

Clause 38

1. Amend Clause 38 by dropping a proposed provision in Section 37B(4) of the Tax Procedures Act, 2015 seeking to exempt remittances eligible for tax amnesty under Section 37B.
2. To keep out money laundering and entry of proceeds of crime into Kenya, it is important that all money, including money eligible for amnesty as proposed in the Bill continue to be subjected to the Proceeds of Crime and Anti-Money Laundering Act and other laws and regulations relating to financial reporting.

Justification

1. This is because Proceeds of Crime and Anti-Money Laundering Act, 2009 is intended to safeguard against entry of suspect money that could be proceeds of crime and which could also be used to fund crimes such as terrorism.
2. While the proposed S.37B(4) of the Tax Procedures Act, 2015 excludes funds derived from proceeds of terrorism, poaching and drug trafficking, this is not helpful because money does not come with labels. It is only upon inquiry as provided for in the Proceeds of Crime and Anti-Money Laundering Act, 2009 and CBK Prudential Guidelines that the suspect origin of funds can be discerned.
3. Retaining this proposed exemption poses many risks:-
 - a. Security threats: this blanket exemption will weaken the current know-your-customer rules and disclosure procedures under the Proceeds of Crime and Anti-Money Laundering Act and CBK Prudential Guidelines. This will in turn open ways for entry of suspect funds that could fund terrorism and similar organized crimes.
 - b. Economic distortion: The blanket amnesty threatens safeguards against money laundering which will in turn open the Kenyan economy to risks of money laundering including economic and political instability.
 - c. The exemption is also inconsistent with Kenya's international legal obligations relating to controlling transnational and international money laundering and terrorism financing, for example, under the United Nations Convention against Corruption to which the country is party.

Clause 68

1. This proposal should be dropped.
2. The Bill should explore alternative options like the proposed mortgage refinancing as indicated through proposed amendments to Clauses 61, 62 and 63 of the Bill.
3. Further, the government may provide subsidies towards the adoption of Tenant Purchase Scheme which can cater for even low income earners.

Justification

1. The proposal will put more burden on the employees and employers in terms of the added tax obligation. Further, it is likely to bring about reduction in gross salaries by employers so that they spare an amount to contribute to the proposed fund. This means that the employee take-home will be drastically affected considering the government will not be offering housing following the deduction.
2. There are no clear benefits linked to the amount to be deducted. Is the government proposing to standardize and pay rent for the employees involved if the proposal is read in tandem with Section 31 of the Employment act? This may be unrealistic considering the administration costs and the possibilities surrounding its sustainability.
3. The CS has not clearly demonstrated how such a fund will be operationalized and how or who benefits from it. Provision of housing may be a good agenda though the generic nature of this proposal is a concern of how it can be a solution to the housing problem.
4. Based on a recent publication by the World Bank there are more options that Kenya can explore to bridge the gap in housing instead of this proposal is which in itself will propagate poverty.

MEMBERS' DELIBERATIONS

1. The meeting requested EATGN to provide a proposal on the taxation structure of cigarettes to the Committee. They were further tasked to provide data to support their proposal.
2. They stated that it would be important for the government to provide services to citizenry in order to encourage them to pay taxes as opposed to coming up with more taxes.

MIN.NO.NA/F&NP/2018/293: MEETING WITH THE ECONOMIC RENAISSANCE CHAMBERS LTD.

The Chairperson called for introduction of those present before inviting a representative of the Economic Renaissance Chambers Ltd to make his submission.

He submitted that:-

The Bill proposes to introduce a new excise tax on 'sugar confectionary and chocolate (including white chocolate)' of Kshs. 20 per kg. The reason why and the rationale for this change appears to be a generalized statement in the budget statement thus:-

"confectionary and chocolate are rich in sugar content and expose consumers to adverse effects on their health due to sugar related diseases".

It is too simplistic and scientifically grossly inaccurate to make a generalized inference of 'adverse effects' on health without regard to the relevant metabolic facts about sugar. The Committee should reject this amendment.

MIN.NO.NA/F&NP/2018/294: MEETING WITH TRADE UNION CONGRESS OF KENYA

The Chairperson called for introductions of those present before inviting representatives of TUC-Ke to make their submissions.

They submitted that:-

Section 67 of the Finance Bill, 2018 proposes to insert a new Section 53B in The Retirement Benefits Act, 1997 (No. 2 of 1997): Powers to recover unremitted contributions

Whereas they were comfortable with Section 53B (a) (i) and (ii), they were opposed to (iii)

Instead, they proposed to replace (iii) with the following amendments “*where there is failure by an employer to comply with a direction to remit deductions/contributions from employee’s emoluments under this provision, the Authority shall take the necessary action or issue such other directions as it may deem necessary and expedient in protecting the interests of the members, including instituting summary proceedings to recover the amounts due to the scheme.*”

Similarly, they proposed to delete (b) entirely

Section 68 of the Finance Bill, 2018 proposes an amendment of Section 31 of the Employment Act, 2007 (No. 11 of 2007): National Housing Development Fund

Whereas TUC-Ke fully supports the Government’s Big Four Agenda and in particular provision of affordable housing to Kenyans, the labour centre is strongly opposed to the proposed amendment and the resultant establishment of the National Housing Development Fund due to the following reasons:-

1. International Labour Standards on Housing

The proposed amendment to create a housing fund blatantly violates Workers’ Housing Recommendation, 1961 (No. 115) “*...Governments, employers’ and workers’ organizations should encourage co-operative and similar non-profit housing societies...*” which Kenya has ratified.

2. No civic education/consultation

Other than scant media reports on the proposed National Housing Development Fund, there was no requisite civic education conducted to sensitize the primary contributors (read workers) or TUC-Ke leadership that would in turn educate the general membership about the need to establish the fund. As a result, workers/employees have and continue to remain in the dark on matters surrounding the Fund.

Consequently, TUC-Ke does not understand what the Fund stands for and what it intends to achieve hence the questions;

- a) What will be employee’s’ legitimate expectations?
- b) What will be the direct benefit that each contributing employee will get?
- c) Is there any guarantee that all contributing employees will acquire a low cost housing unit?
- d) What will be the benefit when an employee retires, about to retire, or those whose contract does not allow reasonable contribution?
- e) Will contributing employees have the right to choose their preferred location of the low cost housing facility?
- f) Is the fund a universal housing scheme?

3. Parameters

TUC-Ke and its entire membership do not know if there was any survey conducted that informed establishment of such a fund. Similarly, we do not know the parameters that were used and methodology that was applied to arrive at this decision.

