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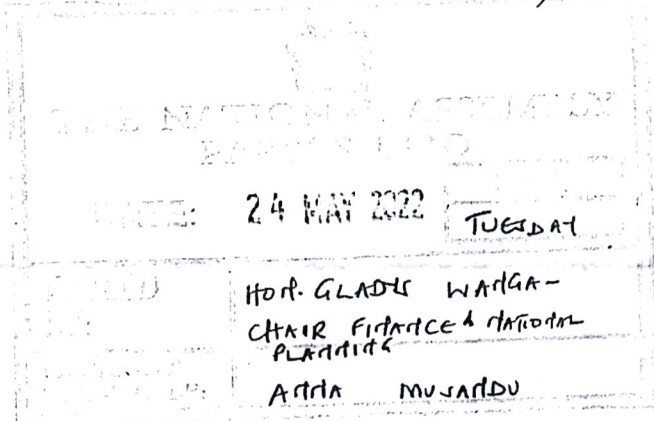


REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION – 2022
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON-

THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 22 OF 2022)



CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

MAY 2022

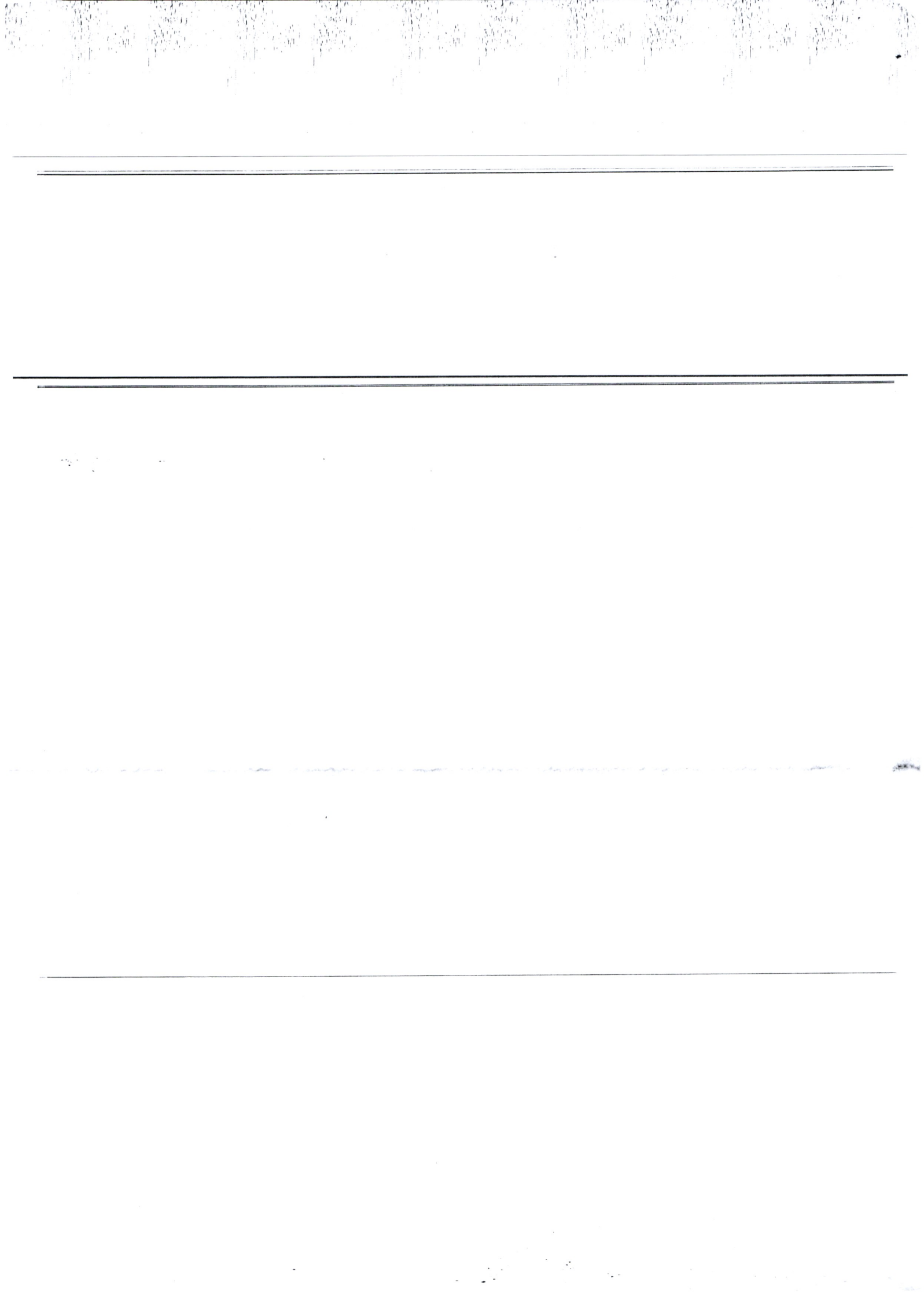


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LIST OF ABBREVIATIONS AND ACRONYMS

ITA	-	Income Tax Act
VAT	-	Value Added Tax
WHT	-	Withholding Tax
EDA	-	Excise Duty Act
KRA	-	Kenya Revenue Authority
CGT	-	Capital Gains Tax
MFIs	-	Microfinance Institutions
EBITDA	-	Earnings before Interest, Taxes, Depreciation and Amortization
EACCMA	-	East African Community Customs Management Act
COVID	-	Corona Virus Disease
ADR	-	Alternative Dispute Resolution
TAT	-	Tax Appeals Tribunal
EAC	-	East African Community
TPA	-	Tax Procedures Act
TOGC	-	Transfer of Business as a Going Concern
HS Code	-	Harmonized System Code
DST	-	Digital Service Tax
NSE	-	Nairobi Securities Exchange
PIN	-	Personal Identification Number
CS	-	Cabinet Secretary
FDI	-	Foreign Direct Investment
LPG	-	Liquefied Petroleum Gas
PFMA	-	Public Finance Management Act
B2B	-	Business to Business
B2C	-	Business to Customer
CBK	-	Central Bank of Kenya
OECD	-	Organization for Economic Co-operation and Development
CMA	-	Capital Markets Authority

LIST OF ANNEXURES

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4. Minutes of the 42nd Sitting
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8. ~~Minutes of the 38th Sitting~~
9. Minutes of the 37th Sitting
10. Minutes of the 36th Sitting
11. Minutes of the 35th Sitting
12. Minutes of the 34th Sitting
13. Minutes of the 33rd Sitting
14. Minutes of the 32nd Sitting
15. Minutes of the 31st Sitting
16. Copy News Paper Advert
17. Letter Inviting Stakeholders for a Meeting

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Finance Bill (*National Assembly Bill No. 22 of 2022*) which was published on 8th April 2022.

The Bill went through the First Reading on 12th April 2022 and was thereafter committed to the Departmental Committee on Finance and National Planning for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has fifty-three (53) clauses and seeks to amend the following laws: the Income Tax Act (Cap. 470); the Value Added Tax Act (No. 35 of 2013); the Tax Appeals Tribunal Act (No. 40 of 2013); the Excise Duty Act (No. 23 of 2015); the Tax Procedures Act (No. 29 of 2015); the Miscellaneous Fees and Levies Act (No. 29 of 2016); the Evidence Act (Cap. 80); the Capital Markets Act (Cap. 485A); the Insurance Act (Cap. 487); the Unclaimed Financial Assets Act (No. 40 of 2011); the Statutory Instruments Act (No. 23 of 2013); and the Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015).

The amendments proposed to the above laws provide a raft of tax policy measures which aim at yielding additional revenue of KSh. 51.607 billion for the Fiscal Year 2022/23 which is part of the KSh. 2,141.6 billion projected revenues for the said year. It further presents an opportunity for the Government to accelerate implementation of key projects under the '*Big Four Agenda*' through rationalized tax policies and fiscal consolidation framework through amendment of statutes that will help fast track the realization of this medium-term agenda (boost manufacturing activities, enhance food security, achieve Universal Healthcare and support construction of at least 50,000 affordable Houses) which are fundamental to improving livelihoods of the public.

Following placement of adverts in the print media on Wednesday 20th April 2022 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from seventy-four (74) stakeholders.

The Committee also invited stakeholders vide letter REF: NA/DDC/F&NP/2022/22 dated 5th May 2022 for a stakeholders' engagement retreat on the Bill which was held at Hilton Garden Inn Hotel from 11th to 13th May 2022 with forty-two (42) stakeholders making oral presentations before the Committee. The Committee also held a meeting with the National Treasury and the Kenya Revenue Authority in line with the requirements of Article 114 of the Constitution.

Majority of the stakeholders were opposed to the amendment proposing that a taxpayer will deposit fifty percent (50%) of the disputed amount with the Commissioner for cases determined by the Tax Appeals Tribunal and ruled in favor of KRA before filing an appeal in the High Court. They observed that the proposed amendment will increase the cost of doing business in the country hence make Kenya an unattractive business environment. It will also deny the taxpayers justice contrary to Article 48 of the Constitution where the taxpayer is not able to raise the required amount. The proposal to increase the capital gains tax from five percent (5%) to fifteen percent (15%) was also not supported by most stakeholders because the increase is huge and it does not take into account inflation.

The increase of tax on basic commodities like maize flour, cassava flour, among others was also opposed by most stakeholders because it will further increase the cost of living for common '*mwananchi*'. Additionally, stakeholders proposed that inflation adjustment be revised from annually to

after every two years because a yearly inflation adjustment impacts on taxpayers' capacity for production and investment. A two-year reprieve from inflation adjustment will provide businesses an opportunity to develop and implement their post-COVID-19 recovery plans and restore confidence in the production process. Further, introduction of excise tax on glass bottles was not supported by stakeholders because it will discourage production of the bottles in the country and thus impact negatively on manufacturing and creation of employment. It will also make Kenyan glass bottles expensive and therefore give an advantage to imported glass bottles.

Most stakeholders proposed that the clause giving the Commissioner powers to ask for any ~~documentation be amended to specify the documents to be requested because the amendment grants~~ the Commissioner broad discretionary powers that may be abused. The imposition of VAT to goods and services used in construction of specialized hospitals was seen by most stakeholders as contrary to the Government's "Big Four" Agenda of ensuring access to universal health care as it will increase the cost of construction and equipping of the specialized hospitals. Details of the stakeholders' comments on the Bill are contained in Part III of this report. All the stakeholders' comments were put into consideration while preparing the report and some of the proposals were adopted forming part of the proposed Committee's amendments.

In considering the Bill, the Committee observed that the amount of revenue that was expected to be realized through this Finance Bill was higher than that raised in the previous Finance Bills. Some of the proposals in the Bill like those increasing the rate of CGT from 5% to 15%, betting tax from 7.5% to 20%, DST from 1.5% to 3% and excise duty on beer, spirits and wines were very ambitious. The Committee noted that these proposals, if enacted, may not necessarily lead to higher revenue collection as people may resort to betting in offshore companies and drinking illicit alcohol. It was sad to note that some of the amendments proposed in the Bill had been made in the Finance Act, 2021 and they were being revised barely six months after implementation. The Committee was of the opinion that the Government should put in place a national tax policy which will create a predictable tax environment and attract investment in Kenya hence increase revenue collection.

On a positive note, the Committee observed that the number of individual citizens who had submitted memoranda on the Bill was higher than the previous years, an indication that Kenyans are taking interest in legislation. The Committee lauded this noting that it will improve the quality of legislation as the opinions of the common 'mwananchi' will be put into consideration when making laws.

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 honor to present to this House the Report of the Committee on its consideration of the Finance Bill (*N.A. Bill No. 22 of 2022*). 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 further wishes to thank all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Finance Bill (*N.A. Bill No. 22 of 2022*) and have the honor to report back to the National Assembly with the recommendation that the Bill be **approved with amendments**.

Hon. Gladys Wanga, CBS, M.P.
Chairperson, Departmental Committee on Finance and National Planning]

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

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

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

1.2 MANDATE OF THE COMMITTEE

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

1.3 COMMITTEE MEMBERSHIP

F. The Departmental Committee on Finance and National Planning was constituted by the House in July 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County
ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency
Jubilee Party

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

Hon. Christopher Omulele, CBS, MP
Luanda Constituency
ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency
Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County
ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency
Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency
MCC Party

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

Hon. Catherine Waruguru, MP
Laikipia County
Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency
Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency
Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency
Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

Ms. Rose M. Wanjohi
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director, Legal Services

Ms. Laureen O. Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. Gideon Kipkoech
Hansard Reporter III

Mr. Luka Mutua
Serjeant-At-Arms II

Mr. George Ndenjeshe
Fiscal Analyst III

Ms. Terry Ondiko
Fiscal Analyst III

Ms. Carolyn Musyoka
Hansard Reporter III

Ms. Carol Waweru
Hansard Reporter III

Ms. Christine Maeri
Audio Officer

PART TWO

2 OVERVIEW OF THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 22 OF 2022)

2.1 INTRODUCTION

6. A finance Bill is an annual Bill that is enacted mainly to facilitate revenue collection by the National Government based on the approved annual Budget Policy Statement and the Budget Estimates.
7. Section 40(3) of the Public Finance Management Act, 2012 provides that the Cabinet Secretary shall submit to Parliament the Finance Bill, setting out the revenue raising measures for the National Government together with a policy statement expounding on these measures
8. The Cabinet Secretary responsible for the National Treasury presented the Budget Policy Highlights for the Fiscal Year 2022/23 on 7th April 2022 with the theme "*Accelerating Economic Recovery for Improved Livelihood*" alongside the revenue raising measures to finance the government's approved expenditure for the period 1st July 2022 to 30th June 2023.
9. Presentation of the budget highlights to Parliament is a departure from the norm with the rest of the East African Community Member States and it is due the General Elections slated for August 2022.
10. The Finance Bill, 2022 provides a raft of tax policy measures which aim to yield additional revenue of KSh. 51.607 billion for the Fiscal Year 2022/23 which is part of the KSh. 2,141.6 billion projected revenues for the said year. It further presents an opportunity for the Government to accelerate implementation of key projects under the '*Big Four Agenda*' through rationalized tax policies and fiscal consolidation framework through amendment of statutes that will help fast track the realization of this medium-term agenda (boost manufacturing activities, enhance food security, achieve Universal Healthcare and support construction of at least 50,000 affordable Houses) which are fundamental to improving livelihoods of the public.
11. The Finance Bill, 2022 proposes amendments to the following tax laws to enhance efficiency and administration in national revenue mobilization:
 - i. the Income Tax Act (Cap. 470);
 - ii. the Value Added Tax Act (No. 35 of 2013);
 - iii. the Tax Appeals Tribunal Act (No. 40 of 2013);
 - iv. the Excise Duty Act (No. 23 of 2015);
 - v. the Tax Procedures Act (No. 29 of 2015);
 - vi. the Miscellaneous Fees and Levies Act (No. 29 of 2016);
 - vii. the Evidence Act (Cap. 80); the Capital Markets Act (Cap. 485A);
 - viii. the Insurance Act (Cap. 487);
 - ix. the Unclaimed Financial Assets Act (No. 40 of 2011);
 - x. the Statutory Instruments Act (No. 23 of 2013); and
 - xi. the Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015).

12. It is important to note that the proposed changes to tax laws in the Finance Bill, 2022 have different effective dates and shall come into operation in accordance with the provisions of clause 1 of the Bill.

2.2 REVIEW OF THE BILL

The Bill has fifty-three (53) clauses and proposes amendments to the following statutes:

13. **Clauses 2 to 21** of the Bill propose to amend the **Income Tax Act (Cap. 470)**. Some of the proposed amendments include:

- i. Amendment to Sections 3, 9, 34 and 35 of the Act to introduce taxation of gains from financial derivatives for non-resident persons as well as setting the tax rate at 15% of the gains.
- ii. Amendment to Section 12E to exempt non-resident persons with a permanent establishment in Kenya from the provisions of the Digital Service Tax.
- iii. Amendment to Section 15 to allow entities or institutions that make donations to charitable organizations to deduct such donations from their taxable income.
- iv. Amendment to Section 16 to allow microfinance institutions to make deduction from taxable income gross interest paid or payable to third parties even if it exceeds the 30% limit set by the law.
- v. Amendment to Section 18B by enhancing the provisions of reporting framework in relation to returns on activities of multinational enterprise groups and their parent entities in Kenya and other jurisdictions. The amendment also specifies that the proposed reporting provisions will apply to the income of the year 2022 onwards.
- vi. Amendment to Section 34 to increase Capital Gains Tax from the current 5% to 15% of the gains.
- vii. Amendment to the Third Schedule to increase Digital Service Tax from 1.5% to 3% of the gross transaction value; among other amendments.

14. **Clauses 22 to 29** of the Bill propose amendments to the **Value Added Tax Act (No. 35 of 2013)**. The Bill proposes to amend the Act as follows:

- i. To remove from exemption list, taxable goods for the exclusive use for the construction and equipment of a specialized hospital with bed capacity of over 50 upon necessary approvals.
- ii. To remove from the exemption and zero rated list, the supply of maize flour, cassava flour, wheat flour, among others.
- iii. To provide exemption on plant and machinery imported for the manufacture of pharmaceutical products. Other proposed exemptions include medical oxygen supplied to registered hospitals, urine bags, adult diapers, artificial breasts, and colostomy or ileostomy bags for medical use.
- iv. Exemption from VAT inputs and raw materials used in the manufacture of passenger motor vehicles and locally manufactured passenger motor vehicles; among other proposed amendments.

15. **Clause 30** the Bill proposes to amend the **Tax Appeals Tribunal Act (No. 40 of 2013)** to streamline the process and timelines of resolving disputes and settlement of such disputes out of the Tax Appeals Tribunal.

16. **Clauses 31 to 35** of the Bill propose amendments to **the Excise Duty Act (No. 23 of 2015)**. The Bill proposes to:

- i. Amend section 10 to provide that the Commissioner (KRA) may, by notice in the Gazette and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the conditions prevailing in the economy in that year in respect of such products.
- ii. Introduce excise duty on liquid nicotine at a specific rate of KSh. 70 per ml rather than per kg. The excise duty at a rate of 15% will apply on fees charged on advertisements of alcoholic, gambling and gaming activities on various media.
- iii. Increase of excise duty rates for various items such as fruit juice, bottled water, alcoholic products, tobacco products, and confectioneries among others.
- iv. Increase of gambling taxes: gaming, betting, lotteries and price completion from the current 7.5% to 20% of the amount wagered.
- v. Some proposed exempt items are such as fertilized eggs for hatcheries, neutral spirits for pharmaceuticals and locally manufactured passenger motor vehicles among others.

17. **Clauses 36 to 42** of the Bill propose to amend **the Tax Procedures Act (No. 29 of 2015)**. The Bill proposes the following amendments to the Act:

- i. Amendment to provide for a specified period of six months allowable for deduction of input tax after the end of the tax period in which the supply or importation occurred.
- ii. Amendment to provide for security of property for unpaid tax. In so doing the Commissioner will notify the Registrar in writing that the property, to the extent of the taxpayers' interest in the property, shall be the subject of a security to the unpaid tax specified in the notification.
- iii. Regularize and streamline the procedures and processes for effecting tax payments and refund that include offset or refund of overpaid tax, refund of tax paid in error, refund of tax paid on exempted or zero-rated supply.

18. **Clauses 43 to 45** of the Bill propose amendments to **the Miscellaneous Fees and Levies Act (No. 29 of 2016)**. The Bill proposes to:

- i. Make amendments to the First Schedule of the Act in order to reduce the export levy on raw hides and skins from 80 percent or USD 0.5 per kilogram to 50 percent or USD 0.32 per kilogram.
- ii. Exempt inputs and raw materials imported by manufacturers of pharmaceutical products from payment of Import Declaration Fees and Railway Development Levy. This will encourage investment in the health sector and improve access to affordable health care services through promotion of manufacturing of pharmaceutical products.

19. **Clause 46** of the Bill proposes to amend section 133 of **the Evidence Act (Cap. 80)** to accommodate all officers involved in administering tax laws as set out in the First Schedule of the Kenya Revenue Authority Act (Cap. 469).

20. **Clauses 47 and 48** of the Bill seek to amend the **Capital Markets Act (Cap. 485A)** to address the shortage of investment advisory services being experienced across the country, due to the restrictive nature of the Act, by expanding the spectrum of persons who may act as investment advisors in offering the much-needed investment advisory services.

21. **Clause 49** of the Bill proposes to amend section 10(4) and 10(8) of the **Insurance Act (Cap. 487)** to align the section with section 21A of the Act.
22. **Clauses 50 and 51** of the Bill seek to amend the **Unclaimed Financial Assets Act (No. 40 of 2011)** to introduce capping penalties and interest to the value of assets found to be reportable and deliverable. This is meant to address the cases where the asset may increase beyond the value of the asset thus discouraging compliance to avoid penalties.
23. **Clause 52** of the Bill proposes to amend the **Statutory Instruments Act (No. 23 of 2013)** to provide for the exemption of statutory instruments legislated under various tax laws from automatic expiry as provided in section 21 of the Act.
24. **Clause 53** of the Bill proposes to amend the **Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015)** to provide for administration of the benefits payable to entitled persons under the Act by the respective entities.
25. The Bill does not delegate legislative power and neither does it limit fundamental rights and freedoms.
26. The Bill does not contain provisions that affect the functions and powers of county governments in terms of Article 110 (1) (a) of the Constitution and hence is not a Bill concerning county governments.
27. Enactment of this Bill may occasion additional expenditure of public funds.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

28. Following the call for memoranda from the public through the placement of adverts in the print media on 20th April 2022 and vide a letter REF: NA/DDC/F&NP/2022/22 dated 5th May 2022 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

-
- i. Institute of Certified Public Accountants of Kenya (ICPAK)
 - ii. Kenya Association of Manufacturers (KAM)
 - iii. British American Tobacco Kenya PLC (BAT)
 - iv. Consol Glass Kenya Limited
 - v. Westminister Consulting
 - vi. Anjarwalla & Khanna LLP
 - vii. Uber
 - viii. East Africa Law Society (EALS)
 - ix. Kenya Bankers Association (KBA)
 - x. KPMG Kenya
 - xi. BDO East Africa
 - xii. PricewaterhouseCoopers Limited (PWC)
 - xiii. Deloitte & Touche LLP
 - xiv. PKF Taxation Services Limited
 - xv. D & M Management
 - xvi. Sanaabil Consulting Limited
 - xvii. Andersen
 - xviii. Sheikh and Company Advocates
 - xix. RSM Eastern Africa Consulting Limited
 - xx. Munene Micheni & Company Advocates
 - xxi. Institute of Public Finance Kenya (IPFK)
 - xxii. Kenya Private Sector Alliance (KEPSA)
 - xxiii. The Scotch Whisky Association
 - xxiv. Kenya Breweries Limited/UDV (K) Limited
 - xxv. Pubs, Entertainment & Restaurant Association of Kenya (PERAK)
 - xxvi. Coca-Cola Beverages Africa
 - xxvii. Alcohol Beverages Association of Kenya (ABAK)
 - xxviii. Kenya Wine Agencies Limited (KWAL)
 - xxix. Associated Battery Manufacturers (EA) Limited
 - xxx. Nairobi Securities Exchange (NSE), Fund Managers Association (FMA) and Kenya Stockbrokers & Investment Banks (KASIB)
-
- xxxi. Ernest & Martin Associates
 - xxxii. Mr. Eliud Matindi
 - xxxiii. Mr. Kagiri Gatama and Mr. George Mut
 - xxxiv. Mr. Chadwick Osare
 - xxxv. Mr. Julius Machikha
 - xxxvi. Ms. Waro Njiro
 - xxxvii. Okohleah Enterprises
 - xxxviii. Tegemeo Institute of Agricultural Policy and Development
 - xxxix. Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
 - xl. Law Society of Kenya

- xli. Biolite Kenya Holdings Limited
- xlii. Mjengo Limited
- xlili. Kenya Airline Pilots Association (KALPA)
- xliv. Clean Cooking Association of Kenya (CCAK)
- xlv. Elgon Kenya Limited
- xlvi. Tatu City Special Economic Zone
- xlvii. Aceclass Consultants Limited
- xlviii. Association of Gaming Operators of Kenya (AGOK)
- xlix. East Africa Venture Capital Association (EAVCA)
 - 1. Outdoor Advertising Association of Kenya
 - li. American Chamber of Commerce, Kenya
 - lii. Fair Price Youth Group
 - liii. Mr. David Muriuki Kageenu
 - liv. Ms. Jayne W. Nyawira
 - lv. Ms. Doris Kanario
 - lvi. Ms. Nancy Wambui
 - lvii. Mr. Jacob Nzuki
 - lviii. Ms. Mercy Etyang
 - lix. Mr. Peter Kanyaru
 - lx. Mr. Boniface Mugambi
 - lxi. Mr. Jackson Timoi
 - lxii. Mr. Njoroge Waweru
 - lxiii. Okoa Uchumi Coalition
 - lxiv. Kenya Network of Cancer Organizations (KNCO)
 - lxv. Media Owners Association of Kenya (MOA)
 - lxvi. Google
 - lxvii. Water Services Providers Association (WASPA)
 - lxviii. EABX Securities Exchange
 - lxix. Kenya Sugar Manufacturers Association (KESMA)
 - lxx. CPA Charles Chege Gitau
 - lxxi. Kibos Fertilizer Limited
 - lxxii. Kenya Union of Savings & Credit Co-Operatives Limited (KUSCCO)
 - lxxiii. Seslaw Advocates
 - lxxiv. The National Treasury and Planning

The stakeholders submitted as follows:

3.1 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

In a meeting with the Committee held on Tuesday, 10th May 2022, the Institute of Certified Public Accountants of Kenya proposed the following amendments to the Finance Bill 2022:

Income Tax Act

Clause 4

29. Amend the clause by deleting the words "*and third parties*" this will ensure that persons who genuinely incur foreign exchange losses due to fluctuation of exchange rates are not punished unnecessarily. In addition, foreign exchange losses are already subjected to tax in Kenya and foreign exchange gains in the hands of the lender are not taxed further. It will also align the proposal with global best practice that seeks to restrict the deduction among related parties.

