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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:
THE CONSIDERATION OF
THE TAX LAWS (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 47 OF 2024)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 03 DEC 2024 DAY. Tue
TABLED BY: Hon. Kuria Kimani, MP Chairperson
CLERK AT THE TABLE: Joyce Lomerolle

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2024

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LIST OF ABBREVIATION

ADR	-	Alternative Dispute Resolution
APTAK	-	Administrators and Pension Trustees Association of Kenya
B2B	-	Business to Business
B2C	-	Business to Customer
BEPS	-	Base Erosion and Profit Sharing
CapEx	-	Capital Expenditure
CBK	-	Central Bank of Kenya
CDSC	-	Central Depository and Settlement Corporation of Kenya
CET	-	Common External Tariffs
CGT	-	Capital Gains Tax
CMA	-	Capital Markets Authority
COMESA	-	Common Market for Eastern and Southern Africa
CS	-	Cabinet Secretary
DST	-	Digital Service Tax
EAC	-	East African Community
EACCMA	-	East African Community Customs Management Act
EDA	-	Excise Duty Act
EPZ	-	Export Processing Zone
e-TIMS	-	electronic Tax Invoice Management Systems
FDI	-	Foreign Direct Investment
FPTS	-	Federation of Public Transport Sector
HS Code	-	Harmonized System Code
IATA	-	International Air Transport Association
ICPAK	-	Institute of Certified Public Accountants of Kenya
IDF	-	Import Declaration Fee
ITA	-	Income Tax Act
KAAO	-	Kenya Association of Air Operators

KAM	-	Kenya Association of Manufacturers
KASIB	-	Kenya Association of Stockbrokers and Investment Banks
KNCCI	-	Kenya National Chamber of Commerce and Industry
KRA	-	Kenya Revenue Authority
LLP	-	Limited Liability Partnership
MFIs	-	Microfinance Institutions
NSE	-	Nairobi Securities Exchange
OECD	-	Organization for Economic Co-operation and Development
OEM	-	Original Equipment Manufacturer
PAYE	-	Pay As You Earn
PFM	-	Public Finance Management
PIN	-	Personal Identification Number
RAK	-	REITs Association of Kenya
RDL	-	Railway Development Levy
REIT	-	Real Estate Investment Trust
SEPT	-	Significant Economic Presence Tax
TAT	-	Tax Appeals Tribunal
TPA	-	Tax Procedures Act
UN	-	United Nations
VAT	-	Value Added Tax
WHT	-	Withholding Tax

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Tax Laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024), sponsored by the Leader of the Majority party, Hon. Kimani Ichung'wah, EGH, MP. The Bill was published on 1st November 2024. It was read a First Time on 14th November, 2024 and was then committed to the Committee for consideration and tabling of report to the House pursuant to Standing Order 127.

The Bill has twenty-six (26) clauses and seeks to amend the following laws: the Income Tax Act (Cap. 470); the Value Added Tax Act (Cap. 476); the Excise Duty Act (Cap. 472), and the Miscellaneous and Levies Act (Cap 469 C). The Tax Laws (Amendment) Bill, 2024 consolidates tax proposals to amend the Income Tax Act, Value- the Income Tax Act, the Value Added Tax Act, the Excise Duty Act, and the Miscellaneous Fees and Levies Act. Some of the proposals involve a proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents making or facilitating payments over a Digital Marketplace, a repeal of digital service tax, and a replacement with a significant economic presence tax at the rate of 30% on 10% deemed profit. The proposals also rationalize tax expenditures that erode revenue that would otherwise be used to implement projects that improve the welfare of all Kenyans.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024, inviting the public to submit memoranda by way of both oral and written submissions on the Bill.

The Committee on diverse dates between Monday 18th and Wednesday 20th November 2024, conducted public participation forums in six(6) counties, namely Isiolo, Bungoma, Siaya, Mombasa, Kericho, and Taita Taveta Counties, where the Committee received views from the members of the public.

Additionally, the Committee, in line with the requirements of Article 118 of the Constitution, vide letters REF: NA/DDC/F&NP/2024/(126) dated 15th November,2024, invited stakeholders for stakeholder engagement sessions which were held on diverse dates between 25th November, 2024 and to 29th November, 2024 at KICC.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honor to present to this House the Report of the Committee on its consideration of the Tax Laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill.

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

It is my pleasure to report that the Committee has considered the Tax Laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024) and wish to report to this August House with the recommendation that the House approves the Bill with amendments.

HON. CPA KURIA KIMANI, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ACKNOWLEDGMENT

The Committee extends its sincere gratitude to the Office of the Speaker of the National Assembly and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

The Committee especially acknowledges and appreciates the participation of all stakeholders and members of the public who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures.

Further, the Committee wishes to express its heartfelt appreciation to the Honourable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report. I particularly commend the Secretariat for their diligent work that enabled the Committee to fulfill its constitutional mandate by providing a thorough analysis of the Bill to the Committee.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to Standing Order 199 (6), it is both a privilege and an honor to present to the House, the Report of the Departmental Committee on Finance and National Planning on its Consideration of the Tax Laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024). The Committee trusts that this report will serve as a valuable resource for informed debate and decision-making by the members of this House.

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is established under **Standing Order 216 (5)** and whose mandate 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 program 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. State Department of National Treasury;
    ii. State Department of Economic Planning;
    iii. Commission on Revenue Allocation; and
    iv. Office of the Controller of Budget; and

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson
Hon. CPA Kuria Kimani, MP
Molo Constituency
UDA Party

Vice-Chairperson
Hon. (Amb). Benjamin Langat, CBS, MP
Ainamoi Constituency
UDA Party

Hon. (Dr). Adan Keynan, CBS, MP
Eldas Constituency
Jubilee Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency
UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency
UDA Party

Hon. Paul K. Biego, MP
Chesumei Constituency
UDA Party

Hon. Dr. John Ariko Namoit, MP
Turkana South Constituency
ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency
UDA Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. CPA.Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Umul Ker Kassim, MP
Mandera County
UDA Party

Hon.(Dr.) Shadrack Ithinji, MP
South Imenti Constituency
Jubilee Party

Hon. Joseph Munyoro, MP
Kigumo Constituency
UDA Party

Hon. Mohamed S. Machele, MP
Mvita Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitate the Committee:

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto
D/Director, Legal Service

Mr. James M. Macharia
Media Relations Officer I

Ms. Winfred Kambua
Clerk Assistant III

Mr. Benson Kamande
Clerk Assistant III

Mr. Benson Muthuri
Serjeant-At-Arms

Mr. Mwangi Muchiri
Audio Officer III

Mr. Salem Lorot
Legal Counsel I

Ms. Peninnah Simiren
Legal Counsel II

Mr. George Ndenjeshe
Fiscal Analyst III

Ms. Nelly W.N Ondieki
Research Officer III

Ms. Joyce Wachera
Hansard Officer II

6. Further, the Committee Secretariat was supported by the following technical officers—

I. **Dr. Martin M. Masinde** - **Director, Parliamentary Budget Office**
II. **Dr. Robert Nyaga** - **Deputy Director, Parliamentary Budget Office**
III. **Ms. Brigitta Mati** - **Legal Counsel I**
IV. **Mr. Isaac Nabiswa** - **Legal Counsel II**
V. **Mr. Lenny Muchangi** - **Legal Counsel II**
VI. **Ms. Gladwel Amimo** - **Research Officer III**
VII. **Mr. Onyango Adera** - **Fiscal Analyst III**
VIII. **Ms. Joy Kyalo** - **Fiscal Analyst III**
IX. **Mr. Allan Ngugi** - **Intern**

CHAPTER TWO

2.0 OVERVIEW OF THE TAX LAWS (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 47 OF 2024)

2.1 BACKGROUND

7. The Tax laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024), is sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, EGH, MP. The Bill was published on 1st November, 2024. It was read a First Time on 14th November, 2024 and was then committed to the Committee for consideration and tabling of report to the House pursuant to Standing Order 127. Some of the proposals involve a proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace, a repeal of digital service tax, and a replacement with a significant economic presence tax at the rate of 30% on 10% deemed profit. The proposals also rationalize tax expenditures that erode revenue that would otherwise be used for the implementation of projects that improve the welfare of all Kenyans

2.2 SUMMARY OF LEGAL PROVISIONS

2.2.1 AMENDMENTS TO INCOME TAX ACT

i. Clause 2 Bill seeks to amend section 2 of the principal Act to
   (a) to simplify the registration process for retirement, pension, and provident funds by eliminating the need to be registered with both the Commissioner for Domestic Taxes and the Retirement Benefits Authority (RBA). Instead, these funds will only need to be registered with the RBA.
   (b) to amend the definition of "royalty" in the Income Tax Act to expand the types of payments considered under this category.
   (c) define 'donation' as any benefit given in the form of money, promissory notes, or goods and services without expecting anything in return.

ii. Clause 3 of the Bill seeks to amend section 5 of the principal Act to
   (a) Increase of meal benefit to employees
   (b) increase the reliefs offered for an amount paid by an employer as a gratuity or similar payment for employment or services rendered, which is paid into a registered pension scheme.

iii. Clause 4 of the Bill seeks to amend section 10 of the principal Act to to tax income earned through digital platforms owned or operated by residents or non-residents. This income covers income from digital content monetization, including creative works, as well as income from the sale of goods, property, or services via digital platforms.

iv. Clause 5 of the Bill seeks to amend section 80(4) of the principal Act to reduce the time for submission of financial statements and summaries by the National Treasury to the Auditor-General and a copy to the Controller of Budget and the Commission on Revenue Allocation from four months after the end of a financial year to two months after the end of a financial year.

v. Clause 8 & 9 of the Bill seeks to increase in pension allowable deduction on contributions by employees to retirement pension or provident funds; and, contributions by employer to defined contribution or defined benefit funds.

vi. Clause 14 of the Bill proposes to tax the interest income earned by resident individuals from certain bonds, notes, and similar securities used to fund infrastructure and social services, commonly known as Infrastructure Bonds. A five percent (5%) withholding tax will be applied to this interest when paid to resident individuals.

2.2.2 AMENDMENTS TO VALUE ADDED TAX ACT

i. Clause 17 of the Bill seeks to amend Section 12 of the Value Added Tax Act to introduce a new subsection (5) to define the time of supply for exported goods by indicating that the time of supply for exported goods shall be the time when the registered person has the required export confirmation documents.

ii. Clause 18 seeks to remove the VAT Input Tax Allocation threshold, which has led to tax planning and revenue loss.

iii. Clause 20 seeks to amend the First Schedule of the VAT Act to change the supply or importation of some goods from exempt supplies to standard-rate VAT and to move others from the zero-rated rate to Exempt.

2.2.3 AMENDMENTS TO THE EXCISE DUTY ACT

i. Clause 22 of the Bill proposes to amend Section 5 of the Excise Duty Act by expanding the scope of excise duty to include excisable services offered in Kenya by non-residents through digital platforms.

ii. Clause 24 of the Bill seeks to extend the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to the 5th day of the following month.

2.2.4 AMENDMENT TO MISCELLANEOUS, FEES AND LEVIES ACT

i. Clause 26 seeks to amend Section 8 of the Miscellaneous, Fees and Levies Act to increase the Railway Development Levy from 1.5% to 2.5%.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

8. Article 118 (1)(b) of the Constitution provides that:

   "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

9. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

   "(3) The Departmental Committee to which a Bill is committed shall ***facilitate public participation on the Bill*** *through an appropriate mechanism including-*

   (a) inviting submission of memoranda;

   (b) holding public hearings;

   (c) consulting relevant stakeholders in a sector; and

   (d) consulting experts on technical subjects.

   (3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

10. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024/126 and NA/DDC/F&NP/2024/127 dated 18th November, 2024 and 19th November, 2024 respectively invited key stakeholders to submit views on the Bill and attend a public participation forum from 25th November, 2024 to 28th November 2024.

11. During the stakeholder engagement process, the public and various stakeholders actively participated by presenting memoranda and making submissions on different clauses of the Bill. These engagements took place at the county level and KICC, where stakeholders had the opportunity to discuss and present their views. The feedback received from these interactions provided valuable input, highlighting specific concerns and suggestions for amendments. The submissions on various clauses of the Bill were as follows: -

3.2.1 BUNGOMA COUNTY

12. The residents of Bungoma County expressed their strong support for the proposed bill, highlighting the critical role of taxation in ensuring efficient service delivery. They highlighted the necessity for every citizen to contribute their fair share of taxes, emphasizing that these contributions should be managed transparently and efficiently for the benefit of all. Also, they stated that expanding the tax base would reduce the government's reliance on borrowing. In particular, they supported taxing multinational corporations operating within the country, pointing out that these entities rely heavily on local labor and infrastructure. The residents also urged the government to exercise prudence in revenue management by curbing wasteful

spending and aggressively tackling corruption to maximize the impact of collected taxes.

13. Additionally, residents called for robust public sensitization and meaningful civic education to ensure citizens fully understand the bill's provisions. They stressed the importance of engaging the public through inclusive participation processes. The noted the importance of the public having a clear understanding of the bills suggested before airing their views on the proposals. Furthermore, they advocated for equitable revenue distribution to counties to strengthen devolution and enhance service delivery at the grassroots level.

Clause 6

14. The public supported the proposal to tax multinational enterprises (MNEs) operating in Kenya, particularly those in the digital and globalized economy. They stated that the minimum top-up tax aims to capture revenue from corporations benefiting from local markets without contributing adequately to the tax base.

15. Residents emphasized that taxation of MNEs would address economic imbalances where large corporations often exploit low-tax jurisdictions, depriving the country of critical revenue. They stated that this also aims to improve tax compliance and fairness, ensuring that foreign businesses contribute their fair share to Kenya's economy.

Clause 7

16. The public expressed support for the proposal of making contributions to the Social Health Insurance Fund (SHIF) deductible under the tax laws. Making these deductions allowable would incentivize individuals and employers to contribute to universal health coverage, thereby enhancing access to essential healthcare services for all Kenyans. They emphasized that prioritizing health-related tax incentives ensures that Kenyans, particularly vulnerable groups, can access affordable healthcare while reducing the financial burden on households.

Clause 14(a)

17. The proposal to exempt pension benefits from taxation was met with widespread support, with residents emphasizing its potential to improve the quality of life for retirees. Many retirees depend solely on their pensions for sustenance, and taxation on these benefits reduces their already limited disposable income. They noted that exempting pensions from tax would allow older individuals to better manage healthcare costs, support their families, and maintain a dignified standard of living. Stakeholders also highlighted that tax exemptions could encourage more people to save for retirement.

Clause 15(ii)(B)(iii)(o)

18. The residents supported the proposal to impose a 20% withholding tax on non-residents operating in digital marketplaces. They argued that this measure would significantly increase government revenue, which could then be used to bolster

devolution efforts and reduce reliance on external borrowing. They highlighted the potential of such taxation to fund essential services and infrastructure projects, contributing to national development.

19. The residents also raised concerns about the digital marketplace tax rate for residents. They recommends reducing the rate from the current 5% to 2.5% or even 1%, emphasizing the economic challenges faced by unemployed youth. Many young people rely on digital platforms for their livelihoods, such as freelancing and content creation, where their earnings are often low. A lower tax rate, they argued, would encourage more participation in the digital economy and provide them with additional disposable income to reinvest in their businesses. Moreover, youths stressed the need for the government to create employment opportunities to allow for greater economic contributions through taxes.

20. Although some residents supported the clause with minimal amendments, there was opposition to the proposal altogether, with some members of the public cautioning against double taxation. They pointed out that many digital platform payments already incur taxes at the source, and additional withholding taxes could unfairly burden individuals in this sector. They proposed having more precise guidelines to ensure fairness and prevent double tax obligations.

Clause 20

21. The proposal to exempt raw materials used in manufacturing sanitary towels and diapers from VAT was supported by most residents. They noted that this measure would make these essential products more affordable for women and girls, directly addressing a critical need for menstrual hygiene and childcare. The public highlighted the significant impact on women's health and education, with affordable sanitary products helping to reduce absenteeism among schoolgirls. However, some members of the public recommends zero-rating these products instead of exempting them. Zero-rating would allow manufacturers to claim input VAT, reducing overall production costs further and ensuring that the tax relief is fully passed on to consumers.

22. Additionally, some residents expressed concerns about removing the raw materials for agricultural products from the zero-rated category, arguing that most farmers rely on affordable inputs to maintain their livelihoods. Increased costs could reduce agricultural productivity and profitability, directly affecting the communities that depend heavily on farming. They proposed zero-rating agricultural inputs, particularly seeds, which residents noted are already too expensive, with the majority of the members being farmers.

23. Further, they proposed a further increase in taxes for aircraft and airplanes, noting that the people who own these planes can afford to pay more taxes.

Rejection of the Bills

24. A section of the residents rejected the bill in its entirety. They raised concerns on the proposed measures, particularly those affecting the digital economy, manufacturing, and agriculture, saying they risk worsening the economic burden on citizens. They noted the increased withholding tax rates for digital marketplaces and the removal of zero-rating on agricultural inputs as measures likely to stifle innovation, inflate production costs, and hinder growth in vital sectors. Additionally, they emphasized that the bill does not sufficiently address issues of tax equity and the taxes collected are not accounted for. Furthermore, the stakeholders cited the potential for reduced investor confidence, with new taxes on multinationals seen as possibly deterring foreign investment.

3.2.2 KERICHO COUNTY

25. The residents supported the proposals in the bill. They noted that every citizen ought to pay their taxes diligently for the government to implement its projects. They noted that taxation and prudent use of resources, given the current fiscal challenges, are key to the development of the country.

Clause 6

26. The residents supported the clause, noting that it will ensure that multinational corporations contribute fairly to the tax system, especially when their effective tax rate falls below 15%. They noted that introducing a minimum top-up tax will help address tax avoidance strategies, where multinational groups shift profits to jurisdictions with low or no tax rates.

Clause 14

27. The residents supported the proposal to exempt pension befits from taxation. This provision will ensure that retirees will no longer face tax deductions on their monthly pension incomes, providing financial relief to individuals who depend on their pension as a primary source of income in retirement. They noted that this change aims to improve retirees' financial stability and reduce the tax burden on pension payments, which have traditionally been subject to income tax. They recommends increasing the pension benefits some retirees received since most retired long ago. Additionally, they emphasized the need to factor in the current inflation and cost of living and recommends adjusting inflation and timely disbursement of the funds.

Clause 15

28. The residents supported the proposal to introduce a 5% and 20% withholding tax on residents and non-residents, respectively. They noted that digital platforms continue to grow, particularly for freelancing and content creation, and this will ensure everyone is within the tax bracket. Those in support emphasized on the fairness in taxation and recommends increasing the rate for non-residents.

29. Although the residents supported this proposal, some proposed lowering the rate to 1%. They submitted that some of them are unemployed, which will discourage the

youth from using this platform to make any income. Further, some proposed having bands to distinguish the high-income earners from those who make minimal returns.

Clause 20

30. The residents supported the exemptions on raw materials for sanitary towels and diapers. They noted that women have had challenges accessing these commodities. They recommends to zero-rate them to make them cheaper.

Clause 25

31. The members of Kericho County supported the proposals to increase excise duty on alcohol, spirits, wines and cigarettes. They noted these commodities have had a negative impact on people's health, contributing highly to people contracting lung, stomach, and throat cancer. They recommends increasing the rate by 10% to 50% as a way of discouraging people especially the youth from using them. Additionally, the recommends curbing illicit brews that are rampant in the country and do not fall under taxation.

3.2.3 SIAYA COUNTY

32. The residents of Siaya County made submissions in support of the Bill, stating that the proposals contained in the Bill seek to widen the tax base, enhance revenue collection, support economic development, and improve fairness. They highlighted as follows;

Clause 14

33. The residents of Siaya County, while in support of the clause, stated that the proposal should further enhance benefits as highlighted in the Bill. However, they believed that the Pensions Act should be amended to revise the minimum pension amount granted to an officer under the Act that has been in place for more than a decade to respond to the high inflation rates.

Clause 15(ii)(B)(iii)(n)

34. The residents supported the proposal. They noted that the proposed introduction of withholding tax on the supply of goods to public entities is aimed at ensuring tax compliance by suppliers as it will provide visibility of the tax on the income earned.

Clause 20(a)(i)(ii)(iii)

35. The residents supported the proposal noting that the proposed amendment is aimed at ensuring fair taxation stating that the aviation sector only affects a select group of people.

Clause 20(a)(x)

36. The residents supported the proposal noting that the proposed tax exemption will boost the local manufacturing industry for agricultural control products and fertilizers, directly reduce the financial burden on farmers. They highlighted that the exemptions will promote incentivize investment in modern farming techniques. They

further stated that this measure will also ensure food security and equitable economic growth.

Clause 25(a)(i)(C)(D)(E)(F)

37. Wanainchi from Siaya County supported the increase of excise duty on these products. They proposed an increase of the proposed excise duty rate on cigarettes with filters, without filters, products containing nicotine or nicotine substitutes and liquid nicotine used in electronic cigarettes. They stated that higher prices for cigarettes may serve as an effective public health measure to curb addiction, to improve health outcomes. This will also be a source of revenue for the government.