4. Tax burden

With 30% tax on their gross income plus a further 16% VAT charged on procured goods and services, public servants in Kenya are among the most highly taxed workers in the world. The proposed amendment “(2A)...An employer shall pay to the National Housing Development Fund in respect of each employee in his or her employment subject to a maximum of five thousand shillings...” will not only increase but worsen the tax burden already shouldered by workers.

It is therefore our considered view that the proposed mandatory deduction at 0.5% of the employee’s monthly **gross** emoluments to support the proposed National Housing Development Fund is ill advised. Essentially, this is a tax to be paid by workers.

5. Management of the Fund

With the history of gross mismanagement and perennial corruption scandals that surround the National Social Security Fund (NSSF) clear in our minds, workers are justifiably skeptical about establishment and management of yet another statutory National Fund.

TUC-Ke strongly believes that any establishment of such a fund must also make clear and transparent provision on management of the same where workers are allowed to manage the fund.

Recommendations

Based on the above observations, and after a careful consideration, analysis and comparison with other countries with similar housing projects and with a view to bench mark with the best practices, TUC-Ke made the following **recommendations**;

- 1) Shelve the section of the Finance Bill, 2018 on housing until adequate civic education has been conducted to sensitize workers on the proposed Fund
- 2) Involve key stakeholders in establishing and management of the proposed National Housing Development Fund.
- 3) Alternatively, a tax credit equivalent to the proposed rate should be given to each contributor to the Fund.

MIN.NO.NA/F&NP/2018/295: MEETING WITH KENYA TEA DEVELOPMENT AUTHORITY MANAGEMENT SERVICES ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting KTDA Management Services to make their submissions.

They proposed the following amendments:-

Section 3

The Section seeks to amend Section 7 of Cap 470 of the Laws of Kenya to enhance the definition of dividends for the purposes of taxation to include the following:-

- i. Any cash or asset distributed or transferred to or for the benefit of the shareholder or persons related to the shareholder;
- ii. A discharge of obligation measurable in money which is owed to the company by the shareholder or related person;
- iii. Debts owed by the shareholder or related person that is paid off by the company;
- iv. Any transactions with a shareholder that has the effect of reducing the present taxable income or reduced assessed losses of the company.

Implication

The tax implication of this expanded definition is that any payment made to shareholder

including that made in respect of supplies made will be considered as a dividend and attract tax at the relevant rate. In particular, payments made in respect of supplies made by shareholders will be considered as dividends paid out of untaxed profits and thus subject to tax.

This will affect the small holder tea farmers who are shareholders of the tea factories they supply to adversely as any payments made in respect of green leaf supplied may be construed to be dividends paid out of untaxed profits and thus subject to tax. The same farmers will then be required to declare the same payments received for income tax purpose; a move which will result in double taxation to the farmer.

Proposal

To prevent double taxation, they proposed that Section 7(1) be the following:-

Section 7 of the Income Tax Act is amended by deleting sub-section (1) and substituting therefor the following new subsection-

(1) For the purpose of section 3(2)(b)-

- a) a dividend paid by a resident company shall be deemed to income of the year of income in which it was payable;
- b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where-
 - i. any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any person related to the shareholder;
 - ii. the shareholder or any person related to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person;
 - iii. the amount is used by that company in any other manner for the benefit of the shareholder or any related person to that shareholder;
 - iv. any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company;
 - v. the amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such a shareholder resulting from an adjustment.

For the purposes of this section, the amounts distributed, transferred or paid shall not include payments in respect of supplies made by the shareholder or any related person to that shareholder.

Justification

This will ensure that there will be no double taxation for suppliers who are also shareholders.

MEMBERS' DELIBERATIONS

1. They proposed that Exports should not be taxed as an incentive to encourage export of tea.
2. Members were of the opinion that most farmers are paid small amounts and may therefore not be subject to the Robin Hood Tax.
3. Members were of the opinion that tea farmers and the country at large would benefit more if there were value addition companies in the country so that finished products are exported as opposed to the current practice.

MIN.NO.NA/F&NP/2018/296: MEETING WITH KENAFRIC INDUSTRIES LTD AND WRIGLEYS EAST AFRICA LTD ON THE FINANCE BILL, 2018

The Chairperson called for the introductions of those present before welcoming Kenafric Industries Ltd. and Wrigleys East Africa Ltd. to make their submissions

A representative of Kenafric Industries Ltd. submitted that:-

Kenafric Industries Limited submitted the following memorandum to the Committee:-

They noted that Clause 31 of the Finance Bill, 2018 proposes to amend the First Schedule to the Excise Duty Act, 2015 by introducing Excise Duty on Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.321.00 and 1806.90.00 at the rate of Kshs. 20 per kilogram.

This proposal concerns the company as it goes against the spirit of the Big Four Agenda which is to promote local manufacturing. If the proposal is passed, it will make local manufacturers uncompetitive as a result of cheap imports and strong possibilities of smuggling as happened in Uganda which has now reversed the excise duty for local manufacturing. This will be an addition to existing high liquidity constraints arising from Withholding VAT and Export Refund formula and the existing with non-tariff barriers in the EAC market. This will have an effect on job creation as the entire value chain will be affected by this tax right from the supply chain to the kiosk vendors.

A representative of Wrigleys East Africa Ltd. submitted that:-

A representative of the company submitted that:-

Their concerns with regards to the proposed excise duty are premised on the adverse ramifications the tax will have both on their business and industry as a whole.

1. Impact of the proposed excised duty on Wrigley Company (EA) Limited business

The proposed excise duty on sugar confectionery and chocolate at Kshs. 20 per Kilo if implemented will have a profoundly negative impact on their business. In particular:

1. The proposed tax will increase the cost of sales yet their industry/business is characterized by low margins. This will seriously affect their ability to remain in business. The proposed duty will have serious consequences not just for Wrigley but also for thousands of retailers and entrepreneurs engaged through their business value chain.
2. The proposed duty will significantly increase the cost of doing business and possibly lead to job cuts and significant scaling down of their operates. Their Kenyan operation serves the domestic and regional markets and the effects of any scale down would be felt beyond the borders. The proposed tax will send a wrong signal to foreign firms keen to invest in the domestic and regional market.
3. The proposed tax will hamper their ability to expand their business value chain in Kenya and the region. Wrigley Company (EA) Limited only recently invested Kshs 7Bn to build a new factory in Athi River, Machakos County. The said factory is expected to generate hundreds of jobs in Kenya.