Committee's Observation/Recommendation

The section provides controls against tax abuse which can be between related parties or third parties. The amendment if accepted will negate the objective of the proposal contained in the Bill and may create an avenue for revenue loss. The Committee therefore rejected their proposal.

30. Amend the clause by deleting definition of 'company' under proviso 4 of sub-section 4A and replacing with '*company does not include persons exempt from interest restriction rule as provided for under Section 16 (2) (j) (iii)*' in order to align the provision on foreign exchange losses to the interest restriction rule. ~~These persons exempted under the interest restriction rule include micro and small enterprises registered under the Micro and Small Enterprises Act 2012 and microfinance institutions licensed under the proposed Microfinance Act 2006.~~

Committee's Recommendation

The Committee adopted their proposal because the proposal aligns the provision of section 4A and section 16(2) (j) (iii) since it addresses issues on interest restriction.

Clause 9

31. Amend the clause by replacing section 4A with 5 under the proposed amendment appearing under section 9 (b) of the Bill. This is because sub-section 4A was already renumbered to sub-section (5) under the Finance Act 2014.

Committee's Recommendation

The Committee adopted their proposal. This is a clean-up and to correct an error as the sub-section had already been renumbered as 5

Clause 10

32. Amend the clause by including for exemption the Credit/Only Non-Deposit taking Microfinance Institutions (MFIs) from the revised thinly capitalization interest based rule (EBITDA) for those licensed under the Microfinance Act 2006. This will provide a level playing field for all players within the financial services sector. If not exempted the Credit Only MFIs will led to threats to their going concerns due to the implied incremental taxes from EBITDA based thin capitalization criteria.

Committee's Recommendation

The Committee adopted their proposal. This credit/only non-deposit taking micro-finance institutions are not included in the Microfinance Act, 2006 to be exempt from the thin capitalization interest based rule.

- ~~33. Amend the clause by adding the following proviso immediately after the proviso to sub-section (2)(j)(iii)(iv) '*the excess interest disallowed shall be carried forward and reduced against future tax profits when the interest to EBITDA ratio reduces to less than thirty percent*'. This is to those persons affected by the interest limitation rule.~~

Committee's Observation/Recommendation

The amendment was made through the Finance Act, 2021 with the aim of dealing with tax avoidance issues related to claiming of interest on loans. The Committee therefore rejected their amendment.

34. Alternatively, amend section 16(2) (j) (iii) to include the following new sub-section (c) '*holding companies that are regulated under the Capital Market Authority Act*'. This is to await provision of comprehensive guidelines on computation of the allowable interest of entities with various streams of income.

Clause 14

35. Amend the clause by replacing the word "*of*" with the word "*or*". This appears to be a typographical error.

Committee's Observation/Recommendation

The Committee observed that their amendment was a clean-up and therefore adopted it.

Clause 15(a)

36. Amend paragraph (a) by reducing the capital gains tax from the proposed 15% to 7.5%. Kenya is yet to adopt indexation (adjustment to the capital gain to enable eliminate impact of inflation) in arriving at the taxable capital gain. The proposed percentage increase is deemed high and may impact negatively on Kenya as an investment destination. This also requires a stakeholders' engagement.

Committee's Observation/Recommendation

The increase of CGT from 5% to 15% was a huge leap. The Committee therefore recommended that the rate of CGT be revised to 10%. Deleting the clause will have a negative impact on revenue collection. The Committee therefore rejected their proposal.

Clause 20

37. Amend paragraph (a) by deleting the words "*through the national grid*" and replacing with the words "*for supply to the national grid*". The proposed amendment will open up the investment deduction to power producers irrespective of whether or not they supply to the national grid.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee because it is a clean-up.

38. Amend the clause by deleting paragraph (b) because investment deduction is already restricted to persons with investment value of at least KSh. 250 million outside Nairobi City County and Mombasa County in a year, it would be desirable to have the investment deduction available to all categories of capital expenditure as per paragraph 1 of the second section. In addition, this will not assist in decongesting the cities by incentivizing growth in rural areas and is controversial as there are no guidelines as to what investment can be or cannot be done outside the aforementioned counties.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee. It will incentivize growth in areas outside the Nairobi and Mombasa Counties.

39. Alternatively, delete the reference to paragraph 1(a) (l) and paragraph 1(b) (a) and replacing them with Paragraph 1(a) (i) and Paragraph 1(b) (i) respectively. The said sections to be deleted as they do not exist under the Second Schedule.

Transfer of Assets at written down values

40. Add the following proviso under paragraph 4 to the second schedule '*provided that in the case of machinery and either the buyer is a body or persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control or both the seller and the buyer are bodies of persons and some other persons has control over both of them and the sale gives rise to a balancing charge, the parties may elect to transfer the assets at written down values by notice in writing to the Commissioner.*' The provision had not been included in the new Second Schedule and the Institute proposed that it be reinstated (investment allowances) to support businesses seeking to restructure for operation efficiencies.

Committee's Observation/Recommendation

The transfer of assets between parties whether related or not creates a situation whereby if not provided for would create a double claim of capital deduction by both parties to such a transaction and will lead to erosion of revenue. The Committee rejected their proposal.

Value Added Tax Act

Exemption of transfer of business as a going concern

41. Reinstatement under Part 1 of the First schedule to the VAT Act in proper numerical order '*the transfer of a business as a going concern by a registered person to another registered person*'. The Tax Laws Amendment Act, 2020 deleted the exemption and currently the transfer of business as a going concern attracts VAT at 16%. The proposed reinstatement of the exemption will reduce the cost of business restructuring.

Committee Observation/recommendation

The Committee observed that transfer of assets between parties whether related or not creates a situation whereby if not provided for as currently in the law will create room for double claim of capital deduction by both parties to such a transaction and lead to erosion of revenue. Their proposal was therefore rejected by the Committee.

Clause 24

42. Amend section 17(3) by inserting the following new paragraph (g) immediately after (f) '*an invoice issued by a non-resident digital services provider*'. This will enable B2B taxpayers have documentation to facilitate claiming of qualifying input tax from imported digital services (currently at 16%).

Committee Observation/Recommendation

The Committee adopted the proposal with amendments. That the paragraph 24(a) should clarify whether the same applies when first filing for the claim or amending the claim to be within the six months. The documents required under paragraph (b) should be specified.

Clause 26

43. Amend Section 30 of VAT Act by inserting the words "*for any tax paid in error other than section 47A and 47B of the Tax Procedures Act, 2015*". The taxpayer should benefit from refunds from taxes paid in error the same way Kenya Revenue Authority (KRA) penalizes for omissions of taxes made in error.

Committee Observation/Recommendation

Their proposal was rejected by the Committee because the refund of tax paid in error is provided under section 47 of the TPA since it is a common procedure that cuts across all the tax laws.

Clause 28

44. Amend paragraph 28(iii) by inserting the words “*and pellets*” immediately after the word “*briquettes*”. Both pellets and briquettes are alternatives to firewood for manufacturers and the two should be cost effective.

Committee Observations/Recommendation

The Committee adopted the proposal. This will ensure clean cooking options as an alternative to firewood.

Tax Appeals Tribunal Act

Clause 30

45. Amend the clause by deleting paragraph (2) and subsequent sub-sections. Requiring a deposit of 50% of the disputed tax revenue in a special account at Central Bank of Kenya before a taxpayer can appeal a decision of the tribunal requires stakeholders' engagement. In addition, the proposal is contrary to Article 48 of the Constitution as a barrier to justice and Article 40 on the right to property and it will negatively impact on working capital and affect business cash flow and open avenues of illegal tax deals to reduce tax assessments.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Excise Duty Act

Clause 31

46. Amend Section 10 to allow for an inflation adjustment every 2 years. A two-year reprieve will allow for post recovery plans by businesses as well as certainty and predictability of excise tax increases. The power to waive national taxes is exclusively vested with Cabinet Secretary, National Treasury under the PFM Act 2012 with no provision for delegation.

Committee's Recommendation

The Committee adopted their proposal and recommends that inflation adjustment be done after every two years.

Clause 34

47. Amend paragraph 34(b) (i) by applying the correct base rate for purposes of the proposed increase in excise duty. The base rate of the excise increase used by National Treasury was suspended in 2021 by the Court (Petition No. 24 of 2021). In regard to clause 34 (b) (i), the base rates used are incorrect.

Committee Observation/Recommendation

The Committee observed that court orders do not bar Parliament from amending the law.

48. Amend paragraph 34(b) (iii) by applying the correct base rate for purposes of the proposed increase in excise duty. The base rate of the excise increase used by National Treasury was suspended in

2021 by the Court (Petition No. 24 of 2021). In regard to clause 34 (b) (iii), the base rates used are incorrect.

Committee Recommendation

The Committee deletes the proposal. There is no correct base rate for purposes of the proposed increase in excise duty.

49. Amend paragraph 34(b) (iv) by applying the correct base rate for purposes of the proposed increase in excise duty. The base rate of the excise increase used by National Treasury was suspended in 2021 by the Court (Petition No. 24 of 2021). In regard to clause 34 (b) (iv), the base rates used are incorrect.

Committee Recommendation

The Committee deleted the proposal. The proposed base rate of the excise duty had been suspended by the Court.

50. Amend the clause by deleting paragraph 34 (b) (ix) and retaining the excise duty at current levels. Maintaining the existing rates and increasing efforts to curb the illicit trade in cigarettes will provide stability to the industry and even recovery of approximately KSh. 4 billion loss by stemming smuggled cigarettes.

Committee Observation/Recommendation

Cigarette smoking has adverse health implications, as such, it should be discouraged by all means hence the increase in excise duty. The Committee therefore rejected their proposal.

51. Amend the clause by deleting paragraph 34 (b) (x) and retaining the excise duty at current levels. Maintaining the existing rates and increasing efforts to curb the illicit trade in cigarettes will provide stability to the industry and even recovery of approximately KSh. 4 Billion loss by stemming smuggled cigarettes.

Committee Observation/Recommendation

Cigarette smoking has adverse health implications, as such, it should be discouraged by all means hence the increase in excise duty. The Committee therefore rejected their proposal.

52. Amend the clause by deleting paragraph 34(d) (i to iv) and retaining the excise duty at current levels. The betting sector is heavily taxed including 7.5% excise duty, 15% betting tax, 20% withholding tax and 30% corporation tax. Further increases could lead to closure of betting businesses and shift to offshore betting and loss of revenue to government.

Committee Observation/Recommendation

The Committee observed that excise duty on gaming activities had been increased in the Finance Act, 2021 and there is therefore need to give the sector time before the taxes are increased. The Committee therefore recommends that the amendment be deleted.

First Schedule, second table appearing in paragraph 1 of part I- (xvi)

53. Amend by deleting the excise tax payable on both imported glass bottles and local glass bottles. Local glass manufacturers are not able to meet current demand nor the full range of glass products. It will also provide a reprieve in cost of glass production and also encourage use of glass instead of plastic as a packaging material.

Committee Observation/Recommendation

The Committee observed that imposition of excise duty on locally manufactured glass bottles will increase the price of such bottles and therefore favour imported glass bottles. This will impact negatively on the manufacturing sector in the country. The Committee therefore adopted their proposal.

54. Amend section 14 to read as follows "*where duty has been paid in respect to excisable goods imported into or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials and packaging material in the manufacture of other excisable goods, the raw materials shall be offset against the excise duty payable on the finished goods.*" This will allow for the claiming of input excise duty to raw materials used in the manufacture of excisable goods. This is a relief on excise tax paid on packaging material and glass bottles.

Committee Observation/Recommendation

The Committee rejected the proposal as it not easy confirm the second use raw materials for purpose of offsetting the duty paid.

First Schedule

55. Amend paragraph (v) by reducing excise duty to 5% on fees charged on advertisement. Introduction of excise duty on fees charged on advertisement by TV and radio stations, print media on forms of betting and gaming competitions by 15% will be damaging to the businesses as they are overtaxed.

Committee Observations/Recommendations

There are already regulations regulating advertising of gaming activities in the country. The imposition of excise duty on such advertisements is therefore not necessary. The Committee adopted their proposal and recommended deletion of the amendment.

Tax Procedures Act

Clause 39

56. Amend the clause to read as follows "*from the time the amount became outstanding*". This is to allow for clarity and certainty.

Committee Observation/Recommendation

The Committee proposed the amendment to Clause 39(5) to provide clarity on the starting point when the amount becomes outstanding.

Clause 41

57. Amend section 51(11) to read as follows "*the Commissioner shall, make the objection decision within sixty days from the date of receipt of a valid notice of objection, failure to which the objection shall be deemed allowed.*" This will mean that where objection to decisions are issued outside the prescribed sixty-day framework, the objections shall be allowed in full and any assessment vacated. This will offer protection to taxpayers and pre-empt unnecessary cases.

Committee Observation/Recommendation

Their proposal was adopted in order to protect the taxpayers.

3.2 KENYA ASSOCIATION OF MANUFACTURERS (KAM)

In a meeting with the Committee held on Tuesday, 10th May 2022, KAM proposed the following amendments to the Bill:

Clause 10

58. Amend Section 16(2)(j)(iii) to include a new sub-section (c) exempting companies regulated by the Capital market Authority to read as follows: *"Holding companies regulated under the Capital Market Authority Act, 1998 (Rev 2012)" in the list of entities exempt from the new interest restriction rules.*
"Manufacturing companies operating in Kenya".

59. Amend to introduce new clause indicating that implementation of the interest restriction provisions should only take effect once the comprehensive guidelines on the computation of allowable interest for entities with various streams of income are in place to read as follows: *"The Cabinet Secretary shall develop Guidelines on the computation of allowable interest for entities with various streams of income published in the Gazette."*

60. Amend the commencement date of the revised interest restriction provisions to apply *"for financial years commencing on or after 1st January 2022"*

Committee Observation/Recommendation

The law does not apply retrospectively. Amendments to the ITA are usually effective on 1st January of the subsequent year. The Committee therefore rejected their proposal.

Clause 11

61. Amend the Bill by deleting clause 11, which proposes to replace the existing section 18A with a new clause that will expand the scope of dealings subject to a preferential tax regime.

Committee's Observation/Recommendation

The amendment as proposed in the Bill is meant to facilitate a multinational company to report (country by country) transactions in the jurisdictions where they operate. Country by country reporting will bring transparency in financial and tax reporting by multinational enterprises. The Committee therefore rejected their proposal.

Clause 13

62. Amend the clause by deleting the proposed clause 18C requiring a multinational enterprise group or a constituent entity, other than an excluded multinational enterprise group, that is resident in Kenya, to notify the Commissioner whether or not it is the ultimate parent entity of the group and in case it is not the ultimate parent entity of the group, whether or not it is a surrogate parent entity.

63. Amend the clause by deleting the proposed new section 18 D to increase the gross turnover to KSh. 950 billion from the proposed ninety-five billion shillings (including extraordinary or investment income) for the ultimate parent entity or a constituent entity of a multinational enterprise group that is resident in Kenya shall file a country by-country report with the Commissioner of its financial activities in Kenya and for all other jurisdictions where the group has a taxable presence.

Committee's Observation/Recommendation

Country by country reporting is a recent international practice that is meant to ensure transparency and visibility by all multinationals. The Committee rejected their proposal.

Clause 15

64. Amend the clause by deleting paragraph 15 (a) in order to retain the current rate for CGT on the transfer of property at 5%.

Committee's Observation/Recommendation

The increase of CGT from 5% to 15% was a huge leap. The Committee therefore recommended that the rate of CGT be revised to 10%. Deleting the clause will have a negative impact on revenue collection. The Committee therefore rejected their proposal.

Clause 20

65. Amend the clause by deleting paragraph 20(b) as it will limit the application of the 100% investment deduction rate in terms of the number of investments and bring about ambiguity.

Committee's Recommendation

Their proposal was adopted by the Committee. This is to reduce ambiguity.

66. Amend to introduce a new Section 14A under the Excise Act for exemption or refunds for products exported where the inputs (raw materials and packaging materials) are excisable to read as follows: *"Where excise duty has been paid in respect of excisable goods manufactured in Kenya is exported by a licensed manufacturer and which have been used as raw materials, input, or intermediate product in the manufacture of a final product or other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials input, or intermediate product shall be offset against the excise duty payable on the finished goods"* and *Where excise duty has been paid in respect of non-excisable goods imported into, exported out of Kenya, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials, input, or intermediate product in the manufacture of a final product or other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials input, or intermediate product shall be offset against the excise duty payable on the finished goods"*.

Committee Observation/Recommendation

The Committee rejected the proposal as it not easy confirm the second use raw materials for purpose of offsetting the duty paid.

Clause 24

67. Amend sub-clause 24(b) by deleting the paragraph 17 (3) (f); or introducing new provisions under clause for the clause to specify the additional documents required.

Committee Observation/Recommendation

The Committee observed that this provision may be abused by the Commissioner and recommends its deletion.

Clause 28

68. Amend the clause by deleting paragraph 28(a) (ii) in order to retain the supply of maize flour, cassava flour and wheat in the VAT exemption schedule.

Committee Observation/Recommendation

The Committee observed that the amendment will increase the price of maize flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight and recommends deletion of paragraph 28(a) (ii).

Section 17 (5)

69. Amend Section 17(5) of the VAT Act, 2013 to add the following conditions where VAT excess credit shall be paid to a registered person by the Commissioner of Tax arising from the VAT Formula: *“Provided that any such excess shall be paid to the registered person by the Commissioner where:*
-
- (e) Such excess arises from Regulation 8 (2) of the Value Added Tax Regulations, 2017 and which may be applied against any tax payable under this Act or any other written law, or is due for refund under section 47(4) of the Tax Procedures Act, 2015; (f) Such excess arising after deductions of zero-rated supplies under Regulation 8 (2) of the Value Added Tax (Amendment) Regulations, 2019 and which may be applied against any tax payable under this Act or any other written law, or is due for refund under section 47(4) of the Tax Procedures Act, 2015; and (g) The registered person lodges the claim for the refund of the excess tax within twenty-four months from the date of commencement of the provisions of Section 17 (5) (e) and (f). Provided further that, notwithstanding Section 17(5)(f), a registered person who before the commencement of Section 17(5) (e) and (f), has a credit arising from the formula under Regulation 8 (2) of the Value Added Tax Regulations, 2017, may make an application for a refund of the excess tax from the commencement date of the Regulations.”*

Committee Recommendation

Their proposal was rejected by the Committee. There is no need for new paragraph (g) to cater for the invoices issued by non-resident.

Section 42A – (4A)

70. Amend the section to re-introduce and revert the provisions exempting Taxpayers in perennial VAT refunds from Withholding VAT who demonstrate that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for not less than twenty-four months to read as follows: *“Section 42A – (4A) of the Tax Procedures Act, 2015 reads as follows: (4A) The Commissioner may at any time exempt any supplier from the provisions of this section if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for not less than twenty-four months”.*

Committee Observation

Their proposal was rejected by the Committee. The re-introduction of Section 42A is no longer necessary as the rate of withholding VAT is currently at 2% after it was reduced from 6 % through the Finance Act 2019.

Clause 30

71. Amend the clause by deleting paragraph 30 (2) requiring an appellant to deposit with the Commissioner fifty per cent of the disputed tax.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 31

72. Amend the Bill by deleting the clause and replacing it with the following new provisions under sub-section 10(1) *“Despite section 8, the Commissioner may, with the approval of the Cabinet Secretary, by notice in the Gazette, adjust the specific rate of excise duty once every two years to take into account inflation by the formula specified in Part 1 of the First Schedule and in the alternative, we propose that the power to exempt specific products from inflation adjustment be granted to the National Assembly instead”*.

Committee Observation/Recommendation

The Committee observed that the power to waive taxes is vested in the Cabinet Secretary and therefore recommends deletion of the clause. The Committee also recommends that inflation adjustment be done after every two years.

Clause 34

73. Amend the clause by deleting paragraph 34 (b) (i) and retaining the current rates for fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit.

Committee Recommendation

The Committee recommends that the excise rate be reduced to Shs. 13.00.

74. Amend the clause by deleting paragraph 34 (b) (ii) in its entirety to retain the current rates for beauty products; or Amend this clause by retaining the rate of excise duty at 10%.

Committee Observation/Recommendation

The Committee rejected their proposal. The Committee adopts the proposal in the bill that the excise duty be at 15% to discourage fake and counterfeit beauty products in the market.

75. Amend the clause by deleting paragraph 34 (b) (iii) to retain the current rates for bottled or similarly packaged waters and other non-alcoholic beverages.

Committee Observation/Recommendation

Increasing excise duty on bottled water will increase prices of the commodity. The Committee therefore adopted their proposal and recommends deletion of the paragraph.

76. Amend the clause by deleting paragraph 34 (b) (iv) to retain the current rates of the excise duty at KSh. 116.08 per litre for beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcohol.

Committee Observation/Recommendation

Increase in excise duty on beer may increase uptake of illicit brew. Additionally, the excise rate of beer had been revised in the Finance Act, 2021 and should therefore be given some time before review. The Committee recommends that the excise rate of beers be retained at Shs. 121.85.

77. Amend by deleting paragraph 34 (b) (vi) to retain the current rates of the excise duty at KSh. 198.34 per litre for wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits.

Committee Observation/Recommendation

Increase in excise duty on wines may increase uptake of illicit brew. Additionally, the excise rate of alcohol had been revised in the Finance Act, 2021 and should therefore be given some time before review. The Committee recommends that the excise rate of wines be retained at Shs. 208.20 per litre.

78. Amend the clause by deleting paragraph 34 (b) (vii) to retain the current rates of the excise duty at KSh. 265.50 per litre.

Committee Observation/Recommendation

Increase in excise duty on spirits may increase uptake of illicit brew. Additionally, the excise rate of alcohol had been revised in the Finance Act, 2021 and should therefore be given some time before review. The Committee recommends that the excise rate of spirits be retained at Shs. 278.70 per litre.

79. Amend the clause by deleting paragraph 34(b) (xvi) to retain the tariff for imported glass bottles from outside the East African Community; and introduce the following new amendments to the existing provisions: "(a) Glass bottles for packaging pharmaceutical products; (b) Glass bottles for packaging goods destined for exports; and (c) Glass jars imported or locally manufactured used for packaging by manufacturers for local use or exports".

Committee Observation/Recommendation

The Committee observed that imposition of excise duty on manufactured glass bottles will give undue advantage to international glass bottle manufacturers hence impact negatively on the local manufacturing industry contrary to the Government's 'Big Four Agenda'. The Committee therefore recommends deletion of the paragraph.

80. Introduce a provision in the Excise Duty Act for exemption or refunds for products exported where the inputs (raw materials and packaging materials) are in the new section 14A to read as follows: "*Where excise duty has been paid in respect of excisable goods manufactured in Kenya is exported by a licensed manufacturer and which have been used as raw materials, input, or intermediate product in the manufacture of a final product or other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials input, or intermediate product shall be offset against the excise duty payable on the finished goods*" and "*Where excise duty has been paid in respect of non- excisable goods imported into, exported out of Kenya, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials, input, or intermediate product in the manufacture of a final product or other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw material input, or intermediate product shall be offset against the excise duty payable on the finished goods*".

Committee Recommendation

The Committee rejected their proposal as it not easy confirm the second use raw materials for purpose of offsetting the duty paid.

81. Amend the clause by deleting paragraph 34(b)(xviii) seeking to introduce excise duty to items under tariff number 3923.90.90 and introduce an exemption for multi-use plastic products by inserting the expression "*excluding articles of plastic for multi-use and baby feeding bottles*" immediately after the expression "*3923.30.90*" appearing in the tariff description "*Articles of plastic of tariff heading 3923.30.00*".

Committee Recommendation

Their proposal was rejected by the Committee. However, the Committee adopted the recommendation to clean up the proposal read "and 3223.90.90" immediately after the expression "3923.30.00.

82. Amend the clause by deleting paragraph 34(b) (xiv) to exclude the proposed excise duty on locally manufactured chocolate products; or introduce new provisions under the provisions to exclude locally produced white chocolate, chocolate in blocs, slabs or bars of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00 by excluding locally produced white chocolate, chocolate in blocs, slabs or bars of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00.

Committee Recommendation

Their proposal was adopted by the Committee. This to protect the locally manufactured chocolate and allow it to be competitive will promoting local industries.

83. Amend the clause by deleting paragraph 34(c) to remove the proposed excise duty of 15% on ice cream.

Committee Recommendation

Their proposal was adopted by the Committee. This to protect the locally manufactured ice-cream, while providing an outlet for local milk and will promoting local industries

84. Amend the clause by deleting paragraph 34(d)(v) proposing to impose excise at the rate of 15% on advertising by television stations, print media, billboards and FM radio stations on alcoholic beverages, betting, gaming, lottery and prize competitions.

Committee Observations/Recommendations

There are already regulations to regulate advertising of gaming activities in the country. The imposition of excise duty on such advertisements is therefore not necessary. The Committee adopted their proposal and recommends deletion of the amendment.

Clause 37

85. Amend paragraph 37(5) by increasing the period of claiming input VAT to twelve (12) months instead of the proposed six months.

Committee Recommendation

Their proposal was rejected by the Committee. The timeline for claiming input tax is sufficient and it will harmonise the section with Section 17(2) of the VAT Act.

Clause 38

86. Amend the Bill by deleting clause 38 which is proposing to repeal section 40 of the tax procedures act on security on property on unpaid tax.

Committee Recommendation

The Committee rejected their proposal. This will defeat the purpose of securing taxes by allowing unscrupulous persons to dispose of assets could have been used for tax recovery.

Clause 39

87. Amend the clause which is seeking to amend section 47 of the Tax Procedures Act on offset or refund of overpaid tax by replacing the proposed penalty of 1% for delays in payments with five per cent (5%) to encourage prompt refunds and to allow taxpayers to lodge applications for VAT refunds within 5 years.

Committee Recommendation

Their proposal was rejected by the Committee. This would stifle and delay tax collection efforts since VAT is a monthly obligation.