Clause 25(a)(i)(J)

38. The residents were of the opinion that the proposed excise duty rate on wines and alcoholic beverages based on alcohol content should be increased, stating that, heightening taxes on alcoholic products will discourage excessive consumption and promote healthy lifestyles.

Clause 15(ii)(B)(iii)(o)

39. The residents of Siaya County proposed the deletion of the clause because, in their view, the digital marketplace offers various opportunities to the unemployed, especially the youth. They stated that digital marketplace are often taxed at the source with the platform responsible for collecting the remitting taxes.

Committee Observations
The Committee was of a different view that the provision's intent was to raise revenue for the Government.

Clause 22

40. The residents proposed the deletion of this clause the sought to introduce excise duty on digital services provided in Kenya by non-resident businesses through digital platforms will result to the businesses adjusting their pricing, therefore potentially passing the additional costs onto Kenyan consumers.

Committee Observations
The Committee was of a different view that the provision's intent was to raise revenue for the Government.

Clause 26

41. They proposed that the clause be deleted since increasing the railway development levy from 1.5% to 2.5% will result in an increase in the cost of imports and potentially increase the cost of commodities such as cars, fuel and food. The additional cost will eventually be passed onto consumers.

Committee Observations

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.4 MOMBASA COUNTY

Clause 3

42. Members of Mombasa County proposed amending the proposal to increase the tax-free threshold of retirement benefits from the KES. 360,000 to KES.500,000. Further, some members proposed to have the threshold capped at 50%. This will help in an increase in disposable income. Similarly, the members proposed to amend the proposal to increase tax free employment benefits threshold from KES.60,000 to KES. 100,000.

Clause 4

43. Members of the public were not in support of the proposal to introduce withholding tax for digital marketplace because it will increase the cost of goods and services acquired through digital platforms. The members also noted that the burden of the taxes will be passed onto consumers. Additionally, the proposal will discourage innovation which will limit the application of the rapidly growing technology.

Committee Observations

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 6

44. Members of Mombasa County support the proposal for it will promote fairness in payment of taxes as well as healthy competitive business environment. On the other hand, some members of the public reject the proposal because the costs of production for multinationals is low compared the cost of production for local firms. Imposing the tax will discourage investors, leading to increased cost of products by local firms and the cost of imports. It will also promote unemployment.

Clause 7

45. The public strongly supported the proposal to make contributions to the Social Health Insurance Fund (SHIF) and the Affordable Housing Levy tax-deductible. They argued that this will reduce their overall tax burden and increase disposable income, which will encourage the culture of saving and promote investment thereby promoting economic growth. The public emphasized that this would benefit businesses and will also create more job opportunities.

Clause 14

46. Members of the public were in support of the proposal to exempt pensions from tax, stating retirees should not be subjected to tax burdens after retirement. Pensions being the primary source of income for retirees, imposing taxes reduces their

disposable income thus exposing them to poverty. Retirees should freely access basic needs without any burden of taxes.

Clause 20

47. The members of the public fully supported the proposal to exempt absorbent product materials from tax for it will reduce costs of the finished products making them affordable to citizens.

Clause 23

48. Members supported the proposal to exempt agricultural products used in production of beer and products from excise duty. This will encourage local agriculture in the country and stimulate growth of domestic economy. Further, other members of the public rejected the amendment arguing that it will promote uncontrolled drinking and addiction to illicit brew which is a major setback to family institutions and the education sector. Further, they noted the need to have a balance between controlling illicit brewing and boosting local growers. The government should ensure strict measures like licensing of alcohol producers to avoid misuse.

Clause 25.

49. The members of the public support the proposal to exempt locally assembled electric vehicles from excise duty because it will promote local industries.

3.2.5 TAITA TAVETA COUNTY

Clauses 8 &9

50. Most members of Taita Taveta County supported the proposal to have pensions exempted from tax. They stated that it would increase retirees' disposable income, making them live an affordable, comfortable life. They further proposed that tax-free retirement benefits should be amended to a threshold of KES.500,000.

Clause 5

51. The proposal to introduce the Significant Economic Presence Tax for multinationals was rejected for it would discourage investors and also affect Kenyans negatively. Multinationals contribute to the growth of the economy by creating employment and promoting industrialization. The members noted the fact the government has to raise money through this proposal, but argued that some regulations in the country discourage Kenyans from investing locally. For instance, the costs of business registration and getting business permits in Kenya are very expensive both in terms of money and time.

52. In addition, imposing the new tax would shift the burden to the consumers who are Kenyans. The products and services from multi-nationals have been proved over time to be of good quality and standards are affordable. The proposal would most likely impose the tax burden to Kenyans who are already taxpayers, through increased costs of goods and services.

53. Lastly, Kenyans working for multinational companies acquire different knowledge and skills which later help them in life. Introducing this tax and would prohibit innovation and industrialization.

Committee Observations

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 6 (12G)

54. The proposal to have multinational Corporations pay a minimum top tax was supported with an amendment to have a specified rate or amount known as minimum top up tax which multinationals will be expected to remit if the ratio of tax paid on their consolidated earnings is less than 15%. This will help avoid calculations of tax based on assumptions and will also prevent the problem of non-disclosure.

Committee Observations

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 13

55. Members of the public were against the proposal to introduce a withholding tax on digital platform earnings. They argued that users of digital platforms are categorized as small-scale businesses that provide goods and services with small earnings; thus, subjecting them to tax burdens will be unfair to them. Additionally, some members were interested in the criteria for identifying the digital platforms to be subjected to tax.

56. Additionally, some members argued that the proposal would be deemed double taxation. They stated that trading on digital platforms entails several charges that are incurred when purchasing goods and offering services online. The charges include mobile transfer transaction costs and the prices of purchased products, of which VAT is always included.

Committee Observations

The Committee noted the stakeholder's concerns. However, it is the Committee's view that, the provision is intended to improve compliance whose rate is currently quite low.

Clause 20 (V)

57. The proposal to exempt absorbent product materials from VAT was supported with citizens of Taita Taveta County. This would lower the prices of products like diapers and sanitary towels making them affordable to families and women respectively.

Clause 21(a)

58. The members of Taita Taveta County supported the proposal to have agricultural inputs exempted from VAT. This would encourage farming in the country, which would lead to an increase in production. Further, the members also noted the need to have imported farm equipment exempted from taxes to reduce the equipment cost.

3.2.6 ISIOLO COUNTY

59. Most members of the public expressed their support for the Bill, recognizing its potential to improve revenue collection and enhance service delivery. They acknowledged that the proposed measures could help strengthen the economy by increasing government resources to fund critical sectors such as healthcare, education, and infrastructure. However, they emphasized that for the Bill to achieve its intended goals, it is crucial to ensure that the revenue collected is managed transparently and used effectively to benefit all citizens. The public stressed that the government must implement strong accountability measures to prevent misuse or misallocation of public funds.
60. Additionally, they highlighted the importance of equitable resource distribution to ensure no region or community is left behind. Many pointed out that fair use of public funds is essential in addressing disparities and promoting inclusive development. They urged policymakers to prioritize projects that would have the most significant impact on improving livelihoods, particularly in marginalized areas.

Clause 4

61. Members of the public were not in support of the clause on the withholding tax for digital marketplaces, arguing that it would increase the cost of doing business in the country. They expressed concerns that the additional tax burden could discourage investment and innovation within the digital economy, which will affect the growth of digital platforms in Kenya. Critics further pointed out that the increased costs might be passed on to consumers, leading to higher prices for goods and services.

Committee Observations

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 6- Minimum top Up tax

62. Members of the public proposed a further amendment to the clause to set a firm threshold of either 30% or 40%, emphasizing the need for stricter limits on deductions. They expressed concern that many multinational companies frequently report excessive expenses, significantly reducing their taxable income and, consequently, their tax liability. According to the members, this practice undermines the country's revenue collection efforts, depriving the government of much-needed funds for development and public services.

63. They argued that the amendment would help ensure that these corporations contribute their fair share of taxes by capping the allowable deductions at a reasonable level. Additionally, they highlighted that without such measures, multinational companies could continue to exploit loopholes in the tax system, perpetuating unfair practices and placing a disproportionate burden on local businesses and individual taxpayers.

Committee Observations
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 7

64. The public expressed strong support for the proposal to make contributions to the Social Health Insurance Fund (SHIF) and the Affordable Housing Levy tax-deductible. They noted that this measure would effectively increase employees' disposable income, as it would reduce their overall tax burden. According to the public, with more money in their pockets, workers would have greater financial flexibility, which could spur both investment and consumption.

65. They argued that increased disposable income would encourage employees to save or invest in personal ventures, thereby promoting economic growth. Additionally, higher consumption levels would boost demand for goods and services, benefiting businesses and creating more job opportunities. The public emphasized that this policy would support individual financial well-being and stimulate broader economic activity, helping achieve sustainable growth.

66. Moreover, they highlighted that, making these contributions deductible would enhance the appeal of the SHIF and Affordable Housing programs, encouraging greater participation. This, in turn, would ensure the success of these initiatives, improving access to healthcare and affordable housing for many citizens. They urged policymakers to prioritize this amendment, viewing it as a practical step toward improving both personal and national economic outcomes.

Clause 14

67. Members of the public supported the provision to exempt pensions from tax, arguing that retirees should not face additional financial burdens in their later years. They emphasized that pensions are often the primary source of income for many retirees, and taxing them would reduce their disposable income, potentially impacting their ability to meet basic needs such as healthcare and housing. Supporters further noted that exempting pensions from taxation is a way to honor retirees' contributions during their working years, providing them with financial security and dignity in retirement. They contended that this exemption would also help reduce poverty levels among the elderly population.

Clause 20- VAT on Aircraft

68. The public strongly supported the proposal to subject Value Added Tax (VAT) to aircraft and spare parts, arguing that this move would create a more competitive market for locally manufactured products. They highlighted that the exemption of VAT on imported aircraft and parts has historically disadvantaged local producers, making it difficult for them to compete.

Clause 20- Exemption of Fertilizer from VAT

69. Members of the public expressed support for the proposed VAT exemption, recognizing its potential to benefit certain sectors of the economy. However, they also raised concerns about its impact on the final consumer. They noted that while businesses might benefit from the exemption, the cost savings would likely not be fully absorbed by the producers. Instead, the VAT would be transferred down the supply chain, ultimately increasing the prices of goods and services for the end consumers. This, they argued, could place an additional financial burden on ordinary citizens, particularly those in lower-income brackets, and might counteract the intended benefits of the exemption. Therefore, they urged policymakers to consider mechanisms to mitigate these effects and ensure that the exemption provides broad-based advantages.

Clause 23

70. Some members of the public in Isiolo County expressed support for the proposal to exempt excise duty on agricultural products used in producing beer and spirits. They argued that this exemption would boost the locally produced agricultural goods market, providing farmers with more stable and profitable outlets for their crops. According to these supporters, such a measure would encourage investment in local agriculture, stimulate rural economies, and create jobs along the value chain, from farming to processing and distribution. They also noted that the increased demand for local raw materials would reduce dependency on imported inputs, thereby strengthening the domestic economy.

71. However, other members of the public held a different view, advocating for the removal of all taxes on agricultural products, not just those used in alcohol production. They emphasized that agriculture is the backbone of the economy and argued that eliminating taxes across the board would lower production costs, making local products more competitive both domestically and internationally. This, they contended, would benefit a broader range of farmers and agribusinesses, ultimately leading to greater food security and economic resilience. Both groups, however, underscored the importance of supportive policies to maximize the agricultural sector's potential, recognizing its critical role in fostering economic growth and improving livelihoods.

Committee Observations
The Committee noted that this provision will reduce tax expenditure, address refund problems

Clause 24

72. Majority of Isiolo County residents expressed support for the extension of the timeline for the submission of excise duty on alcoholic beverages, from 24 hours to the 5th day of the following month. They argued that the proposed extension would ease the administrative burden on businesses, allowing them more time to accurately calculate and submit their taxes. Supporters highlighted that the current 24-hour deadline is impractical, particularly for smaller businesses that may lack the resources to comply within such a short timeframe. They also noted that the extended timeline would improve tax compliance by reducing errors and the likelihood of late submissions, ultimately benefiting both businesses and KRA.

Clause 25

73. Some members of Isiolo County proposed amending the clause to specify that revenue collected from taxes on alcoholic beverages should be earmarked for rehabilitation and related support services. They argued that simply increasing taxes on alcohol without a clear and targeted plan to address addiction and its associated challenges would not effectively tackle the underlying issues. According to the members, many individuals in the community are already struggling with alcohol dependency, and without access to proper rehabilitation programs, higher taxes would only worsen their plight.

74. The residents emphasized the fact that, alcohol addiction often leads to devastating social consequences, including the breakdown of families, loss of livelihoods, and increased health complications. They noted that allocating these funds to rehabilitation centers, counseling services, and public awareness campaigns would provide much-needed support to those battling addiction, helping them regain control of their lives.

75. However, some individuals opposed the proposal altogether, arguing that increasing taxes on alcohol could inadvertently drive more people toward consuming illicit and unregulated alcohol. They warned that this could lead to serious health risks, including poisoning, and exacerbate social problems such as crime and family breakdown. These opponents stressed the need for a balanced approach to support the agricultural sector without encouraging harmful alternatives in the alcohol market.

Clause 26

76. The residents of the County did not support the increase of RDL

Committee Observations

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of an electric light rail system within the big metropolis in Kenya. The Committee, however, proposed a new rate of 2%.

General- Rejection of the Bill in its entirety

77. A few members of the public were against the Bill, arguing that it would impose unnecessary tax burdens on the people of Kenya without providing clear, accountable benefits. They expressed concerns that the additional taxes would exacerbate the financial strain on both businesses and consumers, particularly in an already challenging economic environment. These critics highlighted the lack of transparency regarding how the revenue generated from the tax would be used, questioning whether it would be properly managed or simply contribute to further government inefficiencies.

3.2.7 STEPHEN NJOROGE

78. The stakeholder rejected the bill in its entirety. He noted that these measures threaten the well-being of individuals and businesses alike. He emphasized that the proposals include harsh and unjustifiable measures that place undue burdens on citizens and small businesses.

Clause 26

79. The stakeholder noted that the proposed amendment raises the Railway Development Levy from 1.5% to 2.5%, significantly increasing the costs of imported goods. He said that this levy will inevitably lead to higher consumer prices on a wide range of products, impacting households nationwide and making everyday goods less affordable for many.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed

increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

Clause 4

80. The stakeholder highlighted that Section 10 of the Income Tax Act seeks to tax digital content creators—many of whom are young people striving to make a living in an already challenging job market. He noted that the proposal unfairly targets individuals working in the digital space, punishing their creativity and resilience in a context of high unemployment.

Committee Observation

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 7

81. The stakeholder submitted that Section 15 of the Income Tax Act mandates contributions to the Social Health Insurance Fund (SHIF), despite SHIF's demonstrated failures. He highlighted that health facilities across the country face critical shortages, yet citizens are expected to contribute to a system that fails to deliver essential healthcare. He noted that this policy is an unsustainable burden.

Clause 20 (iv)

82. The stakeholder highlighted that the First Schedule of the VAT Act is being amended in Section 20 to delete paragraph 69, which currently exempts diapers and sanitary pads from VAT. He noted that this change, influenced by IMF conditions, directly targets women and children in vulnerable parts of Kenya. Once VAT on diapers and sanitary pads is imposed on manufacturers, the resulting price increase will have a ripple effect, making these essential items less accessible to girls, women, and children from low-income households.

Committee Observations

The Committee noted that the proposal is not to subject manufacturers to VAT but to exempt them

3.2.8 RYAN MUREITHI

83. Mr. Mureithi rejected the bill in its entirety. He noted that these measures threaten the well-being of individuals and businesses alike. He emphasized that the proposals include harsh and unjustifiable measures that place undue burdens on citizens and small businesses.

Clause 26

84. The stakeholder noted that the proposed amendment raises the Railway Development Levy from 1.5% to 2.5%, significantly increasing costs on imported goods. He noted that this levy will inevitably lead to higher consumer prices on a wide range of products, impacting households across the country and making everyday goods less affordable for many.

Committee Observations

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

Clause 4

85. The stakeholder highlighted that Section 10 of the Income Tax Act seeks to tax digital content creators—many of whom are young people striving to make a living in an already challenging job market. He noted that the proposal unfairly targets individuals working in the digital space, punishing their creativity and resilience in a context of high unemployment.

Committee Observations

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 7

86. The stakeholder submitted that Section 15 of the Income Tax Act mandates contributions to the Social Health Insurance Fund (SHIF), despite SHIF's demonstrated failures. He highlighted that health facilities nationwide face critical shortages, yet citizens are expected to contribute to a system that fails to deliver essential healthcare. He noted that this policy is an unsustainable burden.

Clause 20 (iv)

87. The stakeholder highlighted that the First Schedule of the VAT Act is being amended in Section 20 to delete paragraph 69, which currently exempts diapers and sanitary pads from VAT. He noted that this change, influenced by IMF conditions, directly targets women and children in vulnerable parts of Kenya. Once VAT on diapers and sanitary pads is imposed on manufacturers, the resulting price increase will have a ripple effect, making these essential items less accessible to girls, women, and children from low-income households.

Committee Observations

The Committee noted that the proposal is not to subject manufacturers to VAT but to exempt them

3.2.9 SANAABIL CONSULTANCY LTD

CLAUSE 13

88. **THAT**, clause 13 of the Bill be amended—

(a) in paragraph (a), by adding the following new paragraph immediately after the proposed new paragraph (s)—
(t) the sale of scrap ;

(b) in paragraph (b), by adding the following new paragraph immediately after the proposed new paragraph (n)—
(o) the sale of scrap.

CLAUSE 15

89. **THAT,** clause 15 of the Bill be amended in paragraph (b), by inserting the following new item immediately after item (i)—

(iia) in paragraph 2, by adding the following new sub-paragraph immediately after subparagraph (m)—

(n) in respect of the sale of scrap, one and half per cent of the gross amount, which shall be a final tax.

Justification
This is meant to protect the local scrap industry and incentive the sector and harmonize the sector.

Committee Observations
The Committee noted the stakeholder's submission and believed that the proposal would spur the sector's growth.

CLAUSE 25

90. Sanabil Consulting is proposing the deletion of the excise duty on "Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared" appearing in paragraph 1 of Part 1 of the First Schedule of the Excise Duty Act as this has had a negative effect on the local mwananchi, considering that this is a staple food amongst most Kenyans.

91. That clause 25 of the Bill be amended in paragraph (a)—

(i) by inserting the word "pharmaceutical" immediately after the words "by a registered" appearing in the proposed new tariff description appearing in item (i)(A);

(ii) In G by deleting the excise duty rate of coal and replacing with 2% of the Value.

(iii) by inserting the following new items after item (i)(L)—
(LA) by deleting the tariff description "Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90" and corresponding rate of excise duty and substituting therefor the following new tariff description and corresponding rate of excise duty.

Description	*Rate of excise duty*
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or sh. 200 per kilogramme, whichever is higher.

(LB) by deleting the word "imported" appearing in the tariff description "Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90";

(LC) by deleting the tariff description "Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared" and the corresponding rate of excise duty.

Committee Observations
The Committee agreed with the Stakeholders, noting that introducing excise duty has made the local Pasta, a staple food, expensive and out of reach for ordinary Kenyans. Kenya's local production capacity is still inadequate, meaning the country is still dependent on imports. Further, the imposition of excise duty on food items tends to make food items expensive.

Excise Duty on Glass Bottles

92. The stakeholder proposed imposing 35% excise duty on Imported glass bottles (excluding imported glass bottles for packaging of pharmaceutical products), with the exclusion of glass bottles imported from any of the countries within the East African Community or an excise duty rate to be revised to a specific duty of $160/Tonne whichever is higher. They noted that this amendment was introduced through a previous Finance Act and has had a positive impact on Kenyan glass bottle manufacturers who have previously been exposed to unfair trade practices from countries within the Common Market for Eastern & Southern Africa (COMESA), India, and China, among others that offer subsidies. Additionally, the raw materials utilized by glass bottle manufacturers are almost one hundred percent locally procured.

Committee Observations
The Committee agreed with the stakeholders, noting that the objective of imposing the excise duty is to promote local capacity and industry.

NEW PROPOSALS

93. The stakeholder proposed amending the First Schedule to the Excise Duty Act to exempt from the current excise duty rate of 25%, imported cartons, boxes, and cases, of corrugated paper or paperboard, folding cartons, skillets labels of paper and paper board, originating from East African Community Partner States that meet the East African Community Rules of Origin. They noted that this would encourage trade amongst the partner states as envisaged by the Protocol that would create the East African Community Customs Union.

94. Additionally, they submitted that they support the Government's move to support local manufacturers but the envisaged benefits of the same have not been fully garnered due to malpractices by importers of the commodities. The aforementioned commodities are primarily utilized in the pharmaceutical industry and related to goods exempted from tax in the past.