4. The budget Statement has not set out the rationale and logic in support of the proposed duty nor have their views been taken into account regarding the quantum and implementation mechanism for the said tax, yet it will seriously affect our business.

2. Their proposal to the National Assembly.

In light of the foregoing, they urged the Government to reconsider the proposed excise duty on sugar confectionaries and chocolate by **amending the Finance Bill 2018 to remove the applicable clauses and thus reinstate the status quo**. This, they believe will not only cushion their business from the shocks and proposed duty to the industry but also act as incentive for further investment in capacity and job creation in line with the Government's Big 4 Agenda.

3. Wrigley Company East Africa contribution to Kenyan's Economy

Wrigley Company (EA) Limited is keen on supporting the Government's Big Four Agenda for inclusive growth. The manufacturing pillar is of great significance to them as a business. During her recent visit to Kenya, one of the shareholders and immediate former Chairperson of their parent company Mars Incorporated, Mrs. Victoria Mars, reassured the president His Excellency Uhuru Kenyatta of their commitment to working with his government to realize the Big Four Agenda especially in building a robust manufacturing sector in Kenya.

As already mentioned, they are putting up a state of the art factory at a cost of Kshs 7 Billion. This investment is expected to generate thousands of jobs through direct employment at the factory and from the anticipated expansions of their sales, distribution and retail ecosystem throughout the country. Wrigley has also created thousands of indirect jobs as a part of the employment value it has added to Kenya's economy.

Additional taxation will stifle their ability to invest in further growing the country's economy and achieving the Big Four Agenda.

Wrigley Company Limited (EA) is also a major contributor to the National Exchequer through taxation. Additional taxation by way of the excise duty on sugar confectionary and chocolate will burden their business and their ability to operate. Wrigley wishes to reiterate that a **zero excise duty on sugar confectionary and chocolate and will safeguard significant investments and thousands of jobs in the economy.**

4. Wrigley EA contribution to Kenya's Social-Economic Development Fund

As a responsible corporate citizen. Wrigley Company (EA) Limited has spearheaded numerous social investment initiatives. They are committed to enhancing the social well-being of the communities where they do business in partnership with the government and other actors.

Wrigley has invested in an entrepreneurship development initiative, Maua, to expand income and business opportunities for hundreds of Kenyans in the country. This initiative targets low income urban and rural areas. Mars Inc., their parent company is also currently supporting the agriculture sector and more than 20,000 farmers through the Livelihood Fund for Family Farming and looking into the future of food security through the African Orphan Crops Consortium.

Additionally, Wrigley has been on the forefront of partnering with the Ministry of Health in the development of the Kenya National Oral Health Public Policy through the Wrigley Oral Health Program (WHOP). They are also working with the Ministry of Education in developing the new school curriculum piloted this year. As an outreach initiative, Wrigley launched a program that will cater for more than 20,000 children across the country in giving free dental checks and oral health education.

The value addition for Wrigley EA as an investor and manufacturer in Kenya for the past 50 years is therefore significant, impactful and comprehensive in addressing the social-economic needs of Kenya.

MEMBERS' DELIBERATIONS

1. The two institutions were of the opinion that the government should reduce the cost of living as opposed to increasing the tax burden to the citizenry.
2. They stated that a survey conducted by Wrigleys showed that dental health issues are caused by lack of proper dental health knowledge and not sweets.

MIN.NO.NA/F&NP/2018/297: MEETING WITH THE BRITISH AMERICAN TOBACCO (K) ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before welcoming the representatives of BAT to make their submission.

He submitted that:-

1. Annual rather than biennial inflationary excise adjustments

They welcomed the proposal tabled in Clause 24 of the Bill amending the current inflationary adjustment cycle from biennial to annual.

However, in order to provide certainty for business and enhance government revenue predictability, they urged that this adjustment be done in a timely manner. As at 18th July, 2018, they had not received formal communication for the new inflationary adjusted rate 2018/19 which was meant to take effect from 1st July 2018 as provided in the Excise Duty Act 2015. This delay will lead to the loss in government revenue.

Justification

Steady and predictable increases in tax create stability in industry performance and result in stable growth in government revenue. In December 2015, a cigarette price increase of 25-30% following from an unexpected 50% excise increase resulted in:-

- i. Consumer affordability challenges resulting in higher sales of the low category and subsequent reduction in government revenues.
- ii. A circa 10% increase in illicit trade from 2.6% year ending 2015 to 12.4% in Q4 2017.
- iii. A 21% decline in duty paid cigarette volumes between 2015-2017 – down 12% in 2016 and a further 9% in 2017.
- iv. Lower government tax payments by Kshs. 1.2Bn from BAT alone in 2017.

2. Tax Stamp Costs

They proposed a repeal of the Excisable Goods Management System (EGMS) Regulations 2017 which have resulted in disproportionate and unjustified 87% increase in the cost of excise stamps for tobacco products.

This increase was implemented in total disregard of the due process set out in the Statutory Instruments Act 2013.

Justification

Government indicates that the purpose of tax stamp is to track production, safeguard excise revenue and authenticate excisable products being sold in the market. However, tax stamps are neither meant to come at a significant cost to the manufacturer nor become a revenue generating measure as the current cost appears to be.

- i. Based on 2017 BAT Kenya volume, we estimate that this unprecedented increase has as a result in an increase in the annual compliance costs of Kshs. 351 Million. Without clear and demonstrable benefits to the government in terms of reducing the threat of illicit trade. In real terms, since December 2015, illicit trade in cigarettes has grown from 2.6% to 12.4%, half of the illicit products being cigarettes with counterfeit stamps.
- ii. Contrary to the defined legal process, the increase from Kshs. 1.50 to Kshs 2.80 per stamp (87%) in 2017 was unilateral and did not include industry consultation nor regulatory impact assessment.
- iii. The increase has been disproportionately applied on cigarettes in comparison to similarly valued excisable goods.
- iv. The cost of stamps in Kenya is now at least 3 times the cost of tax stamps in neighboring countries.

A reversal of the cost of stamps and proportionate apportionment of EGMS costs would level the playing field for all companies while reducing lost revenue from illicit trade.

3. Revert to the single tier specific exercise structure

They requested the Committee to revert to a single tier specific excise system at the higher rate which will apply to filtered cigarettes post 2018/19 inflation adjustment as the base rate for any excise increase in 2018. Specifically they recommended:-

Amending the First Schedule to the Excise Duty Act, 2015 in Part 1 by deleting the description “Cigarette with filters (Hinge Lind and soft cap)” and “Cigarettes without filters (plain cigarettes)” and the corresponding rates of excise duty and substituting it with the following:-

Cigarettes containing tobacco or tobacco substitutes	Kshs. 2630 per mille (as informed/instructed by KRA)
--	--

Justification

The Finance Act 2017 introduced a second excise tier of Kshs. 1,800 for filterless cigarettes. In his budget reading, the Cabinet Secretary, Treasury said that this category would address affordability changes.