Clause 41

88. Amend the Bill by deleting clause 41 to retain the current provisions.

Committee observations/recommendations

The Committee rejected the proposal. This will lead to loss of revenue. In addition, the Commissioner is constrained on the relevant documentation that are not produced as this is known by the taxpayer.

Clause on prompt payment

89. A fund under the Public Finance Management Act be introduced to ring-fence funds arising from overpaid taxes or taxes arising from refunds to manufacturers for export purposes. This is to unlock the non-payment of such funds and promote prompt refunds owed to businesses and investors by amending the Public Finance Management Act by introducing a new section 24A to read as follows: "(1) There is established a fund to be known as the Tax Refund Fund which shall be administered by the Cabinet Secretary of matters relating to Finance; (2) There shall be paid into the Fund 1% of monthly tax: (a) Collected from any tax law including, the Tax Procedures Act, Income Tax Act, Excise Duty Act, Value Added Tax, and Miscellaneous Fees and Levies Act; and (b) for purposes of payment of refunds arising from excess and/or erroneous payment of tax under any tax law including, the Tax Procedures Act, Income Tax Act, Excise Duty Act, Value Added Tax, and Miscellaneous Fees and Levies Act; (3) Payment from the Fund shall be made without undue delay to cover all amounts owed by the Government payable as refunds; (4) Not later than three months after the end of each financial year, the National Treasury shall prepare and submit to the Auditor-General financial statements for that year in respect of the Tax Refund Fund; and (5) The Cabinet Secretary may by notice in the Gazette provide for the mode of administration of the Fund established under sub-section (1)".

Committee's Recommendation

This proposal was rejected by the Committee. This will hold up funds that can be used elsewhere and provide an avenue for other sectors to ask for similar Funds.

Section 39A

90. Amend the section by introducing provisions that guide the setting of commencement dates under the Finance Act by introducing amendments to the Public Finance Management Act by the National Assembly to read as follows: "(a) Whether the tax requires an administrative process to be put in place for its implementation; (b) Whether there is a need for guidelines of stakeholders to support compliance due to the nature of the tax requirements; and (c) Whether there is a need for sensitization of stakeholders to support compliance due to the nature of the tax requirements".

Committee's Recommendation

This proposal was rejected by the Committee. This is not necessary. Further different tax regimes have different commencement dates.

3.3 BRITISH AMERICAN TOBACCO KENYA PLC (BAT)

In a meeting with the Committee held on Tuesday, 10th May 2022, BAT proposed the following amendments to the Bill:

Clause 34

91. Amend by deleting paragraph 34(b) (xvii) because this is a new product that is yet to be established in the market. Additionally, BAT was yet to commercialize their factory as the necessary authorizations were yet to be completed.

Committee Observation/Recommendation

The Committee rejected their proposal. Tobacco products have adverse health implications and as such are to be discouraged hence the excise duty.

92. Amend by deleting paragraphs 34(b) (ix) and 32(b) (x) because cigarettes excise duty has gone up by a cumulative 25% between July 2019 and October 2020 due to the application of annual inflationary adjustments on top of a 15% increase in the budget cycle for FY 2019/20.

Committee Observation/Recommendation

Cigarette smoking has adverse health implications, as such, it should be discouraged by all means hence the increase in excise duty. The Committee therefore rejected their proposal.

93. Amend sub-clause 34(b) by deleting the words "*electronic cigarettes and other nicotine delivery devices*" and the corresponding rate of excise duty and amend further as follows "*Liquid nicotine for electronic cigarettes*" with the corresponding rate of excise duty at "*KSh. 5 per milliliter*". The proposed excise rates are prohibitive and will continue to prevent establishment of a legal market for the category.

Committee Recommendation

The Committee rejected their proposal. Nicotine products has adverse health implications, as such, it should be discouraged by all means hence the increase in excise duty.

Clause 31

94. Sub-section 1 of section 10 of the Excise Duty Act is amended by deleting the phrase "*once every year*" and replacing it with the phrase "*once every two years*" and adding the following proviso: "*Provided that the Commissioner may, by notice in the gazette and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year in respect of such products*". The amendment will allow the industry space to recover after each inflationary adjustment and ensure sustainability of government revenues from the category in the face of declining legitimate volumes.

Committee Recommendation

The Committee adopted their proposal to increase inflation adjustment from annually to biennially.

3.4 CONSOL GLASS KENYA LIMITED

95. In a meeting with the Committee held on Tuesday, 10th May 2022, the Company submitted that they were opposed to introduction of excise duty on locally manufactured glass noting that it will shrink the glass manufacturing industry in the country and reduce demand for locally manufactured glass. They observed that the amendment will only give National Treasury a short-term revenue boost but the long-term repercussions will be grave for the country.

Committee Observation/Recommendation

The Committee observed that imposition of excise duty on manufactured glass bottles will give undue advantage to international glass bottle manufacturers hence impact negatively on the local manufacturing industry contrary to the Government's 'Big Four Agenda'. The Committee therefore recommends deletion of the paragraph.

3.5 WESTMINISTER CONSULTING

In a meeting with the Committee held on Tuesday, 10th May 2022, Westminister proposed the following amendments to the Bill:

Clause 20

96. Amend the clause by deleting sub-clause (1A) (b) since it eliminates incentives meant to boost manufacturing in areas outside Nairobi and Mombasa Counties. In addition, there is need for more industries outside Nairobi and Mombasa in order to decongest the already overcrowded cities. Further, the Special Economic Zones that are situated outside the two cities and play a critical role in manufacturing will be affected by the proposed amendment.

Committee's Recommendation

Their proposal was adopted by the Committee. This will incentivise investment in other areas and aid in decongesting the two counties

Clause 30

97. Delete the clause because it is biased towards KRA causing unfair judgement on the taxpayers.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 44

98. Amend the clause by maintaining the inflationary adjustment period as it is. In addition, the inflation adjustment date in the Excise Duty Act be aligned with the current date in the Miscellaneous Fees and Levies Act. This will be harmonized with the Government Financial Year which begins on July 1st and ends on June 30th.

Committee Recommendation

Their proposal was rejected by the Committee. This will maintain consistency.

Clause 52

99. Delete the clause because it is retrogressive. The entire Statutory Instruments Act should be overhauled as the instruments may not be implementable considering the dynamic macro and micro economic factors.

Committee Observation/Recommendation

Enactment of this clause will deny Parliament the right to execute its oversight role. The Committee therefore adopted their proposal to delete the clause.

3.6 ANJARWALLA & KHANNA LLP

In a meeting with the Committee held on Tuesday, 10th May 2022, Anjarwalla proposed the following amendments to the Bill:

Clause 30

100. Delete the clause 30 because the requirement to pay half of the tax in dispute not only creates significant cash flow issues for taxpayers who are still dealing with the effects of COVID-19 and high inflationary conditions in Kenya, but it also raises a significant constitutional question about whether the right to access to justice is being violated. If a taxpayer has lost a case at the Tax Appeals Tribunal and intends to appeal the decision, a stay pending hearing is not granted automatically, and one must demonstrate that the stay should be granted based on the taxpayer's financial situation. The High Court uses this procedure to exercise its discretion in determining whether a delay should be granted at all, or what amount of deposit should be paid by the taxpayer. Additionally, the High Court has power to require a non-cash security be given, in the form of an insurance bond or a bank guarantee, amongst others.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 15 (a)

101. The Capital Gains Tax rate should factor in inflation adjustment (indexation allowance) to correctly capture the present market value of the property while eliminating any price adjustments caused by inflation. The Bill does not propose any mechanism to address inflation adjustment in the increased CGT rate. The rate of 15% should be reconsidered to a lower rate to cushion Kenyans or for a phased approach to be adopted with the 15% rate to be introduced in the future.

Committee's Observation/Recommendation

The Committee agreed with Anjarwalla and recommends that the rate of CGT be revised from 15% to 10%.

Clause 21 (a)

102. The proposal to increase the DST rate should be reconsidered given the nascent nature of this taxation regime in Kenya and to give it an opportunity to be fully operationalized. The rise should be gradual, and the new rate should not be higher than 2%, and the effective date should be moved to January 1, 2023, to provide businesses enough time to reconfigure their systems.

Increasing digital service tax is contrary to the Government's strategy of promoting the digital economy which increased significantly post COVID-19 pandemic as part of economic reinvention.

Committee's Observation/Recommendation

The Committee concurred with their sentiments and proposed to delete the amendment.

Clause 11

103. Include the word "*related*" in the proposed section 18A (b) i, ii, and iii. This is because when independent enterprises (third parties) transact with each other, the conditions of their commercial and financial relations (e.g. the price of goods transferred, or services provided and the conditions of the transfer or provision) ordinarily are determined by market forces and therefore the gains would ordinarily be at arm's length. The scope of the transactions that would fall under the amended Section 18A is quite broad and would capture business transactions between residents and third-party non-residents located in preferential tax regimes. The amendment would also impose a burden on resident companies and third parties in preferential regimes to maintain a transfer pricing policy and increase costs of compliance.

Committee's Observation/Recommendation

The provision was meant to deal with tax planning between unrelated parties located in two different tax jurisdictions where there are differences in tax rates that create opportunities for tax planning. Restricting the provision to related parties only will create loopholes that can be exploited by taxpayers hence their proposal was rejected by the Committee.

104. Delete the new definition of "*preferential tax regime*" since changing the definition of a "*preferential tax regime*" to a rate less than 20% will mistakenly include jurisdictions that are not "*preferential tax regimes*." For example, the United Kingdom, one of Kenya's main trade partners, has a corporate tax rate of 19%. If this clause is implemented as intended, it will impose a considerable administrative burden on any Kenyan entity that trades with a UK entity, even if there is no relationship.

Committee Recommendation

This proposal was rejected by the Committee. It would lead to entities located in preferential tax zones be subject to the transfer pricing requirements under the income tax under a unclear policy objective.

Clause 20

105. Delete the provision in the Bill of inserting a new paragraph 1B immediately after paragraph (1A) of the second schedule of ITA. The provision will be a disincentive to investments outside Nairobi and Mombasa and thus slow the strides made to encourage urbanization in counties outside Nairobi and Mombasa which aim to mitigate rural-urban migration

Committee's Recommendation

Their proposal was adopted by the Committee. It will encourage decongestion of the two Counties by incentivizing investments in rural areas.

Clause 24

106. Amend section 17 (1) to provide clarity that a taxpayer can still claim input VAT within the six months' period from the date of supply or importation. In addition, the amendment contradicts the provision in section 17 (2) that allows taxpayers up to six months to make a deduction of input tax on taxable supplies or importation.

Committee Observation/Recommendation

The Committee observed that there is no contradiction with section 17(2) because the six months' period still applies for claiming input tax. The amendment aims at ensuring that the taxpayer amends the return within six months from the date of supply. The Committee therefore rejected their proposal.

107. Delete the proposed new paragraph (f) of section 17 (3) to allow the Commissioner to request any other document that the Commissioner may require for the purposes of validating the input tax. The documentation required in section 17(3) are adequate to establish evidence of input VAT deduction.

Committee Observation/Recommendation

The Committee observed that if enacted, the amendment may be abused. The Committee therefore recommends that the documents be listed.

Clause 34 (d)

108. Delete the proposed amendment to raise the excise tax rate on sports betting, gaming, lottery, and prize competition activities from 7.5 percent to 20 percent for each of the activities because the proposed increase will cause a significant shrinkage in the Kenyan betting and gaming industry. As a result, Kenyan customers will seek international alternatives which may be unregulated leading to a high risk of exposure to money laundering, terrorism financing and loss of foreign direct investment to the country; industry operators will be forced to increase prices of the betting and gaming products which would make the local industry less attractive to Kenyans; and owing to the inelasticity of the market, the Government may end up collecting lower revenue owing to the significant shrinkage in the market.

Committee Observation/Recommendation

The Committee observed that excise duty on gaming activities had been increased in the Finance Act, 2021 and there is need to give the sector time before the taxes are increased. The Committee therefore recommends that the amendment be deleted.

Clause 35

109. Delete the provision under paragraph 1 of the First Schedule to the EDA which provides for excise duty at the rate of 10% on 100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00.

Committee Recommendation

This proposal was rejected by the Committee. The imported 100% electric powered motor vehicles already enjoy a lower excise duty of 10% Further all locally assembled motor vehicles are exempt from excise duty

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110. Include a new paragraph 18 to part A of the Second Schedule to the EDA to read as follows:
"100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00".

Committee Recommendation

This proposal was rejected by the Committee. The imported 100% electric powered motor vehicles already enjoy a lower excise duty of 10% Further all locally assembled motor vehicles are exempt from excise duty

3.7 UBER

In a meeting with the Committee held on Tuesday, 10th May 2022, Uber submitted as follows on the Bill, THAT:

Increase in the rate of DST

111. The rate of DST should remain at 1.5% of the gross transaction value or increase the rate gradually at a rate of 2% with an effective date of 1st January 2023. 100% increase of the DST rate less than eighteen (18) months after the DST became effective will create a significant burden on the taxpayers because fiscal certainty is important for Uber to plan its business operations, structure new products and prepare projections for the various markets it operates in.

Committee's Observation/Recommendation

The Committee agreed with Uber's comments and recommends that the clause be deleted.

Treatment of imported services by business to business customers

112. The DMS Regulations be amended to reflect that VAT be charged to all recipients (both B2B and B2C) of electronic services provided by non-resident suppliers in alignment with the proposed amendment to section 10 of the VAT Act.

3.8 EAST AFRICA LAW SOCIETY (EALS)

113. In a meeting with the Committee held on Tuesday, 10th May 2022, EALs strongly objected to the enactment of clause 30 of the Bill which proposes that a taxpayer shall pay 50% of the disputed tax amount with KRA before lodging an appeal to a decision made by the Tax Appeals Tribunal in favour of KRA. They noted that the amendment is contrary to the values and principles of the Constitution and the EAC Treaty. The amendment if passed will impede the tax-payers right to access to justice as set out in Article 48 of the Constitution.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

3.9 KENYA BANKERS ASSOCIATION (KBA)

In a meeting with the Committee held on Tuesday, 10th May 2022, KBA submitted the below proposals:

114. Rescind provision on charging 15% Withholding Tax (WHT) on gains or profits derived by non-resident persons from financial derivatives. The Bill proposes to amend the ITA by enacting a new sub-section 9 (3) and (4) which introduces a 15% WHT on any gains accruing to non-resident persons from trading in financial derivatives. Additionally, charging 15% WHT will have a negative effect on attraction of foreign investors at a time Kenya is positioning herself as a financial hub in the region.
115. Delete section 9(3) (4) of the ITA.
116. Retain the Capital Gains Tax (CGT) rate of 5%. Delete clause 15(a) of the Bill.

Committee's Observation/Recommendation

The increase of CGT from 5% to 15% was a huge leap. The Committee therefore recommended that the rate of CGT be revised to 10%. Deleting the clause will have a negative impact on revenue collection. The Committee therefore rejected their proposal.

117. Delete the amendments proposed to Section 34(1) (j) of the income Tax Act (ITA).
118. Amend to section 2 of the Income Tax Act on the definition of "*management or professional fees and royalties*" to include the words "*management or professional fee*". Amending definition of the word "*royalty*" by inserting the following words at the end of the definition "*provided that royalty shall not include scheme, transaction fees and subscriptions fees paid to card clearing companies.*"
119. Introduce the following new sub-section 3(2) (cb) under the ITA: "*the following services shall not be deemed to be digital services or services provided through an electronic marketplace for purposes of Section 3 (2) (cb): Online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange carried out by: (i) A financial institution specified under the Forth Schedule to the Act; or (ii) A financial service provider authorised or approved by the Central Bank of Kenya; and (iii) Online services provided by Government institutions*".

Committee Recommendation

These proposals were rejected by the Committee as they were additional proposals not contained in the Bill.

120. Proposed that section 37(2) of the ITA be deleted.

Committee Recommendation

This proposal was rejected by the Committee. The proposal was rejected as it has been overtaken by events, as all penalties are consolidated under the Tax Procedures Act.

121. Proposed that paragraph 11 of the First Schedule to the TPA, be amended to read as follows: "*Opening accounts with financial institutions and investment banks, other.*"

Committee Recommendation

This proposal was rejected by the Committee. This was meant for the tax appeals tribunal and the amended Rules are awaiting publication by the government printer.

122. Insert a new section 51(11) to the TPA as follows: "*where the commissioner has not made an objection decision within sixty days from the date that the taxpayer lodged a notice of the objection, the objection shall be deemed allowed.*"

Committee Recommendation

~~The Committee adopted their proposal. There should be sanctions if the obligation is not fulfilled.~~

123. Amend Part III of the interpretation schedule on definition of other fees to read; "*other fees are defined to include any fees, charges or commissions charged by financial institutions relating to their licensed activities but does not include interest on loan or return on loan or fees or commissions earned in respect of a loan.*"

Committee Recommendation

This proposal was rejected by the Committee. This will deny the Government a tax revenue stream.

124. Delete clause 30 of which proposes to introduce the requirement to deposit 50% of the disputed taxes before appeal to the High Court.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

125. Proposed to delete paragraph 32 in the First Schedule to the VAT Act – The exportation of taxable services.
126. Amend paragraph 1 to the Second Schedule of VAT, 2013 to read as follows; "*the exportation of goods or taxable services.*"

Committee Recommendation

This proposal was adopted by the Committee. This will allow for zero rating of the goods or taxable services.

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127. Transfer of business as a going concern be listed under Part I of the First Schedule to the VAT Act as an exempt supply.

Committee Recommendation

The Committee rejected the proposal because The VAT charged under the supply is claimable as input VAT hence is not a cost to the business.

128. Amend the Bill by inserting the following new paragraph to Part I of the First Schedule to VAT Act: *"Insurance agency, brokerage and reinsurance business."*

Committee Recommendation

This proposal was rejected by the Committee because exemption of the services from VAT will have a negative impact on revenue collection.

3.10 KPMG KENYA

In a meeting with the Committee held on Tuesday, 10th May 2022, KPMG proposed the following amendments to the Bill, THAT:

Clause 30

129. Delete the clause because the proposal is punitive and will likely be a barrier for taxpayers who wish to appeal against the decision of the Tribunal as they would have to deposit 50% of the disputed amount.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 3

130. Delete the clause because the introduction of new taxes is ill timed and is likely to be counter-productive because of considerable uncertainty as to how the gains will be calculated.

Clause 15(a)

131. Delete the clause or amend it to read as follows: *"Section 34 of the Income Tax Act is amended (a) in sub-section (1) by deleting the expression "five percent" appearing in paragraph (j) and substituting therefore the expression "seven and a half per cent" and proviso "in calculating the gain value, an indexation allowance adjustments should be considered".* The proposal to provide for indexation allowance is to cater for inflation adjustment on the historical cost of the property.

Committee's Observation/Recommendation

The Committee agreed with their comments and therefore recommends that the rate of CGT be revised to 10%. But reducing the CGT rate to 7.5% will have a negative impact on revenue collection. The Committee therefore rejected this proposal.

Section 37(2) of the ITA

132. Delete the clause because there is a unique procedure in application of penalty for late payment of taxes as provided for under section 37 of the TPA.

Committee Observation/Recommendation

All penalties were consolidated under the TPA hence their proposal was rejected.

Clause 41(d)

133. Amend by inserting the following new paragraph 51(11): *"Where the Commissioner has not made an objection decision within sixty days from the date that the taxpayer lodged a notice of the objection, the*

objection shall be allowed. Taxpayers are entitled to service that is expeditious, efficient, lawful, reasonable and procedurally fair.

Committee Recommendation

The Committee adopted their proposal. There needs to be sanctions were an obligation is breached.

134. Amend the VAT Act by changing the VAT status for export of service from exempt to zero-rate because Kenya has struggled for many years on the application of zero-rating to exported services. The lack of clarity has led to numerous disputes between taxpayers and KRA with the issue still to be conclusively resolved.

Committee Recommendation

The Committee adopted their proposal. This will reduce the number of cases of disputes between KRA and the taxpayer.

135. Amend the First Schedule to the VAT Act by listing the transfer of business as a going concern under Part 1 of the First Schedule to the VAT Act as an exempt supply. Most businesses continue to suffer the consequences of COVID-19 and require to restructure their business in the post-COVID-19 period.

Committee's Observation/Recommendation

Their proposal seeks to exempt transfer of a business as a going concern. The VAT charged under the supply is claimable as input VAT hence it is not a cost to the business. The Committee therefore rejected their proposal.

3.11 BDO EAST AFRICA

136. In a meeting with the Committee held on Wednesday, 11th May 2022, the Tax Director BDO, Mr. Steve Ogolla, submitted that the First Schedule to the Income Tax be amended to exclude the following petrochemicals used as raw materials in the manufacture of paints, coatings, inks and fiberglass from 10% excise duty: *unsaturated polyester; Alkyd; Emulsion VAM; Emulsion-styr Acrylic; Homopolymers; and Emulsion B.A.M*. This is because the payment of Excise Duty on the above raw materials has resulted in an increase in the price of locally manufactured paint. This has made Kenyan paint uncompetitive leading to loss of business and jobs to the EAC and COMESA markets.

Committees Observation/Recommendation

The Committee observed that their proposal would reduce the price of those commodities and make them competitive in the international market. Their proposal was therefore adopted.

3.12 PRICEWATERHOUSECOOPERS LIMITED (PWC)

In a meeting with the Committee held on Tuesday, 10th May 2022, PWC proposed the following amendments to the Bill:

Clause 10

137. Amend clause 10 to read as follows: "*Section 16 of the Income Tax Act is amended in the proviso to subsection 2(j) by adding the following new sub-paragraph immediately after sub-paragraph (iii) (B) microfinance institutions licensed under the Microfinance Act, 2006, and non-deposit-taking microfinance business as defined under the Microfinance Act, 2006.*"

Committee's Recommendation

Their proposal was adopted by the Committee. This because the non-deposit-taking institutions are not exempt under the Microfinance Act 2006

Section 4A (4) of the Income Tax Act

138. Amend section 4A(4) of the Income Tax Act by deleting the current definition of the word "*company*" and replacing it with the following: "*company does not include a bank or a financial institution licensed under the Banking Act, microfinance institutions licensed under the Microfinance Act, 2006, or non-deposit-taking microfinance businesses as defined under the Microfinance Act, 2006.*"

Committee Recommendation

This proposal was rejected by the Committee. This will deny the government revenue stream.

Clause 15(a)

139. Amend paragraph 8 of the Eight Schedule to the ITA by inserting a new sub-paragraph immediately after subparagraph (5) to read as follows; "*the adjusted cost as determined under subparagraph (1) shall be adjusted using the formula: adjusted cost = (MP*CPIT)/CPIA Where – MP is the Transfer Value. CPIA is the published Consumer Price Index for the month prior to acquisition. CPIT is the published Consumer Price Index for the month prior to the transfer*".

Committee's Observation/Recommendation

Introduction of indexation requires wider stakeholders' consultations. The Committee therefore recommends that the rate of CGT be reduced from 15% to 10%.

Clause 20

140. Amend paragraph 20(a) in the proviso to paragraph (1), by deleting the words "*for supply to the national grid*" appearing in the definition of "*manufacture*".

Committee's Recommendation

The Committee adopted their proposal. It is a clean-up.

Clause 30

141. Amend the Bill by deleting the clause because it will increase the cost of doing business in the country. If the taxpayer is not able to raise the cash, they will not be able to file the appeal in the High Court and this will deny them justice.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

The Tax Appeals Tribunal Act

142. Amend section 8 of the Act to read as follows; *"The respondent shall file a statement of facts with the Registrar within 30 days of service upon him of the copy of the Record of Appeal by the Appellant, during office hours"*.
143. Amend section 3 of the Act to read as follows: *"The Appellant shall, within thirty days, after the date of service of the notice of appeal under section 32 (2), file a Record of Appeal with the Registrar"*.

Committee Observation/Recommendation

The Tax Appeals Tribunal (Amendment) Act, 2021 was enacted recently and should be given time to be fully implemented. Their proposals were therefore rejected.

Clause 38

144. Amend the clause by allowing for at least 30 days' notice before the Registrar can register the Commissioner's notification as if it were an instrument of restraint on the disposal, mortgage on, or charge in line with the Insolvency Act, 2015 because the provision is likely to generate a lot of litigation since it will affect third parties' rights that are not privy to taxpayer's tax liabilities. Additionally, KRA will be empowered to act as an auctioneer without due process and there is lack of guidelines on its implementation, which can lead to abuse.

Committee Observation/Recommendation

This proposal will defeat the purpose of the amendment which is to secure the taxes. The thirty days' window may provide unscrupulous taxpayers with a window to dispose of the property and frustrate tax recovery. Their proposal was therefore rejected by the Committee.

Clause 40

145. Amend the clause by (a) Standardizing the timelines for application of refund for VAT paid in error to be within five (5) years, which is in consonance to the provisions of Section 47 of the TPA for all other taxes to ensure consistency and predictability of tax statutes; and (b) Section 47 (13) also ought to be included in the provision to give the taxpayer the right to appeal directly if they are aggrieved by the utilisation of the taxes paid in error.

Committee's Observation/Recommendation

Waiting for a period of five years to apply for VAT refund will lead to challenges in tax administration as the evidence to support the matters may have been lost. The Committee rejected their proposal.

Clause 41(a)

146. Amend by inserting section 51(4) to read as follows; *"Where the commissioner deems a Notice of Objection to be invalid on the grounds that 'all the relevant documents relating to the objection have not been submitted, the Commissioner shall specify which relevant documents relating to the objection are*

required and give the taxpayer 30 days within which to submit the documents if they are within the taxpayer's ability to produce".

Committee Observation/Recommendation

The Committee observed that the Commissioner may not be able to know the relevant documents that are not produced as this information is solely with the taxpayer. Placing the burden on the Commissioner to determine the relevant documents required to be submitted to the Commissioner by the taxpayer will be onerous and likely to create inefficiency and challenges in tax administration.