95. The stakeholder further noted that to eliminate misclassifying the tariff codes by importers which result tax evasion of excise duties, Sanabil Consulting proposes an introduction of a specific duty rate of KES 200 per kilogram for all items under tariff code 3920.10.10 and that imported items under tariff code 3920.10.10 be excisable at a rate of 20%.

Committee Observations

The Committee noted that the manufacturing companies in Kenya have the capacity to meet all the requirements of this industry. The expansion of the local companies has, in the past, been hindered because of the unfair competitive advantage given to foreign manufacturers who are not subject to the exact tax requirements as local manufacturers.

3.2.10 WAMAITHA GITHINJI

Clause 4

96. The stakeholder proposed deletion of the clause because Kenyan citizens, especially the youth, rely on the organizations that provide services in the digital marketplace. She stated that introducing additional taxes increases business costs, resulting in even more unemployed people. She stated that there is a need to enact measures to reduce unemployment and increase opportunities for organizations to do business in Kenya instead of enacting laws leading to organizations leaving and making Kenyans redundant.

Committee Observations

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 22

97. The stakeholder proposed the deletion of the clause because, in her view, Kenyans have already been overtaxed with 55% of their income going to the government without the citizens receiving commensurate services from the national government. Additionally, she noted that the cost of living has increased because of the increase in taxes introduced in the last 2 years and companies are relocating from Kenya because of the over taxation.

98.

Committee Observation

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 26

99. The stakeholder proposed the deletion of the clause because in her view this will result in an increase in the cost of fuel and that will further increase the cost of living for Kenyans of all walks of life. She noted that the Kenya National Bureau of Statistics published a report saying Kenyans have been pushed into poverty because of the high cost of living.

Committee Observations

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.11 CPA JAMES MWENDA

Clause 5

100. Delete the proposal and maintain the current DST regime. He further proposed increasing the DST rate from the current 1.5% to 3% to improve the revenue collected. Additionally, he proposed expanding DST from the ambit of the Income Tax Act to the Miscellaneous Fees and Levies Act. He noted that this protects it against base erosion that may inadvertently be caused by entering into double taxation agreements (DTAs).

101. The stakeholder stated that there are no reliable revenue statistics globally regarding the performance of SEPT and the world's developed economies seem to favor DST over SEPT. He further highlighted that the African Tax Administration Forum (ATAF) recently conducted a study that indicated that African countries will benefit more from a DST rate of 3% at the minimum, and Digital Taxes, if placed under Income Tax, suffer from erosion due to Double Taxation Agreements.

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the

deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs. Further, the Committee recommends to define SEPT based on the VAT threshold.

3.2.12 THE STRATHMORE TAX RESEARCH CENTRE

Clause 2

102. The stakeholder supported the proposal as it stands to simplify regulatory frameworks for retirement funds. They noted that by allowing registration solely with the Retirement Benefits Authority, it reduces bureaucratic hurdles and encourages compliance among fund managers. Additionally, they stated that the improved definition of the term royalty is essential for adapting to the digital economy with a broader definition ensuring that all forms of income from intellectual property are taxed appropriately reducing the levels of revenue losses.

Clause 3

103. The stakeholder supported the proposal noting that the increase is a timely response to economic pressures since raising the threshold allows employees to retain more disposable income, which can stimulate consumer spending and support economic growth. It acknowledges inflationary pressures faced by workers and promotes financial stability.

Clause 4 & 5

104. The stakeholder proposed the deletion of SEPT and replacing it with Digital Data Tax. They noted that a Digital Data Tax, as proposed by the World Bank report by Cristian Óliver Lucas-Mas and Raúl Félix Junquera-Varela, is a much better approach to taxing the digital economy. It could involve a form of licensing tax, a much easier method where online businesses will be required to register with the KRA and be issued with a digital license that warrants the conduct of online businesses where all parties stand to gain. The proposal is well-backed due to its progressive nature and ability to increase tax morale, notwithstanding its alignment with international proposals and practices.

105. Additionally, they proposed in the case where the Significant Economic Presence Tax is preferred, we believe that the proposed rates may be excessively high. High tax rates could deter foreign investment and increase costs for local businesses using digital platforms.

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 6

106. The stakeholder noted that a 15% minimum top-up tax may deter foreign direct investment (FDI) as it positions Kenya as a higher-tax jurisdiction compared to other countries in the region. Without adequate provisions for foreign tax credits or exemptions, MNEs could face double taxation on their profits once in Kenya and again in their home countries.

Committee Observation
The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 7

107. The stakeholder supported the clause noting that increasing deductible amounts aligns with global best practices in promoting retirement savings, leading to greater financial security for citizens. They noted that this incentivizes employers to contribute more towards employee retirement plans providing a much-needed relief for the people of Kenya.

Clause 14 (b) & (c)

108. The stakeholder proposed the deletion of the clauses as the smooth transfer of immovable property through the creation of family trusts will become much more expensive. They noted that this channel creates a form of tax relief during property transfer, but it also incentivizes the formation of family trusts for proper management of properties. Without this incentivization, family properties may be squandered and others left destitute. This provision may exacerbate conflict within the family.

Committee Observation
The Committee agreed with the stakeholder noting that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 15

109. The stakeholder proposed to amend the proposal to consider a more minor increase in tax and consider clarifying if the same rates apply to non-residents as well as residents. They noted that the enormous jump from 5% of the gross turnover of a business to 30% of the profit of a business may discourage the growth of the digital space in the end. Additionally, Residents should be charged lower than non-residents to encourage the growth of the local digital space.

Committee Observation

The Committee noted that clause 15 sets out the rates for residents and non-residents on the various tax obligations. Further, the stakeholder has not specified which item is being referred to. In any case the rates for residents are much lower than for non-residents.

Clause 20 (a) (vii)

110. The stakeholder proposed deletion of this clause and retaining the current status noting that this may negatively affect the motor vehicle industry and other related industries such as transportation, warehousing, marketing and assembling.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain.

Clause 20 (b) (iv)

111. The stakeholder proposed deletion of the clause and retaining the entry fees as exempt. They noted that National parks and reserves are a key source of tourism revenue, both local and international. An increase in the price of entry may discourage tourism, especially local tourism.

Committee Observations

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 25 (a) (i) (A)

112. The stakeholder noted increasing excise duty of 'imported sugar excluding sugar' to Shs. 7.50 per kg may discourage the importation of sugar, thereby affecting the importation sector.

Committee Observations

The Committee observed that it is vital to protect the local sugar industry and give them competitive advantage. However, the Committee noted the need to exempt imported sugar for industrial use as it is a raw material.

Clause 25 (a) (i) (B)

113. The stakeholder supported the proposal noting that this may create a favorable atmosphere for the growth of electric car assembly plants in the country.

Clause 25 (a) (i) (C; D; E; & F)

114. The stakeholder noted that increasing the excise duty rate of these products may lead to an increase in their prices, thereby leading to a decline in cigarette trade in the country, and for nicotine products, it may lead to a decline in nicotine trade and use in the country.

Committee Observations
The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by cigarette smoking. Additionally, harmonization of the rate of both the filter and non-filtered cigarettes is meant to protect revenue leakage as a result of mis-declaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25 (a) (i) (G)

115. Delete the proposal. The stakeholder noted that imposing 25% excise duty on imported Electric transformers would lead to increased costs of these items in the country, thereby leading to expensive and delayed maintenance of transformers.

Committee Observations
The Committee agreed with the stakeholder.

116. Additionally, imposing excise duty rate of 35% of the total customs value, or shs. 100 per kg on Imported ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary structures would affect the construction industry, due to the increase of prices.

Committee Observations
The Committee agreed with the stakeholder to delete the proposal.

117. Further they noted that imposing 5% of the total customs value or 27,000 per metric ton of excise duty on Coal may lead to an increase in its price to the market. Since coal is a highly used source of energy, on both small scale, such as households, and large scale, such as industries, this rise shall affect not only the economy by causing a downward decline but also lower the standard of living for families that may not be able to afford coal.

Committee Observations
The Committee noted that the proposed excise duty of Ksh27000 per MT is way above the cost of coal in the international market. Therefore, there is a need to review the proposed excise duty.

Clause 25 (a) (i) (H)

118. The stakeholder noted that raising the excise rate charged on imported sugar confectionery by shs. 42.91 per kilogram of the total customs value, bringing the proposed rate to shs 85.82 per kilogram, may increase their prices.

Committee Observations

The Committee noted the stakeholders' views; however, the proposal to increase the excise duty rate is meant to protect the local industry and give it a competitive advantage.

Clause 25 (a) (i) (I)

119. The stakeholder proposed deletion of the clause noting that imposing a 20% excise duty on the products listed will greatly affect the textile industry in the country, and may lead to economic strain and higher prices.

Committee Observation
The Committee noted the stakeholders concerns however; the Committee was of the view that this will protect the local manufacturing industry.

Clause 25 (a) (i) (M)

120. The stakeholder submitted that this proposal be deleted because inclusion of self-adhesive plates, sheets, film, foil, tape and strips of plastics in the tax bracket, and thereby charging them an excise tax of 25% of the total customs value or Kshs 75 per kilogram- whichever is higher is set to affect the hospitality and catering industry, putting a strain on them.

Committee Observation
The Committee noted the stakeholders concerns however; the Committee was of the view that this will protect the local manufacturing industry.

Clause 25 (b) (i)

121. The stakeholder noted that raising the excise rate charged on telephone or internet and data services by 5% of the total customs value, bringing the proposed rating to 20%. This may lead to the increase of their prices.

Committee Observation
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promoting the digital superhighway agenda.

Clause 25 (b) (ii; iii; iv; & v)

122. The stakeholder noted that raising the excise rate charged on betting, gaming, prize competition, & lottery by 2.5% of the total customs value, bringing the proposed rating to 15% may lead to increased prices.

Committee Observation
The Committee noted that imposing a higher excise duty rate on betting, gaming, prize competition & lottery will likely yield more revenue. Additionally, it will discourage betting, which is commendable.

Clause 26

123. The stakeholder proposed deleting the clause as raising this levy by 1% of the total customs value shall lead to increased prices for customs, thereby reducing the purchasing power of the customers and strain the already preexisting trade relations.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected for the proposed increase shall be committed to developing an electric light rail system within the big metropolis in Kenya. The Committee, however, proposed a new rate of 2%.

3.2.13 ASSOCIATION OF PENSION TRUSTEES AND ADMINISTRATORS OF KENYA

Clause 14

124. APTAK proposed amending the clause by deleting the words "provident funds". The stakeholder noted that the National Treasury circular no. 9 of 2024 issued policy guidelines to close provident funds and move to pension funds. The provident funds are no longer applicable.

3.2.14 KENYA ASSOCIATION OF MANUFACTURERS (KAM)

Clause 2 (d)

125. KAM proposed the deletion of the clause because the proposed change includes payments for software that does not grant intellectual property (IP) rights to a person. Additionally, including software under the definition of royalty goes against international best practices such as the Organisation for Economic Co-operation and Development (OECD). Article 12 of its Model Tax Convention on Income and Capital, provides that software distributors only pay for the acquisition of the software copies and not exploit any rights in the software copyrights. Therefore, payments in these transactions should be dealt with as business profits and not as royalties.

126. Further, Kenyan Courts have issued a judgment upholding the OECD interpretation. This was in the infamous case of *Seven Seas Technologies Limited v Commissioner of Domestic Taxes, Income Tax Appeal No. 8 of 2017) where the court held that* payment of a *license fee for software did not mean acquiring any partial rights in copyright and thus not subject to royalty.*

Committee observations

The Committee was of a different view that the provision does not deal with the distribution of software.

New proposed Amendments to the VAT Act:

127. Section 17 of the Value Added Tax Act, is to be amended in subsection (5) by inserting the following new paragraphs (f) and (g) immediately after paragraph (e):

(f) such excess arising from making zero-rated supplies but was not recovered by the registered person within two years as a result of the Commissioner's reliance on the apportionment formula under Paragraph 8(2) of the Value Added Tax Regulations, 2017.

(g) input tax arising from the purchase or importation of capital goods for use in the production of zero-rated supplies.

128. Section 17(5) of the Value Added Tax Act, be amended by adding the following proviso immediately after the provisos to Subsection (5):
"Provided further that, notwithstanding any other provision of this Act, a registered person may apply for a refund under Section 17(5)(f) within two years from the commencement of this provision."

129. The proposed amendment is premised on the analogy that manufacturers who trade in both zero-rated and standard-rated supplies have incurred a substantial amount of excess input value-added tax ("VAT") credits. To improve its cash flow, the manufacturing companies periodically apply for refunds of the excess input VAT arising from production of zero-rated supplies. Manufacturers continue to encounter challenges in their VAT refund application upon the enactment of the VAT Regulations, 2017 which introduced a formula ("the 2017 formula") under Regulation 8 (2) to determine the portion of input VAT refundable to an entity that produces both zero-rated and standard-rated supplies. As a result, some of the manufacturers have accumulated a substantial amount of VAT credits (Credit adjustment Vouchers (CAV) it is unable to recover or offset against our output. This situation has left us in a perpetual VAT credit position leading to severe cash constraints.

Committee observation
The Committee noted the stakeholders views and recommends that the National Treasury and KRA finds a way to resolve the matter.

Clause 21 (a), (b), (c) and (d)

130. The stakeholder proposed the deletion of clause 21 (a) and (b) because the transfer of these products from zero rated status to exempt implies that the input VAT paid on overheads such electricity, transport, water and logistics will not be refundable. These inputs constitute approximately 30% of the total production cost of these products. As such the transfer will increase the price of essential agricultural commodities significantly.

Committee Observation
The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

131. The stakeholder proposed the deletion of the proposed clause 21 (c) and (d) on removal of fertilizers from the second schedule (zero rate) of the VAT Act because

fertilizers support high crop yields by providing crops with the nutrients required which in return enhances food quality and security. In addition, over the years, Kenya has attracted investments in fertilizer manufacturers. Removing the same from the zero-rate schedule will subject fertilizers to more taxes, making them unaffordable to farmers.

Committee Observations

The Committee noted the proposal. However, they recommend that the exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

New Proposal

132. The stakeholder proposes the introduction of Item 27 on Plants and Machinery of Chapters 84 and 85 under the First Schedule of the Value Added Tax Act to Exempt plant and machinery from 16% VAT. The basis for the proposed new amendment is that the Tax Law Amendment Act 2020 was deleted from the VAT-exempt Schedule plants and machinery, thereby subjecting them to 16% VAT under Item 27 of the First Schedule of the Value Added Tax Act. However, plant and machinery are a critical asset to the business operations around which the whole business revolves to ensure productivity. Globally, business plant and machinery costs are incentivized to encourage investments and subsidize costs for manufacturers thus the introduction of VAT on plants and machinery has also led to increased VAT refunds owed to manufacturers. Therefore, VAT is needed to be exempted from machinery to ensure it is not captured under the ITax system as capital expenditure input items.

Committee Observation

The Committee was of a different view that this is a revenue-raising measure.

133. The stakeholder proposes amendment of the Second Schedule to the Value Added Tax Act in Part A as follows;

(a) By inserting the following new paragraph immediately after paragraph 35

"36. Materials, waste, residues and byproducts, whether or not in the form of pellets, and preparations of a kind used in animal feeding of tariff numbers 1213.00.00,1214.10.00,

2308.00.00, 2309.90.10, 2302.10.00, 2303.20.00, 2304.00.00, 2306.20.00, 2306.41.00, 2306.50.00, 2306.90.00, 2835.26.00. 2309.10.00, 2309.90.90, 2302.30.00, 2303.30.00, 2306.10.00, 2306.30.00, 2306.49.00, 2306.60.00, 2835.25.00 and "

(b) delete Part 1 of the First Schedule in the VAT Act

134. The basis for the proposed new amendment is that animal feeds remain to be a significant cost for farmers. Consequently, the high cost of feed constrains the competitiveness of Kenya's livestock sector as it results in higher prices for final products as there is a need to recover the associated production costs, hence ensuring the sustainability of businesses. Therefore, to support the livestock sector,

there is a need to reduce further the costs related to animal feeds as this will enhance the sector's competitiveness. Zero-rating animal feeds will indeed be one of the policy directives to support the livestock sector. The current status of VAT exemption means that animal feed manufacturers cannot claim input VAT related to electricity and related costs.

Committee Observation

The Committee agreed with the stakeholders.

Clause 23

135. KAM supported the proposal, noting that there is a need to develop strict regulations on spirits to avoid high illicit alcohol incidence because it will increase the level of local raw material sourcing, which will benefit agricultural value addition, not to mention positively impacting the socioeconomic status of farmers and value chain players in Kenya. Moreover, spirits products are easily counterfeited and involve accessible blending processes, hence the need for strict regulations to support the administration of excise remission on spirits.

Clause 25 (a) (i) (A)

136. Amend to define who a registered manufacturer is since the definition of registered manufacturers will clarify who should benefit from exclusion from tax payment. Similar incentives (for example import duty exemption on industrial spare parts) took manufacturers too long to implement due to similar administrative gaps.

Committee Observation

The Committee noted the stakeholder's proposal.

Clause 25 (a) (i) (C)

137. Delete the clause and adopt a proposal of excise increases of 1.5%, 3%, 3%, 3% from financial year 2025/2026 to 2029/2030 respectively because the proposed excise increase will render tobacco manufacturing operations in Kenya uncompetitive, jeopardize employment opportunities and put at risk the $100 million annual foreign currency generated by the industry for the country.

Committee Observation

The Committee observed that the proposal intends to discourage the consumption of these products due to their negative externalities, such as the effect on health caused by cigarette smoking. Additionally, harmonization of the rate of both filtered and non-filtered cigarettes is meant to protect against revenue leakage as a result of misdeclaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25 (a) (i) (E)

138. Delete the clause and adopt a proposal of excise increases of 1.5%, 3%, 3% and 3% from the financial year 2025/2026 to 2029/2030 respectively for products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application since the proposed change in excise duty in the Bill will result in a 25% excise duty increase in oral nicotine pouches.

Committee Observations

The Committee observed that the proposal intends to discourage the consumption of these products due to their negative externalities, such as the effect on health caused by nicotine products. Additionally, the proposed taxation of tobacco products will also discourage their consumption.

Clause 25 (G): Introduction of 5% on customs value or Kshs. 27,000 per MT on Coal

139. Delete the clause because Coal is among the most widely used fuels for power generation due to its low cost, and availability to power high-intensive industries globally, regionally, and locally. Further, Coal is an integral part of Cement Clinker and cement manufacturing and therefore to ensure that local companies produce affordable products, their costs for raw materials, intermediate products, and inputs must remain low. This will likely make the production cost related to cement significantly higher. Further, application of the tax will affect the construction sector in terms of potential job loss in the sector and revenue loss to the government.

Committee Observations

The Committee noted that the proposed excise duty of KShs. 27000 per MT is way above the cost of coal in international market. Therefore, there is need to review the proposed excise duty.

Clause 25 (G): Float glass and surface ground or polished glass, in sheets

140. Delete the clause because the proposed introduction of 35% of custom value or Shs. 200 per kilogram of float glass, will significantly raise processing costs, with potentially devastating consequences for the glass industry in Kenya. It is also important to note that all of the glass processors generate a tremendous amount of revenue for the government through taxes and economic activity. Introducing the excise duty on float glass could adversely affect this revenue stream in the long run.

Committee Observation

The Committee noted the stakeholders concern, however, they recommends to amend the HS code to replace 7005 for a correct HS code 7007.

Clause 25 (G): Imposition of 15% excise duty on imported printing ink of tariff 3215.11.00 and 3215.19.00 excluding originating from EAC.

141. Delete the Clause since the proposal will affect manufacturers in the print sector where ink is used in the manufacture of exercise books, textbooks, and notebooks, thus increasing the cost of Exercise books and stationery, causing the costs in the

education sector to rise. Additionally, this will increase the prices of local commodities as the prices will be transferred to the final consumer. Further, Kenya's export products competitiveness will significantly decline within the region since this proposal will impact the packaging materials for export products. Additionally, KAM proposes the provision of duty remission on input for manufacturer ink which includes resin and lacquers.

Committee Observation
The Committee noted the stakeholder's proposal however, they noted that the proposal is aimed incentivize the local manufacturers.

Clause 25 (H)

142. Delete clause because the doubling of the excise duty as proposed is not sustainable as this increase cannot be passed on to consumers by way of higher prices without leading to a collapse in sales volumes. This will lead to lower tax collections for the government as excise duty revenue is dependent on tonnage/volumes. It will also lead to reduced financial investment by businesses in the sector, which will lead to loss of income and jobs in the retail sector. Maintaining rates at current levels will allow businesses involved in the marketing and distribution of these products to sustain and grow sales volume. This will enable the government to meet its revenue collection targets and keep incomes and jobs in the retail sector safe.

Committee Observation
The Committee noted that the stakeholders view, however, the proposal to increase the excise duty rate is meant to protect the local industry and give them competitive advantage.