However, both the government and the industry have not benefited from this change:

- i. A single specific excise structure provides benefits of transparency for the industry, greater predictability in terms of revenue levels of government as well as ease of administration for both manufacturers and for government.
- ii. Any concerns on affordability can be addressed through a review of the rate within a single tier structure.
- iii. The filterless tier has resulted in reduction in both filterless cigarettes volumes and government revenue by about 20% for BAT product only (Kshs. 150M)

A single tier specific system would recoup the revenue lost from the reduced volumes of filterless cigarettes sold in 2017 as well as enhance the predictability of and enable gradual increases in government revenues.

4. Supply of Excise and VAT exempt cigarettes to Kenya Defense Forces Canteen Organization (DEFECO)

They recommended that the changes in the Bill amending the existing Excise Duty Act and VAT Acts, to allow alcohol and non-alcoholic beverages to be supplied to DEFECO without charging excise duty, also include tobacco products as tax exempt products. They specifically recommended:-

- i. Amending clause 32 in the Finance Bill 2018 to read “Tobacco and tobacco products, alcoholic and non-alcoholic beverages supplied to Kenya Defense Forces Canteen Organization”

- ii. Amending Clause 18 (xi) in the Finance Bill 2018 to read “Tobacco and tobacco products, alcoholic and non-alcoholic beverages supplied to Kenya Defense Forces Canteen Organization”

Justification

KRA and National Treasury indicate that cigarettes cannot be deemed to be for “Official Use” by Kenya Defense Forces (KDF). As a result, their products cannot be tax exempt unlike alcohol and non-alcoholic beverages. Accordingly, BAT Kenya has been unable to supply DEFCO without charging excise duty and Value Added Tax (VAT) since July.

As a local manufacturer and a leading contributor to the economy through their local tax payments of Kshs. 18Bn in 2017, their support to over 5000 farmers; their trade partners contributing to the livelihood of circa 61,000 people; and their 470 direct employees, they are disadvantaged by this current arrangement which does not level the playing field, goes against government’s commitment to support local manufacturers, whilst also increasing expenses incurred by DEFCO.

Benefits of their proposal to the Government

Based on their proposals as outlined above, they projected that their contribution to government excise revenue will increase annually by circa 6% over the next 5 years. This will be in line with the government’s objective to increase the contribution of manufacturing from 9% to 15% of GDP in 5 years.

MEMBERS’ DELIBERATIONS

1. As local manufacturers, they felt that it was discriminatory for them to be denied the chance to supply duty free cigarettes to DEFCO.
2. If given the chance, they will be supplying 40 million cigarettes to DEFCO against a total of 5.2 billion consumed annually.
3. They emphasized on the need to have a predictable tax regime in the country as sudden changes in taxes impact negatively on their revenue.

MIN.NO.NA/F&NP/2018/298: MEETING WITH THE ASSOCIATION OF INSURANCE BROKERS OF KENYA ON THE FINANCE BILL, 2018

AIBK had proposed amendments to the Insurance (Amendment) Bill, 2018 and not the Finance Bill, 2018 which was under consideration. The Chairperson informed them that they would

receive communication from the Committee Secretariat on when they will appear before the Committee to make a presentation on the Insurance (Amendment) Bill, 2018.

MIN.NO.NA/F&NP/2018/299: ANY OTHER BUSINESS

The Chairperson thanked the Members for staying through the day's meetings and for engaging with the stakeholders professionally. He requested the Members to be punctual for the following day's meetings.

MIN.NO.NA/F&NP/2018/300: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 6.55pm. The next meeting will be held on 2nd August, 2018 at 9.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED.....DATE..........



MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 1ST AUGUST, 2018 IN TAIFA HALL, KENYATTA INTERNATIONAL CONVENTION CENTRE AT 9.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Francis K. Kimani, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. David M. Mboni, MP
8. Hon. Andrew A. Okuome, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Purity Ngirici, MP
11. Hon. Joshua C. Kandie, MP
12. Hon. Samuel Atandi, MP
13. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Alfred Sambu, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Lydia H. Mizighi, MP
5. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Lauren Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Ms. Catherine Burure | - | Fiscal Analyst |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | - | Office Assistant |

9. Ms. Catherine Waireri - Intern

COMMISSION ON REVENUE ALLOCATION

1. Humphrey Waltonga - Vice Chairman
2. Sheila Yicke

GREEN BONDS PROGRAMME KENYA

1. Ms. Cecelia Murai - Programme Manager
2. Ms. Jacqueline Mwiti

ANJARWALLA & KHANNA

1. Mr. Daniel Ngumy - Partner
2. Mr. Kenneth Njuguna - Senior Associate

BRITAM

1. Margaret Kathanga - CEO & Prinicipal Officer Britam General
2. Ambrose Dabani - CEO & Prinicipal Officer Britam Life
3. Kenneth Kahiu - CEO Asset Management- Britam
4. Carol Misiko - Chief Risk Officer
5. Dennis Mworja - COO- Britam Life Assurance
6. Muthoga Ngesa - Director- Britam
7. Calvin Ondigi - Legal Britam Life Assurance

ASSOCIATION OF COLLECTIVE INVESTMENT SCHEMES

1. Mr. Willie Njoroge - CEO, Fund Managers Association
2. Mr. Geoffrey Gangla - CEO, Genghis Capital
3. Ms. Rebecca Tiba - Madison Insurance Asset General Manager
4. Ms. Gladys Karuri - Principal Executive Director- FSO
5. Mr. David Gitau - Portfolio Manager, CIC
6. Mr. Seth Andiki - Operating Portfolio Manager, CIC
7. Ms. Pauline Ndirangu

KPMG

1. Ms. Isabella Robi - Senior Tax Advisor
2. Mr. Kenneth Wanjohi - Tax Manager
3. Ms. Caroline Njuguna - Tax Advisor
4. Mr. Peter Kinuthia - Partner
5. Mr. Clive Akora - Director

JOURNALISTS

1. Mr. Wainaina Wambu - Standard Media Group

2. Mr. Anthony Mutua

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Public hearings on the Finance Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/282: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.00a.m. with prayer from the Chairperson. He then emphasized to the Members that they should carry out the public hearings in a professional manner before welcoming the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2018/283: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/284: MEETING WITH THE COMMISSION ON REVENUE ALLOCATION ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting representatives from CRA to make their submissions.