Clause 41

147. Amend paragraph 41(d) by providing that the Commissioner be limited to rendering their decision within 60 days and the provision "*failure to which the objection shall be deemed to be allowed*" be retained.

Committee Observation/Recommendation

The Committee observed that their proposal will encourage the Commissioner to be efficient and was therefore adopted it.

Other recommendations not in the Bill

148. Amend the TPA to align its provisions to the Insolvency Act by deleting Section 34(2) of the TPA and replace with the following paragraph: "*If the person referred to in sub-section (1) enters into any insolvency process under the Insolvency Act, 2015, including but not limited to liquidation, winding up, bankruptcy, taxes shall be paid to the Commissioner in accordance with the provisions of the Second Schedule to the Insolvency Act, 2015*".

Committee Recommendation

Their proposal was rejected by the Committee. It will limit the options available for the Commissioner to recover unpaid taxes.

Aggressive use of Agency Notice

149. Amend Section 42 (5) of the TPA to read as follows: "*An agent shall pay the amount specified in the notice within 30 days of receipt of the notice, or 30 days from the date that the amount owed by the agent to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf*".

Committee Recommendation

Their proposal was rejected by the Committee. It will limit the options available for the Commissioner to recover unpaid taxes.

Zero-rating of exported services

150. Amend the Bill by re-introducing zero-rating of exported taxable services under part A of the Second Schedule to the VAT Act, 2013.

Committee Recommendation

This proposal was adopted by the Committee. This will deny the government revenue stream.

Clause 34

151. Amend the error to by inserting the expression "and 3923.90.90" immediately after the expression "3923.30.00".

Committee Recommendation

Their proposal was adopted by the Committee. This is a clean-up

Excise duty on 'other fees' earned by financial institutions

152. Delete the amendment and the re-introduction of the previous definition of 'other fees' as was defined in the Excise Duty Act, 2015 before the amendment in which the definition was: "other fees includes any fees, charges or commissions charged by financial institutions relating to their licensed activities but does not include interest on loan or return on loan or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder".

Committee Recommendation

This proposal was rejected by the Committee. This will deny the government revenue stream.

Introduction of excise duty on furniture and various food products

153. Delete the provisions from paragraph 1 of Part I of the First Schedule to the Excise Duty Act.

Excise duty on bottled water

154. Delete the provision in Paragraph 1, Part 1 of the First Schedule to the Excise Duty Act, 2015 imposing excise duty on bottled or similarly packaged waters at the rate of KSh. 6.03 per litre.

Clause 32

155. Amend the Bill by deleting the clause.

Committee Recommendation

The Committee rejected this proposal. This will cause loss of revenue.

3.13 DELOITTE & TOUCHE LLP

In a meeting with the Committee held on Tuesday, 10th May 2022, Deloitte & Touche proposed the following amendments to the Bill:

Clause 30

156. Delete the clause because the proposal to have the taxpayer deposit 50% of the tax in dispute before lodging the appeal with the High Court appears to blame and burden the taxpayer in resolution of the tax disputes. The proposal will impact negatively on the cash flow of businesses leading to closures and may encourage the revenue authority to issue inflated assessments in order to collect higher deposits. The taxpayer unable to deposit the 50% of the tax in dispute will be denied their right to appeal the decision of the Tribunal in contravention of Article 48 of the Constitution to right of access to justice. It's also discriminatory since it assumed that KRA has a stronger case and more likelihood of success.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 41

157. Amend the clause by adding the words "*receipt of a valid notice of objection*" under section 51(11) of the TPA. This will ensure that the imposed obligation of the Commissioner is with a sanction, should the Commissioner fail to perform the obligation. This will ensure certainty to the taxpayer that the Commissioner is required to issue certain decisions and there are consequences of failure to issue such decisions within the statutory timelines.

Committee Recommendation

Their proposal was adopted by the Committee. Imposed obligation must have a sanction if not met.

Clause 39

158. Amend section 47(2) by inserting the following words "*provided that where the Commissioner fails to ascertain and determine an application under sub-section (1) within ninety days, the same shall be deemed ascertained and approved*". This will serve as a consequence where the commissioner fails to respond to a refund application and as an incentive for the Commissioner to effectively respond to refund applications issued by the taxpayer.

Committee Observation/Recommendation

The Committee adopted their proposal as it will encourage efficiency by the Commissioner.

159. Amend section 47(8) by inserting the following words "*for the avoidance of doubt, advance tax and withholding income tax credits accrued in accordance with section 12A and Section 35 may similarly be offset against future installment tax payable.*" This will provide clarity that advance tax credits and withholding tax credits may similarly be automatically utilized to offset against future instalment tax liabilities. This will align the treatment of advance tax credits and withholding tax credits under Section 47 of the TPA with Section 12A of the ITA.

Committee Observation/Recommendation

The amendment includes withholding tax credits which should not be used to offset future instalment taxes. Restricting the offset to tax liabilities under the same tax head shall limit the Commissioner in tax recovery efforts. The Committee rejected their proposal.

Income Tax Act

Clause 15

160. Deletion the clause or amend the proposal by reducing the proposed % increase from 15% to 10% with a corresponding introduction of indexation. The current Capital Gains Tax does not provide for inflation adjustments (indexation), thus not considering the part of the appreciated price in assets relating to inflation. This is because inflation is not gain to the asset holder, but rather the effect of increased money circulation in the economy, therefore without the inflation

adjustments, the real value of the asset is not reflected. Increase in the Capital Gain Tax may negatively impact Kenya's competitiveness as an economic hub as well as an investment destination.

Committee's Observation/Recommendation

Introduction of indexation requires further consultations with stakeholders. The proposal to reduce the CGT rate from 15% to 10% was adopted by the Committee.

Clause 20

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161. Amend the clause by deleting the word *"through the national grid"* in paragraph 20(a) and replacing with *"for supply to the national grid."* The term *"through the national grid"* had been deleted under the Finance Act, 2021. In addition, the definition of manufacture still makes reference to generation of electrical energy for supply to the national grid. The proposal will open up investment deductions to power producers irrespective whether they supply to the national grid or not.

Committee Observation/Recommendation

The Committee observed that their proposal was a clean-up and therefore adopted it.

162. Amend the clause by deleting paragraph 20(b) or deleting reference to paragraph 1(a) (l) and paragraph 1(b) (a) and replacing with Paragraph 1(a) (i) and Paragraph 1(b) (i) respectively. The nature of the business should not be pegged on the eligibility of the taxpayers to the investment deduction. This may punish investors who have genuinely incurred huge capital outlays. Further, it may not incentivize investors in investing in areas outside those in the proposal. In addition, the proposal that investment deductions should not apply to business located outside the Nairobi City County and Mombasa County due to their nature is discriminatory and reduce the incentive to decongest these areas.

Clause 4

163. Amend the clause by deleting the words *"and third parties"*.

Committee's Observation/Recommendation

The Committee rejected their proposal because the amendment provides controls against tax abuse which can be between related parties or third parties. If the amendment is accepted, it will negate the objective of the proposal contained in the Bill and may create an avenue for revenue loss.

164. Amend Clause 4A (1) (ii) (a) by adding the following words *"provided that this shall not apply to persons exempt from the interest restriction rule as provided for under section 16 (2) (j) (iii)"*. This will ensure that deferral of the realized foreign exchange losses do not apply to persons exempt from the interest restriction rule under section 16(2)(j)(iii). Also, persons who genuinely incur foreign exchange losses due to fluctuations of exchange rates are not unnecessarily punished. This is also in line with international best practices on restriction to financial transactions between related parties.

Transfer of assets at written down values

165. Addition of proviso under paragraph 4 to the second schedule to read as follows *"provided that in the case of machinery and either the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control or both the seller and the buyer are bodies of persons"*

and some other persons has control over both of them and the sale gives rise to a balancing charge, the parties may elect to transfer the assets at written down values in writing to the Commissioner." This will support business seeking to restructure for operational efficiencies which in turn will in turn increase profit and government revenues.

Committee Recommendation

Their proposal was rejected by the Committee. This would deny government tax revenue.

Deductibility of interest expense (New EBITDA based interest limitation rule)

166. Addition of proviso after sub-section (2)(j)(iii) "(iv) the excess interest disallowed shall be carried forward and allowed against future tax profits when the interest to EBITDA ratio reduces to less than thirty percent". They also proposed that the provision is updated to not consider loans from resident persons from the ambit of the EBITDA based interest restriction rule i.e. only interest paid to non-resident persons shall fall within the EBITDA based on interest restriction. This seeks to minimize the negative impact of the newly introduced interest restriction rule.

Committee Recommendation

Their proposal was rejected by the Committee. This would have allowed for loss of revenue.

Value Added Tax

Clause 23

167. Amend the clause to read as follows "*the provisions of sub-section (1) shall apply to taxable supplies made under section 5(7), subject to the regulations issued by the Cabinet Secretary under Section 5(7)*". The recommended modification will allow for the Cabinet Secretary to make relevant changes to the regulations, including amendment to ensure administrative issues are dealt with prior to bringing B2B transactions within the ambit of VAT on Digital Marketplace Supply. In addition, by seeking to exempt all supplies made over the internet or an electronic network or through a digital marketplace from reverse VAT, imported services supplied under the B2B model will fall outside the scope of VAT, presenting loss of tax revenue.

Committee Recommendation

The Committee rejected their proposal. This would have allowed for loss of revenue.

Clause 24

168. Amend the Bill by deleting the clause because the amendment seeks to confer upon the Commissioner powers to request for "*any documentation*", the determination of which is to their discretion, for purposes of validation of input VAT claimed. The term "*any documentation*" is ambiguous and uncertain. The documents required to validate input tax are adequate to do so. However, if the proposal is carried, it should clearly define the set of documents additionally required and indicate the exceptional circumstances they would be needed.

Committee Observation/Recommendation

The Committee observed that the amendment may be abused by the Commissioner and recommended that the documents be listed.

Clause 28

169. Amend by deleting the proposal to retain the goods and services in the exemption schedule. The proposal to subject goods and services applied to the construction of specialized hospitals to 16% VAT is likely to lead to huge non-deductible input tax as a number of the supplies made by medical institutions including medical services and certain items of medicament are exempt from VAT. The tax is a cost to the specialized hospitals who are likely to pass it to the patients and therefore impact negatively on the universal health care agenda.

Committee Observation/Recommendation

The Committee observed that imposition of VAT on goods for construction and equipping of specialized hospitals with a minimum bed capacity of fifty will be contradictory to the Government's 'Big Four Agenda' of achieving universal healthcare. The Committee therefore recommends deletion of the proposed amendment.

Exemption of transfer of business as a going concern

170. Amend First Schedule to the VAT Act, Part 1 by introducing "*taxable supplies in connection with transfer of a business, property or assets by a registered person, that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity where such transaction is: a) an intended restructuring within a group which does not involve transfer of business to third party; or b) in the public interest subject to approval by the Cabinet Secretary. The Cabinet Secretary may by notice in the Gazette make regulations which sets out the requirements for purposes of implementing this provision. In this paragraph "group" in relation to a body corporate means the body corporate, shareholders, any other body corporate that is its holding company or subsidiary and any other body corporate that is subsidiary of that holding company or incorporates as part of the restructuring of the group*".
171. Addition of a proviso under section 17(6) of the VAT Act "*for avoidance of doubt, the value of all supplies under (c) above shall not include the value of transfer of business, property or assets for purposes of paragraph xx of part 1 of the First Schedule*". The introduction of VAT on transfer of business as a going concern has increased cost of restructuring business, as it makes it expensive to restructure businesses as well as new capital investments into existing businesses through mergers and acquisitions. The move to exempt TOGCs will also align the tax treatment of restructuring transactions in the VAT Act to those in other tax laws, therefore enhancing certainty and constituency.

The VAT treatment of exported services

172. Amend the VAT Act to zero rate exported services. The Cabinet Secretary for National Treasury, should develop regulations to aid taxation of services that are traded across borders pursuant to Section 67 of the VAT Act. The zero rate on exported services is within the destination principle which requires that internationally traded services be subjected to VAT according to the destination. That the incidence of VAT falls on the final consumer and therefore not affect business. Exemption means that the affected persons are not entitled to deduction of input tax, a cost to business. The exemption of the export of taxable services is not only unfair but discriminatory vis-à-vis export of goods.

Committee Recommendation

Their proposal was adopted by the Committee. This will allow the fair treatment of the export of taxable goods and services.

Excise Duty Act

Clause 34

173. Amend paragraph 34(b) (vi) by deleting the expression “Kshs. 278.70 per litre” in respect of the tariff description “*spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%*” and substituting therefor the expression “*shs 306.57 per litre*”. This will ensure that the CS does not amend the First Schedule in contravention of section 8(i) of EDA in that a proposed increase is capped at 10% of the current rate.

Committee Recommendation

The Committee recommends that the excise rate of spirits be retained at Kshs. 278.70 per litre.

174. Amend the First Schedule of to the Act by deleting the tariff description “*products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to Health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences*” and replace the description with “*products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health.*” This is because there is ambiguity in the excise duty rate applicable to tobacco products that may lead to tax disputes. The proposed amendment will provide clarity.

Committee Recommendation

This proposal was rejected by the Committee. Nicotine products are harmful to the health and their use discouraged with taxes,

Miscellaneous Fees and Levies

175. Amend Section 9 of the Act in line with changes proposed under the VAT Act and Excise Duty Act by adding the following paragraphs: “*provided that: (i) the Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and (ii) in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.*” This will lead to a lower late payment interest of 1% per month and late payment penalty of 5% will apply on late payment of excise duty and VAT on imported goods. Further, the duplum rule applies. It will be a welcome relief for importers of excisable goods and cushion importers from excessive interest currently applicable under the East African Community Customs Management Act, 2004 (EACCMA).

Committee Recommendation

This proposal was rejected by the Committee. This would have allowed for revenue loss.

3.14 PKF TAXATION SERVICES LIMITED

In a meeting with the Committee held on Wednesday, 11th May 2022, PKF proposed the following amendments to the Bill:

Clause 30

176. Delete the clause because the proposal violates Article 48 of the Constitution which provides that: “*the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice*”.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 15

177. They proposed that the rate of capital gains tax be maintained at the rate of 5% and there should be provisions to allow for indexation due to inflationary increases in property values. The proposed amendment will adversely affect the return on investments for investors and thus potentially depress overall investment into the economy.
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Committee's Observation/Recommendation

Introduction of indexation requires further consultations with stakeholders. The proposal to reduce the CGT rate from 15% to 10% was adopted by the Committee.

Clause 11

178. Amend the clause to require the Commissioner to conduct an evaluation of transactions between a resident person and a third party in a preferential tax regime before finding that the transaction yields less gains than a transaction with an entity not in a preferential tax regime.

Committee Observation/Recommendation

The Committee observed that the exclusion will create room for avoidance of tax. As such, the Committee rejected the proposal.

Clause 24

179. Amend the clause to clarify the exact documents that the Commissioner may demand for the purposes of verifying input tax.

Committee Observation/Recommendation

The Committee observed that the proposal may be abused and recommends that an amendment be made to list the documents.

Clause 28

180. Amend the clause by deleting paragraph 63 because the proposal is not in line with the Government's Big Four agenda of ensuring ordinary Kenyans access universal health care as it will result in increased cost of construction and equipping of the specialized hospitals.

Committee Recommendation

The Committee agreed with their comments and recommends that the clause be deleted.

Clause 29

181. Opposed the amendment proposed in the clause because it will increase the cost of firefighting equipment for county governments or registered hospitals and clinics or local authorities that currently enjoy zero-rate on the items due to the specific nature of the functions they perform.

Committee Recommendation

Their proposal was rejected by the Committee because Zero rating is limited to goods produced for exports and the said goods are exempted from VAT.

Clause 34

182. Opposed the amendment proposed in the clause because it will reverse the Government's efforts to promote investment in glass bottle manufacturing in Kenya by exposing the local manufacturers to cheap imports. They proposed that the clause be amended to protect and spur local glass manufacturers in order to make them more competitive.

Committee Observation/Recommendation

The Committee observed that imposition of excise duty on manufactured glass bottles will give undue advantage to international glass bottle manufacturers hence impact negatively on the local manufacturing industry contrary to the Government's '*Big Four Agenda*'. The Committee therefore recommends deletion of the paragraph.

3.15 D & M MANAGEMENT SERVICES

In their memorandum, the Company proposed the following amendments to the Bill:

183. Delete the proposed amendment of section 34 of the ITA which proposes to increase capital gains tax from 5% to 15%. This is likely to have adverse impact on transfer of property especially as the tax legislation does not claim indexation allowance relief which allows the taxpayer to remove the effect of inflation on the value of assets.

Committee's Observation/Recommendation

Introduction of indexation requires further consultations with stakeholders. The Committee proposed to reduce the CGT rate from 15% to 10%. Their proposal was therefore rejected by the Committee.

184. Delete the proposed amendment of the Tax Tribunal Act, 2013 that introduces a requirement for taxpayers to deposit with the KRA 50% of the tax in dispute tax in a special account at the CBK before they file an appeal to the High Court against a decision of the Appeals Tribunal. The proposal raises serious concerns, notably, the limitation of taxpayers' access to justice and their right of appeal, a fundamental right projected by the Constitution of Kenya.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

185. Delete provision of clause 26 that repeals section 30 of the VAT because it restricts the period of claims from 12 months currently provided to the 6 months which is an even shorter time period.

Committee Recommendation

The proposal was rejected by the Committee. This has caused tax disputes and will allow for harmony between the provisions of Section 17(2) of the VAT Act and the TPA.

186. Delete provision of adding articles of plastic of tariff heading 3923.90.90, a residual tariff line for '*other*' articles, under the ambit of excise duty of 10%. They noted that plastic articles are used in packing essential goods used by the majority of Kenyans.

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187. Amend the Value Added Tax Act to exempt LPG from VAT by inserting paragraph 139 to the First Schedule (Exempt Supplies, Part 1, Goods, Section A) to the Value Added Tax Act, 2013. "Gas meters of tariff number 9028.10.00.

Committee Observation

The Committee observed that the prices of LPG had increased and recommends that the VAT rate of LPG be reduced from 16% to 8%.

3.16 SANAABIL CONSULTING LIMITED

- ~~188. In their letter dated 26th April, 2022 Sanaabil Consulting Limited observed that it was unwise to charge excise duty on locally manufactured ice cream and other edible ice, local chocolate and plastic noting that the proposed excise duty may not raise as much revenue and may reduce existing contributions to the exchequer. They proposed that the amendment to levy excise duty on locally manufactured sugar confectionery of tariff HS Code: 1704 and Chocolates (HS Code: 1806), Reusable articles of plastic of tariff heading 3923.30.00 and ice cream and other edible ice whether or not containing cocoa of tariff number 2105.00.00 be deleted and instead levy it on imported products from countries other than EAC countries.~~

Committee Recommendation

The Committee noted their proposals and recommends that locally manufactured ice cream and chocolate be exempted from excise duty.

3.17 ANDERSEN

In a meeting with the Committee held on Tuesday, 10th May 2022, Andersen proposed the following amendments to the Bill:

Clause 16(2) (j)

189. Amend Section 16(2) (j) to include the following new paragraph (c) "*Holding companies that are regulated under the Capital Market Authority Act, 1998 (Rev 2012)*" in the list of entities exempt from the new interest restriction rules.

Committee Recommendation

This proposal was rejected by the Committee. This would cause loss of revenue to Government.

190. Amend by introducing a new clause indicating that implementation of the interest restriction provisions should only take effect once the comprehensive guidelines on computation of allowable interest for entities with various streams of income are in place.

Committee Recommendation

This proposal was rejected by the Committee. This would cause loss of revenue to Government.

191. Amend the commencement date of the revised interest restriction provisions to apply "*for financial years commencing on or after 1st January 2022*".

Committee Recommendation

This proposal was rejected by the Committee.

Clause 30

192. Amend the Bill by deleting the clause and retaining the existing section 32 of the TAT Act, 2013.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 31

193. Amend the clause by deleting the proviso.

Committee Observation/Recommendation

The Committee observed that the power to waive taxes is vested in the Cabinet Secretary and recommends deletion of the clause.

Clause 34

194. Amend the clause by deleting paragraph 34(d) (v).

Committee Observations/Recommendations

There are already regulations in place to regulate advertising of gaming activities in the country. The imposition of excise duty on such advertisements is therefore not necessary. The Committee adopted their proposal and recommends deletion of the amendment.

195. Amend the clause by deleting paragraph 34(b) (iv) and retain the excise duty rate at KSh. 116.08/litre.

Committee Observation/Recommendation

The excise rate of beer was increased in the Finance Act, 2021. The Committee observed that there was need to give beer market time before increasing the excise rate and recommends that the excise rate be retained at Shs. 121.85 per litre.

196. Amend the clause by deleting paragraph 34(b) (vii) and retain the excise rate at KSh. 265.50/litre.

Committee Observation/Recommendation

The excise rate of spirits was increased in the Finance Act, 2021. The Committee observed that there was need to give spirits market time before increasing the excise rate and recommends that the excise rate be retained at Shs. 278.70 per litre.

197. Amend the clause by deleting paragraph 34(b) (vi) and retain excise duty at KSh.198.34 per litre.

Committee Observation/Recommendation

The excise rate of wine was increased in the Finance Act, 2021. The Committee observed that there was need to give wine market time before increasing the excise rate and recommends that the excise rate be retained at Shs. 208.20 per litre.

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198. Amend the clause by deleting paragraph Section 34 (b) (xvi) which seeks to remove excise tax on both imported and locally manufactured glass bottles.

Committee Observation/Recommendation

The Committee observed that imposition of excise duty on manufactured glass bottles will give undue advantage to international glass bottle manufacturers hence impact negatively on the local manufacturing industry contrary to the Government's '*Big Four Agenda*'. The Committee therefore recommends deletion of the paragraph.

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- ~~199. Amend Section 10(1) of the Excise Duty Act by introducing the words "*and save as expressly specified in Paragraph 2 of the First Schedule to this Act*" immediately after the words "*section 8*" appearing in the section.~~

Committee Recommendation

Their proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

200. Amend Paragraph 2(1) of the First Schedule to the Excise Duty Act by introducing the words "*save for excise duty on barley and malt-based beer that shall be similarly adjusted but only at the beginning of every fifth financial year*" at the end of that paragraph.

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

201. Amend the definition of "*adjustment day*" as it appears in Part III of the First Schedule to the Excise Duty Act by deleting it in its entirety replacing it with the following new definition; "*1st day of October of every fifth year for barley and malt based beer, and 1st day of October of every year for all other excisable goods*".

Committee Recommendation

Their proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

3.18 SHEIKH AND COMPANY ADVOCATES

In their memorandum dated 3rd May 2022, Sheikh and Company Advocates proposed the following amendments to the Bill:

Capital Allowances - Investment Deduction Allowance

202. Delete the proposed amendment and revert to the Post Tax Law (Amendment) Act, 2020; "*With 120% investment deduction, where the cumulative value of investment for the preceding three years from the commencement of this provision, or the cumulative investment for succeeding three years outside Nairobi City County and Mombasa City County is at least KSh. 2 Billion.*" The tax incentive will allow for investments in other areas than the aforementioned two counties since the lack of infrastructure

and other social amenities in the other areas is usually the drawback from investing by potential investors.

Committee Observation/Recommendation

The investment allowance was providing unnecessary tax expenditure which was addressed through the new investment allowance. The Committee rejected their proposal.

Value Added Tax on Importation of Plant and Machinery

203. Amend paragraphs 84 and 85 in relation to exemption from VAT for plant and machinery imported by manufacturers whose cumulative investment value is at least KSh. 5 Billion, and the investment has been made outside Nairobi City County and Mombasa County. This will continue the incentive for manufacturers to set up outside the densely-populated counties of Nairobi, Mombasa and Kisumu. It will also encourage migration to follow the manufacturers in the other areas thus decongest the urban areas as well as reduce infrastructure strain.

Committee Recommendation

This proposal was rejected by the Committee. This was to clarify those investments who by their nature are naturally located outside Nairobi or Mombasa for instance mining.

3.19 RSM EASTERN AFRICA CONSULTING LIMITED

In a meeting with the Committee held on Tuesday, 10th May 2022, proposed the following amendments to the Bill:

Clause 8

204. Amend the clause to read as follows: "*Provided that this section shall not apply to a person resident in Kenya for tax purposes*". DST was meant to charge tax income derived from the supply of the digital services tax by persons not paying taxes in Kenya and hence their recommendation that the proviso be amended to exclude any other persons already subjected to tax in Kenya and not only persons with permanent establishment in Kenya.

Committee Recommendation

This proposal was rejected by the Committee. This would deny the government tax revenue

Clause 9

205. Amend Section 15(2) (h) to read as follows: "*(h) annual subscription paid during that year of income to trade association which has made an election under section 21(2)*". Subscription fees paid to accounting bodies and other professional bodies and other professional bodies are necessary to operate within the profession, and as such, these are costs directly related to their business. Failure to have these subscription fees hinder the bodies from doing business in Kenya and hence should be allowable expenses.

Committee Recommendation

The Committee rejected this proposal. The allowable deduction should be restricted to expenditure which is wholly and exclusively used in generation of income. The proposal to deduct subscription fees is not in line with this policy.

Clause 15

206. Amend the clause to retain the non-resident tax at 5% because most non-resident persons disposing property in Kenya are doing so to unlock value of their property to receive cash flow to cushion against the impact of the global pandemic.

Committee's Observation/Recommendation

The Committee noted their comments and recommends reduction of the CGT rate from 15% to 10%.

Clause 21

207. Amend Paragraph 12 to read as follows: "*The rate of tax in respect of digital service tax under section 12E shall be two per cent of the gross transaction value*". The cost of an increase of the DST rate will be shifted to the consumers making the cost of digital services in Kenya expensive. In addition, some digital services such as QuickBooks used in accounting cannot be substituted.

Committee Recommendation

The Committee noted their proposal and retained the rate of DST at 1.5%.