Clause 25 (I)

143. Delete clause based on the fact that Kenya has the highest duty structure for resins in the region thus it places undue disadvantage for paint manufacturers for local manufacturers. Notably export of paints from Kenya have reduced since the introduction of excise duty from 1500 tons to 1200 tons between 2021 and 2022, with imports increasing in the same period. Excise duty on resins not locally manufactured is therefore detrimental to local industry.

Committee Observations
The Committee noted the stakeholders concerns however; the Committee was of the view that this will protect the local manufacturing industry.

Clause 25 (a) (i) (J)

144. Amend the wine excise duty rate to read as below:

(J) in the description of "Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits", by deleting the corresponding rate of excise duty and substituting therefore the rate of excise duty "shs. 10 per centiliter of pure alcohol";

145. They submitted that this would align the excise duty rate for spirits with that of our regional counterparts, Uganda and Tanzania, guaranteeing consistency and competitiveness within the East African Community market. The disparities in tax rates can lead to market distortions, for example, cross-border alcohol smuggling, undermining local businesses and tax revenue collections.

Committee Observation

The Committee noted that the aim of the proposal was to raise additional revenue for the Government and charge excise duty on alcohol content.

Clause 25 (a) (i) (K)

146. Amend the beer rate to read as below:

(K) in the description of "Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non- alcoholic beverages and spirituous beverage of alcoholic strength not exceeding 6%", by deleting the corresponding rate of excise duty and substituting therefore the rate of excise duty "shs. 20 per centilitre of pure alcohol"

147. They emphasized that High excise duties lead to increased costs for both manufacturers and consumers, which can disproportionately burden lower-income consumers. This drives them to purchase cheaper alternatives which are illicit.

Provided that beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufactured by licensed small independent brewers shall be subject to the rate of "shs. 10 per centilitre of pure alcohol."

K(1) An independent small brewer means a person licensed under section 17 and has met the below additional criteria:

(a) Has been granted a license by the Kenya Revenue Authority certifying the Person as a small independent brewer.

(b) When granting the license the Kenya Revenue Authority shall ensure that the applicant shall have a maximum annual production capacity of 150,000 litres and the person shall also not be affiliated with any local or international alcohol manufacturer.

(c) The Kenya Revenue Authority Commissioner shall revoke the license once the brewer has surpassed the annual production capacity of 150,000 litres.

148. They highlighted that this will enhance clarity and fair competition through a defined production cap and to support small businesses and local entrepreneurs.

Committee Observation
The Committee noted that the proposal aimed to raise additional revenue for the Government and charge excise duty on alcohol content.

Clause 25 (a) (i) (L)

149. Retain the proposed spirits rate because the new excise rate will increase compliance, mainly because the incentive to evade high taxes is lifted. Improved compliance enhances data capture, market transparency, and accurate tax revenue predictions.

Committee Observations
The Committee noted that the proposal aimed to raise additional revenue for the Government and charge excise duty on alcohol content.

New proposed Amendments

150. Amend Clause 25 (a) (i) (L) to read as follows:

*(L) "In the description of "spirits of undenatured ethyl alcohol; spirits liqueurs, and other spirituous beverages of alcoholic strength exceeding 6%", the excise duty rate is stated as "shs. 10 per centilitre of pure alcohol"; **Provided that Undenatured Extra Neutral alcohol strength exceeding 80% being purchased by a duly registered alcohol manufacturer shall be subject to the rate of Kes. 356 per litre.***

151. They noted that Extra Neutral Alcohol (ENA) is a raw material used to manufacture spiritous beverages. If tax rate is changed to be ABV based it will significantly occasion cash flow challenges to manufacturers. ie manufacturers will have to pay upfront Kes. 960 per liter (96% abv * Kes. 10 per cl) as opposed to current Kes. 356 per liter. Looking at our neighboring countries, Tanzania does not currently charge an excise tax on ENA, whereas Uganda currently charges Ush. 2,500 per liter. As such, our current excise rate of ENA is four times the Uganda rate thus reducing cash flow and making local manufacturing in Kenya uncompetitive.

Committee Observation
The Committee noted the proposal however, does not wish to introduce complexies in the administration of excise duty on Spirits.

Clause 25 (i) (M)

152. Remove PVC edge banding classified under HS code 3920.43.90 for furniture manufacturers because these are specialist PVC based products which are not manufactured in the EAC. The excise tax sought to protect other PVC products

however because this HS code has a very wide description, it also includes several PVC products not made in the EAC.

Committee Observation
The Committee noted the stakeholder's concerns however noted that the proposal will discourage use of plastics in line with climate change.

New proposed Amendments

153. Amend the Excise Act to include the following amendments providing for loss of allowance for spirits in transit as follows:

> **2)** *The Commissioner may, in the ascertainment of the volume of spirits, calculate as follows—*
>
> *(i) by use of a mass flow meter at twenty degrees centigrade*
>
> *(ii) With an accuracy of +/-3% of the measured volume in litres.*

154. Further, they noted that the Excise Regulations provide for the ascertainment of volumes of spirits as follows:

> *(2) Where the Commissioner under paragraph (1) directs ascertainment by weighing, the volume shall be calculated—*
>
> **i)** *by means of alcohol hydrometer and the associated practical alcohol table; or*
>
> **ii)** *by use of an automated density meter at twenty degrees centigrade.*

155. However, the process of measuring the volume of Spirits sold by distillers or received by manufacturers of spirits has changed due to the introduction of mass flow meters which are approved by Weights and Measures for custody transfer applications. It is important to note that the temperature has an effect on ethanol volume readings. When the readings are taken at warmer temperatures, the ethanol quantity is usually higher as opposed to a colder temperature. This lack of standardization normally results in significant losses. Manufacturers transporting spirits continue to be affected by losses due to the evaporation of the same. This continues to unfairly increase costs required and there is a need to have a fair calculation of the same.

Committee Observation
The Committee noted this progressive proposal and recommends the proposal be accommodated in the future reviews of this section.

156. Amend The First Schedule to the Excise Duty Act Schedule in Part I as below:

In the description of "Imported eggs of tariff heading 04.07", by inserting the words "excluding eggs originating from East African Community Partner States that meet the East African Community Rules of Origin" at the end thereof

157. They submitted that the Finance Act 2021 introduced a 25% excise duty on imported eggs of tariff 0407 which has been charged on both table/fresh eggs and hatching eggs. Unfortunately, the excise duty increased the cost of sourcing hatching eggs from the EAC region required to produce chicken, thereby affecting Kenya's competitiveness in poultry products. Since Kenya is a signatory to the EAC Treaty and its Protocols, Kenya needs to treat products originating from EAC Partner States in the same manner as Kenyan products. Additionally, in the current Tax Laws (Amendment) Bill, there are similar exemptions where excise duty will not be charged on products originating from EAC partner states, e.g., imported printing inks. Therefore, eggs originating from EAC partner states should be exempted from the excise duty.

Committee Observation
The Committee noted the stakeholder's proposal and recommended exempting eggs meant for hatching instead of table eggs.

158. Amend The First Schedule to the Excise Duty Act Schedule in Part I as below:

by inserting the word "Imported" immediately before the description of "Food Supplements"

159. They noted that the current taxation structure in the food supplement industry has affected the ability of local products to compete against internationally imported brands that dominate the market. In terms of excise duty, local manufacturers are paying excise duty on both the inputs (self-adhesive plastic stickers - 3919.90.90) and the final product. Unfortunately, they are unable to offset the excise duty charged on the packaging material against that charged on the final product as packaging material is not deemed a raw material to which the excise can be offset against the final product as per Section 14 of the Excise Duty Act. This is double taxation for local food supplement manufacturers Therefore, there is a need to create a level playing field for local manufactured food supplements against imported food supplements and this has been done in other industries such as chocolate and sugar confectionery where manufacturers enjoy protection from imports through an Excise Duty which is only imposed on imported products.

Committee Observation
The Committee was of a different view that the excise duty is necessary for raising revenue.

Clause 26

160. Delete clause 26 because increasing of RDL to two-point five (2.5%) percent will adversely impact the local manufacturing sector. The Finance Act, 2023 had reduced RDL from 2.5% to 1.5% in an effort to reduce the cost of raw materials and incentivize growth of local manufacturing. This proposal to return the RDL rate back to 2.5% is likely to reverse any economic progress made through Finance Act, 2023.

Committee Observation
The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

New Proposal to amend the Third Schedule of the Miscellaneous Fees and Levies Act.

161. Amend the miscellaneous fees and Levies Act to remove kraft paper of HS codes 4804.21.00; 4804.31.00 and 4804.11.00 from the list of products attracting EIPL because kraft paper classified under the HS codes 4804.29.00 and 4804.21.00 is utilized for the manufacture of packaging material used in primary packaging of food products such as Unga and tetra pack for milk and yogurt. As such, the imposition of the export and investment promotion levy has significantly increased the cost of production and hence reduced the competitiveness of Kenyan exports to the region and the world.

Committee observation
The Committee noted that the levy is not under consideration in this bill, and the proposal may be considered in the future.

3.2.15 GRANT THORTON

Clause 25

162. Deletion of the proposal of 15% excise duty on wagers and stakes in betting and gaming activities and replacement with 5% on deposits made by punters or players. This will guarantee the collection of tax revenue where excise duty is collected at source when customer deposits their funds to their gaming wallet.

Committee observation
The Committee noted that imposing a higher excise duty rate on betting, gaming, prize competition & lottery is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

Clause 20 (a)

163. Delete the proposal and retain the products as exempt. Making the above services Vatable increases the cost of doing business. They noted that introducing VAT on these items will make Kenya an expensive tourism destination. Domestic tourism has

seen a surge recording 2.25 million bed nights, up 10% from last year as per Kenya Tourists Board. There is need to encourage the trend.

Committee observation

The Committee agreed with the stakeholder.

Clause 20 (b)

164. Delete the proposal and retain the services as exempt. Making these services vatable will increase the cost of doing business and make Kenya an expensive tourism destination. Further, the introduction of VAT on betting, gaming, and lottery services will erode the actual stake a customer places per bet and, therefore, will adversely impact the withholding tax on winnings collected.

Committee observation

The Committee noted the stakeholders concerns. However, the Committee noted that imposing VAT on betting, gaming, & lottery is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

3.2.16 TRAVEL 'N STYLE LTD

Clause 20 (b) (iii)

165. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convention on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation

The Committee agreed with the stakeholder

3.2.17 MOHAMED BAFAGIH (VOGUE TOURS & TRAVEL LTD)

Clause 20 (b) (iii)

166. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation

The Committee agreed with the stakeholder

3.2.18 SILVERBIRD TRAVEL PLUS LTD

Clause 20 (b) (iii)

167. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholders

3.2.19 PHYLIS GITAU

Clause 20 (b) (iii)

168. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.20 OTTINAR MKOTO ALUKUMA

Clause 20 (b) (iii)

169. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international

VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.21 PHOEBE MWENDE KYALO

Clause 20 (b) (iii)

170. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.22 FAITH MUMBUA KIOKO

Clause 20 (b) (iii)

171. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.23 STEVE MULINYA

Clause 20 (b) (iii)

172. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO)

and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.24 FLY BEYOND AFRICA

Clause 20 (b) (iii)

173. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.25 DIDI TRAVELS LTD

Clause 20 (b) (iii)

174. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.26 KISHORI SHAH

Clause 20 (b) (iii)

175. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International

Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.27 JAMES GITONGA

Clause 20 (b) (iii)

176. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.28 KIIRU MAHIAINI

Clause 20 (b) (iii)

177. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.29 LILIAN MING'ALA

Clause 20 (b) (iii)

178. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins

in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.30 MAURICE MUNYAO

Clause 20 (b) (iii)

179. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.31 SPLASH WORLD TRAVEL LIMITED

Clause 20 (b) (iii)

180. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.32 NICANOR SABULA

Clause 20 (b) (iii)

181. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.33 TRAVEL CREATIONS LTD

Clause 20 (b) (iii)

182. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.34 PHOENIX SAFARI

Clause 20 (b) (iii)

183. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.35 AIRMASTERS

Clause 20 (b) (iii)

184. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.36 ISABEL WAIRIMU

Clause 20 (b) (iii)

185. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.37 BETTERBY LIMITED

Clause 20 (b) (iii)

186. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.38 ANNE NG'ENDO

Clause 20 (b) (iii)

187. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.39 BIGMAN TRAVEL & HOLIDAYS LIMITED

Clause 20 (b) (iii)

188. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convention on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.40 CHRISTINE NDERIMO

Clause 20 (b) (iii)

189. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.41 MUMBI NJOROGE

Clause 20 (b) (iii)

190. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convention on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.42 DANIEL MAINA

Clause 20 (b) (iii)

191. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.43 RUFUS MUTWIRI

Clause 20 (b) (iii)

192. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international

VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.44 THE TICKET COMPANY LIMITED

Clause 20 (b) (iii)

193. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.45 COLLINS MUTUA MUEMA

Clause 20 (b) (iii)

194. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.46 ESTHER NJOKI GITONGA

Clause 20 (b) (iii)

195. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convection on International

Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation
The Committee agreed with the stakeholder

3.2.47 LEXLINK CONSULTING

Clause 7

196. Amend Clause 7 of the Bill to allow the deduction of Housing Levy contributions to apply to all incomes, not just employee income.

Committee Observation
The Committee noted that there is an existing provision in the Affordable Housing Act that allows private business to deduct the levy as an expense.

Clause 12

197. Lexlink Consulting proposed that Section 34 of the Income Tax Act be retained. The proposed clause will create ambiguity as it will be unclear when a tax is final.

Committee Observation
The Committee noted this is a clean up to remove unnecessary details and to provide that the rates shall of tax shall be specified in the third and ninth schedule respectively.

Clause 14 (e)

198. Delete clause 14 as it is discriminative with preference given to non-residents.

Committee Observation
The Committee observed that the provision was to give exemption to non-residents participating in a project which is 100% grant assigned by the Kenyan Government.

Clause 20

199. Lexlink were in support of the Clause to exempt goods used in the manufacture of baby diapers, sanitary towels, and tampons. Further, they propose the inclusion of adult diapers in this provision.

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 22

200. Amend to align with VAT regulations that allow for simplified registration of non-resident persons to allow for the implementation of the tax. The proposal does not provide a clear mechanism for how this tax will be imposed on persons who do not have a presence in Kenya.

Committee Observation

The Committee noted that the proposal will be addressed in the relevant excise duty regulations and the Tax Procedures Act.

Clause 25

201. Delete the clause that proposes to increase excise duty on airtime and internet services from 15% to 20%.

Committee Observation

The Committee noted that imposing a higher excise duty rate on these services is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

NEW PROPOSAL

a) Reintroduce the provision deleted in the Finance Act 2023 on the taxation of income of a wife;

b) Amend the Finance Act 2023 on payment of withholding tax due within 5 days to be due the following month so to reduce liquidity issues for taxpayers;

c) Increase revenue by:
   i. Reduce/eliminate incentives and exemptions especially those targeted at SEZs that do not employ a certain number of people. Alternatively set a minimum number of local persons who must be employed by persons who enjoy exemptions with a minimum wage.
   ii. Tax incentives provided to non-resident investors should be removed as these are unfair, discriminatory against local investors and unnecessary.
   iii. Remove exemptions for the employment income of non-resident persons working in EPZs as provided in the Eleventh Schedule of the Income Tax Act.
   iv. Stop signing unnecessary double taxation agreements.
   v. Reduce expenditure.
   vi. Widen tax base.
   vii. Increase the VAT rate by 1%.

Committee Observation

The Committee did not agree with the stakeholder's proposal.

3.2.48 CM ADVOCATES LLP

Clause 14(b)

202. Delete the Clause because taxing the income of family trusts may drive individuals to revert to using offshore trusts, leading to a potential erosion of domestic tax revenues and undermining the original policy objective.

Committee's Observation

The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 14(c)

203. Delete the Clause because family trusts are a beneficial succession planning tool that many families have adopted to secure family assets for the benefit of their future generations while reducing family conflict and disputes over assets. Introducing payment of CGT on transfers of immovable properties will inevitably discourage families from setting up family trusts in Kenya.

Committee's Observation

The Committee noted that the proposal contravenes Section 3E(3) of the Trustees (Perpetual Succession) Act, Cap 184 which provides that a trustee shall not acquire a better title to the trust property than the transferor had immediately before the transfer of the disposition.

3.2.49 THE BUNGE LA WANANCHI- NAIROBI COUNTY

204. The Bunge La Wananchi in Nairobi appeared before the Committee to express their support for the Tax Laws Amendment Bill, 2024, highlighting several key points that demonstrate how the proposed changes prioritize the interests of the common citizen ("Mwananchi").

i. **Consideration for the Common Mwananchi:** The group commended the Bill for incorporating provisions that directly benefit employees and lower-income citizens, marking the first time such measures have been implemented. Specifically, they noted that deductions such as contributions to the State Health Insurance Fund (SHIF), the Housing Levy, and Post-Medical Retirement contributions will now be deductible for employees. They noted that this move will help alleviate the financial burden on workers while ensuring their access to critical services, such as affordable healthcare, housing, and post-retirement medical care.

ii. **Simplification of Overpaid Taxes:** Bunge La Wananchi praised the proposed reforms aimed at simplifying the process of resolving disputes over overpaid taxes. These changes will streamline interactions between the Kenya Revenue Authority (KRA) and taxpayers, making it easier and faster to address tax refunds or overpayment adjustments. Such measures will enhance trust between the government and citizens while reducing unnecessary bureaucratic delays.

iii. **Integration of Business Systems with KRA:** They also lauded the proposed integration of business systems with the KRA's infrastructure, emphasizing that it will improve efficiency in tax administration. This integration will enable seamless monitoring of business activities and the automatic transmission of data to the KRA. It will reduce manual reporting, minimize errors, and enhance compliance while easing the administrative burden for businesses.

iv. **Withholding Tax on Goods Supplied to Public Entities:** Another aspect highlighted was the introduction of withholding tax on goods supplied to public entities. This measure will encourage government agencies to be more financially accountable and ensure timely payment of debts owed to suppliers.

3.2.50 FERTILIZER ASSOCIATION OF KENYA

Clause 21(c) and (d)

205. The Fertilizer Association of Kenya proposed deleting Clause 21(c) and (d), which seek to review the Second Schedule to the Value Added Tax Act. They noted that this change will negatively affect the economy by increasing the costs for farmers as suppliers will no longer be able to offset VAT costs. It will threaten food security and increase the financial burden to smallholder farmers. Although in the short-term, the taxes collected will increase, this will have a negative effect on the medium to long-term revenue collection as productivity will decrease.

Committee Observation

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

3.2.51 ALCOHOL BEVERAGES ASSOCIATION OF KENYA (ABAK)

Clause 23 -Empowering the Cabinet Secretary responsible for the National Treasury to exempt spirits made from agricultural products in Kenya from excise duty.

206. ABAK is in support of the proposal for this to increase the level of local raw material sourcing, which will benefit agricultural value addition, not to mention positively impact the socioeconomic status of farmers and value chain players in Kenya.

Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 'by the 5th of the following month.

207. ABAK supported the proposal for the intended policy objective of collecting alcohol excise tax within 24 hours to discourage illicit trade, which has not been achieved. This is evidenced by spirits manufacturers' ban and vetting process in March, April, and August 2024. Cash flow and working capital have been adversely affected by the payment of excise within 24 hours.

Clause 25 a (i) (A) - Proposed Increase in Excise Duty on Imported Sugar and Expansion of Exemptions for Manufacturers.

208. Delete the proposal to increase the excise duty on imported sugar from Shs. 5 to 7.50 per kg. It also broadens the exemption criteria: instead of limiting the exemption

to pharmaceutical manufacturers, it will now apply to all registered manufacturers and licensed sugar refineries that import raw sugar specifically for processing.

Committee observation
The Committee did not agree with the stakeholder's proposal.

Clause 25 a (i) (J- L) - Proposal to levy excise duty on alcohol based on the alcohol content.

209. ABAK proposed an amendment to Clauses to levy excise duty at "shs. 10 per centiliter of pure alcohol, with an alcohol content tolerance of ±0.4%. There are administrative complexities associated with ABV ABV-based excise tax regime e.g. deviation tolerated between the ABV declared on the label and the test ABV in the liquid has not been prescribed, the process of maintaining detailed ABV reporting per batch has not been prescribed, action by unscrupulous producers to reduce tax liability by declaring a different ABV on the label that is different from ABV in the liquid, consumers having higher ABV than declared.

210. Further, aligning the excise duty rate for spirits with that of our regional counterparts; Uganda and Tanzania guarantee consistency and competitiveness within the East African Community market. The disparities in tax rates can lead to market distortions, for example, cross-border alcohol smuggling, undermining local businesses and tax revenue collections.

Committee observation
The Committee did not agree with the stakeholder's proposal.

NEW CLAUSE

211. Amend Excise Duty Act 2015 and Regulations 2020 to provide for an allowance for spirits processing and transit losses. Delete Section 36 (2) and replace it with: -

2) Where the Commissioner under paragraph (1) directs ascertainment by the volume shall be calculated—
a) by use of a mass flow meter at twenty degrees centigrade
b) With an accuracy of +/-3% of the measured volume in liters

Justifications

212. The process of measuring the volume of Spirits sold by distillers or received by manufacturers of spirits has changed due to the introduction of mass flow meters which are approved by Weights and Measures for custody transfer applications. Temperature affects ethanol volume readings. When the readings are taken at warmer temperatures, the ethanol quantity is usually higher as opposed to a colder temperature. This lack of standardization normally results in significant losses. Before 2015, Kenya's Customs and Excise tax law provided a 1% spirits process and transit loss allowance on excisable raw materials.