Representatives from CRA proposed the following amendments:-

Clause 6

Under sub-clause 2, the presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income. This proposal should consider introducing a minimum exemption.

Justification

These will include the informal business that include hawkers and traders in the markets e.g. mama mboga whose turnover is below five million.

Clause 28

They proposed that taxes collected under this proposal should be paid into the Consolidated Fund.

Justification

Considering that health is a concurrent function, it is unclear how the counties will benefit from this Fund. Further, when the taxes are paid into the Consolidated Fund as opposed to the Sports Fund, the counties get to benefit from the equitable share of revenue.

Clause 52

They proposed that taxes collected under this proposal should be paid into the Consolidated Fund.

Justification

Betting is a concurrent function and when the taxes are paid into the Consolidated Fund as opposed to the Sports Fund, the counties get to benefit from the equitable share of revenue.

Clause 68

They proposed that if the proposal is for employees who want to own homes, then it should be made optional.

Justification

It is not clear whether it is a national savings scheme or a housing development scheme. It is also unclear how employees, subject of the deductions will benefit from the fund. In addition, it is not clear on what happens to an employee if they are not interested in the scheme yet the deductions are mandatory.

MEMBERS' DELIBERATIONS

1. They were opposed to presumptive tax because the derivation of presumptive tax will be based on the declarations that the business persons make when going for their permits. This may make the traders to evade going for permits thus impacting negatively on the county revenue.
2. They were opposed to the national housing development fund because there are no regulations to govern the management of the fund.
3. There is already a sports fund that was created before therefore his worries clause 28
4. The optional bit in Clause 68 should be removed.

MIN.NO.NA/F&NP/2018/285: MEETING WITH THE GREEN BONDS PROGRAM KENYA ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting GBPK to make their submissions.

A representative of Green Bonds Programme Kenya (GBPK) submitted that:-

GBPK is a public-private partnership that aims at developing Kenya's Domestic Green Bonds Market. The Kenya Bankers Association (KBA), Nairobi Securities Exchange (NSE), Climate Bonds Initiative (CBI), the Financial Sector Deepening Africa (FSD Africa) and the Dutch Development Bank FMO convened the GBPK to accelerate the take-up of green bonds as a tool for Kenya to tap into international and domestic capital markets to finance green projects and assets. The GBPK is endorsed by the Central Bank of Kenya (CBK), Capital Markets Authority (CMA) and the National Treasury. The program is also supported by the international and regional partners IFC and African Development Bank.

Recommendations

Proposed amendment to the Income Tax Bill and rationale thereof:

FIRST SCHEDULE, of the Income Tax Bill 2018, Clause 18

Current provision in the Bill: FIRST SCHEDULE (18) Interest income accruing from all listed

bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

Issue of Concern: This provision recognizes that bonds issued for purposes that relate to improving infrastructure and the social wellbeing of the country be exempt from tax. It however fails to recognize green bonds which would qualify in this category.

Proposed amendment: FIRST SCHEDULE (18): Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, the green economy and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

Justification: Inclusion of Green Bonds in this exemption shall encourage the uptake of the bonds.

Additional amendments/definitions:

i) Insert the following definition into Part I, Section 2 of the Capital Markets Act:
“Green Bond” means a debt security listed and issued on a securities exchange and independently certified by a recognised verifier. The proceeds are used to finance or refinance new or existing green projects that generate climate and / or other environmental benefits, societal and sustainable development co-benefits that conforms to the Green Guidelines and Standards and approved by the Authority; The instrument can be issued either by the National Government, County Government or a Company to enable capital-raising and investment for new and existing projects with environmental and social benefits.”

“Verifier” refers to an entity, independent of the issuer, its directors, senior management and advisers, accredited under the Climate Bonds Standard and Certification Scheme or any other professional body acceptable to the Nairobi Securities Exchange and the Capital Markets Authority, appointed by the issuer to confirm the green status of the Green Instrument.

ii) Insert the following definition into Part I, Section 2 (1) of the Income Tax Act:
“Green Economy” is one in which the production of goods (and services), is optimized to ensure minimum negative impact on the environment and maximum socio-economic benefits for the population.

MEMBERS, DELIBERATIONS

1. On whether CMA has developed regulations for issuance of green bonds, GBPK responded that CMA has developed draft listing rules for issuance of green bonds.
2. The Chairperson requested them to come up with amendments that are specific to clauses or part of the income tax they would like to amend and the justification of the amendment.

MIN.NO.NA/F&NP/2018/286: MEETING WITH ANJARWALLA AND KHANNA CO. ADVOCATES ON THE FINANCE BILL, 2018

The Chairperson called for introductions of those present before inviting representatives of Anjarwalla and Khanna Co. Advocates to make their submissions.

A representative of Anjarwalla & Khanna submitted the following proposals:-

1 Income Tax (The ITA)

A. Deemed dividend income

Section 3(3)(b)(v)

The intention of the provisions was to deem any transaction between a company and a shareholder to be a distribution of a dividend to such shareholder where the resulting adjustment reduces taxable income or increases taxable income or increases assessed losses of that company. Further, the term dividend is defined under Section 2 of the ITA as follows:

“dividend” means any distribution (whether in cash or property, and whether made before or during a winding up) by a company to its shareholders with respect to their equity interest in the company, other than distributions made in complete liquidation of the company of capital which was originally paid directly into the company in connection with the issuance of equity interest.”

The proposed amendment seeks to introduce a new provision in the ITA for certain transactions to be deemed as a dividend without amending the definition of the term ‘dividend’ under section 2 of the ITA. This may result to lack of clarity on what constitutes a dividend which may lead to disputes between taxpayers and the Kenya Revenue Authority.

The Bill also seeks to amend **section 7** of the ITA by providing that an amount shall be deemed to be a dividend distributed by a company to a shareholder where such a dividend is paid to or on behalf of a shareholder or any person related to the shareholder. We would however point out that a dividend is only made by a company to its shareholders. Payments to persons related to the shareholder cannot be regarded as dividends.

Recommendation

They proposed an amendment to sub-section (v) to read as follows:

“(v) the amount represents reduced taxable income or additional assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment.”

They proposed that the definition of the term dividend under **section 2** of the ITA is amended to insert the words, “...including an amount deemed as a dividend under Section 7 of the ITA” after the word ‘interest’

The Bill should amend the proposed **section 7(1)(b)** by deleting any references to a person related to the shareholder.