Clause 23

208. Amend the clause by deleting sub-section 1A because it contradicts the VAT (Digital Marketplace) Regulations which states that a transaction in a B2B framework will be accounted for by the resident person under the reverse VAT framework.

Committee Recommendation

This proposal was rejected by the Committee. The Regulations are proposed to be amended in line with the proposed amendment to the VAT Act, 2013 hence no contradiction.

Clause 30

209. Delete the clause because the new sub-sections are not in favour of the aggrieved taxpayers as it may hinder their access to justice in case of a disputed tax.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 38

210. Amend the proviso after section 10(5) to read as follows: "*Provided that where a payment plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan*". Where tax liabilities arose from a misinterpretation of tax statutes, the Commissioner should allow taxpayers to settle the ascertained obligation within a reasonable time, as negotiated by the taxpayers rather than imposing a two-month limit resulting to loss of property the taxpayers may have taken years to acquire.

Committee Observation/Recommendation

The Committee observed that this proposal is an avenue for tax recovery and therefore adopted it.

Clause 39

211. Retain the current provision on the refund for overpaid VAT because the process of VAT refund requires audit by certified agents and the 6 months' period is insufficient for lodging the refund with the Commissioner.

Committee Observation/Recommendation

VAT is a monthly obligation and in cases of refunds, a person should not delay application for a period of six months. The Committee rejected their proposal.

3.20 MUNENE MICHENI & COMPANY ADVOCATES

In a meeting with the Committee held on Tuesday, 10th May 2022, Mr. Munene Micheni proposed the following amendments to clause 7 of the Bill:

212. Delete the proposed amendment and amend section 3A of the Income Tax Act by: (a) deleting the word 'only'; inserting the word 'not' immediately after the word 'shall'; and deleting sub-section 3A (c). The amendments are aimed at correcting the typographical error of not inserting the word 'not' and the deletion of sub-section 3A (c) is necessary because it creates a double negative and the Commissioner will be acting ultra vires of his functions and powers detailed in section 4 of the Tax Procedures Act, 2015 and fail to meet the constitutional principle of public participation.

Committee Observation/Recommendation

The Committee observed that the law on trusts had been enacted recently and needed time to be fully implemented before amendments are made. The Committee recommends deletion of the clause.

3.21 INSTITUTE OF PUBLIC FINANCE KENYA (IPFK)

In their letter dated 5th May 2022, IPFK proposed the following amendments to the Bill:

Clause 28

213. Delete the clause because its enactment will hurt, especially the low-income earners who find it hard to afford basic commodities.

The Committee noted their proposal and proposed to delete the amendment proposing imposition of VAT on maize and cassava flour.

Clause 30

214. Amend the clause by deleting the provision for taxpayers to deposit 50% of the disputed tax prior to appealing a Tax Appeals Tribunal decision. The 50% provision is unconstitutional and places an unnecessary burden on taxpayers.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 34

215. Amend by deleting the proposed amendment on the excise duty tax rate on fees charged on advertisements for alcoholic, gambling and gaming activities and reduce the rate since the huge incremental tax will lead to job loss and more unemployment in the hotel and beer manufacturing industries. The cost will be passed to consumers and may scare away companies dealing with such goods.

Committee Observation/Recommendation

The Committee observed that there are already other regulations regulating advertisement of gaming activities hence no need to increase excise duty on the same. The Committee therefore recommends deletion of the amendment.

3.22 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

In a meeting with the Committee held on Wednesday, 11th May 2022, KEPSA proposed the following amendments to the Bill:

Clause 15 (a)

216. The fifteen percent of gains be introduced incrementally with two-point five percent introduced in 2023 and 2024, then ten percent introduced in 2025. New tax rate to be effected only for deals done after 2023 and not retrogressively and indexation of the capital gains tax.

Committee's Observation/Recommendation

Introduction of indexation requires further consultations with stakeholders. The Committee proposed to reduce the CGT rate from 15% to 10%. Their proposal was therefore rejected by the Committee.

Clause 21 (a)

217. Retain Digital Service Tax at the current level of 1.5% by deleting this clause.

Committee Recommendation

The Committee adopted their proposal and deleted the amendment.

Clause 30

218. Delete Clause in its entirety.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 31

219. Delete the Proviso

Committee Observation/Recommendation

The Committee observed that this provision may be abused and therefore recommends its deletion.

Clause 34(b) (xvi)

220. Delete the glass bottle from paragraph 1 i.e., remove excise tax on both imported and locally manufactured glass bottles

Committee Observation/Recommendation

Imposition of excise duty on locally manufactured bottles will increase their prices and make them uncompetitive in the international market. The Committee therefore proposes deletion of the clause.

Clause 8

221. Amend the proviso of Section 12E(1) to exclude any other non-resident persons whose income is subject to corporate tax in Kenya, and not only permanent establishments to read as follows; *“Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace. These persons can be collectively referred to as persons deemed resident in Kenya for tax purposes, provided that this section shall not apply to a person resident in Kenya for tax purposes”*.

Committee Observation/Recommendation

Exclusion of non-resident persons with permanent establishments is because they file returns in Kenya unlike the non-residents with no permanent establishments. The Committee rejected their proposal.

Clause 6

222. Amend Section 9(3) (4) of the ITA be deleted.

Clause 9

223. Delete clause 9 (2) (iii)

Committee Recommendation

This proposal was rejected by the Committee.

Clause 10

224. Amend Section 16(2) (j) (iii) to include a new sub-section (C) *“Holding companies that are regulated under the Capital Market Authority Act, 1998 (Rev 2012)”* in the list of entities exempt from the new interest restriction rules and new clause indicating that implementation of the interest restriction provisions should only take effect once the comprehensive guidelines on computation of allowable interest for entities with various streams of income are in place.

Clause 20(b)

225. Amend Second Schedule to the Income Tax Act by inserting the following new paragraph immediately after paragraph (1A) – 1B), *“the provisions of paragraph (1A) – (b) shall not apply to investments which, due to the nature of their business, have to be located in places which are outside Nairobi City county and Mombasa county. This shall not include power generation machinery, equipment, and buildings”*.

Clause 23

226. Remove the introduction of sub-section 1A.

Committee Recommendation

This proposal was rejected by the Committee.

Clause 32

227. Amend the clause by deleting paragraph 32(b) (ix).

Committee Recommendation

~~This proposal was rejected by the Committee.~~

228. Amend the clause by deleting paragraph 32(b) (xvii).

Committee Recommendation

This proposal was rejected by the Committee.

Clause 34

229. Amend the clause by deleting paragraphs 34 (b) (i) and (iii)

Committee Observation/Recommendation

The Committee observed that increasing excise duty will increase prices of the commodities. The Committee therefore recommends to reduce the excise duty on juices to Shs. 13.00 per litre and delete paragraph (iii).

230. Amend the clause by deleting paragraph 34(b) (iv).

Committee Observation/Recommendation

Increasing the excise rate of beer will encourage consumption of illicit brew and thus reduce revenue collection by the Government. The Committee recommends deletion of the amendment.

231. Amend Section 10 (1) of the Excise Duty Act by introducing the words "*and save as expressly specified in Paragraph 2 of the First Schedule to this Act*" immediately after the words "*section 8*" appearing in that section.

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

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232. Amend Paragraph 2 (1) of the First Schedule to the Excise Duty Act by introducing, the words "*save for excise duty on barley and malt-based beer that shall be similarly adjusted but only at the beginning of every fifth financial year*" at the end of that Paragraph.

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

233. Amend the definition of "adjustment day" as it appears in Part III of the First Schedule to the Excise Duty Act by deleting it in its entirety and instead replaced by the new definition "1st day of October of every fifth year for barley and malt based beer, and 1st day of October of every year for all other excisable goods".

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

234. Amend clause 34 by deleting paragraph 34(b) (vi).

Committee Observation/Recommendation

Increasing the excise rate of wines will encourage consumption of illicit brew and thus reduce revenue collection by the Government. The Committee recommends deletion of the amendment.

235. Amend clause 34 by deleting paragraph 34(b) (vii).

Committee Observation/Recommendation

Increasing the excise rate of spirits will encourage consumption of illicit alcohol and thus reduce revenue collection by the Government. The Committee recommends deletion of the amendment.

236. Amend clause 34 by deleting paragraph 34(d) (v).

Committee Observation/Recommendation

The Committee observed that there are already other regulations regulating advertisement of gaming activities hence no need to increase excise duty on the same. The Committee therefore recommends deletion of the amendment.

Section 40((5) of the TPA – Security on property for unpaid tax

237. Introduce a proviso after the new section 40(5) of the TPA to state; provided that where a payment plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan. The new Section 40(5) of the TPA shall read as follows: *Where a taxpayer fails to pay the tax liability described in the notification under subsection (1) within two months after the receipt of the notification, the Commissioner or authorized officer may, at the cost of the taxpayer, dispose of the property that is the subject of the restraint on disposal, mortgage or charge, by public auction or private treaty, or as provided for under the relevant Act for the recovery of the tax, provided that where a payment plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan*".

Committee Observation/Recommendation

The proposal can be an avenue for tax recovery and was therefore adopted by the Committee.

Section 47(1) (b) of the TPA– Refund of overpaid VAT

238. They proposed that section 47(1) of the TPA be amended to read as follows: *"Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed*

form for a refund of the tax in five years, or six months in the case of value added tax, after the date on which the tax was paid.

Committee Observation

The Committee observed that this is a monthly obligation and in cases of refunds, a person should not defer the refund for a period of more than six months. This proposal was therefore rejected by the Committee.

Other Key Issues for Further Consideration

239. Section 15(2)(h) of the Income Tax Act, 2013, be amended to include section 15(2)(h) in order to re-introduce the deductibility of subscription fees paid to trade associations to read as follows: "Without prejudice to the provisions of section 15(1), in computing for a year of income the gains or profits chargeable to tax under section 11, the following amounts shall be deducted – annual subscription fees paid during that year of the association which has made an election under section 21(2)".

Committee Recommendation
This proposal was adopted by the Committee.

240. Second Schedule to the Income Tax Act, 2013, to be amended in paragraph 1 and the proviso (A) by deleting the words "for the transmission of electrical energy" appearing in paragraph (f) thereof.

Committee Observation
The Committee observed that this was a clean-up and was therefore adopted by the Committee.

241. The First Schedule to the Income Tax Act, 2013, be amended in Section A of Part I by inserting the following immediately after paragraph 139 "Equipment for development of mini hydro power generation, transmission, and distribution of power".

Committee Observation
Their proposal will have a negative impact on revenue and was therefore rejected by the Committee.

242. Re-introduction as Part I of the First Schedule - The transfer of a business as a going concern registered under the Transfer of Undertaking (TOGC) by a registered person.

Committee Observation
Their proposal seeks to allow the transfer of business as a going concern. The VAT charged under the supply will be treated as input VAT hence not a cost to the business. The committee rejected the proposal.

243. Amend the First Schedule to the Value Added Tax Act, 2013, in Section A of Part I by inserting the following immediately after paragraph 139-140; *Clean and Improved Cook stoves of class 7321.12.00 and 7321.19.00.*

Committee Observation/Recommendation

Inputs for the manufacture of clean and improved cook stoves are already exempt in order to promote local manufacturing of the goods. Their proposal was therefore rejected.

244. Amend the First Schedule to the Value Added Tax Act, 2013, in Section A of Part I by inserting the following new paragraph immediately after paragraph 139–142. *Methyl Alcohol (HS code 2905.11.00) used for cooking fuel.*

Committee Recommendation

This proposal was rejected by the Committee as it will have a negative impact on tax revenue.

245. Introduce a 25% Import Tariff exemption on Denatured Ethyl Alcohol (HS Code 2207.20.00) for Domestic Cooking Fuel.

Committee Recommendation

This proposal was rejected by the Committee. The item to be zero rated

246. Introduce a 10% Import Tariff exemption on electric cooking products (HS Code 8516.50.00 and 8516.60.00).

Committee Recommendation

This proposal was rejected by the Committee. This would deny government a tax revenue stream.

247. The First Schedule to the Value Added Tax Act, 2013, is amended– in Section A of Part I by inserting the following new paragraph: immediately after paragraph 139–Solar Lanterns of tariff numbers 8513.10.20, 8513.10.90.

248. Amend the First Schedule to the Value Added Tax Act, 2013, in Section A of Part I Sec by amending the paragraph to read as follows “*Specialized equipment for the development and generation of solar and wind energy. Wind turbines 84128030, Solar photovoltaic panels HS Code 8541400000, Charge Controllers HS Code 9032890000/ 8537100000, Inverters HS Code 8504400000, solar lamps and lanterns specifically designed to be powered by the generation of solar energy Solar water pumps HS Code 8413700000, Solar Water Heating Complete Kits under HS Code 841912 00, Solar Water heating reticulation recirculation pumps and similar apparatus for recirculating heating media and parts under HS Code 84138100 upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy*”.

Section 40(5) of the TPA - Security on property for unpaid tax

249. Introduce a proviso after the new section 40(5) of the TPA to state that: “*Provided that where a payment plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan*”.

Committee Observation/Recommendation

The Committee observed that this proposal could be an avenue for tax recovery. The Committee therefore adopted the proposal.

Section 47(1) (b) of the TPA– Refund of overpaid VAT

250. Section 47(1) of the TPA be amended to reads as follows: “47 (1) *If here a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid*”.

Committee Observation/Recommendation

VAT is a monthly obligation and in cases of refunds, a person should not delay application for a period of more than six months. Their proposal was therefore rejected by the Committee.

3.23 THE SCOTCH WHISKY ASSOCIATION (SWA)

251. In a letter dated 29th April 2022, SWA raised concern with the rise of excise tax from KSh. 278.70 to 335.30 which would negatively impact trading conditions in the market, which may inadvertently encourage illicit trade and the informal market. They stated that illicit alcohol creates a lose-lose situation for all legitimate actors in the market and poses a serious risk to consumer health and represents a major loss of revenue for government. They further stated that some of the known drivers of illicit alcohol include a challenging economic environment, inadequate legal frameworks, lack of control at borders, taxation strategies that are not appropriate in the local context, and high tariffs.
252. SWA submitted that a 20% increase in tax will put Scotch Whisky and other imported spirit drinks, which are already subjected to a 25% import duty, out of reach of many Kenyan consumers who may turn to the informal market. The impact will also be felt in the local hospitality sector which has been particularly hit by the COVID-19 pandemic over the past two years. They suggested that massive excise hikes should be avoided to allow for a speedy post-COVID recovery. They requested for reconsideration of the level of proposed excise tax increase.

Committee Observation/Recommendation

The Committee observed that increasing excise duty on spirits will encourage people to take illicit alcohol and therefore not translate to higher revenues. The Committee therefore recommends deletion of the amendment.

3.24 KENYA BREWERIES LIMITED/UDV (K) LIMITED

In a meeting with the Committee, Mr. John Musinga, the Managing Director, KBL and other officials from KBL proposed the following amendments to the Bill:

Clause 16

253. Amend the clause by inserting the following new paragraph (c) under sub-clause 16(2)(j)(iii): “*Holding companies that are regulated under the Capital Market Authority Act, 1998*” in the list of entities exempt from the new interest restriction rules.

Committee Recommendation

This proposal was rejected by the Committee. This requires more consultations.

254. Amend the clause by introducing a new paragraph indicating that implementation of the interest restriction provisions should only take effect once the comprehensive guidelines on computation of allowable interest for entities with various streams of income are in place.

Committee Recommendation

This proposal was rejected by the Committee. This is to bring it line with international best practices to deal with tax avoidance and allow for time to study the effect of the law.

255. Amend the commencement date of the revised interest restriction provisions to apply "*for financial years commencing on or after 1st January 2022*".

Committee Recommendation

This proposal was rejected by the Committee. This would have made the effective date is retrospective.

Clause 30

256. Amend the Bill by deleting clause 30 and retain the existing section 32 of the TAT Act, 2013.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 31

257. Amend the clause by deleting the Proviso.

Committee Observation/Recommendation

The Committee observed that the provision may be abused and recommends for its deletion.

Clause 34

258. Amend the clause by deleting paragraph 34(b) (iv) and retain the excise duty rate at KSh. 116.08/litre.

Committee Recommendation

The Committee recommends deletion of the paragraph and retain the excise duty rate at KSh. 121.85 per litre.

259. Amend the clause by deleting paragraph 34 (b) (vii) and retain the excise duty rate at KSh. 265.50/litre.

Committee Recommendation

The Committee recommends deletion of the paragraph and retain the excise duty rate at KSh. 278.70 per litre.

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260. Amend the clause by deleting paragraph 34(b) (vi) and retain excise duty at KSh. 198.34 per litre.

Committee Recommendation

The Committee recommends deletion of the paragraph and retain the excise duty rate at KSh. 208.20 per litre.

261. Amend the clause by deleting paragraph 34(b) (xvi) to remove excise tax on both imported and locally manufactured glass bottles.

Committee Recommendation

This proposal was adopted by the Committee. To allow the local glass manufacturing industry to grow.

262. Amend the clause by deleting paragraph 34(d) (v).

Committee Observation/Recommendation

The Committee observed that there are already other regulations regulating advertisement of gaming activities hence no need to increase excise duty on the same. The Committee therefore recommended deletion of the amendment.

263. Amend section 10(1) of the Excise Duty Act by introducing the words "*and save as expressly specified in Paragraph 2 of the First Schedule to this Act*" immediately after the words "*section 8*" appearing in the section.

Committee Recommendation

This proposal was rejected by the Committee.

264. Amend paragraph 2(1) of the First Schedule to the Excise Duty Act by introducing, the words "*save for excise duty on barley and malt-based beer that shall be similarly adjusted but only at the beginning of every fifth financial year*" at the end of that Paragraph.

Committee Recommendation

This proposal was rejected by the Committee.

265. Amend the definition of "*adjustment day*" as it appears in Part III of the First Schedule to the Excise Duty Act by deleting it in its entirety and replacing with the following new definition "*1st day of October of every fifth year for barley and malt based beer, and 1st day of October of every year for all other excisable goods*"

Committee Recommendation

This proposal was rejected by the Committee.

3.25 PUBS, ENTERTAINMENT & RESTAURANT ASSOCIATION OF KENYA (PERAK)

In a meeting with the Committee held on Wednesday, 11th May 2022, the Pubs, Entertainment and Restaurant Association of Kenya proposed the following amendments to the Finance Bill, 2022:

Clause 34

266. Amend the clause by deleting paragraphs 34(b) (iv), (vi) and (vii) and retain the excise duty rates of beer, wine and spirits at KSh. 116.08 per litre, KSh. 198.34 per litre and KSh. 265.50 per litre respectively. This is to maintain the status quo in line with the Court Orders suspending excise duty increase in November 2021.

Committee Recommendation

The Committee recommends deletion of the paragraphs and retain the excise duty rates at KSh. 121.85, KSh. 208.20 and KSh. 278.70 per litre respectively.

267. Amend section 10(1) of the Excise Duty Act by adding the words "*and save as expressly specified in Paragraph 2 of the First Schedule to this Act*" immediately after the words "*section 8*" appearing in that section.

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

268. Amend paragraph 2(1) of the First Schedule to the Excise Duty Act by adding the words "*save for excise duty on barley and malt-based beer that shall be similarly adjusted but only at the beginning of every fifth financial year*" at the end of that paragraph.

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

269. Delete definition of the term "*adjustment day*" as it appears in Part III of the First Schedule to the Excise Duty Act and replace with "*1st day of October of every fifth year for barley and malt based beer, and 1st day of October of every year for all other excisable goods.*"

Committee Recommendation

This proposal was rejected by the Committee. The provision does not make it mandatory for the Commissioner to adjust the specific rate of excise duty for inflation purposes annually.

Excise Duty on Glass

270. Delete the word glass bottle from paragraph 1. This will remove excise tax on both imported and locally manufactured glass bottles. The proposed amendment will make locally produced beverages more expensive than imported ones as the imported finished goods will not be impacted by the 25% excise tax on glass, making the proposal discriminatory. Further, it will lead to decline in investment in local production of both glass and beverages packaged in glass. It

will also make glass from other EAC countries cheaper than locally produced glass since the imported glass is excluded from excise tax.

Committee Observation/Recommendation

The Committee observed that the amendment will give undue advantage to imported glass and impact negatively on the Government's '*Big Four Agenda*'. The Committee recommended deletion of the paragraph.

Clause 30

- ~~271. Deletion the clause 30 and retain existing section 32 of the Tax Appeals Tribunal Act 2013. The proposed amendment will impact negatively on the working capital of companies, discriminate and deny aggrieved taxpayers access to justice especially when they cannot raise the amount in dispute and it's an unfair administration of justice as its the taxpayer being required to make the deposit while the tax regulator is exempted especially when the authority appeals a TAT ruling for instance in respect of tax refund disputes.~~

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommended that the clause be deleted.

3.26 COCA-COLA BEVERAGES AFRICA

In a meeting with the Committee held on Wednesday, 11th May 2022, the Director Public Affairs, Communication & Sustainability, Ms. Susan Maingi and other officials from the Company proposed the following amendments to the Bill:

Clause 34

272. Amend the clause by deleting the expression "*shs. 12.17 per litre*" in respect of the tariff description "*Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter*" and substituting therefor the expression "*shs. 13.30 per litre*".

Committee Recommendation

The Committee noted their concerns and reduced the excise duty rate from Shs. 13.30 to Shs. 13.00 per litre.

273. Amend the clause by deleting the expression "*shs. 6.03 per litre*" in respect of the tariff description "*Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices*" and substituting therefore the expression "*shs. 6.60 per litre*";

Committee Recommendation

The Committee noted their concerns and deleted the paragraph.

Clause 31

274. Amend the clause to allow for an inflation adjustment every 2 years and delete the proviso giving the Commissioner discretion on inflation adjustment.

Committee Recommendation

The Committee adopted their proposals. It will give businesses time to recover from effects of the COVID-19 Pandemic.

First Schedule to the Excise Duty Act, 2015 on excise tax on glass bottles/imported and local glass

275. Amend the First Schedule to the Excise Duty Act, 2015 (b) in the second table appearing in paragraph 1 of Part I (xvi) by deleting the tariff description "*Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) and the proviso thereto and substituting therefor the tariff description ...Glass bottles (excluding glass bottles for packaging of pharmaceutical products)*".

Section 14

276. Amend section 14 of the Excise Duty Act by removing excise tax payable on both imported glass bottles and local glass bottles and revision of section 14 (for clarity purposes) which provides that: "*where duty has been paid in respect to excisable goods imported into or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods, the raw materials shall be offset against the excise duty payable on the finished goods.*"

Committee Observation/Recommendation

The Committee observed that the proposed amendment will give undue advantage to imported glass and impact negatively on the local manufacturing industry. The Committee adopted their proposal and recommended that paragraph 34(b) (xvi) be deleted.

Clause 30

277. Amend the clause by providing that where all appeals have been exhausted and the court has ruled in favour of the aggrieved person, the Commissioner shall refund the monies deposited by that person under sub-section (2) within thirty days after the determination of the court.
278. Amend the clause by deleting paragraph (2) because there is in place a system through the legal process to address the issue of payment of taxes upon making an appeal.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

3.27 ALCOHOL BEVERAGES ASSOCIATION OF KENYA (ABAK)

In a meeting with the Committee held on Wednesday, 11th May 2022, the Association proposed the following amendments to the Bill:

Clause 10

279. Amend section 16(2) (j) (iii) by inserting new paragraph (c) "*Holding companies that are regulated under the Capital Market Authority Act, 1998 (Rev 2012)*" in the list of entities exempt from the new interest restriction rules. Subsidiaries of such holding companies generate significant active

trading income from their respective operations, which mitigates the impact of the new interest restriction.

Committee Recommendation

This proposal was rejected by the Committee. This requires additional consultations.

Clause 30

280. Amend sub-clauses 30 (2) (3) & (5) by deleting the pre-requisite deposit on tax dispute resolution. The 50% deposit by a taxpayer on disputed tax will negatively affect capital and cash flow as the money will not earn any interest, reduce the amount of money available for investment while raising the cost of doing business in Kenya and discriminate against and deny aggrieved taxpayers access to the justice system when they are unable to raise the amount in dispute.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 34

281. Amend the clause by deleting paragraphs 34(b)(iv) and retaining the excise rate at KSh. 116.08/litre, 34 b (vi) and retaining excise duty at KSh. 198.34 per litre", 34 (b)(vii) and retaining the excise rate at KSh. 265.50/litre and 34 (b) (xvi). The proposed increase will be transferred to consumers in terms of increased prices who will in turn reduce their consumption leading to a decrease in the sales made by the companies. These high prices will lead the consumers to consume cheap and illegal drinks in their locality.

Committee Recommendation

The Committee noted their concerns and recommends that the excise rates be retained at KSh. 121.85, KSh. 208.20 and KSh. 278.70 per litre and deletion of paragraph 34(b) (xvi).

282. Amend the clause by deleting paragraph 34(d) (v) because the Alcohol Beverages Association of Kenya's marketing code that guides the alcohol industry promotes responsible alcohol advertising. In addition, the advertisements are reviewed by the Kenya Films Classification Board which ensures that the advertisements are for the intended audience and at the appropriate times.

Committee Recommendation

The Committee noted their concerns and proposed deletion of the paragraph.

3.28 KENYA WINE AGENCIES LIMITED (KWAL)

283. In a meeting with the Committee held on Wednesday, 11th May 2022, the Managing Director, Ms. Lina Githuka proposed that the Excise Duty on wines, including fortified wines, and other alcoholic drinks generated from fruit fermentation, which was recommended to be KSh. 229 per litre be retained at KSh. 208.20 per litre in the First Schedule of the Excise Duty Act, 2015. They suggested that the new Excise Duty rate adjustment need to be at the rate of KSh. 198.34 per litre and not KSh 208.20 per litre. There was a court order in place that had suspended the latter rate until the case is determined (Constitutional Petition no. 24 of 2021). They also pointed out

that if the existing tax rate is maintained, the government will receive KSh. 128.8 million more in wine taxes than if the tax rate is raised to KSh. 229.