Committee observation

The Committee noted this progressive proposal and recommends the proposal be accommodated in the future reviews of this section.

3.2.52 ECART SERVICES KENYA LTD

Clauses 4

213. Amend the clause the seeks to amend section 10 of the Income Tax Act on taxation of income derived from services offered by the owner or operator of a digital market place or platform. The stakeholder proposed to amend the clause by removing the references to "goods" for it to read as follows—

> *Where a resident or a non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetization, property or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya.*

214. ECART argued that imposing the proposed withholding tax on payment for goods will undermine tax collection and thus not meet the expected increase in revenue. The Withholding tax on goods will additionally reverse MSME formal digitization, reduce economic activity in the digital economy while increasing offline activities, and hinder the tax base expansion strategy and BETA objectives.

Committee Observation

The Committee agreed with the stakeholder noting the need to promote the e-commerce industry which is at its nascent stage.

Clauses 4, 13 & 15

215. The stakeholder noted that varied interpretations of the clauses will lead to costly contentious litigations and will not meet its intended tax collection objective. They stated that the proposal is not clear on the withholding tax agent. Noting the current ambiguity, the proposal would be interpreted to be the buyers or the platforms owner/operators making the payment to the vendors. Further, the stakeholder noted lack of nexus of payments to Kenya stating that the proposal has not limited the application of the proposed Section 10 to only capture transactions originating from or terminating in Kenya. This gives Kenya extraterritorial enforcement of taxes which is a critical oversight.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.53 KENYA ASSOCIATION OF TRAVEL AGENTS (KATA)

Clause 20 (b) (iii)

216. Delete the clause that seeks to review the VAT exempt status of air ticketing services to be now rated at 16%. The provision will increase the cost of domestic and international travel within and outside Kenya which will also affect the operating

costs and margins in the air travel sector. The VAT implication means that international air ticket agents will have an undue advantage over local travel agents because they will not register for VAT or levy VAT on a service that is booked off shore. VAT being a consumption tax that is borne by the final consumer, the provision will impact the final price levied to the consumer.

217. Additionally, the stakeholder stated that the costs of purchasing tickets and ticketing services is affected by other indirect airport charges to include landing, noise, parking, common user terminal equipment etc hence the proposed tax will make tickets and other specifically air ticketing services more expensive. The tax proposal portrays an element of contradiction of the provisions in the Convention on International Civil Aviation (Chicago Convention), International Civil Aviation Organization (ICAO) and Organization for Economic Corporation and Development (OECD) international VAT guidelines. Article 2(5) of the Constitution of Kenya 2010 directs that general rules of international law shall be part of Kenyan laws.

Committee Observation
The Committee agreed with the stakeholder on the need incentivize the tourism sector hence the exemptions should remain

3.2.54 CLIFF DEKKER HOFMEYR (CDH)

Clause 2

218. Delete the clause and retain the definition of 'royalty' as it is in the Income Tax Act. This is because the proposed amendment if adopted in its current form, would classify all software-related payments as "royalties" and subject them to WHT. In addition, they noted that the training, maintenance, and support fees that the Bill seeks to classify as royalties are already subject to WHT as management or professional fees

Committee Observation
The Committee was of a different view that the provision does not deal with distribution of software.

Clause 4

219. Delete clause 4 of the Bill that proposes taxation on payments made by owners or operators of digital platforms or marketplaces by a resident or non-resident. CDH proposes that the provision apply only to residents or non-residents with a permanent establishment (PE) in Kenya. They noted that by imposing the obligation to account for the withholding tax ("WHT") on non-residents with no PE in Kenya, the Kenya Revenue Authority ("KRA") may lack the visibility, reach, and capacity to enforce compliance. Additionally, the imposition of an additional compliance requirement on the operators of these platforms may make Kenya unattractive and put these Kenyans' livelihoods at risk given the growing number of Kenyans earning income from sources such as content creation, sponsorship, and advertisement through digital platforms.

Committee Observation
The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 5

220. CDH noted that should the proposal to introduce the Significant Economic Presence (SEP) Tax be retained, then the proposed minimum top-up tax should be abolished entirely and the SEP tax be revised to 1.5% of the gross turnover earned by the non-resident person in Kenya. Given that the proposed SEP tax has no significant variations from the current DST, it would still qualify as a unilateral measure within the OECD's 2-Pillar Solution context.

Committee Observation
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses than businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies had not benefitted from reduced production costs.

Clause 6

221. CDH proposes that clause 6 be deleted if the Significant Economic Presence tax is upheld in this Bill. This proposal signals Kenya's intent to comply with Pillar 2 of the OECD's 2-Pillar Solution, which is designed to ensure that MNEs pay a minimum amount of tax at 15% with respect to their global profits. However, among the conditions for implementing the 2-Pillar Solution is the elimination of DST and other unilateral measures; it would be prudent to select either alternative or not both to align Kenya with the OECD Inclusive Framework on BEPS, of which Kenya is a member.

Committee Observation
The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 15

222. Delete the provision in Clause 15 (b)(ii) (A) because this proposal will eliminate the incentive to invest in these instruments, thus reversing these instruments' attractiveness and potentially depriving the Government of access to funding.

Committee Observation
The Committee agreed with the proposal

Clause 17

223. Amend this proposal to specify what is meant by export confirmation documents or the deletion of this section. This will clarify what the Bill requires of the taxpayers for better compliance. Clause 17 proposes to set the time of supply of exported goods as when the registered person has possession of the required export confirmation documents.

Committee Observation
The Committee agreed with the stakeholder's proposal, noting a need for clarification on what constitutes export confirmation documents, and recommends an amendment to cure the concern.

Clause 20 (a)(vii)

224. Delete Clause 20 (a)(vii) and retain the service at zero-rated status. This proposal of standard rating of locally assembled cars for the transportation of tourists, seems to be counterintuitive and ill-advised, as it will increase the costs for operators in the tourism sector.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (b) (iii)

225. Delete the proposal

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (b) (iv) and (v)

226. Delete Clause 20 (b) (iv) and (v) of the Bill that proposes to subject entry fees to national parks and services of tour operators to 16% VAT. This proposal affects the tourism sector adversely and would make the country less attractive to tourists.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 22

227. Delete Clause 22 of the Bill that proposes to charge Excise Duty on excisable services offered in Kenya by a non-resident through a digital platform and mandates the payment to be made by the non-resident person offering the service. This proposal could be considered excessive, particularly for non-residents with no PE in Kenya, since their services are still subject to tax under other regimes such as Withholding Tax, Digital Service Tax, and the proposed SEP tax. They noted regionally,

none of the neighbors in the EAC have imposed excise duty on digital services; therefore, Kenya may drive itself out of benefits derived from non-resident digital services.

Committee Observation

The Committee noted that WHT, DST/SEPT and excise duty are for different tax obligations

Clause 25

228. Clause 25 of the Bill proposes to impose Excise Duty on imported electric transformers and parts at 25%. Delete clause 25 (a) on excise duty on imported transformers will make electricity more expensive for Kenyans and industries as well.

Committee Observation
The Committee agreed with the stakeholders

229. Delete Clause 25 (b) (i) that seeks to increase excise duty on telephone and internet data services from the current 15% to 20 %. The proposal in the Bill is likely to increase the cost of accessing these services for the final consumers

Committee Observation
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on the promotion of the digital superhighway agenda.

3.2.55 MS. GOOLZAR HASSANALI
Clause 20(b)(iii).

230. Delete the clause because the proposed VAT rate will increase the ticket prices on local and international travel. It will be an added cost to the ticket price. Further, other indirect airport charges also affect ticket purchases (prices) and services.

Committee Observation
The Committee agreed with the stakeholder

3.2.56 MS. ESTHER MUTHEE
Clause 20(b)(iii).

231. Delete the clause because the cost of domestic and international travel within and outside Kenya will increase. The increase will also affect the operating costs and margins in the air travel.

Committee Observation
The Committee agreed with the stakeholder

3.2.57 MS. RESHMA SHAH

Clause 20(b)(iii).

232. Delete the clause because the proposed VAT rate will increase the ticket prices on both local and international travel. It will be an added cost on the ticket price. Further, ticket purchases (prices) and services are also affected by other indirect airport charges.

Committee Observation
The Committee agreed with the stakeholder

3.2.58 MR. CHRISPINE MUNENE

Clause 20(b)(iii).

233. Delete the clause because the proposed VAT rate will increase the ticket prices on both local and international travel. It will be an added cost on the ticket price. Further, ticket purchases (prices) and services are also affected by other indirect airport charges.

Committee Observation
The Committee agreed with the stakeholder

3.2.59 MS. LUCY MAINA

Clause 20(b)(iii).

234. Delete the clause because the cost of domestic and international travel within and outside Kenya will increase. The increase will also affect the operating costs and margins in the air travel.

Committee Observation
The Committee agreed with the stakeholder

3.2.60 MS. GETRUDE KARIUKI

Clause 20(b)(iii).

235. Delete the clause because the proposed VAT rate only targets local air ticketing service providers and excludes Airlines, international air ticket agents and Online Travel Agents OTAs) offering the service remotely. This will deviate business to these groups of persons/entities in view of their exclusion at the expense of local travel agents.

Committee Observation
The Committee agreed with the stakeholder

3.2.61 MR. STEVE OKOTH

Clause 20(b)(iii).

236. Delete the clause because the proposed VAT rate will increase the ticket prices on both local and international travel. It will be an added cost on the ticket price.

Further, ticket purchases (prices) and services are also affected by other indirect airport charges.

Committee Observation
The Committee agreed with the stakeholder

3.2.62 UNIFORM TRAVEL CENTRE
Clause 20(b)(iii).

237. Delete the clause because the proposed VAT rate will increase the ticket prices on both local and international travel. It will be an added cost on the ticket price. Further, ticket purchases (prices) and services are also affected by other indirect airport charges.

Committee Observation
The Committee agreed with the stakeholder

3.2.63 MS. ROSHANALI MERAH
Clause 20(b)(iii)

238. Delete the clause because global best practice and international statutes recognize international air travel as an exported service, hence zero-rated.

Committee Observation
The Committee agreed with the stakeholder

3.2.64 MR. MUNAZZAM AMIR
Clause 20(b)(iii).

239. Delete the clause because the proposed VAT rate only targets local air ticketing service providers and excludes include Airlines, international air ticket agents and Online Travel Agents OTAs) offering the service remotely. This will deviate business to these groups of persons/entities in view of their exclusion at the expense of local travel agents.

Committee Observation
The Committee agreed with the stakeholder

3.2.65 MS. DEBORAH MWAITA
Clause 20(b)(iii)

240. Delete the clause because global best practice and international statutes recognize international air travel as an exported service and hence zero rated.

Committee Observation
The Committee agreed with the stakeholder

3.2.66 MR. MESHACK VAATI
Clause 20(b)(iii).

241. Delete the clause because the proposed VAT rate will increase ticket prices for local and international travel. It will be an added cost to the ticket price. Further, other indirect airport charges also affect ticket purchases (prices) and services.

Committee Observation
The Committee agreed with the stakeholder

3.2.67 MS. JACQUE NAANYU
Clause 20(b)(iii)

242. Delete the clause because the proposed VAT rate will increase ticket prices for local and international travel. It will be an added cost to the ticket price. Further, other indirect airport charges also affect ticket purchases (prices) and services.

Committee Observation
The Committee agreed with the stakeholder

3.2.68 MS. JOY KARIUKI
Clause 20(b)(iii)

243. Delete the clause because global best practice and international statutes recognize international air travel as an exported service and hence zero rated.

Committee Observation
The Committee agreed with the stakeholder

3.2.69 MR. ABDULLAHI BULLE
Clause 20(b)(iii)

244. Delete the clause because global best practice and international statutes recognize international air travel as an exported service and hence zero rated.

Committee Observation
The Committee agreed with the stakeholder

3.2.70 MR. CALISTO MARWARA
Clause 20(b)(iii).

245. Delete the clause because the cost of domestic and international travel within and outside Kenya will increase. The increase will also affect the operating costs and margins in the air travel.

Committee Observation
The Committee agreed with the stakeholder

3.2.71 MS. SURINDER KAUR

Clause 20(b)(iii)

246. Delete the clause because the proposed VAT rate will increase the ticket prices on local and international travel. It will be an added cost to the ticket price. Further, other indirect airport charges also affect ticket purchases (prices) and services.

Committee Observation

The Committee agreed with the stakeholder

3.2.72 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

Clause 1

247. Amend Clause 1 to include the commencement date for the Bill, as it has been omitted. The absence of a commencement date creates ambiguity in implementing the proposals in the Bill and makes it difficult for the affected sectors and stakeholders to prepare adequately for compliance.

Committee Observation

The Committee noted that it's intended for the bill to come into effect in accordance with Article 116 of the Constitution of Kenya.

Clause 6

248. Amend the clause on minimum top-up tax to align it to acceptable international tax approaches under the Africa Tax Administrators Forum (ATAF) and Organization for Economic Cooperation and Development (OECD) frameworks.

Committee Observation

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 15

249. Delete Clause 15 (b)(ii) A that seeks to introduce a tax of 5% on the interest earned from a bond, note or other similar security. The proposal will discourage investment in these bonds and hamper the momentum of developing the market as it makes Kenyan bonds less attractive.

Committee Observation

The Committee agreed with the stakeholder

Clause 25

250. Delete Clause 25 (b) (i) because it's likely to increase the cost of accessing these services for the final consumers. Raising the duty to 20% could discourage online services and digital platforms, slowing down the growth of e-commerce, digital

education, and remote work, which are crucial for economic development in the modern era.

Committee Observation
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

New Proposals

251. **ICPAK** proposes that Section 2 of the Income Tax Act be amended to define 'paid' differently. Currently, the word is defined as '"Paid" includes distributed, credited, dealt with, or deemed to have been paid in the interest or on behalf of a person.''. They proposed amending it to read as follows:

> *'' "paid" includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person and shall not include accounting accruals."*

252. The Court of Appeal, in the case of Kenya Revenue Authority and Republic (ex parte: Fintel Limited), provided an interpretation of the definition of the words "paid" and "upon payment," including accruals. The requirement to withhold and pay taxes at the point of accrual has occasioned cash flow issues for taxpayers. It makes an inaccurate assumption that taxpayers already have the cash to pay the suppliers by taking a mere accrual in their books. They noted that businesses are forced to pay taxes well in advance using the money meant for business operations before they can raise or plan to spend the suppliers.

Committee Observation
The Committee noted that a court ruling exists on the definition of "paid," which includes accounting accruals.

3.2.73 DIGITAL FINANCIAL SERVICES ASSOCIATION OF KENYA

New Proposal

253. Amend Part II, Paragraph 6 of the First Schedule to the EDA by introducing the following proviso:

> *"Provided that digital lenders licensed under the Central Bank of Kenya (Digital Credit Providers), Regulations 2022 shall be subject to excise duty in accordance with Part II, Paragraph 4 of the First Schedule of this Act*".

254. The proposed amendment will ensure that digital lenders licensed under the DCP Regulations will account for excise duty under Part II, Paragraph 4 of the First Schedule of the EDA on "other fees" as defined under Part III of the First Schedule of the EDA. This will ensure fairness and equity within the lending space, remove ambiguity and reduce the costs of digital loans.

Committee Observation
The Committee agreed with the stakeholder

255. Amend Section 4 by adding the following Sub-section immediately after Sub-section 1A. Section 6(3) of the EDA as read together with Section 4(1) of the EDA mean that digital lenders who collect excise duty at the time of maturity of the loans remit excise duty that has not yet been collected from borrowers. The amendment will ensure liability of excise duty for digital lenders will arise at the time of repayment of the loan. This will ensure that digital lenders remit excise duty that has already been collected from the borrowers as envisioned under the EDA.

256. The proposed subsection should read as follows;

> *1B) In relation to digital lenders licensed under the Central Bank of Kenya (Digital Credit Providers), Regulations 2022, the time of supply shall be the date on which the fee is repaid in full."*

Committee Observation
The Committee agreed with stakeholder

257. Amend Section 29 of the Excise Duty Act to add the following sub-paragraph immediately after Section 29(3). The application for refund should be made on the earlier of 3 years from the date of the sale of the services or the purchaser becoming legally insolvent. They noted that the qualifying requirements under Section 29(2) of the EDA are very restrictive and may not accommodate services provided to individuals. The proposed subsection will consider the realities of digital and reduce the administrative burden of recovering excise duty through refunds. The subsection should read as follows;

> *"Provided that in case of digital lending, the amount of excise duty relating the digital lending services whose payment has not been received upon expiry of 6 months after disbursement of the loan may be refunded in accordance with this Section.*

Committee Observation
The Committee noted the proposal and recommended consideration of this matter in future legislation.

3.2.74 PKF KENYA
Clause 5

258. Amend the Clause to revise downwards the SEP Tax rate of 3 % of gross revenue (which is computed as 30% on the deemed taxable profit and where the deemed taxable profit is pegged at 10% of gross turnover) and provide a lower tax rate e.g. 1% or 1.5% of gross revenue that will make Kenya attractive to non-resident investors and make the services affordable to final consumers.

Justification

The proposal seeks to double the tax payable by non-resident persons deriving income from Kenya over a digital marketplace from 1.5% to 3% of gross revenue. The increase in this tax applicable to the digital economy will likely hamper growth and negatively affect Kenya's competitiveness as a digital and Fintech hub. Further, the ultimate consumers of digital services will bear the burden as non-resident platforms are likely to pass on the additional tax costs to their customers by increasing the cost of goods and services supplied via a digital marketplace and platform.

Committee Observation
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses than businesses with a physical presence. Consequently, the increase is to adjust the deemed profit to reflect what it would have been if these companies had not benefitted from reduced production costs.

Clause 14(b) and 14(c)

259. Delete the proposal of the Bill to repeal the CIT exemption on income and the Capital Gains Tax ("CGT") exemption accorded on the transfer of title of immovable property to a family trust. This proposed amendment will discourage local family trusts and encourage the establishment of family trusts outside Kenya.

Committee Observations
The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 15(b)

260. Delete the proposal for it seeks to bring into the tax net that taxpayers leveraging on tax exemptions on infrastructure bonds to reduce their effective tax rates. The infrastructure bonds are attractive to investors due to their tax-free status and the proposed amendment may reduce investors' appetite for such bonds. The WHT will reduce the effective yield of the investment, dissuading investment in such interest-bearing bonds and securities when the Government is in a cash crunch.

Committee Observations
The Committee agreed with the stakeholder's proposal.

Clause 18

261. Delete the Clause that proposes to amend Section 17 of the VAT Act to put an end to all input VAT claimed for taxable supplies made by manufacturers who supply to official aid-funded projects as well as abolish VAT refund on excess input VAT arising to manufacturers who supply of goods and services to an official aid funded. The proposal is punitive because it imposes an additional cost burden on manufacturers who will not be able to recover the input VAT incurred in supplying to official aided projects and seek a refund for the same value. The inability to claim this cost will discourage their participation in aid-funded projects. Consequently, this could hinder the effective implementation of these projects and hamper the growth of the manufacturing sector.

Committee Observation
The Committee noted that this is a revenue-raising measure.

Clause 20

262. Delete the clause that proposes to change the VAT status of aircraft and spacecraft, including direction-finding compasses, instruments, and appliances, as well as spares for aircraft maintenance, as well as hiring, leasing, and aircraft charter from VAT exempt to standard rated at 16%. The introduction of VAT on aircraft, spares, and instruments would mean a significant surge in airline acquisition and maintenance costs. These increased costs would be passed on to consumers through escalating fares and higher charges for charters, cargo, aerial services, and unmanned aircraft vehicle (UAV) services, among others, and will negatively impact the aviation industry.

Committee Observation
The Committee agreed with the proposal to delete the clause, noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to a high cost of operation of airlines in Kenya, thus making the country uncompetitive as a regional hub. In this regard, the Committee proposes to review the proposal in the Bill.

Clause 20

263. Delete the Subclause that proposes to end VAT exemption on specially designed locally assembled motor vehicles for transportation of tourists, ticketing services supplied by travel agents, entry fees into the national parks and national reserves, and services of tour operators, excluding in-house supplies from VAT exempt to standard rated at 16%. This will negatively impact the tourism and vehicle assembly sectors. Increased costs through additional taxes will eventually be passed to tourists, rendering Kenya a less competitive travel destination.

Committee Observations
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 21

264. Delete the Clause that proposes to change the VAT status of fertilizers, including all inputs and raw materials whether produced locally or imported, supplied to manufacturers of fertilizers from zero-rated to exempt. The change of VAT status from zero-rated to VAT exempt will lead to an increase in the final price as input VAT will no longer be recoverable on inputs such as electricity, rent, etc., The fertilizer manufacturers will then pass on the irrecoverable VAT in the price to the final consumer.