B. Compensating tax

Section 4 of the Bill has proposed to repeal the current compensating tax provisions by deleting section 7A of the ITA and replacing it with a new tax on untaxed distributions. Any dividends paid out of taxes that have not been subjected to tax shall be chargeable to tax at the corporation tax rate of 30%.

This is likely to give rise to the following challenges:

- i. Under section 7 of the ITA, a dividend paid by a company which holds directly or indirectly more than 12.5% of the shares of the underlying company shall not be deemed income chargeable to tax. Further, income such as interest income from an infrastructure bond is generally earned tax free by an investing company. When the recipient company then seeks to pay a dividend, would it be subjected to 30% corporation tax on this amount if its initial source is itself tax free? It is not clear in the Bill;
- ii. Furthermore, what of a Kenyan company which has non-Kenyan subsidiaries (say in Uganda, Tanzania etc)? Will dividends received in Kenya from the non-Kenyan subsidiaries, and which dividends will have already been taxed in the relevant country, then subjected to tax under section 7A of the Bill when paid out of the Kenyan holding company? As currently drafted, this income will be subjected to 30% tax in Kenya, in addition to the taxes already suffered in the other country. This will make Kenya an unattractive destination for regional investments and may make regional groups of

companies such as Equity Bank and Kenya Commercial Bank (which have non-Kenyan subsidiaries) to migrate their head offices to elsewhere. In short, this tax leakage at the group level would make Kenya less attractive as a holding company jurisdiction;

- iii. What of a company that disposes off a property and pays CGT at the appropriate rate? Will it have to pay taxes under section 7A of the Bill given the fact that the rate of the CGT is lower than the tax rate set out under section 7A? Indeed, this same argument can be applied for companies whose corporate tax rate is lower than 30%, for instance recently NSE listed companies and development companies investing in affordable or low cost housing. It should be clarified how this new provision applies to these unique circumstances; and
- iv. Also will a distribution of foreign dividends received by a Kenyan company (and which are not subjected to tax in Kenya) or distribution of untaxed gains or profits arising as a result of claiming tax incentives such as 150% capital allowance granted to manufacturing entities amount to “untaxed distribution”.

Recommendation

They proposed that guidance is provided on these issues to avoid potential disputes in the future, arising from different interpretations of these new provisions. For example:

- i. Dividends received by a Kenyan company of which tax has been paid can be distributed upwards with no further tax;
- ii. Clarification that where tax has been paid at a rate lower than 30%, such dividends can be paid with no further tax (for example, where a company has paid CGT at the appropriate rate);
- iii. clarification that where the dividend has been received from income which is not accrued or derived from Kenya, such a dividend can be paid without triggering taxes under section 7A of the Bill; and
- iv. Where a company is in a tax loss position on account of claiming applicable capital allowances, and has made accounting profits which can be freely distributed to shareholders, such as a distribution ought not to trigger compensating tax.

C. Withholding tax on demurrage charges and insurance premiums

The Bill introduces WHT at the rate of 20% and 5% of the gross amount payable on the demurrage charges and insurance premiums (except insurance premiums paid for the insurance of an aircraft) respectively. Demurrage charges have been defined in the Bill “...as the penalty payable for exceeding the period allowed for taking delivery of goods, or returning any equipment used for the transportation of goods...”

It is unlikely that non-resident recipients of demurrage charges and insurance premiums will agree to bear the WHT burden as this will result in reduction of their income, especially if they are based in a jurisdiction which does not have a double tax treaty with Kenya and cannot claim a credit for the tax withheld in Kenya.

It is therefore likely that the cost associated with the introduction of WHT on demurrage charges and insurance premium paid out to non-residents will be passed on to the end consumer through a “tax gross-up” mechanism and this will result in an increase in the cost of doing business.

Recommendation

They recommended that the provisions relating to WHT on demurrage charges and insurance premium are deleted.

2. Excise Duty Act, 2013

A. Excise Duty on Money Transfer

Clause 31(b)(ii)(6)

It was their view that the provision raises the following challenges:

- i. As an effective date of the excise duty was 1 July 2018, merely two weeks after the publication on the Bill, there is an administrative challenge to the financial institutions in rolling out the systems for collective of the excise duty. This could make it difficult and expensive to collect and remit the excise duty.
- ii. Secondly, it has been opined that the excise duty may lead to investor apathy. On 24th August 2016, the President assented to the Banking (Amendment) Act, 2016 with the aim of introducing a cap (the Interest Rate Cap) on the maximum interest rate chargeable on a credit facility. The Bill proposes to repeal the Interest Rate Cap with effect from 1st October 2018. These measures by the government of repealing existing laws and introducing new laws in the banking sector have been viewed as overregulation in the industry. Due to overregulation and uncertainty in Kenya's taxation policy, investors may adopt a wait-and-see attitude that may lead to stunted economic growth.
- iii. The excise duty will have a negative impact on the liquidation of the economy as it is likely to discourage people from transferring money using financial institutions, thereby reversing the gains that the banking and financial sector have had over the years. People may subsequently resort to other methods of money transfer which is likely to lead to low circulation of money in the economy thus affecting development.
- iv. There will be unintended consequences in the financial sector including significant reduction in investor returns, potential compression of corporate profit margins particularly for high turnover companies, reduction in liquidity of key capital market assets such as treasury bills and bonds, amongst others.
- v. The Bill does not outline clear guidelines and definitions of key terms including the definition of '*money transfer*', '*money transfer agencies*' and '*other financial service providers*'. It is therefore unclear what transactions are amenable to the excise duty.
- vi. Further, there is no clarity on whether:
 - a) This loan would include cheque transactions, cash withdrawals and deposits and loan transactions would be captured by the excise duty.
 - b) The excise duty would be charged on money transfer services by cellular phone service providers. In the event that the excise duty will be applicable on mobile money transfer services (where the allowable limit is Kshs. 500,000 or more), this would discourage people from using mobile money transfer services thus slowing down the government's push towards a cash-light economy;
 - c) Statutory payments for example capital gains tax, stamp duty and other tax payments would be captured if such taxes are in the amount of KES 500,000 or more;
 - d) The excise duty applies to transfers of money between unrelated banks or whether it also envisages transfers between accounts of the same bank; and
 - e) The excise duty covers transfers between different accounts held by a single person.

Recommendation

They proposed that the proposed introduction of excise duty on money transfer of KES 500,000 or more be shelved.