Committee Recommendation

The Committee noted their concerns and retained the excise duty rate of wine at KSh. 208.20 per litre.

3.29 ASSOCIATED BATTERY MANUFACTURERS (EA) LIMITED

In a meeting with the Committee held on Wednesday, 11th May 2022, ABM submitted THAT:

Value Added Tax

284. In order to boost manufacture of solar deep cycle batteries, the lead acid deep cycle batteries which are manufactured in Kenya should be removed from paragraph 113 of the First Schedule to the Act and subject them to VAT at the standard rate of 16%. Lithium ion deep cycle batteries should however be retained in the Schedule since they are not manufactured locally. Paragraph 113 be amended to read as follows: "*Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and lithium ion deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy*".
285. In order to eliminate the tax disputes with KRA, they proposed inclusion of a comprehensive list of items that are exempt from payment of VAT under paragraph 113 of the First Schedule to the Act. This will bring an understanding of the comprehensive list of items subject to exemption from VAT.

Committee Observation/Recommendation

The Committee observed that the proposed amendment will limit application of the exemption to only lithium ion deep cycle batteries. The Committee therefore rejected their proposal.

Excise Duty Act

286. Excise duty on plastic bottles used in packaging ionized water and sulphuric acid be removed in order to make the commodities more competitive in the market.

Committee Recommendation

This proposal was rejected by the Committee.

287. Part 1 of the First Schedule to the Act be amended to delete Articles of plastic of tariff heading 3923.30.00 or alternatively amend section 29 of the Act to allow for refund of excise duty paid on plastic bottles for export by inserting the following new paragraph: "*(c) the excise duty has been paid on plastic bottles used in packaging of products for export*".

Committee Recommendation

This proposal was rejected by the Committee. It will lead to administrative challenges as the tariff heading has other articles of plastic other than plastic bottles.

288. In order to eliminate the tax disputes with KRA, they proposed inclusion of a comprehensive list of items that are exempt from payment of Customs Duty under paragraph 26 of the Fifth Schedule to the EACCMA.

3.30 NAIROBI SECURITIES EXCHANGE (NSE), FUND MANAGERS ASSOCIATION (FMA) AND KENYA STOCKBROKERS & INVESTMENT BANKS (KASIB)

In a meeting with the Committee held on Wednesday, 11th May 2022, they proposed the following amendments to the Bill:

Clause 15(a)

289. Delete the proposed amendment to section 34 of the Income Tax Act that increases Capital Gains Tax from 5% to 15%. The proposed tax hike will discourage home ownership. Investments in the real estate sector will slow as currently the sector does not have CGT. Property is a major asset class in pension portfolios and the proposed tax will further negatively impact the pensions industry.

Committee Recommendation

The Committee noted their concerns and recommended reduction of the rate of CGT from 15% to 10%.

Clause 3

290. Amend the clause by deleting the new paragraph (i) immediately after paragraph (h) "*gains from financial derivatives not traded at a publicly listed securities Exchange*". The nascent derivatives market at the NSE has been in operation for only three years and needs support to grow.

Committee Recommendation

The Committee adopted their proposal. This will provide the support that the sector needs to continue growing.

Clause 6

291. Amend the clause by adding the following new sub-paragraph immediately after sub-section (3) "*provided that this section shall not apply to financial derivatives traded at a publicly listed Securities Exchange*". The proposal for a 5% capital gain tax on the NSE derivatives which currently stands at 10,362 contracts of approximately Kshs. 6 Million will net a total of Ksh 300, 000 in tax revenue collection, but perhaps destroy the derivatives market.

Committee Recommendation

~~The Committee adopted their proposal. The tax revenue collected from the market is modest. The adoption will allow for the sector to grow.~~

Clause 15

292. Amend the clause by adding the following new sub-paragraph immediately after paragraph (q) "*provided that this section shall not apply to financial derivatives traded at a publicly listed Securities Exchange.*" Introduction of capital gains tax to a derivative product whose underlying asset is exempt from tax distorts the market while negating the purpose of the initial exempt.

Committee Recommendation

The Committee adopted their proposal. This will allow the sector to grow as its only three years old and the revenues collected are modest.

Clause 21

293. Amend the clause by adding the following new sub-paragraph immediately after sub-paragraph (r) "*provided that this section shall not apply to financial derivatives traded at a publicly listed Securities Exchange.*" The proposed new tax emanates from outside of the capital market industry, but the industry shall suffer collateral damage is implemented across the board. They proposed exemption from taxation of gains from derivatives traded at the NSE.

Committee Recommendation

The Committee adopted their proposal. This will prevent the sector from suffering from the collateral damage and allow the sector to continue growing.

Clause 30

294. Delete the clause because this proposal is applicable to where a taxpayer makes an appeal to the High Court against a judgment by the Tax Appeals Tribunal. However, the governance process in KRA is slow and present a major cash flow problem to the taxpayer. Further it assumes upfront that KRA is right in the case.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Income Tax Act, Head B, Third Schedule

Paragraph 2 (g) (ii)

295. Amend to read as follows "*a gain in transfer of securities traded on any publicly listed securities exchange licensed by the Capital Markets Authority is not chargeable to tax under section 3(2) (f)*". The amendment to the proposal in the Finance Act, 2022 is due to the fact that trading of securities especially government bonds which are national assets and listed for trading at a publicly listed exchange are income generating, whose income is distributed through dividends. The establishment of a parallel and privately owned exchange to trade in government securities means income earned will only be shared with private entities some foreign owned. In addition, the proposed new exchange will be exclusively owned by banks whereas the current securities exchange is open to ownership by all Kenyans. Further, two markets open the door to two prices, to the detriment of the small players.

Paragraph 11, First Schedule

296. Amend by adding the following new paragraph immediately after paragraph (11) "*provided that this section shall not apply to accounts opened by non-residents with no local presence for purposes of trading in marketable securities.*" It is a requirement for an investor to have a PIN even for foreign investors which creates a barrier to foreign investment flows. If the amendment is carried, the foreign investor whose sole source of income is interest, dividends and capital gains (from investments only in marketable securities listed in Kenya) will only be liable for withholding tax as a final tax and are therefore not obligated to file tax returns. It will not result in any loss of tax

revenue either. The proposed amendment shall enable a blanket application of the PIN exemption for foreign investors.

Committee Recommendation

This proposal was rejected by the Committee. The Commissioner should remain with the discretion to exempt the need to acquire a PIN.

3.31 ERNEST & MARTIN ASSOCIATES

Mr. Ernest Muriu appeared before the Committee on Wednesday, 11th May 2022 and proposed the following amendments to the Bill:

Clause 1

297. Amend the clause by deleting sub-clause 1(b) and substituting it as follows; "*all other sections, on the later of 1st July 2022 and the date of assent*". This is in case of delay in enactment e.g. referral of the act to parliament.

Committee Recommendation

This proposal was rejected by the Committee to allow for discretion of commencement dates.

Clause 9

298. Amend sub-clause 9(a) (iii) by deleting the character "y" and replacing it with "x". This is because the amendment to paragraph (w) is intended to merge "z" and "x" not with "y".

Clause 10

299. Section 16 of the Income Tax Act is amended in sub-section (2) (j) by: deleting the words "*and third parties*"; deleting the words "*gross interest paid*" with the words "*gross interest and royalties paid*"; deleting proviso (A) and substituting therefor the following new proviso – "*interest on all related party loans*"; Inserting new proviso (AA) "*on all royalties paid or payable to related party*" and deleting proviso (B) and substituting therefor the following new proviso "*micro and small enterprises with a turnover of less than KSh. 50 million*". This because the current provision is designed to discourage legitimate borrowing from banks and other financial institutions instead of discouraging profit shifting to related parties within or outside Kenya, the amendment is aimed at reconfiguring the restriction to have the effect of preventing profit shifting. Legitimate borrowing from banks and other financial institutions should not be deterred

Committee Observation/Recommendation

This amendment was made through the Finance Act, 2021. There is need to give time for full evaluation of the challenges of the legislation before making amendments.

Clause 13

300. Amend Section 18D to read as follows: "*18D. (1) A resident ultimate parent entity or a resident constituent entity of a multinational enterprise group with a gross consolidated turnover of ninety-five billion shillings (including extraordinary or investment income) shall file a country by country report with the Commissioner of its business or financial activities in Kenya and for all other jurisdiction where the group has taxable presence.*" This is to make the terms resident ultimate parent entity and resident constituent consistent with the phrasing in section 9 and 10 of the Act and will be easier to read.

Committee Observation/Recommendation

The proposal in the Bill applies to residents who are required to report on activities of the constituent entities that are in other jurisdictions for visibility. Their proposal was rejected by the Committee.

Clause 20(a)

301. Delete the words "*through the national grid*" and replace thereof with the words "*for supply to the national grid*". This is because the words "*through the national grid*" were already deleted by section 19(a) (v) of the Finance Act 2021.

Committee Observation/Recommendation

The Committee observed that their proposal was a clean-up and therefore adopted it.

Third Schedule, HEAD B paragraph (2) (j)

302. Define local content to mean "*parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.*" Consider harmonizing the term local content found in the proposed Clause 28(a) (iv) item 144 of the Bill with the ITA incentive for motor vehicle manufacturers.

Committee Observation/Recommendation

The proposal to base calculation of 30% on the ex-factory price and the definition of local content was adopted by the Committee.

303. The Third Schedule to the Income Tax Act is amended in paragraph 5 by deleting sub-paragraph (ja). With the proposed deletion of section 11(3A), clause 7 of the Bill, then this is a consequential deletion.

Committee Observation/Recommendation

The Committee observed that deleting sub-paragraph (ja) will imply that there will be no WHT on rent for commercial premises. This will erode the tax base and was therefore rejected by the Committee.

Value Added Tax

304. Amend section 6(1) by deleting the phrase section 5(2) (b) and replacing thereof with the phrase section 5(2) (aa) or (b). This is to give the minister power to increase or decrease VAT rates applicable to petroleum products.

Clause 23

305. Amend section 10(4) by deleting the words "*if a registered person*" and replacing with the words "*if the person referred to in subsection (1)*" and by deleting the words "*the registered person*" and replacing with the words "*the person referred to in subsection (1)*". This is to align sub-section 4 with the other parts of section 10.

Committee Recommendation

This proposal was rejected by the Committee.

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306. The Second Schedule to the Value Added Tax Act, 2013 is amended in paragraph 1 of Part A, by inserting the words "or taxable services" after the word goods. This is to reinstate the exported services as zero-rated.
307. The First Schedule in Part II is amended by deleting the paragraph 32. This is to remove exported services from the exempt services list.

Committee Recommendation

This proposal was adopted by the Committee. This will allow for fairness in treatment of taxable goods and services.

308. Insert the following new section 8A: "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; or (e) the services are radio or television broadcasting services received at an address in Kenya; or (f) the effective use or enjoyment of the services takes place in Kenya irrespective of who is making payment for the services or irrespective of whether the supply was made to a recipient who was not physically in Kenya". This is to clearly state when a service is deemed to be consumed in Kenya and is therefore not an export in order to manage the proposal to have exported services to be exempt instead of zero rated.

Committee Observation/Recommendation

There is need for further consultation before the proposed amendment is introduced since it can lead to huge revenue loss through claims of unjustified refund. This proposal was therefore rejected by the Committee.

Clause 24

309. Amend section 17(2) by inserting the following additional proviso, "Further provided that, where a return is amended any input VAT properly deducted by the registered person in his original return, shall be carried over to the amended return". This is to ensure that the amended returns continue carrying all input VAT where an amendment is done after 6-month period.

Committee Observation/Recommendation

This proposal is already provided for under section 17(5) of the VAT Act and was therefore rejected by the Committee.

- ~~310. Amend clause 24(b) by adding the words "in accordance with section 43 of this Act" after the words "Commissioner may require" in the proposed paragraph (f). This is to ensure that the commissioner may only request for documents, a taxpayer is required to keep under section 43 of the Act and no more.~~

Committee Observation/Recommendation

The proposal to amend the clause to link it with section 43 of the VAT Act is not necessary because section 43 is on keeping records.

Clause 28

311. Amend the clause by deleting paragraph 28(a) (i). The incentive to build hospitals should not be removed and on the other hand give incentives to manufacture cars. This may appear as insensitive.

Committee Recommendation

The Committee recommends deletion of the paragraph in order to reduce the cost of building specialized hospitals.

Paragraph 28(a) (iv)

312. Amend the proviso by deleting the words "*and whose total value comprises at least thirty percent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya*" and replacing with the words "*and whose ex-factory value comprises at least thirty per cent of local content provided that the exemption shall be extended for a further period of five years if the manufacturer achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicle.*" Where local content means "*parts designed, and manufactured in Kenya by an original equipment manufacturer operating in Kenya*". This is to make this consistent with the Income Tax Act 3rd Schedule, HEAD B, paragraph (2) (j) and to replace the term "*total value*" with the term "*ex-factory value*".

Committee Observation/Recommendation

The proposal to base the calculation of 30% on the ex-factory price and the definition of local content was adopted by the Committee.

313. Amend the clause by deleting paragraph 28(b) (i). This is to delete the hospital exemption for the reasons previously provided.

Clause 29

314. Amend the clause by deleting paragraph 29 (b) in Part B, by deleting paragraph 9 because it was already deleted by The Tax Laws (Amendment) Act, 2020.

Committee Recommendation

This proposal was rejected by the Committee. The goods are already exempted from VAT under Paragraph 96A of the First Schedule. Zero rating is limited to goods produced for exports.

Tax Appeals Tribunal

Clause 30

315. Delete the proposed clause where the taxpayers with disputes are to pay a deposit of 50%. The proposed amendment is contrary to article 48 of the Constitution on access to justice.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Excise Duty Tax

316. Amend section 7 by inserting the following new sub-section 2A: "*2A. the Cabinet Secretary, may, by notice in the Gazette, provide for the remission of duties, wholly or partially, applicable to the petroleum products Tariff descriptions 2710.12.20, 2710.19.22, 2710.19.31 and 2710.19.32*".

Committee Observation/Recommendation

This proposal was rejected by the Committee. This is redundant since the Cabinet Secretary has the powers to waiver taxes.

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- ~~317. Amend sub-section 3A by deleting the words "*sub-section (2)*" and replacing with the words "*sub-section 2 or 2A*". This is to provide for Excise Duty Remission for petroleum products, in the event the PDL is not sufficient to stabilize prices.~~

Committee Observation/Recommendation

This proposal was rejected by the Committee. This proposal is redundant as the commissioner already has the power to exempt certain goods from adjustments of inflation.

Clause 35

318. Amend the proviso in the proposed item 17 by deleting the words "*and whose total value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya*". and replacing with "*and whose ex-factory value comprises at least thirty per cent of local content Provided that the exemption shall be extended for a further period of five years if the manufacturer achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicle*". Where local content means "*parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya*". For the same reasons given for the similar amendment in the VAT Act.

Committee Observation/Recommendation

The proposal to base calculation of the ex-factory price and definition of local content was adopted by the Committee.

319. The First Schedule to the Excise Duty Act, 2015 is amended—in Part III by inserting the following definition, "*Import shall not apply to any item imported from any of the countries within the East African Community*".

Committee Observation/Recommendation

This proposal was rejected by the Committee. The proposal to provide for carrying over the credit is already provided under Section 17 (5) of the VAT Act

Clause 37

320. Insert following proviso after the proposed sub-section (5) "*Provided that, where a return is amended any input VAT properly deducted by the registered person in his original return, shall be carried over to the amended return*". To ensure that amended returns continue carrying all input VAT, where an amendment is done after 6-month period.

Clause 38

321. Add the following proviso in the proposed section 40(4): "*Provided that the Commissioner shall, give the notification to the Registrar within seven days from the date of payment of the whole of the amount of unpaid tax secured under this section*". To give timeline for necessary notification.

Committee Recommendation

This proposal was rejected by the Committee. It was proposing to provide the timelines for the Commissioner under this subsection which will complicate administrative efforts and make it cumbersome for the Commissioner

322. Amend the proposed section 40 (5) by deleting the words "*within two months after receipt of the notification,*" and replacing with the words "*in accordance with any agreement made under section 33 of this act*". This is to remove the possibility of sale of the assets without engagement of the taxpayer.

Committee Recommendation

This proposal was rejected by the Committee. It was proposing to provide the timelines for the Commissioner under this subsection which will complicate administrative efforts and make it cumbersome for the Commissioner

Clause 39

323. Delete the proposed section 47(1) and replace it as follows: "*47. (1) Where in the ascertainment of the tax liability, results in a taxpayer has overpaid a tax under any tax law, the amount of that overpaid tax shall be allowable to offset against the taxpayer's future tax liabilities under the same tax law, in the return for the next or future tax periods; Provided this sub-section shall not apply to PAYE: (2) The taxpayer may apply to the Commissioner, in the prescribed form – (a) to offset the overpaid tax against the taxpayer's tax liabilities under any other tax law; and (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid*".

Committee Recommendation

This proposal was rejected by the Committee since it will deny a tax payer to utilise the overpayment to settle other outstanding tax obligations.

324. Delete the proposed section 47(8) as this is catered for under the proposal above.

Committee Recommendation

This proposal was rejected by the Committee as it has been catered for in a previous proposal.

325. Delete the proposed section 47(9) and replace it as follows: "*(9) Where an offset of tax under sub-section (1) is made, and the Commissioner later determines that there was no overpayment of tax, the amount of the tax that was used to offset the taxpayer's future tax liabilities under sub-section (1) shall be treated as a tax due to the Commissioner in the subsequent tax period*".

Committee Recommendation

This proposal was rejected by the Committee as the proposals are to an overpayment of installation tax and no other tax.

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326. Delete the proposed section 47(10) and replace it as follows: "*(10) the amount due under subsection (9) shall be due from the date the offset under subsection (1) was made*".

Committee Recommendation

This proposal was rejected by the Committee as the proposals are to overpayment of installation tax and no other tax.

327. Delete the proposed section 47(13) because it creates a conflict in the act and to harmonize the provisions for tax losses carried forward (section 16(4) of the income tax act) with the provision of tax credit carried forward.
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Clause 41(d)

328. Amend the proposed sub-section (11) by adding the words "*failure to which the objection shall deemed to be allowed*" after the words "*valid notice of objection*".

Committee Recommendation

This proposal was rejected by the Committee, it is redundant.

329. By deleting the proposed sub-section (12) as this is adequately covered by section 52.

Committee Recommendation

This proposal was rejected by the Committee, it not required.

330. Amend 6B. (1) by inserting the following definition in its proper alphabetical order; "*An investment entity*" means an entity licensed under the Capital Markets Act other an entity listed in a securities exchange".

331. 6B. (1) in the definition of financial institution the term "*an investment entity*" should be defined.

Clause 52

332. Delete the proposed amendment and replace it as follows: "*Section 21 of the Statutory Instruments Act, 2013 is amended in sub-section (3) – by deleting the words "not exceeding twelve months" and replacing thereof with the words "not exceeding twenty-four months"*". The proposed amendment is superfluous because section 21(2) gives the CS the power to make a regulation extending the operation of a statutory rule for a period not exceeding 12 months.

Committee Recommendation

This proposal was rejected by the Committee. This is to allow for the statutory instruments to await review by the next Parliament as they are lapsing within the transition period

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333. Amend section 12(1) of the Statutory Instruments Act, 2013 by inserting the following proviso- "*Provided that any statutory instrument which contains provisions dealing with taxes, levies or fees shall also stand referred to the Committee responsible for Finance matters for the purpose of reviewing and scrutinizing statutory instruments*".

Committee Recommendation

This proposal was rejected by the Committee. This is to allow for the statutory instruments to await review by the next Parliament as they are lapsing within the transition period

334. Amend the Statutory Instruments Act, 2013 by inserting the following new section 12A: "12A. *The relevant committee shall facilitate public participation and involvement in reviewing and scrutinizing statutory instruments facilitate public participation and involvement*".

Committee Recommendation

This proposal was rejected by the Committee. This is to allow for the statutory instruments to await review by the next Parliament as they are lapsing within the transition period

335. Amend the Statutory Instruments Act, 2013 by deleting section 14 because all statutory instruments should be reviewed to avoid any mischief or provisions not in the public interest.

Committee Recommendation

This proposal was rejected by the Committee. This is to allow for the statutory instruments to await review by the next Parliament as they are lapsing within the transition period

336. Amend the Statutory Instruments Act, 2013 in sub-section 15(2) by deleting the words "shall be deemed to have fully met the relevant considerations referred to in section 13." and replacing with the words "shall be deemed to have been revoked". All statutory instruments should be reviewed to avoid any mischief or provisions not in the public interest, otherwise, they should lapse.

Committee Recommendation

This proposal was rejected by the Committee. This is to allow for the statutory instruments to await review by the next Parliament as they are lapsing within the transition period.

3.32 MR. ELIUD MATINDI

337. In his memorandum submitted via email, Mr. Matindi opposed the amendment proposed to section 21 of the Statutory Instruments Act noting that the amendment is unconstitutional as it is contradictory to Articles 1(2), 1(3)(a), 10, 94, 201, 210 and 259 of the Constitution.

Committee Observation/Recommendation

The Committee observed that if enacted, the amendment will take away the oversight role of Parliament with regards to statutory instruments. The Committee recommends deletion of the clause.

3.33 MR. KAGIRI GATAMA AND MR. GEORGE MUT

338. They submitted that maize flour, bread and milk be tax exempt because they are basic commodities. Instead, they proposed that alcohol and cigars be heavily taxed to cover the tax lost from exemption of maize flour, bread and milk.

Committee Recommendation

The Committee adopted their proposal. They are basic commodities.

3.34 MR. CHADWICK OSARE

339. He opposed the subjection of maize flour, cassava flour, wheat flour and meslin flour to 16% VAT. He also opposed the increase in tax on vegetable and fruit juices noting that all the above listed items are basic commodities. He proposed that in order to narrow down the fiscal gap, the Government should reduce expenditure, restructure loans and reduce the appetite for expensive future loans.

Committee Recommendation

The Committee adopted his proposal and reduced taxes on the said commodities.

3.35 MR. JULIUS MACHIKHA

340. In his email, Mr. Machikha opposed the taxation of food items.

Committee Recommendation

The Committee adopted his proposal. They are basic commodities.

3.36 MS. WARO NJIRO

Ms. Njiro submitted her comments on the Bill via email. She proposed as follows, THAT:

Income Tax Act

341. The amendments proposed to sections 3, 9, 34 and 35 of the Act are harsh on foreigners willing to invest in Kenya. She proposed that the tax should be reduced from 15% to 10% in order to encourage investors to do business in the country.

Committee Recommendation

The Committee adopted her proposal and reduced the CGT rate to 10%.

Value Added Tax Act

342. She supported the proposal to exempt the removal of VAT on maize, cassava and wheat flour noting that it will cushion Kenyans who depend on the commodities for food or business.

Committee Recommendation

The Committee adopted her proposal and deleted the amendment.

343. She proposed that locally manufactured passenger motor vehicles be exempt from VAT in order to encourage innovation by Kenyan students and persons in the manufacturing sector.

Excise Duty Tax

344. The excise duty waged on gambling taxes will be punitive to Kenyans if increased from 7.5% to 20%. She proposed that the excise duty be increased to 10% because many Kenyan youths depend on betting for a living. Increasing taxation on gambling advertisements will be a better way of raising taxes.

Committee Recommendation

The Committee noted her concerns and deleted the amendments.

345. The Government should make Kenyans' lives bearable by reducing the tax strain on them. This is because of the increased poverty levels in the country.

3.37 OKOHLEAH ENTERPRISES

346. In their comments submitted by email, they were opposed to the 100% excise duty remission on white sorghum. They instead proposed that the remission remains at 80% because sorghum growers will not be able to get a market for the white sorghum currently being cultivated for sale to Kenya Breweries Limited and a good proportion of young people will descend into consumption of illicit liquor given that the healthier more hygienic option of senator keg will not be available to them because of its increased retail prices.

3.38 TEGEMEO INSTITUTE OF AGRICULTURAL POLICY AND DEVELOPMENT

347. In a meeting with the Committee held on Wednesday, 11th May 2022, Mr. Joseph Opiyo, a senior Research Associate submitted that the Institute was opposed to the proposal to increase excise duty on beer and glass bottles because it will have a negative impact on food security and livelihoods, cause a risk to investments, discourage investment in the manufacturing sector, distort the working value chain which is stabilizing and reduce the demand for sorghum.

Committee Recommendation

The Committee noted their concerns and delete the amendment.

3.39 MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

348. In their letter, Ref: MOTI/S/ADM/99 VOL.XVII dated 17th September 2021, the Ministry opposed the charging of withholding tax (WHT) on the interest of the income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority because charging of WHT on the above institutions will cripple their operations. Additionally, they are not commercial entities that make profits for other purposes other than fulfilling the objectives under which they were established.

Committee Recommendation

This proposal was adopted by the Committee because the above institutions are not profit making but they aim at providing services to Kenyans and it is therefore not proper to charge WHT on the interest of the income that they earn.

3.40 LAW SOCIETY OF KENYA (LSK)

In a meeting with the Committee held on Thursday, 12th May 2022, the President, Mr. Eric Theuri and other officials from LSK proposed the following amendments to the Bill:

The Tax Appeals Tribunal Act (No. 40 of 2013)

349. Delete the proposed amendments to sections 32(2), (3) & (5) of the TAT Act.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Tax Procedures Act (No. 29 of 2015)

Clause 37

~~350. The proposed new sub-section immediately after sub-section 31 (1) is not only misplaced, but it is also redundant because it is already contained in the substantive Act i.e. the VAT act section 17 under the proviso clause.~~

Committee Recommendation

This proposal was rejected by the Committee since it's redundant

Clause 38

351. Deletion of the Tax Procedures Act, 2015 which is amended by repealing section 40 and replacing it with the following new section, for lack of guidelines on its implementation which can lead to abuse. *"(1) Where a taxpayer, being the owner of property in Kenya, fails to pay a tax by the due date, the Commissioner may notify the Registrar in writing that the property, to the extent of the taxpayer's interest in the property, shall be the subject of a security for the unpaid tax specified in the notification: Provided that the Commissioner shall, within seven days from the date of the notification to the Registrar, by notice in writing inform the taxpayer and any other person who may have an interest in the property about the notification; and (2) Where the Registrar has been notified by the Commissioner under subsection (1), the Registrar shall, without levying or charging a fee, register the Commissioner's notification as if it were an instrument of restraint on the disposal, mortgage on, or charge, as the case may be, the property specified in the notification."*

Committee Observation/Recommendation

The proposal to abandon sale of property by private treaty in an alternative where public auction is not the best option will limit the options available for the Commissioner to recover unpaid taxes.