Committee Observations
The Committee noted the proposal. However, they recommend that the exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 21

265. Delete the subclause that proposes to remove the VAT exemption on agricultural pest control products as well as all inputs and raw materials imported or purchased locally and supplied to manufacturers of agricultural pest control products. Though the proposal is intended to increase tax revenue collection, reclassification of the VAT status of these products from exempt to taxable will increase the cost of producing agricultural pest control products. This proposal has the resultant effect of increasing the price of agricultural pest control products since every player in the production chain will load VAT on their products.

Committee Observations
The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 25(a)(i) G

266. Delete the clause that proposes to introduce excise duty on imported electric transformers and parts. Introducing excise duty on imported transformers and their parts could significantly hinder access to electricity, especially in underserved and rural areas. Transformers are essential for electricity distribution networks, enabling power to reach households and businesses. Excise duty on these items would raise the cost of importing transformers, increasing expenses for energy providers who rely on these components to expand or maintain their networks. This cost increase may be passed down to consumers through higher electricity tariffs or could delay infrastructure projects that aim to extend the grid into remote regions

Committee Observations
The Committee agreed with the stakeholder's proposal

Clause 25 (b)(i)

267. Delete the Clause that proposes to increase excise duty on telephone and internet data services from 15% to 20%. The increased excise duty on telephone and internet data services will raise the cost of essential communication services, affecting low- and middle-income households that depend on affordable data for communication, education, and business. In a digital age where internet connectivity is crucial, this tax hike could widen the digital divide by making these services less accessible to vulnerable groups. Affordable internet access is vital for Kenya's digital transformation and economic growth. As more sectors shift to digital platforms, an increase in data costs may stifle small and medium-sized enterprises (SMEs) that rely on affordable data for operations, e-commerce, and marketing. Higher data costs could, therefore, slow economic productivity, reducing Kenya's competitiveness in the digital economy.

Committee observation

The Committee agreed with the stakeholders' proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promoting the digital superhighway agenda.

Clause 26

268. Delete the clause that proposes to increase the rate of the Railway Development Levy ("RDL") from 1.5% to 2.5%. Kenya relies heavily on importing raw materials to manufacture finished goods and a wide range of other goods. The proposal will increase the cost of raw materials, which will increase the cost of the finished products as manufacturers will load any additional taxes to the final consumer. This will also affect the price of all other imported goods into Kenya.

Committee observations

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.75 KENYA ASSOCIATION OF TOUR OPERATORS

Clause 21

269. Delete the proposal to impose VAT on National Parks and Reserves entry fees. While Kenya is renowned for its national parks and wildlife reserves and significant tourist attractions, park fees in Kenya are currently comparatively higher than those in all neighboring countries, especially for international tourists. The proposal to introduce Value Added Tax (VAT) on Park Fees will have the following significant consequences:

i. Increased Costs for Tourists: Park fees can account for as much as 25% of the package price and adding VAT t will increase the overall cost of visiting Kenya. This will lead to a decline in tourist arrivals, especially in the face of competition from countries with lower costs, such as Uganda, Tanzania, South Africa and Zambia.

ii. Pricing Out Budget Tourists: Kenya's wildlife parks are already considered expensive, particularly for international visitors. Adding VAT will make Kenya less competitive, particularly for budget tourists, which is essential to sustaining the tourism industry.

iii. Impact on Conservation Efforts: Revenues generated by Park Fees play a crucial role in conservation activities, such as wildlife protection, antipoaching efforts, park management, and environmental education. A reduced number of visitors arising from higher pricing will, in turn, reduce the funds available for conservation.

iv. Community-based conservation programs: Several such programmes rely very heavily on Park Fees. These will also suffer if tourism revenue drops due to lower numbers. V. Forward Bookings: Several safaris for 2025 have already been confirmed, and the Tour operator Brochures are currently in the Market offering safaris to new clients. These sales have not factored in VAT, and it will not be feasible to add the same after a sale has been made.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.76 ANJARWALLA & KHANNA LLP
Clause 2 (d)

270. **Delete the clause** because the overall effect of the proposed amendment is to impose withholding tax on payments made in distributing or outright purchase of software which is against international best practices. Noting that the software providers would require the Kenyan purchasers or distributors to gross up their payments, the proposed amendments will increase the cost of software acquisition for customers in Kenya. Additionally, this issue has been litigated in the High Court and at the Tax Appeals Tribunal, where it has been held in the case of *Seven Seas Technologies Limited v Commissioner of Domestic Taxes* that software distribution does not amount to exploitation and would therefore not be a royalty. These cases considered and upheld international best practice on the definition of royalty.

Committee Observation
The Committee was of a different view that the provision does not deal with software distribution.

Clause 5

271. **Maintain the clause but use the DST rate of 1.5%** and also apply the user-based factor" that is already currently in use and is therefore tried and tested as set out under Regulation 5 in the Income Tax (Digital Service Tax) Regulations, 2020. Further, apply a "revenue-based factor" that would ensure the imposition of tax on those non-residents who have a significant economic presence. The position is based on

the fact that in Nigeria, for example, which is the only other African country that imposes the SEPT, their local law provides that a non-resident person will be liable to tax in Nigeria if they have created a significant economic presence by deriving an income of approximately USD 65,000 in a year from the activities in scope. Similarly, in India, they use a prescribed revenue-based threshold of approximately USD 280,000 or a user-based threshold as the nexus rule for identifying whether a non-resident has a significant economic presence.

Committee Observation
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses than businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

New proposed Amendments to the Income-tax Act:

272. Introduce an amendment by inserting a new Sub-Section 12E (7) to read as follows:

"The significant economic presence tax shall be suspended when international consensus is reached by the members of the Inclusive Framework and the rules enter into force."

273. They noted that there are international discussions ongoing at the UN and the OECD levels on the taxation of the digital economy, where global consensus is awaited before implementing the taxation of digital services. Unilateral measures risk causing misalignment on the taxation of these cross-border activities. Pending the conclusion of the international discussions, Kenya should consider including a sunset clause to allow for the suspension of the SEPT when global consensus is achieved.

Committee Observation
The Committee noted that this will be provided for in the regulations.

Clause 18 (a)

274. They supported the proposal noting that a registered person making mixed supplies will be able to claim the exact amount of input VAT incurred in making the taxable supplies.

Clause 20 (a) (vii)

275. Delete the clause because the impact of the deletion is that removal of the VAT exemptions in locally assembled motor vehicles for the transportation of tourists is likely to dampen investment prospects in the country, specifically the Tourism sector which is a key revenue-generating sector of Kenya's economy.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (a) (x)

276. Retain as zero-rated supplies since agriculture is a key sector in Kenya which many ordinary Kenyans rely on. The proposal to exempt fertilizer will make it more expensive and unaffordable for farmers. Zero-rating these goods, therefore, supports affordability and stimulates growth in the agricultural sector, and aligns with broader economic goals such as food security and rural development.

Committee Observation
The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 20 (b) (i)

277. Delete the clause because introducing VAT on these services will increase the tax burden in the betting sector, which is already heavily taxed. The effect of overtaxing the sector will erode the actual stake a customer places and reduce demand for these activities, eventually leading to a shrinkage in tax collections.

Committee Observation
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

Clause 20 (b) (ii) (iii) (v)

278. Delete the clause because removing the VAT exemptions will likely dampen investment prospects in the tourism and aviation sectors. Tourism plays a critical role in our economy. Adding VAT to the air ticketing services is likely to decrease demand for such services and potentially, the agents may lose their competitive edge. Additionally, adding VAT on entry fees into national parks and national reserves will make the entry fees expensive and discourage visits by tourists in these areas

Committee Observations
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (b) (vi)

279. They supported the proposal noting that this will encourage investors to acquire businesses in Kenya.

Clause 22

280. **ALN proposed clarifying the registration and compliance mechanism for non-resident persons.** They highlighted that this proposal is aimed at increasing the tax base by extending it to cover excisable services offered in Kenya by a non-resident person through a digital platform.

Committee Observation
The Committee noted that this will be provided for in the regulations.

Clause 23

281. **They supported the proposal**. The addition of spirits made from agricultural products (excluding barley) as one of the products that shall be subject to excise duty remission is aimed at curbing the consumption of illicit spirits which pose significant health concerns through the reduction of costs of the spirits made from agricultural products.

Clause 24

282. **They supported the proposal**. However, they recommends that the period is extended from the 5th day of the following month to the 20th day of the following month to align to the timelines for remitting VAT. This proposal shall allow taxpayers ample compliance time to remit excise duty to the Commissioner. Further, this amendment will ease the cashflow constraints currently experienced by manufacturers of alcoholic beverages who are required to remit excise duty payments within 24 hours of removal of goods from the stockroom as the manufacturers would not have received payment from purchasers.

Committee Observation
The Committee noted the stakeholders proposal however, the Committee maintained the 5th day of the following month as it provides sufficient time for remitting VAT.

Clause 25 (a)(B)

283. **They supported the proposal**, noting that the exemption would promote local assembly and adoption of electric vehicles, potentially reducing the cost for consumers and supporting sustainability initiatives.

Clause 25 (a) (G)

284. **Delete the clause** because electricity is an essential good and all efforts should be made to ensure that items used in the electricity supply are made cheaper and not more expensive. In this regard, this proposal will potentially increase the cost of power, resulting in an increased cost of living and doing business.

Committee observation

The Committee agreed with the stakeholder

Clause 25 (b) (i)

285. **Delete the clause** because this change will directly impact the costs associated with telephone and internet services. Considering the crucial roles that internet data and telephone services play in business operations, this proposed amendment is expected to have an adverse impact on the overall cost of doing business in Kenya.

Committee observation
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

Clause 25 (b) (ii)(iii)(iv)

286. **Amend the clause by deleting the 15% and replacing the current 12.5% excise duty on stakes with 5% excise duty on deposits (i.e., all sums deposited by a customer in their online wallet inclusive of the stake) made by punters / players on a daily basis.** This is because in the last four (4) years, the excise duty regime in the betting and gaming sector has consistently been amended. From no excise duty to introduction of excise duty at 7.5% by the Finance Act, 2021, which was subsequently increased to 12.5% through the Finance Act, 2023 (against a proposal to increase the rate to 20%), and now the Bill proposes to increase the rate to 15%. The effect of sudden and frequent increases in taxes will create an incentive for unscrupulous operators to game the system in an effort to evade tax and illegal gambling which will result in unregulated activities where minors cannot be protected.

Committee observations
The Committee noted that imposing a higher excise duty rate on betting, gaming, prize competition & lottery is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

Clause 26

287. **Retain the current 1.5%** because in as much as the government aims to expand revenue, increase in RDL will directly increase the cost of imports which is likely to result in higher prices for goods, particularly essential commodities. SMEs which rely heavily on imports may experience higher operational costs due to increased importation expenses.

Committee Observation
The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.77 MACADAMIA NUTS ASSOCIATION

Clause 20(a)(x) and 21(c)

288. Delete Clauses proposes changing the status of fertilizers and agricultural pest control products from zero-rated to exempt. Importers and distributors of fertilizers will face increased costs of doing business as they cannot claim input VAT on inputs, leading to higher fertilizer prices. This rise in costs will likely discourage fertilizer use, resulting in lower macadamia yields and adversely impacting the agricultural sector. Kenya's macadamia supply, reliant on 200,000 small-scale, price-sensitive farmers, will be particularly affected, as higher input costs reduce productivity. This decline will negatively impact exports and employment, further straining the sector's contribution to the economy.

Committee Observation

The Committee noted the proposal; however, they recommend that the exemption of these goods partly reduce the costs of the inputs and further reduce the burden of tax refunds.

3.2.78 MIZANI254

Clause 20

289. Delete the proposal and maintain the exemptions because the removal of VAT exemption for goods intended to promote investment in the manufacturing sector will be detrimental to the economy. Therefore, instead of removing exemptions, the Committee should explore alternative ways to support this sector, which has shown limited growth.

Committee Observation

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 26

290. **Delete the proposal and retain the Railway Development Levy at 1.5% since any increase** in the levy at this time would further escalate costs, compounding challenges for businesses and citizens who are already grappling with losses and reassessing growth and expansion plans. Any rise in marginal costs is likely to stifle economic growth.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.79 MAURICE MUNYAO

Clause 20 (b) (iii)

291. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder

3.2.80 IBRAHIM OMAR
Clause 20 (b) (iii)

292. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder

3.2.81 KELDINE & CO LLP
Clause 21

293. Delete the proposed amendment that seeks to change the classification of certain items from zero-rated to exempt, including agricultural pest control products, fertilizers under chapter 31, and inputs or raw materials locally purchased or imported by fertilizer manufacturers, as approved by the Cabinet Secretary for Agriculture. However, this exemption could result in higher costs for manufacturers. We propose that this subclause be deleted to avoid unnecessary cost increases in the fertilizer manufacturing sector.

Committee observation
The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

New Clause Income Tax Act

294. They proposed the exemption provided under Legal Notice 91 of 2015 be enshrined in the primary law to protect the noble intentions it sought to promote. As such, the First Schedule of the Income Tax Act should be amended by introducing paragraph 74 which shall provide as follows;

'Interests to be paid on loan from foreign sources for investing in the energy or water sectors, or in roads, ports, railways or aerodromes.

Provided an exemption under this Paragraph shall be granted upon recommendation by the Cabinet Secretary for the time being responsible for respective sectors and shall be valid for not more than ten years.'

Justification

These proposals, therefore, serve to promote strategic infrastructure development by incentivizing foreign investment in key sectors such as energy, water, and transportation. These sectors are critical to the country's long-term economic growth and competitiveness, and the exemption of interest on foreign loans will help facilitate large-scale infrastructure projects vital to national development. By targeting investments in the energy and water sectors, it encourages the financing of environmentally sustainable infrastructure, thus supporting the country's climate action goals.

Committee Observation

The Committee noted the proposal and recommended consideration of this matter in future legislation.

New Clause

295. Introduce a new section under the Income Tax Act that provides;

Section 39(D)

'Any export-oriented person providing Business Process Outsourcing (PBO) services that employ at least 200 individuals for more than twelve months shall be eligible for a tax rebate equivalent to 20% of the cost of hiring these employees in the year after the year of such engagement.'

Justifications

Kenya's growing appeal as a hub for BPO businesses presents significant economic opportunities. The sector promotes employment through direct job creation by incentivizing companies to employ at least 200 people, reducing unemployment, and stimulating related industries like training, insurance, and hospitality. Additionally, it fosters economic growth by increasing export revenues as BPO services target international markets, improving Kenya's balance of payments. Furthermore, it aids in diversifying the export base away from traditional sectors like agriculture, enhancing the country's economic resilience and stability.

Committee observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

New Clause proposal- Housing Levy

296. They noted that the Act does not clarify whether the Affordable Housing Levy applies to secondary employees, such as non-full-time company directors. They further suggested that the Ministry should provide clear guidance on this issue and consider granting an explicit exemption for this category of employees. Further, they noted recent issues concerning secondary employees and the housing levy, with conflicting interpretations. The Attorney General issued an advisory indicating that the Act did not envision secondary employees. They emphasized that a clarification would resolve this conflict.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

New Clause- PAYE – Work-from-home benefits (Home offices)

297. **Keldine & Co LLP** noted that the ITA classifies the provision of furniture to employees for use in their homes as a taxable benefit under gains or profits chargeable to income tax. They proposed that furniture purchased for employees' home offices solely to facilitate remote work should be exempt from being treated as a taxable benefit. They also suggested that communication and electricity allowances for employees working from home should not be considered taxable employment benefits.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

New Clause- Exemption of Non-profit organizations from VAT

298. Keldine & Co LLP proposed that supplies made to non-governmental, non-profit organizations, and churches be explicitly exempt from VAT. Such entities, established for purposes like poverty relief, public distress, and the advancement of religion and education, are subject to VAT on taxable goods and services. They argued that exempting these organizations would lower operational costs, allowing them to allocate more resources to charitable and humanitarian activities, aligning with the government's goal of promoting the common good.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

New Clause- PAYE & individual income tax rates

299. They noted that the Finance Act 2023 introduced higher tax rates for individuals, with a 32.5% rate for those earning between Kshs. 500,000 and Kshs. 800,000 per

month, and 35% for those earning above Kshs. 800,000, exceeding the Corporate Income Tax rate of 30%. They highlighted that this disparity undermines the Government's Bottom-Up Economic Transformation Agenda (BETA) and places undue pressure on employees, whose net take-home pay is already strained by increased NSSF, NHIF, and AHL contributions. Comparisons with other jurisdictions, such as Ghana (30%), Nigeria (24%), and Mauritius (15%), suggest that Kenya's rates are disproportionately high. Citing the Laffer curve, they argued that excessive tax rates could discourage compliance and reduce revenue. They proposed reducing the top tax rate to 25% to create a more equitable and sustainable tax environment for individuals and businesses.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations and recommends the National Treasury to start the process of reviews bands and eliminating the current top bands which are above the corporate income tax rate of 30% and to improve the progressivity of all the PAYE bands.

New Clause- Shipping Tax – Amendment of Section 9

300. They noted that Section 9(1) of the Income Tax Act, as currently drafted, lacks a clear compliance framework, particularly regarding the due dates and frequency for returns and payments. They proposed that Section 9(1) be amended by repealing the proviso and replacing it with a new clause that states: "Provided that all income of a non-resident shipping line, including income from delays in taking delivery of goods or returning any equipment used for transportation, shall be deemed to be income derived from Kenya... and provided that the tax liability under this subsection shall be payable to the Commissioner not later than the 20th working day after the end of the month in which the income was realized." This amendment aims to clarify by specifying a due date for tax payments, promoting compliance and improving tax administration.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.82 PARLIAMENTARY SERVICE COMMISSION
CLAUSE 3

301. **Amend clause 3 (b) by inserting the following sub-paragraph immediately after sub-paragraph (i)**

(ia) by inserting the following new paragraph immediately after paragraph (f)

(fa) any amount paid or granted to public officer pursuant to any written law or statutory instrument, with effect from 1st October, 2022, to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased.

Committee Observation

The Committee agreed with the stakeholder's proposal.

3.2.83 TRAVELSHOPPE COMPANY LIMITED

Clause 20 (b) (iii)

302. Delete the clause because the proposed VAT rate only targets local air ticketing service providers and excludes include Airlines, international air ticket agents and Online Travel Agents OTAs) offering the service remotely. This will deviate business to these groups of persons/entities in view of their exclusion at the expense of local travel agents.

Committee Observation

The Committee agreed with the stakeholder

3.2.84 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

Clause 5

303. Amend Clause 5 to define the term 'Significant Economic Presence'. The clause should define this term precisely to ensure clarity in scope and application. Without a clear definition, determining significant economic presence may depend heavily on subjective judgments.

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 6

304. KEPSA proposed to defer implementing the proposed minimum top-up tax pending consultations with affected taxpayers to develop comprehensive regulations. They noted that there is a need for a clear understanding of the various refundable tax credit regimes (e.g., qualified versus nonqualified), their application to Pillar 2 legislation and their impact on local FDI objectives and policies. The Government might wish to consider how the Pillar 2 legislation fits in with the local realities of attracting FDI and the ability to introduce incentives the Government would deem effective to foster such FDI.

Committee Observation

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism,

potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 14

305. Delete Clause 14 (b) and (c) that seek to amend the First Schedule of the Income Tax Act that exempts income or principal sum of a registered family trust and capital gains relating to the transfer of title of immovable property to a family trust from value-added tax. Currently, trust income is taxed when distributed to beneficiaries. By introducing this amendment, the income will be subjected to double taxation as the trust's income will be taxed and the same will be taxed upon distribution to the beneficiaries.

Committee Observation
The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 15

306. Delete Clause 15 (b)(ii)(A)(iv) that introduces a 5% tax on interest earned from a bond, note or other similar security that has a maturity of at least three years and used to raise funds for infrastructure and other social services. This may significantly disadvantage the Government, when trying to raise finance, through the issuance of these forms of investments and obtaining borrowing locally. It is also not clear whether this interest income will be subject to further tax making this investment vehicle very unattractive.

Committee Observation
The Committee agreed with the stakeholder.

Clause 20

307. Delete Clause 20 (a)(iii) that seeks to delete paragraph 58 on direction finding compasses in the First Schedule of the Value Added Tax. The introduction of 16% VAT on Direction-finding compasses, instruments, and appliances for aircraft will result in higher costs for aircraft maintenance, which has a safety implication as the costs will be extremely high.

Committee Observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard, the Committee proposes to review the proposal in the Bill.

Clause 20(a)(vi)

308. Delete Clause 20(a)(vi) that seeks to make aircraft spare parts vatable at 16%. The introduction of 16% VAT on the importation of aircraft and spacecraft will result in Kenyan operators losing competitiveness due to increased purchasing or financing costs. This, in turn, will result in increased operational costs, which will be cascaded down to the consumers and traveling public.

Committee Observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard, the Committee proposes to review the proposal in the Bill.