B. Excise duty on bottled water

Clause 31(a)(ii)

While it may be important to tax luxury goods to fund government projects, a distinction ought to be made for water that is not of a luxury nature especially water provided by social enterprises which seek to improve health and sanitation in informal settlements. As such, the action of “bottling”, in and of itself does not make the water a luxurious product.

Recommendation

The proposal to delete the expression “Waters (excluding water of tariff No. 2201.90.00) and other non-alcoholic beverages not including fruit or vegetable juices” appearing in paragraph 1 of the First Schedule to the Excise Duty Act ought to be shelved. This is because bottling natural or ordinary water in itself does not make the water luxurious. Tariff 2201.10.00 clearly distinguished the water of a luxurious nature as “mineral waters and aerated waters” and all other water excluded from this category ought to be exempted from excise duty. Such a carve out would shield the less fortunate members of society (who do not have access to piped water) from a sin tax on bottled water ordinarily used for recreational purposes.

3. The Employment Act

Clause 68

In order to have transparency on the activities of the Fund and use of the money paid into the Fund, it is important that the fund is formed in a similar manner and go through the same process as other similar funds (such as the National Hospital Insurance Fund and the National Social Security Fund). As such, a Bill forming the Fund must be tabled in Parliament and subject to public participation.

Recommendation.

They proposed that the entire section is deleted until the Fund is properly constituted following public participation upon enactment of a law in respect of the Fund.

4. Special Operating Framework Arrangements (SOFA)

The Bill proposes a raft of amendments to the ITA, the Excise Duty Act, the Value Added Tax Act, 2013 and the Miscellaneous Fees and Levies Act, 2016 in relation to transactions involving SOFA. There is however, no definition on what a SOFA is or statute that governs SOFA in Kenya. This creates ambiguity regarding the purpose of a SOFA, which investments are considered as SOFA, which ministry regulates SOFA, which type of projects are targeted by SOFA etc.

Article 201(b)(i) of the constitution provides that the burden of taxation should be shared fairly. This is in line with the principles of taxation that call for fairness and certainty in revenue tax policy. The proposed provisions in the Bill, in the absence of a SOFA enabling statute, are in contravention of both the Constitution and International best practice with regards to revenue laws.

Recommendation

It should be considered whether there is need for the creation of SOFA given the existence of already highly incentivized regimes such as the SEZs and EPZs. If necessary, a specific statute that gives guidelines on the establishment and taxation of SOFA should be enacted.

5. Other provisions they would have expected to be proposed by the Bill

A. Group Taxation

Under the ITA, each company in a group is taxed independently. This leads to a situation where some companies within a group are in a tax paying position, while other companies in the same group have tax losses and are therefore not required to pay tax. At a group level, this has an

impact on cash-flows and reduces funds which would have been available for expansion of operations and investment.

Recommendation

- a) A group taxation regime should be introduced and would be applicable (subject to an election to be made by the group) if certain thresholds in shareholding are met, in which case all the profits of the companies in the group would be aggregated and tax assessed on the holding company.
For example, the provisions could be drafted in such a way that, if a Kenyan company holds 90% or more of the shares of one or more Kenyan companies, the group may choose to be taxed as a single entity. Hence, the subsidiaries would be treated as “branches” of the parent company, and corporate tax is payable only by the parent company. To prevent abuse of such a system, it could be mandatory for the holding company to be a Kenyan Company for the group taxation regime to be applicable.
- b) Consolidated groups should also be allowed to file a single tax return to make it administratively easier to comply with annual filing obligations. This recommendation would be in line with the current position as regards Value Added Tax, and can be an opportunity to harmonize the general tax requirements that trigger group taxation across tax heads.
The Companies Act, 2015 already imposes an obligation on directors of a parent company to prepare consolidated group accounts. This should be extended for income tax purposes for companies that elect to be taxed as a single entity.

B. Tax treatment on shares buy-backs

The Companies Act 2015, introduced share buy-back provisions. A limited company having a share capital may purchase its own shares, including any redeemable shares, provided that such buy-back is undertaken in accordance with the Companies Act. A share buy-back ought to be financed out of capital, out of distributable profits or from the proceeds of a fresh issue of shares made for the purpose of financing the share buy-back. Under the provisions of the Eighth Schedule, a share buy-back amounts to a transfer on which capital gains tax will be chargeable at the rate of 5%. The CGT would be payable by the shareholder who is selling the shares to the company and broadly, CGT would be computed as the difference between the cost paid by the shareholder to acquire the shares from the shareholder.

There is a risk that capital gains arising from a share buy-back may be deemed to be a “distribution”. In addition, if the buy-back is characterized as a dividend, it would be subject to withholding tax at the rate of either 5% for residents or 10% for non-residents.

Recommendation

The Bill should clarify the treatment of share buy-back transactions. We would recommend that, in the hands of the company, a share buy-back should not be treated as a distribution as it is merely a transaction where a company is re-purchasing its shares. However, any gain accruing to the shareholder on sale of the shares to the company should be subject to CGT.

MEMBERS’ DELIBERATIONS

1. They supported the national housing development fund but there should be regulations on how it will be implemented.

2. They were opposed to the Robin Hood Tax since the same people could suffer the same cost several times in case of multiple transactions.
3. They informed the meeting that South Africa has the group relief perspective.

MIN.NO.NA/F&NP/2018/287: MEETING WITH BRITAM HOLDINGS PLC ON THE FINANCE BILL, 2018

The Chairperson called for introduction of those present before inviting Britam Holdings PLC to make their submissions.

A representative of Britam proposed the following amendments on behalf of the company, That:-

Clause 31

Clause 31(b)(ii) should be amended by deleting the proposed paragraphs (5) and (6) for inclusion in the Excise Duty Act in entirety.

Justification

The proposed new additions of paragraph (5) and (6) introduce an excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers at a rate of 10% of the excisable value as well as on money transferred by banks, money transfer agencies and other financial service providers at a rate of 0.05% of the amount transferred in any money transfer of Kshs. 500,000 or more.

Due to the nature of their business which involves payment of claims, maturities, benefits and investment income this proposal will have a huge impact on their overall business costs as well as the return payable to their clients.

In addition, the provision creates ambiguity as it does not define the nature of money transfer, does it include:- cheque transactions? Cash withdrawals and deposits? Loan withdrawals? Are statutory payments such as taxes included in the definition of transfers? What about bank to bank transfer? Or a transfer between different accounts of the same person? Further clarity is required.