The proposal for a twenty-one days' notice period before the notification is effected will defeat the purposes of the notification which is to secure taxes.

Clause 39

~~352. The Tax Procedures Act, 2015, is amended by repealing section 47 and replacing it with the following new section: "Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form: b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid".~~

Committee Recommendation

The Committee rejected their proposal as it will stifle revenue collection.

353. They proposed that a five-year window for application of offset or refund of overpaid tax across all tax heads be allowed.

Committee Observation/Recommendation

This proposal is not tenable as it will stifle and delay tax collection efforts.

354. Amend section 47 (2)(b) to read: "*in the case of an application under subsection (1)(b), refund the overpaid tax within a period of one year from the date of the application*".

Committee Recommendation

This proposal was rejected by the Committee. It will delay tax collections

355. Introduce the following new paragraph 47 (4): "*(4) Where the application is for a refund of tax under subsection (1)(b), the Commissioner shall apply the overpayment in the following order after giving the taxpayer a 14 days' notice of any pending tax liability for the taxpayer to ascertain the tax liability*".

Committee Recommendation

This proposal was rejected by the Committee. This will lead to delays in tax collections.

Clause 40

356. They proposed that the Bill be amended to standardize the timelines for application of refund for VAT paid in error to be within five (5) years which is in consonance to the provisions of section 47 of the Tax Procedures Act, 2015 for all other taxes. In addition, section 47(13) ought to apply as it gives the taxpayer the right to appeal directly if they are aggrieved by the utilization of the taxes paid in error.

Committee Recommendation

This proposal was rejected by the Committee. This will stifle tax revenue collection.

Clause 41(d)

357. Amend Section 51 of the TPA to limit the Commissioner to rendering their decision within 60 days and the provision "*failure to which the objection shall be deemed to be allowed*" be retained.

Clause 41

358. Amend the section by inserting the following new section 4 (a); "*Where the commissioner deems a Notice of Objection to be invalid on the grounds that 'all the relevant documents relating to the objection have not been submitted, the commissioner shall specify which relevant documents relating to the objection are required and give the taxpayer 30 days within which to submit the documents if they are within the taxpayer's ability to produce.*"

Clause 42

359. Amend paragraph 42 (1) (d) by inserting the words "*which notice shall not be less than 30 days*".

Committee Recommendation

This proposal was rejected by the Committee. 30 days is too long.

360. Sub-section (6) is amended by deleting the following word "*seven*" appearing immediately after the word "*within*" and substituting therefor with the following word "*fourteen*".

Committee Observation/Recommendation

The Committee noted their concerns and adopted the proposal. The increased timeline is sufficient.

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361. Sub-section (9) is amended by deleting the said provision and substituting therefor with the following provisions: "*The Commissioner shall serve the taxpayer with a copy of the notice issued under sub-section 2, concurrently when serving the agent with the said notice.*"

Committee Recommendation

This proposal was rejected by the Committee. This was to affect only the agent.

362. Sub-section (10) to be amended by inserting the following additional proviso: "*Provided that the agent shall only pay monies to the Commissioner in accordance with an agency notice, not earlier than thirty days of receiving the notice.*"
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Committee Recommendation

This proposal was rejected by the Committee. The payment period provided should be sufficient but 30 days is too long.

363. Section 42 of the Tax Procedures Act is amended by inserting the following new sub-section immediately after sub-section (13): "*14) No notice shall be issued under this Section unless the Commissioner has either confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act, 2013, within the prescribed timelines.*"

Committee Recommendation

This proposal was rejected by the Committee. This limits the powers of the Commissioner and stifles the ability to collect taxes.

Income Tax Act (Cap 470)

Clause 14

364. Delete the word "*of*" appearing immediately after the term "*on the individual's life*" and replace it with the word "*or*".

Committee Recommendation

The proposal is a clean-up and was therefore adopted by the Committee.

Clause 19

365. Delete the proposed provision that seeks to exclude exemptions.

Clause 15

366. Consider a gradual increase in the rate of capital gains tax but not a twofold increase to 15%. Alternatively, consider introduction of Capital gains tax on indirect transfers as proposed in later sections of this memorandum, which is likely to yield more income for the government.

Committee Recommendation

The Committee noted their comments and reduced the rate of CGT from 15% to 10%.

Section 10

Amendment of section 16 of Cap 470

367. Amend Section 16(2) (j) (iii) to include a new sub-section (c) "*Holding companies that are regulated under the Capital Market Authority Act, 1998 (Rev 2012)*" in the list of entities exempt from the new interest restriction rules".

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government tax revenue.

368. Insert a new clause indicating that implementation of the interest restriction provisions should only take effect once the comprehensive guidelines on computation of allowable interest for entities with various streams of income are in place.

Committee Recommendation

This proposal was rejected by the Committee. The implementation can begin as the guidelines are being awaited.

369. Amend the commencement date of the revised interest restriction provisions to apply "*for financial years commencing on or after 1st January 2022*".

Committee Recommendation

This proposal was rejected by the Committee. The commencement date cannot be applied retrogressively.

Clause 21

370. Delete the proposed provision.

Committee Recommendation

The Committee recommends deletion of paragraph 21(a).

Value Added Tax Act (No. 35 of 2013)

Clause 28

371. Delete the proposal to remove paragraph 108 from the exemption list. This will affect the cost of Kenya's staple food and will hurt the common '*mwananchi*' at a time when the cost of living is already going up as a result of increase in fuel prices and the already heavy taxation of basic goods e.g. cooking gas.

Committee Recommendation

The Committee noted their concerns and recommends deletion of the paragraph.

Clause 24

372. Delete the clause because it will cause great injustice to the taxpayer.

Committee Recommendation

This proposal was rejected by the Committee, as any other document required by the Commissioner are not clearly defined.

Clause 29

373. Delete the clause and retain current exemption in a bid to promote the Government's agenda of healthcare and safeguard Article 43 of the Constitution on Economic & Social rights.

Committee Recommendation

This proposal was rejected the Committee. This would have denied government tax revenue.

The Excise Duty Act (No. 23 of 2015)

Clause 34

374. Amend by deleting the glass bottle from paragraph 1 i.e., remove excise tax on both imported and locally manufactured glass bottles.

Committee Recommendation

The Committee adopted their proposal and recommends that the paragraph be deleted.

375. Amend the clause by deleting paragraph 34(d) (v).

Committee Observation/Recommendation

The Committee observed that there are already other regulations regulating advertisement of gaming activities hence no need to increase excise duty on the same. The Committee therefore recommends deletion of the amendment.

Clause 31

376. Delete the clause.

Committee Recommendation

The Committee recommends that the clause be deleted.

Other proposals for amendment not contained in the Finance Bill

Capital Gains Tax (CGT) on indirect disposal of property

377. In order to ensure consistency, reduce economic distortion of the capital gains, and reduce income inequality, provisions for CGT on indirect disposal of property that is ultimately situated in Kenya or derives value from Kenya should be subject to CGT under the Eighth Schedule to the ITA. It is important that exceptions continue to be made for gains arising from disposal of shares listed on a trading exchange even where such disposal results in a change of ownership of the Kenya assets.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

Insurance Relief

378. LSK proposed that the Act is amended to take into account inflation adjustment since this threshold has not been amended since January 2007. They propose that Paragraph 2 of the Third Schedule of the ITA is amended to read as follows: "*The amount of insurance relief shall be fifteen percent of the amount of premiums paid but shall not exceed ninety thousand shillings per annum.*"

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

Contributions to registered pension or provident funds

379. Amend section 22A(1)(c) of the ITA is to read as follows: "*three hundred and sixty thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, twenty thousand five hundred shillings per month of service)*".

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

Tax free pension withdrawal

380. Amend paragraphs 8 (5)(b)(i) and (ii) and 8 5(c)(i) of the ITA is amended to read as follows: "*(b) in the case of a withdrawal from a registered pension or individual retirement fund upon termination of employment, the lesser of: (i) the first one hundred thousand shillings per full year of pensionable service with that employer starting on the later of the date the pensionable service began, or, where the employee had previously received a lump sum payment from that same employer, the date the employee's pensionable service recommenced after receipt of that lump sum; or (ii) the first one million shillings; or (c) in the case of a lump sum paid out of a registered provident fund (or a defined contribution registered fund deemed by the Commissioner to be a provident fund for the purposes of assessing under this paragraph accumulation for the payment of lump sums other than out of a pension) the total of: (i) the lesser of the first one million shillings or the first one hundred thousand shillings per full year*".

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

Mortgage interest deduction

381. Section 15 (3) (b) be amended to read as follows: "*The amount of interest not exceeding six hundred thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first four financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes.*"

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

Zero-rating of Exported Services

382. Re-introduction of the zero-rated VAT status of exported services will make Kenya a favourable investment destination for companies looking to set up regional hubs thereby contributing to the revenue collection by the Government. Sectors should be allowed to apply for zero rating of their services subject to approval by the National Treasury.

Committee Recommendation

This proposal was adopted by the Committee. This will make Kenya an attractive investment hub.

3.41 BIOLITE KENYA HOLDINGS LIMITED

383. In a meeting with the Committee held on Thursday, 12th May 2022, officials from Biolite proposed that clean and improved cook stoves be exempt from VAT as it aims to benefit marginalized households and in addition, enable Kenya achieve its Greenhouse Gas NDCs and mitigate deforestation.

Committee Observation/Recommendation

VAT was imposed on clean and improved cook stoves in order to promote local production of the stoves since the inputs are exempt. The Committee therefore rejected their proposal.

3.42 MJENGO LIMITED

384. In a meeting with the Committee held on Thursday, 12th May 2022, the Company proposed that the First Schedule to the Excise Duty Act be amended by eliminating the application of 20% excise duty on "*imported pasta of tariff no. 1902 whether cooked or not cooked or stuffed... or otherwise, prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous*". They stated that lowering the cost of pasta will make it more affordable and available to Kenyan households. It will also help to ensure the country's long-term food security, and it will be a positive move for other businesses that rely on pasta and spaghetti, such as the hotel industry.

Committee Observation

Their proposal was rejected by the Committee because it will lead to loss of revenue.

3.43 KENYA AIRLINE PILOTS ASSOCIATION (KALPA)

385. In a letter dated 21st April 2022, KALPA submitted that they have an extensively researched strategy that will reverse the fortunes of Kenya Airways and the aviation industry in Kenya.

Committee Observations

Their proposals were outside the ambit of the Finance Bill, 2022. The Committee will engage the Association at a later date in order to be apprised on the strategy.

3.44 CLEAN COOKING ASSOCIATION OF KENYA (CCAK)

In a meeting with the Committee held on Thursday, 12th May 2022, the Clean Cooking Association of Kenya proposed the following amendments to the Bill:

The VAT Act

386. Amend Section A of Part I of the First Schedule to the Value Added Tax Act, 2013 by inserting the following new paragraphs immediately after paragraph 139 "*140. Clean and improved cook stoves of tariff numbers 7321.12.00 and 7321.19.00*". This will reduce the cost of clean and improved cook stoves making them accessible to households who use inefficient cook stoves or the three stones especially to low income earners. Access to clean cook stoves will reduce incidences of indoor air pollutions by reducing reliance on firewood and kerosene.

Committee Observation/Recommendation

VAT was imposed on clean and improved cook stoves in order to promote local production of the stoves since the inputs are exempt. The Committee therefore rejected their proposal.

25% Import Duty on denatured ethyl alcohol

387. Amend by exempting Denatured Ethyl Alcohol (HS code 2207.20.00) for domestic cooking fuel from import duty. This will reduce the cost of the denatured ethyl alcohol for use by the low-income earners as well as reduce reliance on firewood and kerosene which contribute to air pollution and respiratory issues in said households. Import duty exemption on denatured ethyl alcohol for a period of 5 years will allow for the establishment of and investment into a local production industry envisaged to support the projected fuel demand.

Committee Recommendation

This proposal was rejected by the Committee. The will cause a loss of tax revenue to the government.

3.45 ELGON KENYA LIMITED

In a meeting with the Committee held on Thursday, 12th May 2022, the Company proposed the following amendments to the Bill in order to reduce the cost of fertilizers:

388. Import Declaration Fees be reduced from 3.5% to 1.5%.
389. Railway Declaration Levy be reduced from 2% to 1.5%.
390. Zero rate fertilizers so that input VAT can be reclaimed in order to reduce the selling price.
391. They noted that a few of their specialised fertilizers have 16% VAT. They requested that these limited items be zero-rated like other fertilizers. The items are: gypsum, limestone, calcium carbonate, magnesium sulphate, potassium nitrate, MKP, Manganese Sulphate, phosphoric acid, nitric acid, caustic soda, zinc sulphate, copper sulphate, sodium molybdate, ferrilene, calcium hypochlorite, Bentley plus, ultraferro, hydrogen peroxide, cocopeat, PE films, irrigation equipment, calcium chloride, micronutrient preparations, organic surface-active agents (non-ionic) and phosphates of potassium.

Committee Observation/Recommendation

The Committee observed that their proposals would lead to lower prices of fertilizers. This will reduce the cost of farming hence increase food production and in turn increase government revenue from the sector. Their proposals were therefore adopted by the Committee.

3.46 TATU CITY SPECIAL ECONOMIC ZONE

392. In a meeting with the Committee held on Wednesday, 11th May 2022, Tatu City submitted that Tatu City Special Economic Zone is classified as a Project of Strategic National Importance pursuant to The Physical and Land Use Planning (Classification of Strategic and Inter-County projects) Regulations, 2019. Over 70 companies including some of the largest Kenyan and international industrial groups are operational or under development. Two schools are open and

educating more than 3000 students and more than 3000 homes are occupied or under construction. They proposed the following amendments to the Finance Bill, 2022:

393. Insert the following paragraphs in the First Schedule, Part I of the Income Tax Act: "*Dividends received by special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act*" and "*Dividends paid by Special Economic Zone enterprises, developers or operators to any non-resident person.*"

Committee Recommendation

The Committee adopted their proposal. The incentives were removed in the Tax Laws Amendment Act.

394. Insert the following new paragraph in paragraph 12, Part A, of the Second Schedule to the Value Added Tax Act, 2013. "*The supply of goods or taxable services to a special economic zone.*"

Committee Observation/Recommendation

Their proposal assumes the supply of goods and services to a Special Economic Zone (SEZ) are done concurrently which is not always the case. The amendment will limit application of the zero-rating as currently provided under paragraph 12. The Committee therefore rejected their proposal.

395. Insert the following new definition to section 2: "*export means to take or cause to be taken from Kenya to a foreign country, or a special economic zone, or an export processing zone.*"
396. Add the following new phrase immediately after the word "zone" in order to amend the definition of "import": "*or a special economic zone.*"

Committee Observation/Recommendation

The Committee observed that the current definitions of 'export' and 'importation' are sufficient and there has been no dispute in the interpretation of the definitions. Their proposal was therefore rejected by the Committee.

3.47 ACECLASS CONSULTANTS LIMITED

397. In a meeting with the Committee on Thursday, 12th May 2022, the Company submitted that paragraph 34(d) be deleted. The amendment from 7.5% to 20% will lead to the closure of the betting sector and loss of revenue and livelihoods. In addition, they are subjected to multiple taxation, exhaustion of funds through the taxations, erroneous base of excise duty and the black-market environment.

Committee Observation/Recommendation

The Committee observed that increasing the excise duty on betting activities from 7.5% to 20% may not necessarily discourage betting as people may resort to betting on offshore companies. The Committee therefore adopted their recommendation and deleted the amendment.

3.48 ASSOCIATION OF GAMING OPERATORS OF KENYA (AGOK)

In a meeting with the Committee held on 12th March 2022, the Chairperson of the Association, Ms. Eunice Kiragu proposed the following amendments to the Bill:

Clause 34

398. Delete paragraph 34(d) because the implementation of excise tax (consumption tax on the customers) is impractical for all gaming establishments. There is currently a court case challenging the proposed increase of excise tax from 7.5% to 20% in court. Further, the betting and gaming operators are currently taxed at gross gaming revenue of 15%, corporate tax on profits 30%, excise duty at 7.5% of the amount wagered and 20% of winnings. Finally, the increase in excise duty may encourage development of illegal gambling market.

Committee Observation/Recommendation

The Committee observed that increasing the excise duty on betting activities from 7.5% to 20% may not necessarily discourage betting as people may resort to betting on offshore companies. The Committee therefore adopted their recommendation and deleted the amendment.

399. Deletion of the proposed 15% excise tax on advertisement on betting and gaming, lottery and prize competitions. The proposal increases taxation on the industry that may lead to closure of said establishments and job losses affecting the workforce.

Committee Observation/Recommendation

The Committee observed that there are already other regulations regulating advertisement of gaming activities hence no need to increase excise duty on the same. The Committee therefore recommends deletion of the amendment.

3.49 EAST AFRICA VENTURE CAPITAL ASSOCIATION (EAVCA)

In a meeting with the Committee held on Thursday, 12th May 2022, the Chief Executive Officer, Ms. Eva Warigia proposed the following amendments to the Bill on behalf of the Association, THAT:

400. Section 21 paragraph 3 of Head B of the Income Tax Act be amended by maintaining the current expression of "one-point five percent" appearing in paragraph 12 in order to help the Kenyan founded digital enterprises to scale up since retaining the 1.5% would ensure that their operating capital is not reduced.

Committee Recommendation

The Committee noted their concerns and recommends deletion of the amendment increasing DST from 1.5% to 3%.

Clause 15

401. Amend Section 34(1) (j) by introducing the 15% rate incrementally with the first 7.5% in 2023 and the remaining 7.5% in 2024. The proposed change from 5% to 15% is a drastic shift for businesses and may discourage potential investors in the future. The phased increment will be instrumental in planning made by the private equity and the venture capitals. In addition, indexation aids in the administration of investment losses due to inflation, exchange loss, and other macro variables, and it protects the investor's position for long-term investment support.

Committee Observation/Recommendation

Provision for indexation requires further stakeholder engagement. The Committee therefore proposed that the rate of CGT be revised from 15% to 10%.

3.50 OUTDOOR ADVERTISING ASSOCIATION OF KENYA

402. In a meeting with the Committee held on Thursday, 12th May 2022, Ms. Maureen Wakalia proposed that paragraph 34(d) of the Bill, which imposes a 15% Excise Duty on fees charged for advertising alcohol, gambling, and gaming activities in various media be deleted. They noted that the purpose of Excise Duty is to act as a sin tax, deterring consumers from overindulging in ~~behavior and or products that are morally suspect, harmful, or costly to society; however, the~~ way it has been applied to advertising on various media affects advertisers rather than consumers and/or companies involved in the alcohol, gambling, and gaming industries.

403. They further claimed that entities in the alcohol, gambling, and gaming industry could alter their style of advertisement in a way that it does not draw the 15% excise tax, resulting in them dropping advertisements in the outdoor sector and opting for advertising that does not attract the Excise Duty charge. In addition, businesses may shift their focus from outdoor to digital channels, which are free from the 15% excise duty and result in lesser income in an already depressed economy.

Committee Observations/Recommendations

There are already regulations regulating advertising of gaming activities in the country. The imposition of excise duty on such advertisements is therefore not necessary. The Committee adopted their proposal and recommends deletion of the amendment.

3.51 AMERICAN CHAMBER OF COMMERCE, KENYA (AMCHAM)

The Chief Executive Officer, Mr. Maxwell Okello appeared before the Committee on Thursday, 12th May 2022 and submitted as follows on the Bill:

Digital Service Tax

404. They recommended that the DST regime be abolished in its entirety. The Government should reconsider alternative approaches more likely to achieve its policy goals without creating the risk of double taxation.

Committee Recommendation

The Committee noted their concerns and recommends deletion of the amendment increasing DST from 1.5% to 3%.

Clause 23

405. Amend the clause to read as follows: "*The provisions of sub-section (1) shall not apply to taxable supplies made under section 5(7), subject to the regulations issued by the Cabinet Secretary under section 5(7)*". The amendment will allow the CS to make relevant changes to the Regulations pursuant to his powers under section 67 of the VAT Act.

Committee Recommendation

The Committee rejected their proposal. The Regulations are proposed to be amended in line with the proposed amendment to the VAT Act, 2013 hence no contradiction.

Clause 15(a)

406. Delete the clause or revise the rate of CGT to 10%. A rate of 15% without corresponding appreciation that part of the gain is as a result of inflation is considerably high and may have a negative consequence in the long run.

Committee Recommendation

The Committee noted their concerns and reduced the rate of CGT from 15% to 10%.

Clause 19

407. Delete the clause because the proposed amendment may discourage succession planning.

Committee Recommendation

The Committee recommended deletion of this clause because the amendment will discourage succession planning.

Clause 30

408. Amend the clause by removing the 50% deposit and appointment of officials within the ADR process that are unrelated to KRA. This is to ensure that no party is advantaged over the other when engaging in ADR.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 36

409. Delete the clause because even trusts that are not conducting a business or have a valid exemption will be required to notify the Commissioner if there is change in trustees or beneficiaries.

Committee Observation/Recommendation

The amendment will enable the Commissioner to have visibility of owners of registered trusts and determine their tax liability status. This proposal was therefore rejected the Committee.

Clause 38

410. The decision should always be justified. The two-month window period proposed for a taxpayer to settle the owing amounts is very small. The proposal to sell through a private treaty should be abandoned as it will open a Pandora's Box in terms of accountability and administrative openness.

Committee Observation/recommendation

The proposal to abandon sale of property by private treaty is an alternative where public auction is not the best option. This proposal was therefore rejected by the Committee.

Clause 41

411. Amend the clause to read as follows: "51. (4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of

fourteen days notify the taxpayer in writing that the objection has not been validly lodged. The notification shall specify the gaps and request that taxpayer to remedy the gaps by resubmitting the notice of objection within fourteen days. Provided that a notice of objection shall be deemed to have been validly lodged where the Commissioner fails to notify the taxpayer under this sub-section within a period of fourteen days. (11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection, failure to which the objection shall be deemed allowed'. The recommended modification will ensure that the consequence of the Commissioner issuing an invalidation notice after the proposed 14 days is codified in law, which will offer better protection for taxpayers.

Committee Recommendation

This proposal is rejected by the Committee. The fourteen days provided are sufficient to lodge an objection.

3.52 FAIR PRICE YOUTH GROUP

412. In their comments submitted via email, they requested that any taxation measure that will increase the price of senator keg be suspended because it will be unaffordable to many young people. The current demand for senator keg should be maintained so that more sorghum in the market will be used and thus sustain many youth who are involved in the sorghum value chain. Further, the sector is still recovering from effects of the COVID-19 pandemic that severely disrupted economic activity. Additionally, the cost of farm inputs is extremely high making farming a very expensive venture without guaranteed result, the government should focus on helping farmers to access inputs at a lower price.

Committee's Recommendation

Their concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.53 MR. DAVID MURIUKI KAGEENU

In his memorandum submitted via email, Mr. Kageenu commented as follows on the Bill, THAT:

413. Opposed the amendment proposed to section 34 (j) of the Income Tax Act proposing to increase capital gains tax from 'five' to 'fifteen' percent because it is likely to reduce the foreign direct investment (FDI) into Kenya and also encourage Kenyans to invest abroad.

Committee Observation/Recommendation

The Committee noted their concerns and reduced the rate of CGT from 15% to 10%.

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414. Opposed the amendment proposed to section 32 of the Tax Appeals Tribunal Act because companies do not operate with excess funds in anticipation of tax disputes and this amendment will therefore significantly affect their cash flow and liquidity position.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

3.54 MS. JAYNE W. NYAWIRA

415. Ms. Nyawira appeared before the Committee on Thursday, 12th May 2022 and stated that she was grateful for the remission of excise duty on sorghum based beer because it had fueled growth of small scale farmers in Tharaka Nithi County increasing their earnings per acre. However, the proposed increase in excise duty will increase the price of beer and hence reduce intake of sorghum by contracting companies like Kenya Breweries Limited. She therefore proposed that tax on sorghum based beer should not be increased because the value chain was severely affected by COVID-19 restrictions and adverse weather conditions that resulted in loss of the 2021 crop harvest.
416. She also proposed that the Government liberalizes access to affordable farm inputs by sorghum farmers.

Committee's Recommendation

Her concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.55 MS. DORIS KANARIO

417. In her comments submitted via email, Ms. Kanario requested for a relief of high taxes on sorghum which is cash crop of small households in Tharaka Nithi County.

Committee's Recommendation

Her concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.56 MS. NANCY WAMBUI

418. In a meeting with the Committee held on Thursday, 12th May 2022, Ms. Wambui submitted that she was a sorghum aggregator with over 7000 small holder farmers in Meru and Tharaka Nithi Counties. Over 70% of the farmers were women and youth who we had been trained on climate smart agriculture to grow sorghum due to guaranteed market from KBL. Due to increase in Farm inputs, KBL offered to increase the price of sorghum to cushion farmers who were immensely affected. She requested that excise duty on sorghum beer is not increased so as not to reduce the demand for sorghum since it does not have alternative market and it is the main crop that brings income to farmers along the ASAL region.

Committee's Recommendation

Her concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.57 MR. JACOB NZUKI

419. Mr. Nzuki appeared before the Committee on Thursday, 12th May 2022 and submitted that introduction of excise duty on sorghum beer meant increment in price and reduced competitiveness of the beers which was likely to negatively affect consumption and therefore reduce demand for raw material which is sorghum a move likely to push him and other small scale farmers out of market.