Clause 22

309. Delete Clause 22, which would impose excise duty on non-residents offering services through a digital platform. Apart from the proposed excise duty, there are proposals to introduce a withholding tax on income from digital marketplaces and a new significant economic presence (SEP) tax. The proposed change, if passed into law, will increase operational costs for digital service providers and this additional cost will most likely be passed onto consumers.

Committee Observation
The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 23

310. KEPSA recommends having regulations to implement this provision are developed by the Cabinet Secretary to ensure the incentive is not abused, occasioning high illicit alcohol incidence and loss of government revenue. This will increase the level of local raw material sourcing which will benefit agricultural value addition, not to mention positively impact socioeconomic status of farmers and value chain players in Kenya. However, spirits products are easily counterfeited, involves accessible blending processes, hence the need for strict regulations to support the administration of excise remission on spirits.

Committee Observation.
The Committee noted the essence of having regulations in this matter.

Clause 25 (a) (i) (C)

311. Delete clause 25 (a) (i) (C) and maintain the current excise duty rates.

Committee Observation.
The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused

by cigarette smoking. Additionally, harmonization of the rate of both the filter and non-filtered cigarettes is meant to protect revenue leakage as a result of misdeclaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25 (E)

312. Amend 25(E) and increase excise duty gradually from 1.5%, 3%, 3%, 3%, 3% for financial years 2025/26 to 2029/30.

Committee Observation

The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by nicotine products. Additionally, the proposed taxation of tobacco products will also discourage their consumption.

Clause 26

313. Delete Clause 26, which seeks to increase the Railway Development Levy (RDL) from 1.5% to 2.5%, because Kenya shall be uncompetitive regionally and in Africa since other countries do not have a similar levy. There is a need to support the manufacturers to be competitive locally and in exports and supply at affordable prices. They recommends increasing the RDL for non-manufacturers or only to finished imported products.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

NEW PROPOSALS.

i. **Credit adjustment vouchers (CAVs)-Credit for input tax against output tax.**

314. Introduce provisions to allow for refund of excess tax arising from zero rated supplies adjusted/ assessed using the formula before 17th June 2019 under Legal Notice No. 86 published in the Kenya Gazette Supplement No. 84 dated 17th June 2019.

Committee Observation

The Committee noted the stakeholders views and recommends that the National Treasury and KRA finds a way to resolve the matter.

ii. **Address refund for excess input credit after VAT refunds are paid under the VAT Formula**

315. Introduce legal amendments with provisions recognizing refunds arising after the VAT

Formula is applied; or

316. Separate the capital expenditure items captured on the KRA itax system which causes an

increase in credit refunds; or

317. Exemption of VAT on Machinery to ensure it is not captured under the ITax system as capital expenditure input items.

318. They proposed amending Part 1, Section A to the First Schedule of the VAT Act 2013 by

inserting: "**The supply of denatured ethanol of tariff number 2207.20.00.**"

Justification

319. Amendments to the VAT Act 2013 through the Statute Law (Miscellaneous Amendments) Act, 2024 subjected the supply of denatured ethanol of tariff number 2207.20.00 to 16% VAT effective 25th April 2024. This has been very detrimental to the growth of the Ethanol Cooking Fuel industry by rendering it unaffordable to households. This in turn makes the Government's objective of achieving universal access to clean cooking by 2028 unachievable.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

Section 14 of the Excise Duty Act

1. Amend Section 14 of the Excise Duty Act to include: -

   "Where excise duty has been paid in respect of excisable goods imported into or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials (including packaging materials) in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods."

   Committee Observation

   The Committee observed that this is provided for in Section 14.

2. Imported Glass Bottles (excluding imported glass bottles for packaging of pharmaceutical products) provided that it shall not apply to glass bottles imported from any of the countries within the East African Community- Rate of excise duty 35%.

   Committee Observation

   The Committee agreed with the stakeholder that the provision is meant to protect local manufacturers of glass bottles.

3. Amend Paragraph 1 of Part I of the First Schedule to the Excise Duty Act, 2015 to delete the following item — Description Rate Imported Glass 35% bottles (excluding imported glass bottles for packaging of pharmaceutical products)

   Committee Observation

   The Committee agreed with the stakeholder that the provision is meant to protect local manufacturers of glass bottles.

3.2.85 ALPHA TAX AND BUSINESS ADVISORY SERVICES

Clause 2(a)

320. Delete the proposal to amend the definition of royalty under subsections (b) and (f), as it contradicts international best practices regarding the tax treatment of software payments. This issue was highlighted in the case of *Seven Seas Technologies Limited v Commissioner for Domestic Taxes (Income Tax Appeal 8 of 2017) [2021] KEHC 358 KLR*, where the court distinguished between payments for partial rights in copyright, which qualify as royalties, and payments for acquiring and distributing software copies without reproduction rights, which were not subject to withholding tax under the Income Tax Act. The proposed expanded definition is likely to create increased tax disputes between taxpayers and the Kenya Revenue Authority, as it conflicts with established jurisprudence.

Committee Observation

The Committee, while noting the stakeholder's comments, had a different view that the provision does not deal with software distribution.

Clause 6

321. Defer implementation of the introduction of minimum top tax. The introduction of Pillar 2 measures will likely impact foreign direct investment (FDI), as tax is an essential component of the attractiveness for investment, as shown in many independent studies. There is a need for a clear understanding of the various refundable tax credit regimes (e.g., qualified versus nonqualified), their application to Pillar 2 legislation, and their impact on local FDI objectives and policies.

Committee Observation

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 14(b)

322. Delete the proposal to subject the income or principal sum of a registered family trust to tax. The exemptions introduced in the Finance Act 2021 encouraged the use of trusts for estate planning, and withdrawing this exemption so soon undermines the principles of tax predictability and certainty. This change could lead to capital flight, as individuals move assets to jurisdictions with more favorable tax regimes, and it may also reduce community support and charitable contributions made by family trusts to social development initiatives.

Committee Observation

The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 25(b)(i)

323. Delete the proposal to increase Excise Duty on telephone and internet data services from 15% to 20% in Part II of the First Schedule. The current 15% excise duty on communication and internet services supports the growth of the digital economy by keeping costs affordable, and fostering the expansion of e-commerce, digital education, and remote work, all vital for modern economic development. Raising this duty to 20% risks discouraging the use of online services and digital platforms, slowing economic progress. Small and medium enterprises (SMEs), which depend

heavily on affordable internet and telephone services, would face increased operational costs, reducing competitiveness, hindering innovation, and limiting market expansion. This could ultimately result in decreased productivity and potential job losses.

Committee Observation

The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

324. **New proposal to include Packaging Materials in Excise Duty Offset**

Proposal to Amend Section 14 to read as follows:

'Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as packaging or raw materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the packaging or raw materials shall be offset against the excise duty payable on the finished goods.'

Justification

The proposal to include packaging materials in Section 14, allowing for excise duty offsets on raw materials, aligns with economic principles and international best practices to ensure a fairer tax system. Without this provision, excise duty is effectively charged twice—on packaging materials and finished goods—leading to double taxation, higher production costs, and increased consumer prices. Since excise duty is globally recognized as a consumption tax meant for the final consumer, permitting offsets for packaging materials prevents intermediate producers from bearing undue tax burdens, aligning Kenya's tax framework with international standards.

Committee Observation

The Committee observed that this is provided for in Section 14.

3.2.86 TILE AND SANITARY WARE RETAILERS

Clause 25-G

325. Delete the proposal to introduce excise duty equivalent to 35% of the customs value or Shs 300 per kg on imported ceramic sinks, washbasins, pedestals, baths, bidets, water closet pans, flushing cisterns, urinals, and similar sanitary fixtures under tariff heading 6910, as well as imported ceramic tiles and finishing ceramics under tariff 6907. This amendment is poorly structured and poses a significant risk to the building and construction industry in Kenya, potentially leading to its collapse due to increased costs and reduced affordability of essential materials.

Committee Observation

The Committee agreed with the stakeholder

3.2.87 KELVIN SAITOTI NAIKUNI

Clause 4

326. Delete Clause 4, which seeks to amend the Income Tax Act to impose tax on a resident or non-resident owner or operator in a digital marketplace. The proposal seeks to tax digital content creators—many of whom are young people striving to make a living in an already challenging job market. This proposal unfairly targets individuals working in the digital space, punishing their creativity and resilience in a context of high unemployment.

Committee Observation

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 20 (iv)

327. Delete the proposal to exempt baby diapers, pads, and tampons from VAT. These products should not be subjected to VAT tax.

Committee Observation

The Committee noted that the proposal is not to subject manufacturers to VAT but to exempt them

Clause 26.

328. Delete Clause 26 which seeks to increase the Railway Development Levy (RDL) from 1.5% to 2.5%. The proposal will significantly increase the costs of imported goods. This levy will inevitably lead to higher consumer prices on a wide range of products, impacting households across the country and making everyday goods less affordable for many.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

New Proposal for Tax Laws.

329. Social Health Insurance Fund deductions should not only be made allowable deductions in the computation of taxable income but that they be done away with entirely as he believes they are forced deductions on Kenyans towards a dysfunctional Healthcare.

3.2.88 WECARE YOUTH ORGANIZATION

Clause 22

330. They supported the proposal noting that the amendment will help expand Kenya's tax base, create a more level playing field for businesses, and generate additional

revenue from the growing digital and cross-border service economy. It is essential, however, to implement clear guidelines for compliance and simplify processes for non-resident providers to ensure smooth adoption of the new provision.

Clause 5

331. They supported the proposal and recommends providing a clear, transparent, and detailed guidelines outlining the specific criteria for determining SEP. This includes setting clear thresholds for revenue, digital engagement, or market activity that would trigger the SEP Tax.

Clause 14 (d)

332. WeCare supported the proposal since Infrastructure bonds are currently tax-exempt. The 5% tax will increase revenue collection, as most people have found infrastructure bonds lucrative investments.

Clause 6

333. They supported the proposal because it will help in promoting tax fairness, curbing base erosion, and aligning with international tax practices. This provision is part of Kenya's broader efforts to modernize its tax system and ensure that multinational companies contribute appropriately to the country's development.

Clause 20 b (iv)

334. They supported the proposal however, they noted that VAT exemption for small tour operators who primarily serve local tourists should be considered to avoid undue burden on small businesses.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain

3.2.89 KOKO NETWORKS

New Clause

335. Amend Part 1, Section A to the First Schedule of the VAT Act 2013 by inserting:
"The supply of denatured ethanol of tariff number 2207.20.00"

Justification
The supply of bioethanol was VAT exempt from the Finance Act 2021, which enabled fast uptake of the KOKO Fuel solution amongst Kenyan households, where 1.3 million households cook with KOKO Fuel. Amendments to the VAT Act 2013 through the Statute Law (Miscellaneous. Amendments) Act 2024 subjected the supply of denatured ethanol of tariff number 2207.20.00 to 16% VAT effective 25th April 2024. This has been very detrimental to the growth of the Ethanol Cooking Fuel industry by rendering it unaffordable to households. This makes the Government's objective of achieving universal access to clean cooking by 2028 unachievable.

336. Currently, there is a limited supply of bioethanol due to low investment in ethanol production, mechanization, low adoption of high-yield cane varieties, and insufficient areas under cane to support an increase in production. KOKO has signed an offtake agreement with local ethanol producer(s) and is currently mopping up all domestically available technical alcohol to our specifications.

Committee Observation
The Committee agreed with the stakeholder this will promote the use of clean energy

3.2.90 BAKER MCKENZIE

Clause 5

337. Delete Clause 5 and introduce it when it clearly explains what 'Significant Economic Presence' constitutes. They noted that the Bill contains many major gaps and ambiguities regarding core aspects of the Significant Economic Presence Tax. It also over-allocated taxable profits to Kenya by taxing 100% of the assumed consolidated group profits derived from Kenya. Baker Mckenzie also proposes that if passed, KRA's tax treaties should prevail over the Significant Economic Presence Tax.

Committee Observation
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

3.2.91 SAFARICOM

New proposal Income Tax Act Section 15 (1)

338. Amend by introducing a provision in the ITA to allow telecommunication companies to claim investment allowances for capital expenditure incurred on spectrum fees over their useful life, typically 10 years. This lowers the overall cost, which will then be passed on to the final consumer, increasing the affordability of telecommunications services

Committee Observation
The Committee observed that the proposed investment allowance will lead to revenue loss and therefore, did not agree with the stakeholder.

Clause 25 (b) (i)

339. Delete the clause and retain the current rate of 15% because maintaining the Excise Duty rate at 15% will promote the industry's stability and predictability efforts, digital inclusivity and increased uptake of online jobs thus increasing employment opportunities for the youth; and contribute to the Government's Bottom-up. On the

other hand, increasing Excise Duty rate will negatively impact telephone and internet data services usage in Kenya as most Kenyans will find it expensive.

Committee Observations
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

3.2.92 MILESTONE GAMES LIMITED

Clause 20

340. Delete Clause 20 (b)(i) of the Bill that proposes to delete Paragraph 17 of Part II of the First Schedule of the VAT Act which exempts betting, gambling, and lotteries services from VAT.

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 25

341. Delete Clause 25(b)(ii) of the Bill that proposes to increase excise duty on betting from 12.5% to 15% computed on the amount wagered or staked. According to Milestone Games Limited, the betting sector is struggling to recover from the current economic crises and is ill-prepared to absorb additional tax increases, mainly because it is currently the most-taxed industry in Kenya.

Committee Observation
The Committee noted that imposing a higher excise duty rate on betting is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

3.2.93 JOYCE KARIUKI

Clause 20 (b) (iii)

342. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder

3.2.94 AGGREY WEKESA

Clause 20 (b) (iii)

343. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder

3.2.95 NASRA SULEMAN ALI
Clause 20 (b) (iii)

344. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder

3.2.96 DELOITTE & TOUCHE LLP
Clause 2(d) – Definition of Royalty

345. Amend Clause 2(d) in the definition of Royalty in part (b) by simplifying it to read: "Any software in the form of a license fee," as the proposed definition in the Bill is open to various interpretations and does not cure the commercial vs non-commercial aspect associated with software and license payments. Additionally, the proposal will lead to the deduction of withholding tax on payments unrelated to transferring the right to use software.

Committee Observation
The Committee was of a different view that the provision does not deal with distribution of software.

Clause 5

346. Amend Clause 5 by deleting the word "**ten**" and replacing it with "**five**" in the proposed Section 12E (4) so as to retain the effective tax rate of 1.5% in order to

encourage foreign direct investment in the digital economy. Additionally, the proposed increase to 3% is too steep in comparison with the DST rate of 1.5%.

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 12

347. Amend Clause 12 by clarifying that withholding tax on qualifying interest and qualifying dividend is final because if passed as is in the Bill, the Income Tax Act will lack a provision that states the tax rate on fringe benefits to individuals.

Committee Observation

The Committee noted this is a clean-up to remove unnecessary details and to provide that the rates of tax shall be specified in the third and ninth schedules, respectively.

Clause 13

348. Amend Clause 13 by excluding payments to residents who supply goods to public entities from deduction of withholding tax where such payments do not exceed KSh. 280,000 in a year. This is because SMEs generate low margins, and subjecting them to withholding tax on payments to supplies of goods to public entities will significantly affect the small business owners.

Committee Observation

The Committee noted the concerns; however, the provision is intended to improve compliance, and the rate is quite low.

Clause 14(d)

349. Delete Clause 14(d) entirely because introducing a tax on Infrastructure Bonds will make the notes, securities and bonds which are listed in the future unattractive to investors. This will additionally impact negatively on the efforts towards climate change financing and environmental sustainability goals.

Committee Observation

The Committee agreed with the stakeholder.

Clause 15 (b) (ii)

350. Delete Clause 15 (b) (ii) so that residents can be incentivized to take up Infrastructure Bonds and other securities with the emergence of climate financing and environmental, social and governance standards.

Committee Observation

The Committee agreed with the stakeholder.

Clause 20 (a) (ix)

351. Amend Clause 20 (a) (ix) by introducing a transitional period that reads as follows: "...such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: *Provided that the value of such investment is not less than two billion shillings, and the exemption was granted before 01 January 2024 and shall continue to apply for twelve months after this date*." This is because repealing the exemption on short notice without giving investors time to undertake budgeting and seek financing will disorient their investment plans and delay project implementation, consequently affecting the manufacturing sector.

Committee Observation

The Committee agreed with the stakeholder that the proposal be dropped as the exemption in the Clause has been in place since 2022 and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions.

Clause 25

352. Delete Clause 25 because the National Tax Policy seeks to address tax challenges experienced by taxpayers over time while also promoting predictability and transparency.

Committee Observation

The Committee noted the stakeholder's concerns however, this will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

New Proposed Amendments

Income Tax Act

Section 4A (1) (ii)

353. Amend Section 4A (1) (ii) to peg the limitation of deferral of realized foreign exchange losses on account of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) to the amount relating to the foreign borrowing or loans. This is because the prevailing provision provides for deferral of realized exchange losses on all losses whether relating to the foreign loan or not.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

Section 12C

354. Amend Section 12C to harmonize the turnover tax regime to incorporate persons whose gross income is in excess of KSh.280,000 but does not exceed Ksh.25,000,000 in any year of income. This change will align the minimum taxable threshold for

turnover tax regime with the minimal taxable threshold for Residential Rental Income (RRIT) and serve to enhance equity and fairness in tax administration.

Committee Observation

The Committee noted there is a difference between turnover taxes, which is applied to business income, versus RRIT; therefore, the thresholds do not necessarily mean to be the same. Equally, the rates of the taxes are different; turnover is 3% and RRIT is 7.5.%

Section 16 (1) (c)

355. Amend Section 16 (1) (c) by at least two years to allow all expenditures whose invoices are not eTIMs compliant to be deducted in ascertaining the taxable gains and profits for the financial year 2024. This is because several people have yet to fully transition to e-TIMS compliance, which will lock businesses out of claiming legitimate business expenditures for income tax purposes.

Committee Observation

The Committee noted that this will defeat the purpose of eTIMS and lead to revenue loss.

First Schedule – Paragraph 72

356. Amend First Schedule Paragraph 72 of the ITA to provide clarity to the existing income tax exemption because the current provision implies that the exemption is granted to any gain derived from the transfer within the Special Economic Zones regardless of whether the transferer is not a licensed enterprise, operator or developer in within the SEZ.

Committee Observation

The Committee agreed with the stakeholder

Value Added Tax

Section 17 (2)

357. Amend Section 17 (2) to provide that taxpayers can claim input tax if they have the requisite documentation or where the supplier has declared the sale in their VAT return. This is because the current provision imposes on taxpayers the responsibility to enforce compliance and ensure that suppliers declare sales to KRA.

Committee Observation

The Committee did not agree with the proposal since it may lead to cases of false claims

Section 17 (5) (a)

358. Amend Section 17 (5) (a) by introducing a proviso "...*Provided that all input tax directly attributable to making zero-rated supplies shall be refundable in full and shall be excluded from the formula under Regulation 8 of the VAT Regulations*." This amendment will eliminate the unfairness under Regulation 8 of the VAT Regulations and ensure that VAT Regulation aligns with the direct attribution principle espoused under the principal legislation Section 17 (6) of the VAT Act.

Committee Observation

The Committee observed that the proposal is referencing a regulation which is improper

Excise Duty

First Schedule – Part III

359. Amend First Schedule Part III to introduce the definition of licensed small independent brewers to provide clarity on the scope of manufacturers whose products will attract the lower excise duty rate of KES 10 per centiliter of alcohol, which will help mitigate against tax disputes for both taxpayers and the KRA arising from different definitions of the term.

Committee Observation

The Committee agreed with the stakeholder

First Schedule – Part I

360. Delete First Schedule Part I on the excise duty on glass bottles because its removal will aid in abating pollution and also encourage more companies to become eco-friendly.

Committee Observation

The Committee agreed with the stakeholder noting in addition to aiding and abetting pollution, the provision is meant to protect local manufacturers of glass bottles.

First Schedule – Part I

361. Amend First Schedule Part I to exclude eggs of tariff heading 04.07, onions of tariff heading 07.03 and potato crips and potato chips of tariff heading 07.01 originating from the East African Community Rules of Origin because Article 15 of the EAC Customs Union Protocol prohibits the imposition of any internal taxation on products of other Partner states in excess of that imposed, directly or indirectly, on similar domestic products.

Committee Observation

The Committee agreed with the stakeholder's proposal.

Miscellaneous Fees and Levies

Section 9B(b)

362. Amend Section 9B(b) by deleting the phrase "Section 47" because the imposition of penalties and late payment interest on unpaid tax is provided for in Section 83A and 38 of the Tax Procedures Act, 2015, respectively, while Section 47 provides for offset or refund of overpaid tax which appears erroneous.

Committee Observation

The Committee noted the stakeholder's comments, however, it recommends the retention of the Section as it is.

3.2.97 ICHIBAN

New proposal VAT Act

Part 1, First schedule - Exemption from VAT for some of the taxable goods used as raw materials for manufacture of textile materials

363. Amend by introducing a new paragraph reading as follows;

'148. Taxable goods of chapter 5407 and chapter 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for investment, Trade and Industry'.