Clause 57B

They propose insertion of a new clause 57B which proposes an amendment to the Stamp Duty Act by introducing a new Section 82A as follows:-

82A. Payment of Stamp Duty for “policy of life insurance” and “policy of insurance accident”

for purposes of this Act, the stamp duty payable for “policy of life insurance” and “policy of insurance accident” shall be payable monthly as an aggregate of all policies issued within the said month.

Justification

This provision is aligned to all government levies or taxes payable on a monthly basis such as VAT, Withholding Tax, Sugar Levies, standard levies amongst others. The franking of policy documents is administratively cumbersome and difficult to comply with. The proposed

amendment seeks to correspond to the use of technology such as I-tax as rolled out by the government collecting agency, Kenya Revenue Authority, as stamp duty will be payable monthly via I-tax.

In addition, they proposed the amendment as it lacks alignment with the Income Tax Act and the Kenya Information's and Communications Act.

MEMBERS' DELIBERATIONS

1. On why they were opposed to the Robin Hood Tax, they stated that there are a lot of steps in which money moves in a single transaction thus each step will be taxed and thus the amount will be a great deduction to the investor and also the bank that invests money for their customers. Thus will discourage small savers from saving in an investment fund.
2. They were seeking to amend the process of payment of Stamp Duty where the amount is declared as opposed to the current process where they use franking machines which is tedious and does not give room for digitalization of the process.

MIN.NO.NA/F&NP/2018/288: MEETING WITH ASSOCIATION OF COLLECTIVE INVESTMENT SCHEMES AND KPMG ON THE FINANCE BILL, 2018

The Chairperson called for the introduction of those present before welcoming ACIS to present their memorandum to the Committee.

A representative of ACIS submitted that:-

The Association of Collective Investment Schemes (ACIS) is a member organization mandated to steer the operations of Collective Investment Schemes (CIS') to ensure investment protection and equitable transparency in a bid to deepen financial inclusion and drive savings for investments.

They proposed the following amendments:-

Section 31(b)(ii)

- a. Delete paragraph 6 of Section 31(b)(ii)
- b. Replace "ten" with "twelve" in paragraph 5 of Section 31(b)(ii)

Justification

The proposal targets the flow of money through the financial institutions. ACIS considered the proposal and its impact on the operations of the Collective Investment Schemes (CIS) in Kenya and the expected returns to the unit holders. If one has multiple transactions, the 0.05% Robin Hood tax applies at every stage of the funds movement, negatively impacting the expected return to the customers. This ultimately impacts on the saving culture and savings mobilization. In our view, increasing the excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers from 10% to 12% will still earn the government the desired revenue without imposing the ruinous 0.05% Robin Hood tax.

A representative of KPMG submitted that:-

Section 4

Delete the proviso to the proposed section (7)(a) of the Income Tax Act and replace it as follows:-

Provided that this section shall not apply to:

- i. Registered collective investment schemes
- ii. Distributions of exempt dividend income
- iii. Companies where the Commissioner is satisfied that the tax losses arose from utilization of capital allowances and
- iv. Distribution of income that has been exempted under any other provision of this Act.

Issue with the provision

If the provision is implemented as proposed, it will result in double taxation for a number of holding companies including those listed on the NSE. Further, the proposal subjects to tax, income exempted from tax to promote certain sectors of the economy. The specific examples are as follows:-

- a. Dividends paid by subsidiaries companies to their parent companies are exempt from tax under the Income Tax Act. Under the proposed change the holding company will pay corporation tax on the dividends because of the exemption even though the subsidiary will have already accounted for corporation tax before making the distribution. This results in an effective tax rate of 51% on the two companies.
- b. Companies that take advantage of capital allowances which only defers taxation to the future will be taxed twice when paying dividends and in future when they finish utilizing the allowances.

Justification

The amendment will remove double taxation inherent in the current provision and reduce the incentive for investors to use offshore investment vehicles for investments into Kenya.

Section 18

Propose to change the current provision 18(a)(vi) as follows:-

By deleting the words “primary school laptop tablets” appearing in Paragraph 53 and substituting therefore the words “computers, microwaves, fridges, ovens, electric heaters, electric and gas cookers and television sets”

Issue with the provision

The Bill proposes to exempt from tax raw materials for the local assembly of computers. This provision is to help promote the local assembly of computers to spur the manufacturing sector. While this is a good move, it will not create a significant boost to the sector. They recommend that the exemption be expanded to include a number of common household equipment such as fridges, ovens heaters. This will create a larger manufacturing base and provide an avenue for developing a significant pool of local content providers.

Justification

The amendments provide a large base for the development of higher value manufacturing.

Section 31(a)(i)

They proposed that the excise duty on kerosene is retained at Kshs. 7,205 per 10001 @ 20 degC

Issue with the provision

The government has proposed to increase excise duty on kerosene to reduce the incentive to adulterate petrol and diesel with kerosene. However, the proposed increase amounts to only Kshs. 3 per litre which is not adequate to bridge the price gap between kerosene and petrol and diesel.

The increase will therefore not help in the fight against adulteration but has an immediate negative impact on the cost of living especially for the vulnerable persons.

Justification

The proposal significantly increases the cost of kerosene which is the main fuel used for cooking and lighting by a majority of Kenyans without significantly assisting the government to fight the adulteration of fuel. Retaining the current rates will cushion the poor especially in light of the proposed introduction of VAT on petroleum products.

Section 31(b)(5)

They proposed the expanding of the definition of “...transfers at a rate of 0.05% on transfer funds by banks, money transfer agencies and other financial service providers in case of the money transferred is Kshs. 500,000 or more”. Provided that this section shall not apply to:

- a) Transfers where the sender and the recipient are the same person;
- b) Payment of taxes and other statutory remittances;
- c) Purchases and receipt of proceeds from government debts transactions;
- d) Purchases and sales of securities on the NSE;

- e) Cash withdrawals; and
- f) Loan transactions including inter-bank borrowing.

Issue with the provision

The explanation of “0.05% of the money transferred in case of money transfer of Kshs. 500,000 or more” is not clear opening it to different interpretations and legal disputes. As currently structured, the transfer includes the following:-

- a) Payments of taxes and other statutory charges;
- b) Transfers from different bank accounts of the same person;
- c) Loan repayments; and
- d) Trade settlements.

Justification

The current section is subject to disputes because it does not provide adequate guidelines on determination of what constitutes transfer of funds.



The proposed amendments will bring clarity to the legislation and reduce disputes in its implementation.

MIN.NO.NA/F&NP/2018/289: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 12.50pm. The next meeting will be held on at 2.00pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED.....DATE..........