Committee's Recommendation

His concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.58 MS. MERCY ETYANG

420. In her comments submitted via email, Ms. Etyang submitted that she was a young agri-entrepreneur who was working both as a farmer and aggregator of cereals and pulses in Busia County and had been contracted by one of the leading beer manufacturers in Kenya. She observed that the proposed increase in excise duty tax on sorghum beer will increase the price of sorghum beer and in turn slow down the uptake of sorghum by contracting companies such as KBL. She therefore requested that the tax on sorghum beer should not be increased.
421. She also noted that the cost of farm inputs had increased. She urged the government liberalize access to affordable farm inputs by sorghum farmers.

Committee's Recommendation

Her concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.59 MR. PETER KANYARU

422. In his comments sent via email, Mr. Kanyaru requested for the reduction of excise duty on sorghum growing farmers, because majority of small scale farmers especially in the Eastern part of Kenya rely on sorghum both as a cash crop and for food.

Committee's Recommendation

His concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.60 MR. BONIFACE MUGAMBI

423. In his comments sent via email, Mr. Mugambi was opposed to the introduction of excise duty on sorghum beer because Kenya Breweries Limited is a sure market for his sorghum and excise duty on sorghum beer will have a negative impact on the livelihood of sorghum farmers.

Committee's Recommendation

His concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.61 MR. JACKSON TIMOI

424. In his comments sent via email, Mr. Timoi requested that excise duty on sorghum beer be suspended because the cost of production of barley is currently high. The sector should be given time to recover from the high prices of farm input.

Committee's Recommendation

His concerns were noted and adopted by the Committee. The Committee recommended that the excise duty on beer be retained at the current rate. In order to protect the livelihoods of farmers who supply sorghum to KBL.

3.62 MR. NJOROGE WAWERU

425. Mr. Waweru appeared before the Committee on Wednesday, 11th May 2022 and submitted that the Value Added Tax Act be amended to zero-rate textbooks, journals and periodicals from VAT in order to make them cheaper so as to encourage the reading culture in the country.

Committee Observation/Recommendation

The Committee observed that zero-rating textbooks, journals and periodicals will cause a huge dip in revenue. For that revenue, his proposal was rejected by the Committee.

3.63 OKOA UCHUMI COALITION

In a meeting with the Committee held on Thursday, 12th May 2022, the Coalition proposed the following amendments to the Finance Bill, 2022:

Clause 9

426. Amend by deleting paragraph 1A(c) or inserting the words "the person has incurred investment in a special economic zone and met the requirements under paragraph 1A and 1B". an exhaustive list of businesses which due to their nature would not be carried out in Nairobi and Mombasa counties should be provided to prevent legal uncertainty on the nature of business that would be entitled to these investment deductions.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied the Government tax revenue stream.

Clause 11

427. Amend by introducing provisions that will make parties who are transacting with each other through a joint venture subject to transfer pricing rules.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied the Government tax revenue stream.

Clause 12

428. Amend by reducing the threshold from gross turnover of KSh. 95 billion to a much lower threshold. Though the KSh. 95 billion is in line with the OECD standards, it is argued that the threshold should be much lower so as to capture more multinational enterprises that operate in Kenya and to ensure that more multinational enterprises are subject to country by country reporting requirements.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied the Government tax revenue stream.

429. Amend the clause to read as follows: "18B. The provisions of sections 18C, 18D, 18E and 18F shall apply to returns for the year of income 2022 and subsequent years of income".

Committee Observation/Recommendation

Their proposal is a clean-up and it was therefore adopted by the Committee.

Clause 15

430. Amend the Eighth Schedule to the ITA to include provision for an indexation allowance. While the increase in CGT is a welcome move, taxpayers will unduly suffer where no indexation allowance is provided for to consider the rate of inflation.

Committee Observation/Recommendation

Provision for indexation for inflation adjustment requires further stakeholder engagement. The Committee noted their concerns and reduced the rate of CGT from 15% to 10%.

Clause 28

431. Delete the clause because VAT exemption of goods under paragraph 63 covered the construction of taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty.

Committee Observation/Recommendation

The Committee observed that this amendment is a contradiction to the Government's 'Big Four Agenda' and recommends its deletion.

Clause 30

432. Delete the proposed paragraphs 32(2) and 32(5) because it will significantly affect cash flows of the businesses.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Amendment of section 10 of the Act

433. Parameters that will be used to exempt certain products from inflation adjustment review by the Commissioner should be explained.

Committee Observation/Recommendation

The Committee observed that the provision may be abused and recommends its deletion.

Clause 34

434. Amend by either deleting paragraph 34(b) (viii) of increasing the excise rate. This is because tobacco products are harmful to the health of consumers.

Committee's Recommendation

Their proposal was rejected by the Committee. Tobacco products are harmful to human health and should be discouraged with higher taxes.

435. The proposal to increase excise duty on imported motorcycles should be deleted because the local supply may not meet the demand hence increase the cost of motorcycles.

Committee Observation/Recommendation

This amendment will increase the price of motorcycles which is a source of employment for many Kenyans. The Committee recommends that the clause be deleted.

436. Delete the proposal to increase excise duty on glass bottles because making locally manufactured glass bottles excisable will reduce their competitive advantage.

Committee Recommendation

The Committee adopted their proposal and deleted the amendment. This will allow locally manufactured glass to be cheaper than imported glass.

437. The excise rate for cigarettes with filters (hinge lid and soft cap) and cigarettes without filters (plain cigarettes) should be amended to include both categories of cigarettes under one uniform specific tax rate set at the higher of the two options. This is to enhance effectiveness of tax administration since it is a more simplified tax system.

Committee Recommendation

This proposal was rejected by the Committee. Nicotine is harmful to the human health and should be discouraged.

Clause 41

438. Delete because the amendment creates uncertainty for taxpayers.

Committee Recommendation

This proposal was rejected by the Committee. It would have denied government a tax revenue stream.

Clause 44

439. Delete the clause because export levies are required to encourage domestic production of goods that are subject to the levy by making it cheaper to supply to domestic manufacturers.

Committee Recommendation

The Committee adopted their proposal as it will encourage domestic manufacturing of goods.

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440. Zero-rate supply of maize flour, wheat, meslin and cassava flour because the proposal in the Bill will lead to the price of the commodities.

Committee Observation/Recommendation

Imposing VAT on the commodities will increase their prices. The Committee adopted their proposal and deleted the amendment.

3.64 KENYA NETWORK OF CANCER ORGANIZATIONS (KENCO)

In a meeting with the Committee held on Thursday, 12th May 2022, the Kenya Network of Cancer Organizations proposed the following amendments to the Bill:

Clause 31

441. Amend the clause to clearly provide parameters that will be used by the Commissioner General to determine the products that will be excluded from the inflation adjustment review in order to avoid loopholes that industry players can exploit.

Committee Observation/Recommendation

The Committee observed that the power to waive taxes is vested in the Cabinet Secretary (CS) and recommends that the clause be deleted.

Clause 34

442. Amend paragraph 34(b) (viii) by increasing the excise rate by 10% to KSh. 15296.60 to discourage consumption of the products and raise additional revenue.

Committee Recommendation

This proposal was rejected by the Committee. The consumption of tobacco products needs to be discouraged as its harmful to the human health.

443. The excise rate for cigarettes with filters (hinge lid and soft cap) and cigarettes without filters (plain cigarettes) should be amended to include both categories of cigarettes under one uniform specific tax rate set at the higher of the two options. This is to enhance effectiveness of tax administration since it is a more simplified tax system.

Committee Recommendation

This proposal was rejected by the Committee. The consumption of tobacco products needs to be discouraged as its harmful to the human health.

3.65 MEDIA OWNERS ASSOCIATION OF KENYA (MOA)

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444. In their memorandum dated 10th May 2022, the Media Owners Association of Kenya recommended that the proposal to impose 15% excise duty on fees charged by all television stations, print media, billboards and radio stations for advertisements for alcoholic beverages, betting and gaming be deleted from the Bill because there are already adequate measures in place to discourage the promotion of alcoholic beverages, betting and gaming products and activities. Imposition of the excise duty will amount to double regulation and double taxation with serious economic and social implications on the media industry.

Committee Observations/Recommendations

There are already regulations regulating advertising of gaming activities in the country. The imposition of excise duty on such advertisements is therefore not necessary. The Committee adopted their proposal and recommends deletion of the amendment.

3.66 GOOGLE

In their memorandum dated 26th April 2022, Google proposed the following amendments to the Finance Bill, 2022, THAT:

Clause 21

445. Amend the clause by deleting paragraph 21(a) or defer implementation to after a certain period of time because the proposal is drastic given that most digital service providers have only just begun complying with the DST provisions.

Committee Recommendation

The Committee noted their concerns and recommends deletion of the clause.

Clause 11

446. Amend the clause by deleting paragraph 11(b) because the policy objective of the provision is not clear and appears to impose transfer pricing requirements on transactions between independent parties.

Committee Recommendation

The Committee rejected this proposal. This will lead to loss of the tax revenue stream to government.

Clause 27

447. Delete the clause because the lack of a threshold for tax registration could lead to significant administrative burdens where a company has low-value transactions.

Committee Recommendation

Their concerns were noted and adopted by the Committee.

Clause 30

448. Delete the clause because the proposed amendment is bound to reduce working capital for the appellant during the period in which the funds are held by the CBK.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

3.67 WATER SERVICES PROVIDERS ASSOCIATION (WASPA)

In their memorandum, WASPA proposed the following amendments to the Finance Bill, 2022, THAT:

VAT Act

Paragraph 95 of section A, Part 1 of the First Schedule

449. Amend by zero-rating water supply services in order to enable water service providers to recover input VAT which they incur at costly amounts.

~~Paragraph 23 of Part II of the First Schedule~~

450. Amend to zero rate sanitation services in order to reduce the cost.

Income Tax Act

Part 1 of the First Schedule

451. Amend to exempt water service providers who are duly licensed from corporation tax on their surpluses in order to provide relief to the water service providers.

Committee's Observations

The amendments proposed by the Water Services Providers Association will result to loss of revenue and were therefore not adopted by the Committee.

3.68 EABX SECURITIES EXCHANGE

In their memorandum dated 12th May 2022, EABX proposed the following amendments to the Bill, THAT:

452. Clauses 3, 6, 15 and 21 be amended to exclude financial derivatives traded on an exchange licensed by the CMA from CGT because it is assumed that this tax incentive was placed in order to deepen the nascent financial markets in the quest of making Kenya an international financial centre.

Committee Recommendation

The Committee noted and adopted their proposal. The financial derivatives market is new in the country and needs time to grow.

453. Delete the amendment proposed to paragraph 2(g) (ii) of the Third Schedule to the ITA in order to support the deepening of the capital and financial markets.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

3.69 KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA)

454. In their memorandum, Ref: KESMA/1/5/2022 dated 9th May 2022, KESMA proposed that clause 30 of the Bill be deleted because millers depend on cash flows in order to pay farmers, salaries, suppliers and other obligations. The proposal will have far reaching negative repercussions on not only millers but also several stakeholders in the sugar sub-sector who depend on weekly payments from millers.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

3.70 CPA CHARLES CHEGE GITAU

In his letter dated 4th May 2022, CPA Gitau proposed the following amendments to the Finance Bill, 2022, THAT:

Clause 30

455. Delete the clause because presumption of innocence is enshrined in Article 50 of the Constitution to the extent that all avenues of appeal must be exhausted and thus payment of 50% of tax is tantamount to condemning the taxpayers unheard.

Committee Observation/Recommendation

The Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they are unable to raise the amount. The Committee therefore recommends that the clause be deleted.

Clause 34

456. The proposal to increase excise duty on imported motorcycles be deleted because the "boda boda" sector has employed more than two million Kenyans.

Committee Observation and Recommendation

This will increase the price of motorcycles and make them unaffordable to most Kenyans yet it is a source of employment for many people. The Committee recommends deletion of this clause.

Clause 38

457. Amend by deleting paragraph 40(1) because KRA should not be left to be the prosecutor and judge. Additionally, there exists enough safeguards from Tax Appeals Tribunal to the Court of Appeal to arbitrate on tax matters and thereafter KRA can follow the normal route of execution of court's decrees.

Committee Recommendation

This proposal was rejected by the Committee. There needs to be level playing field between the taxpayer and KRA in tax disputes.

Clause 24

458. Amend the clause by deleting paragraph 24(b) because section 17(3) sets out a conclusive list of documents a taxpayer must have when claiming input VAT.

Committee Observation/Recommendation

The Committee observed that this provision may be abused and recommends that a list of documents be provided.

Clause 41

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459. Amend paragraph 41(d) (11) by inserting the words "*failure to which the taxpayer's notice of objection shall be allowed*" immediately after the words "*notice of objection*". The repealed section was meant to remove ambiguity and uncertainty to taxpayers.

Committee Recommendation

The Committee adopted their proposal. This will provide clarity and impose sanctions for failure to meet the obligation.

3.71 KIBOS FERTILIZER LIMITED

460. In their memorandum, Ref: KFL/01/05/2022, The Company submitted that the local fertilizer industry that utilizes local content like molasses, boiler ash, mud filter, vinasse and bagasse be protected by: Exempting from VAT all raw materials used in the production of local fertilizer; Fair treatment for VAT purposes on finished locally produced fertilizer vis-à-vis imported fertilizer; Controlled guidelines be introduced on importation of fertilizer e.g. (a) Amend First Schedule to the VAT Act (taxable supplies imported or procured locally in the production and manufacture of local fertilizer that use local components such as molasses, bagasse, boiler ash, mud filter, vinasse and sugar upon the recommendation by competent relevant authorities); (b) Brand Kenya, Buy Kenya, Build Kenya initiative in the purchase of locally produced fertilizer; and (c) Gazette strict guidelines in the importation of fertilizer.

Committee Recommendation

This proposal was rejected by the Committee. Zero rating is limited to exports.

3.72 KENYA UNION OF SAVINGS & CREDIT CO-OPERATIVES LIMITED (KUSCCO)

In their letter, Ref: KUSCCO/ADV/VOL.1/67 dated 5th May 2022, KUSCCO proposed the following amendments to the Bill, THAT:

Income Tax Act

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461. Amend clause 51 by excluding cooperatives in the implementation of the UFAA Act, 2011 because SACCOs and cooperatives will be penalized for no apparent reason.
462. Amend section 15 of the ITA in paragraph 15(3)(b) by including all financial institutions specified in the Schedule which include SACCOs and all cooperatives offering mortgage products or financing housing as financial institutions.

Committee Observation/Recommendation

The Act was amended to include SACCOs. Their proposal was therefore not necessary.

First Schedule

463. Amend definition of the word "*financial Institution*" by including the following words, "*A co-operative society registered under the Co-operative Societies Act, Cap. 490*". This will include SACCOs, housing cooperatives and unions that finance housing and mortgage activities.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

464. Amend section 19A to provide that "*other fees*" in SACCOs is mutual income and therefore should be taxed fairly as income from doing business with members not external customers.

Committee Recommendation

This proposal was rejected by the Committee. This would have denied government a tax revenue stream.

3.73 SESLAW ADVOCATES

465. In their memorandum, Seslaw Advocates submitted that the First Schedule to the Income Tax be amended to exclude the following petrochemicals used as raw materials in the manufacture of paints, coatings, inks and fiberglass from 10% excise duty: "*unsaturated polyester; Alkyd; Emulsion VAM; Emulsion-styr Acrylic; Homopolymers; and Emulsion B.A.M*". This is because the amendment was not part of the proposals in the Finance Bill, 2021 that went through public participation as required by Article 118 of the Constitution.

Committees Observation/Recommendation

The Committee observed that their proposal would reduce the price of those commodities and make them competitive in the international market. Their proposal was therefore adopted.

3.74 THE NATIONAL TREASURY AND PLANNING

The Cabinet Secretary for National Treasury and Planning, Hon. Ukur Yatani appeared before the Committee on Wednesday, 18th May 2022 and briefed the Committee on the proposals in the Bill and the revenue expected to be collected from the Bill. The CS proposed the following further amendments to the Bill, THAT:

Clause 21

466. Delete the clause and substitute it as follows: "*Head B of the Third Schedule to the Income Tax Act is amended—(a) in paragraph 2, by adding the following new items immediately after item (m)—(n) In respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations; (o) In respect of a company operating a shipping business in Kenya, fifteen per cent for the first ten years from the year of commencement of its operations: in paragraph (3)—(i) by deleting the words "one-point five per cent" appearing in item 12 and substituting therefor the words "three per cent"; (ii) by adding the following new item immediately after item (q)— (r) in the case of gains from financial derivatives, fifteen per cent of such gains*".

Clause 34

467. Amend the clause in sub-clause (b) by deleting the expression "13,296.6" appearing in item (viii) and substituting therefor the expression "15, 296.6".
468. Amend the clause in sub-clause (d) by deleting item (i) and substituting therefor the following new item (i)- by deleting paragraph 4A and substituting therefore a new paragraph as follows – "4A. Excise duty on betting shall be twenty per cent of the amount wagered or staked. Provide that this paragraph shall not apply to horse racing". The proposed amendment seeks to exempt horse racing from betting tax. This is meant to promote horse racing activities in the country and thus contribute to job creation as well as nurture this nascent sport.
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NEW CLAUSES

Stamp Duty Act

469. 21A. Section 117 of the Stamp Duty Act is amended in sub-section (1) by adding the following new paragraph immediately after paragraph (p)—“(q) an instrument executed in favour of a mortgage refinance company”. The proposal is meant to promote the uptake of mortgage in the country by exempting instruments executed by mortgage refinance companies from stamp duty.

Miscellaneous Fees and Levies Act

470. 42A. Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended in subsection (2A)—by deleting paragraph (b) and substituting therefor the following new paragraph—“(b) raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry”.
471. By deleting paragraph (c) and substituting therefor the following new paragraph—“(c) input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing”.
472. 42B. Section 8 of the Miscellaneous Fees and Levies Act, 2016, is amended in subsection 2A—by deleting paragraph (a) and substituting therefor the following new paragraph—“(a) raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry”.
473. By deleting paragraph (b) and substituting therefor the following new paragraph—“(b) input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing”.
474. 42C. Section 9A of the Miscellaneous Fees and Levies Act, 2016, is amended by adding the following proviso—“Provided that this section shall not apply to currency notes and coins imported by the Central Bank of Kenya”.
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Kenya Roads Board Act, 1999

475. 49A. Section 2 of the Kenya Roads Board Act, 1999 is amended in the definition of “Fund” by deleting the expression “section 30” and substituting therefor the expression “section 31”.

476. 49B. Section 6 of the Kenya Roads Board Act, 1999 is amended in subsection (2) by deleting paragraph (c) and replacing it with the following new paragraph—“(c) manage the fund and allocate monies from the Fund in the following manner: (i) fifty per cent of the Fund shall be allocated in accordance with paragraph (d); and (ii) fifty per cent of the Fund shall be allocated for the purposes of section 32A (2)”.
477. By deleting the words “from the fuel levy” appearing in the opening words of paragraph (d).
478. In paragraphs (d) (i), (ii), (iii), (iv), (v) and (vi), by deleting the words “monies from the fuel levy” and substituting therefor the words “allocated funds”.

The Proceeds of Crime and Anti-Money Laundering Act, 2009

479. 49C. of the Act is amended by inserting the following new section immediately after section 2—
“2A. This Act shall apply to all preventive measures that apply to anti-money laundering activities including measures for combating terrorism finance”.
480. 49D. of the Act is amended—in paragraph (a), by deleting item (i) and substituting therefor the following new item—“(i) reports made pursuant to section 12”.
481. In paragraph (b), by inserting the words “results of its analysis or other” immediately after the word “send”.
482. 49E. Section 24B of the Act is amended by inserting the words “is in breach of the provisions of this Act or the Regulations issued under this Act or” immediately after the words “reporting institution” appearing in the opening sentence of paragraph (1).
483. 49F. Section 36A of the Act is amended in sub-section (5) by adding the following proviso to paragraph (b)—“Provided that the measures shall be taken in consultation with the Centre and shall include issuing instructions, directions, guidelines or rules to reporting institutions regulated or supervised by the supervisory body and to which the provisions of this Act apply”.

Betting, Lotteries and Gaming Act

484. 49G. Section 29A of the Betting, Lotteries and Gaming Act is amended by adding the following new sub-section—“(3) the provisions of this section shall not apply to horse racing”.

PART FOUR

4.0 COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee observed THAT:

1. The proposal to increase excise duty on betting activities will encourage people to bet in offshore companies and thus not achieve the intended purpose. The Government will also not be able to realize the expected revenue from the sector.
2. The proposal to increase excise duty on alcohol may encourage uptake of illicit alcohol. The Government may not therefore achieve the intended purpose of the tax which is to discourage drinking and will therefore not realize the expected revenue. Additionally, the excise rate for alcohol was revised in the Finance Act, 2021 and the sector should be given time especially because it is still recovering from effects of the COVID-19 Pandemic.
3. Imposition of excise duty on locally manufactured glass bottles will give undue advantage to imported glass and thus shrink the glass manufacturing sector in the country. This is contradictory to the Government's 'Big Four Agenda' which seeks to grow the manufacturing industry in Kenya.
4. The number of stakeholders who submitted memoranda on the Bill has increased, from fifty-one (51) in the Finance Bill, 2021 to seventy-four (74) in this Bill. This indicates that more Kenyans are taking interest in legislation and this will improve the quality of laws passed by Parliament.
5. The requirement for taxpayers to deposit 50% of the disputed amount to the Commissioner before filing an appeal in the High Court will be an impediment to justice to taxpayers who are not able to raise the money contrary to Article 48 of the Constitution. Further, it'll impact negatively on the working capital of such taxpayers.

PART FIVE

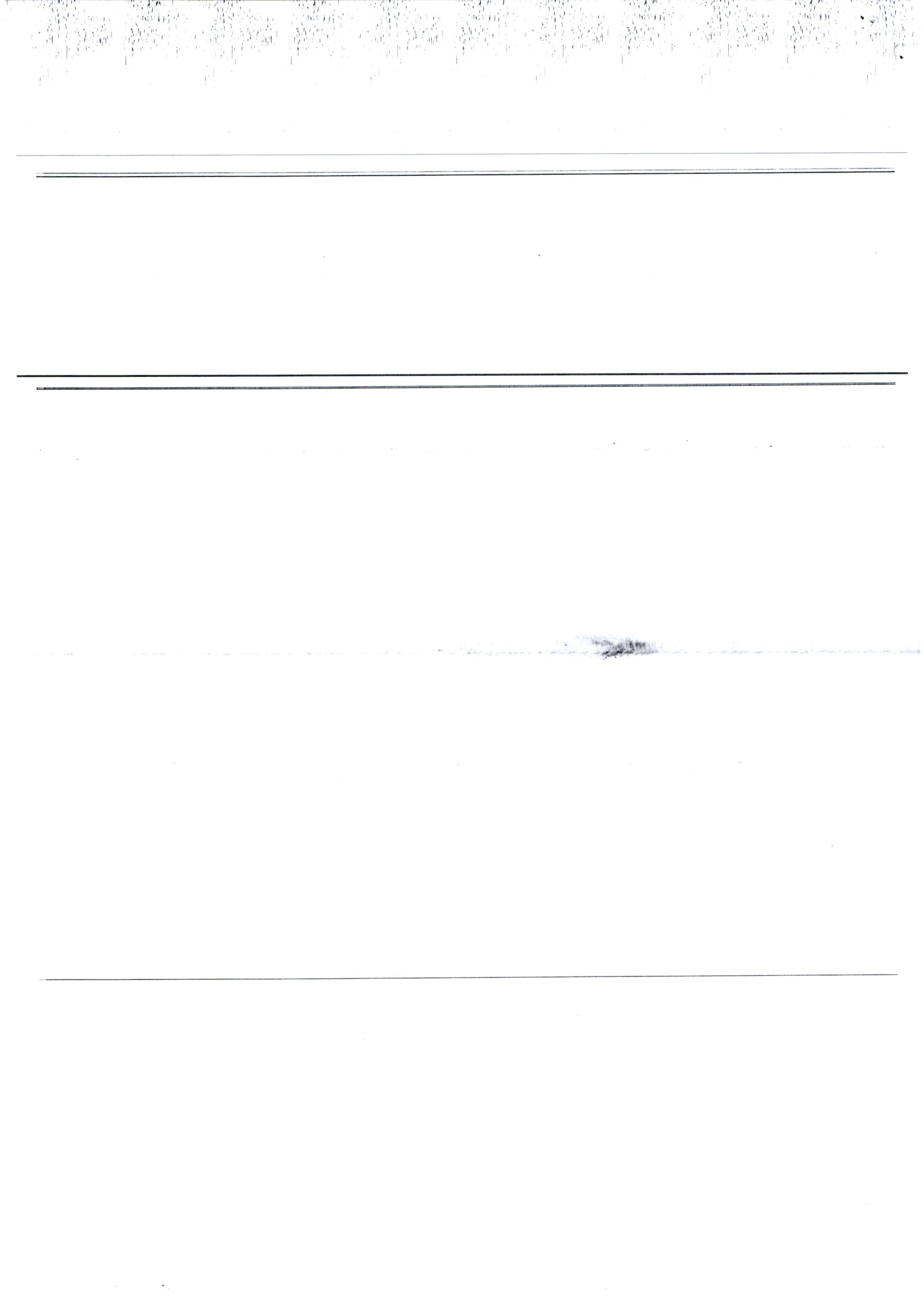
5.0 COMMITTEE RECOMMENDATION

The Committee having reviewed the Finance Bill (*National Assembly Bill No. 22 of 2022*) recommends that the House approves the Bill with amendments.

SIGNED..... DATE. 24th May 2022


HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING





REPUBLIC OF KENYA

NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

ADOPTION SCHEDULE

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE FINANCE BILL
(NATIONAL ASSEMBLY BILL NO. 22 OF 2022)

DATE: 21st May 2022

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU, MP – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. DR. CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON. EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