Justification

This is aimed at supporting the manufacturing sector, which is one of the key priorities of the Bottom-Up Economic Transformation Agenda. If considered, the proposal is expected to foster economic development and provide solutions to various socio-economic problems facing Kenya.

Committee Observation

The Committee agreed with the stakeholder

MISCELLANEOUS FEES AND LEVIES ACT

Section 7- Exemption from IDF for goods used as raw materials for the manufacture of textile materials

364. Amend Part A of the second schedule to include the following paragraph immediately after xxx;

Xxxxi) Taxable goods of Chapter 54 and Chapter 63 are imported as raw materials for the manufacturing of products in Kenya.

Justification

This is because the main driver of high production costs is the high prices of raw materials occasioned by various taxes and levies on the raw materials.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

Section 8 - Exemption from RDL for goods used as raw materials for manufacture of textile materials

365. Amend Part B of the second schedule to include the following paragraph immediately after xvi;

xvii) Taxable goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacturing textile products in Kenya.

Justification

This is aimed at supporting the manufacturing sector, which is one of the key priorities of the Bottom-Up Economic Transformation Agenda. If considered, the proposal is expected to foster economic development and provide solutions to various socio-economic problems facing Kenya.

Committee Observation

The Committee agreed with the stakeholder

3.2.98 KIIRU MAHIAINI

Clause 20 (b) (iii)

366. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.99 HHK CONSULTING

Clause 13

367. The amendment includes withholding tax on scrap metal at a rate of 3% of the gross amount of the transaction. This will broaden the tax base, bringing this segment primarily dominated by small-scale players into the tax net, and further enhance data collection on scrap metal dealers for authenticating valid licensing as required under the Scrap Metal Act.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.100 PETER KARUGO

Clause 20 (b) (iii)

368. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is

particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain

3.2.101 MILESTONE GAMES LIMITED (MGL LOBBY)
Clause 20 (b) (i)

369. Delete the proposal by the government to exempt betting, gaming, and lottery services from VAT despite the fact that it is aimed at expanding the revenue base and is designed to accelerate the implementation of the Bottom-Up Transformation Agenda (BETA). The policies and increased revenue are anticipated to augment the BETA. Like any other sector struggling to recover from the current economic crises, the betting industry is ill-prepared to absorb additional tax increases, mainly because the betting industry is currently the most taxed in Kenya. Increased taxes will reduce revenue for the exchequer, as demonstrated by the contraction of revenues by 21.9%.

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 25 (b) (ii)

370. Delete the proposal to introduce 16% VAT on the betting services as well as increasing the excise duty rate on betting stakes from 12.5% to 15%. The stakeholder strongly believes that effective regulation cannot be achieved through fiscal policy as proposed by Government. Further such regular changes are incongruent with Kenya's National Tax Policy promulgated in April 2023. Comparative best practice from Tanzania, Uganda, Rwanda and South Africa demonstrates that removal of all transactional taxes and focusing on gross gaming revenue tax leads to enhanced tax collections for the Exchequer.

Committee Observation
The Committee noted that imposing a higher excise duty rate on betting is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

3.2.102 SKM AFRICA LLP
Clause 2

371. Amend the definition of royalty to remove the distribution of software from the ambit of royalty because the proposed amendment contravenes international best practices, particularly Article 12 of the Organization for Economic Cooperation and Development Model ("OECD") Tax Convention Model, that require payment to be subjected to WHT if made for consideration for rights to the software's underlying

Intellectual Property ("IP") rights. The amendment is against the High Court's jurisprudence in the case of Seven Seas Technologies Limited v Commissioner of Domestic Taxes, Income Tax Appeal no. 8 of 2017, where the High Court distinguished between the rights to use copyright in software against the right to use a copyrighted software.

Committee Observation
The Committee was of a different view that the provision does not deal with software distribution.

Clause 5

372. Amend the SEPT rate to a lower rate because the increment will discourage growth and foreign investment in Kenya's digital space, impacting profitability levels and pricing that could result in higher costs for consumers using these digital services.

Committee Observation
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 13

373. Delete WHT on residents since eTIMS invoice will be generated and lower WHT to non-residents. The proposed amendment will negatively impact suppliers' cash flow and profit margins on contracts with public entities especially SMEs and suppliers with bank loans. The proposal will likely increase the government's expenditure as non-resident suppliers will gross up their invoices to consider the WHT deducted.

Committee Observation
The Committee noted the concerns however the provision is intended to improve compliance and the rate is quite low.

Clause 14 (b&c)

374. Delete the clause imposing income tax on registered family trusts, for it could discourage Kenyans from establishing family trusts for succession planning. The proposal will also incentivize Kenyans to register family trusts in low-tax jurisdictions outside Kenya undermining local economic benefits and trust-based financial arrangements.

Committee Observation
The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 15 (b) (i,ii)

375. Delete the clause imposing WHT on infrastructure bonds. The introduction of WHT on interest from long-term securities intended for infrastructure and social services could discourage investment in such instruments by reducing the net returns to investors. The proposal will further lead to low demand for government securities, potentially increasing the government's borrowing cost. Additionally, the proposal will undermine the attractiveness of such bonds as low-tax investment options hindering efforts to mobilize resources for critical public services and infrastructure development.

Committee Observation

The Committee agreed with the stakeholder's proposal.

New Proposal

376. Amend repeal of WHT on winnings and replace the 20% WHT on winnings with a 5% WHT on withdrawals (i.e., the gross payout made which is the stake plus the winnings) remitted to punters / players on a daily basis.

377. Further, at Section 2(1) of ITA by deleting the definition of "winnings" and substituting therefor

> *"withdrawals" means the amount of money withdrawn by a customer from their betting or gaming wallet maintained by a person licensed under the Betting, Lotteries and Gaming Act".*

Committee Observation

The Committee did not agree with the proposal as it will lead to revenue loss and negate the current effort in combating gambling.

378. Delete the word "winnings" in Section 10 (1)(g) of the ITA and substituting therefor – "*withdrawals*".

A - Rates of Tax

I. At Section 34 (1) (m) by deleting the word "winnings" and substituting therefor – "*withdrawals*".

II. At Section 34 (2) (i) by deleting the word "winnings" and substituting therefor – "*withdrawals*".

B – Deduction of Tax

I. At Section 35 (1) (i) by deleting the word "winnings" and substituting therefor "*withdrawals*".

II. At Section 35 (3) (h) by deleting the word "winnings" and substituting therefore – "*withdrawals*".

In the Third Schedule – Rates of Personal Relief and Tax

Head B – Rates of Tax

i. In paragraph 3 (i), deleting the words "in respect of winnings, twenty percent" and substituting therefore the words "in respect of withdrawals, five percent."

ii. At paragraph 5 (i), by deleting the words "in respect of winnings, twenty percent" and substituting therefor the words "*in respect of withdrawals, five percent*"

Committee Observation

The Committee did not agree with the proposal as it will lead to revenue loss and negate the current effort in combating gambling.

Clause 20 (a) (x)

379. Delete the clause to retain zero rated VAT on the proposed supplies. The proposal will significantly increase costs of the agricultural products due to non-deductibility of input VAT. By shifting some items to VAT exemption, businesses lose the ability to claim input VAT deductions, further escalating production expenses. These changes risk undermining food security, increasing the cost of living, and creating tax policy uncertainty due to frequent adjustments, which complicates planning for stakeholders in the agricultural and manufacturing sectors.

Committee Observation
The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 20 (b)

380. Delete the clause to retain VAT exemption on the betting, gaming, and lottery services. This VAT value will erode the actual stake a customer places per bet, adversely impacting the withholding tax on winnings collected. Apart from this linear decrease in withholding tax, it should also be expected that customers will shy away from betting, leading to a drop-in collection on betting tax (15% of GGR) and corporate tax (30% on net taxable income).

381. Additionally, if betting and gaming services are made subject to VAT at 16%, all input VAT from marketing, advertising, technology, odds providers, cloud and cybersecurity and consultancy services (both local and foreign) will become claimable from a VAT perspective, leading betting companies to be in a perpetual VAT credit position. This perpetual VAT credit position is unfavorable from a revenue mobilization perspective for the KRA.

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 25 (a) (K)

382. The stakeholder supported the proposal by proposing to amend the proviso to clause 25 (a)(i)(K) and replace it with the following new proviso to eliminate ambiguity—

> *"Provided that Beer, cider, Perry, mead, opaque beer, wine, fortified wines and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufactured by licensed brewers for the first 500,000 liters per month shall be subject to the rate of KES 10 per centiliter of pure alcohol."*

383. The proposal by the Bill to reduce excise duty on beer with low alcohol content will encourage consumption of beer which is considered safe for human consumption since beer is fermented naturally and encourage consumption of beer which is considered safe for human consumption since beer is fermented naturally. The proposal to apply a uniform excise duty rate on beers manufactured by independent brewers and spirits ensure fairness on taxation of beer and spirits with the same alcohol content and encourage consumption of beer. Additionally, the proposal will promote creation of employment, reduce consumption of illicit alcohol and also promote revenue growth.

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 25 (b)

384. Amend the clause on the current excise duty at the rate of 12.5% on stakes and replace with 5% excise duty **on deposits** (i.e., all sums deposited by a customer in their online wallet inclusive of the stake) made by punters/ players on a daily basis.

i. At **paragraph 4A**, by deleting the words "twelve- point five percent" and substituting therefor the words "*five percent*" and by deleting the words "wagered or staked" and substituting therefor the words "*deposited into the customers betting wallet*";
ii. At **paragraph 4B**, by deleting the words "twelve- point five percent" and substituting therefor the words "*five percent*" and by deleting the words "wagered or staked" and substituting therefor the words "*deposited into the customers gaming wallet*";
iii. At **paragraph 4C**, by deleting the words "twelve-point five percent" and substituting therefor the words "*five percent*";
iv. In paragraph 4D, the words "twelve-point five percent" are deleted and substituted for the words "five percent."

Committee Observation
The Committee noted the stakeholder's suggestion. However, they observed that imposing a higher excise duty rate on betting, gaming, prize competition & lottery is

likely to yield more revenue. Additionally, it will discourage betting which is commendable.

Further proposal

385. Deleting the definition "amount wagered or staked" and insert the following new definition in proper alphabetical sequence:

> *"amount deposited into the customers betting wallet" means the amount of money transferred by a customer into the customer wallet maintained by a licensed betting and gaming operator for betting and gaming purposes"*

Committee Observation

The Committee did not agree with the stakeholder and recommends the current definition be maintained as it is accurate.

Clause 25(b) (vi)

386. Delete the clause in its entirety for it will result to increased taxes that will undoubtedly result in less resources available for betting operators to support CSR and sports initiatives to support communities, specifically centered around women and youth. Additionally, there is a risk of shrinkage of the betting and gaming sector which may go as far as loss of jobs in a bid to reduce employee costs as well as betting and gaming players in the market winding up from the Kenyan market. The intended effect of the increase in revenue collection is unlikely to be met on account of this proposal.

Committee Observation

The Committee noted the stakeholder's suggestion. However, it observed that this will likely yield more revenue. Additionally, it will discourage gambling which is commendable.

Clause 26

387. Delete this proposal for it will raise the cost of imported goods, as the levy charged on imported goods. The increased levy may lead to higher prices for goods that depend on rail infrastructure for transportation, as businesses may pass on the additional cost to consumers. While the higher levy is expected to generate more funds for railway infrastructure development, the increased cost burden could lead to inflationary pressure, impacting the general cost of goods. Additionally, businesses that rely on affordable transportation costs provided by railway transportation will be significantly disadvantaged.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed

increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.103 ALICE ABOKA

Clause 20 (b) (iii)

388. Delete Clause 20 (b) (iii) of the Tax Laws (Amendment) Bill, 2024 and retain the current provision of the VAT Act 2013, with air ticketing services remaining as VAT exempt. The cost of domestic and international travel within and outside Kenya will increase. The increase will also affect the operating costs and margins in the air travel sector.

Committee's Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.104 ANDERSEN

Clause 5

389. Delete the Clause because the tax burden for non-residents under the SEPT will be significantly higher as opposed to the current Digital Service Tax that applies at the rate of 1.5 per cent of the gross revenue. This proposal aims to tax businesses that are carried out via a digital market place at the rate of 3 % which will discourage non-resident investors in the digital market.

Committee's Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 6

390. Delete the Clause or amend to give detailed guidelines and regulations where implementation should wait until the regulations are adopted because the introduction of the minimum top-up tax is likely to work against incentives provided to SEZs and EPZ, which might discourage investments.

Committee's Observation

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 7

391. Adopt the proposal. However, the limit for mortgage interest should be increased to approximately Ksh480,000 as this will lead to more employees taking up mortgages, which aligns with the Government's bottom-up economic transformation agenda.

Committee's Observation

The Committee noted the proposal. However, there is a need to balance between revenue and disposal income.

Clause 14(c)

392. Delete the provision as this will reduce family trust popularity for succession planning with a potential shift towards alternative estate planning methods.

Committee's Observation

The Committee noted that the proposal contravenes Section 3E(3) of the Trustees (Perpetual Succession) Act, Cap 184 which provides that a trustee shall not acquire a better title to the trust property than the transferor had immediately before the transfer of the disposition.

Clause 18

393. Delete the proposal to delete Section 17 (8) of the VAT Act, as this change could discourage people from engaging in business with official aid-funded projects approved by the CS in accordance with the First Schedule. Further, this may make the official aided projects more expensive due to input VAT's non-deductibility.

Committee's Observation

The Committee noted that this is a revenue raising measure.

Clause 20(a)(vii)

394. Delete the proposal because removing these items from the exempt category will increase the cost of acquiring and maintaining these vehicles, forcing tour operators to pass on the additional expenses to tourists.

Committee's Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20(b)(iv)

395. Delete the proposal because fees to these parks are a critical source of revenue, but if VAT is applied to them, the cost of visiting these parks will increase, potentially making them less affordable for both international and local tourists. This could lead to a decline in visitor numbers, reducing tourism revenue.

Committee's Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 25

396. Delete the proposal as this will increase the costs of operations to both individuals and companies who use such services in the generation of income.

Committee's Observation

The Committee noted that imposing a higher excise duty rate on these services is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

Clause 26

397. Delete the Clause given that Kenya is a net importer, the increase of the IDF rate will generally increase the cost of importation of goods and subsequently the overall production cost of manufacturing.

Committee's Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.105 MAUREEN SOKOTO

Clause 20 (b) (iii)

398. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee therefore, did not accept the proposal by the stakeholder to delete.

3.2.106 JOSEPHINE WAINAINA

Clause 20 (b) (iii)

399. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.107 ELIZABETH KULOBA

Clause 20 (b) (iii)

400. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain.

3.2.108 BOLT

Clause 5

401. Deletion of the proposal that seeks to charge a tax of 10% of gross turnover to non-resident persons whose income is derived from or accrues in Kenya through a digital marketplace.

Committee observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 13

402. Deletion of the proposal seeking to add additional revenue sources from which tax can be charged.

Committee observation
The Committee noted the concerns however the provision is intended to improve compliance and the rate is quite low.

3.2.109 PAN AFRICAN TRANSFORMERS

Clause 25 (a)

403. Delete the proposal that seeks to an additional tax of 25% on imported electric transformers and parts.

Committee observation
The Committee agreed with the stakeholder's proposal

3.2.110 IATA

Clause 20 (a) (i)

404. Delete the proposal that seeks to remove all aircraft and aircraft parts VAT exempt. It is the opinion of IATA that imposition of VAT on such supplies will represent an additional and irrecoverable cost to domestic airlines in Kenya as no input tax credit is available on domestic transport services.

Committee observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard the Committee proposes to review the proposal in the Bill.

Clause 20 (a) (iii)

405. Delete the proposal to charge VAT on direction finding compasses, instruments and appliances for aircrafts are currently VAT exempt. According to IATA, this proposal would deal a big blow to the aviation industry – making it unnecessarily expensive for domestic and international travel and thus making airlines retain underserviced or subpar equipment.

Committee observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard the Committee proposes to review the proposal in the Bill.

Clause 20 (a) (iv)

406. Delete the proposal that seeks to charge VAT on other aircraft spare parts imported by aircraft operators or persons engaged in aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

Committee observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard the Committee proposes to review the proposal in the Bill.

Clause 20 (b) (ii) and (iii)

407. Delete the proposal to charge 16% VAT on air ticketing services, hiring, leasing, and chartering of aircraft, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00.

Committee observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.111 KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI)

Clause 5

408. Amend the proposal to charge a tax of 10% of gross turnover to non-resident persons whose income is derived from or accrues in Kenya through a digital marketplace to 5% given that many of these platforms are still in the investment phase of their growth.

Committee observation
The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 15 (b)(i)(u) and 15 (b)(ii)(B)(III)(n)

409. Delete the introduction of 5% and 0.5% withholding tax for supply to public entities by non-residents and residents respectively. According to KNCCI, suppliers, particularly non-residents may opt to incorporate the withholding tax into their cost structure in order to accommodate the cost and protect their margins further raising the cost of supplies to government.

Committee observation
The Committee noted the intention of this proposal is to improve tax compliance.

Clause 25 (a) (i) (A)

410. Delete the proposal that seeks to charge VAT on imported sugar excluding sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery at KES. 7.5 per kg.

Committee observation

The Committee observed that it is vital to protect the local sugar industry and give them competitive advantage. However, the Committee noted the need to exempt imported sugar for industrial use as they are raw materials.

Clause 25 (a) (i) (K)

411. Amend the proposal that seeks to charge an excise rate on beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages not exceeding 6% from KES 22.50 per centiliters to KES 20 per centiliter of pure alcohol.

Committee observation

The Committee noted that the aim of the proposal was to raise additional revenue for the Government and charge excise duty on alcohol content.

Clause 25 (a) (i) (L)

412. Amend the proposal that seeks to charge an excise rate on spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% a rate of KES 10 per centiliter to KES 8.9 centilitre.

Committee observation

The Committee noted that the aim of the proposal was to raise additional revenue for the Government and charge excise duty on alcohol content.

Clause 25 (a) (E) and (F)

413. Delete the proposal to increase excise duty on liquid nicotine for electronic cigarettes from KES 70 to KES 100 per milliliter and also on products containing nicotine, nicotine substitutes intended for inhalation without combustion or oral application and liquid nicotine for electronic cigarettes from KES 1595 to KES 2,000 per KG. Raising taxes on both combustive and non-combustive nicotine products creates an opportunity for illicit and counterfeit products which already account for about 40% of the nicotine products in Kenya.

Committee observation

The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by nicotine products. Additionally, the proposed taxation of tobacco products will also discourage their consumption.

Clause 25 (b) (i)

414. Delete the amendment to increase excise duty on telephone and internet data services from 15% to 20%.

Committee observation

The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

Clause 26

415. Delete the amendment that seeks to increase Railway Development Levy (RDL) from 1.5% to 2.5% which might increase the cost of imported goods.

Committee observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.112 SC JOHNSON

New Clause

416. SCJ proposes the following new clauses:

i. Amend Part I of the First Schedule of the VAT Act, 2013, to introduce a new paragraph covering mosquito repellents and the inputs, raw materials, and machinery associated with the fight against malaria. This will help in the fight against malaria and thus ensure the affordability of repellents for Kenyans in the endemic regions.

ii. Amend Part II of the first schedule to the VAT Act, 2013 to include taxable services supplied to manufacturers of repellants used in the fight against malaria exempt from VAT.

iii. Amend Part A and B of the Miscellaneous Fees and Levies Act to provide for exemption of IDF and RDL on inputs, raw materials and machinery used in the manufacture of mosquito repellents.

Committee observation

The Committee agreed with the stakeholder.

3.2.113 CAROLINE MUNINI

Clause 20 (b) (iii)

417. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convention on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO) and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain.

3.2.114 KBL & UDV Kenya

Clause 23

418. KBL agrees with the proposal, although there is a need to ensure that regulations are developed to ensure this incentive is not abused, occasioning high illicit alcohol incidence and loss of government revenue.

Clause 24

419. KBL agrees with the proposal to amend Section 36 of the Excise Duty Act on payment of excise duty from twenty-four hours to the fifth day of the following month. This will restore the alcohol industry's competitiveness, improve liquidity, and lower the cost of capital.

Clause 25 (a) (i) (A)

420. Delete the proposal to charge VAT on imported sugar, excluding sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery at KES. 7.5 per kg.

Committee observation

The Committee observed that it is vital to protect the local sugar industry and give them competitive advantage. However, the Committee noted the need to exempt imported sugar for industrial use as they are raw materials.

Clause 25 (a) (i) (K)

421. Amend the proposal that seeks to charge an excise rate on non-alcoholic beverages manufactured by licensed small independent brewers from KES 10 per centilitres to KES 8.9 per centilitre of pure alcohol. Additionally, KBL proposes: an amendment to the excise rates for Ethanol (raw material) at the specific rate of KES 356.42/litre or lower; a definition of the term licensed small independent brewers; an amendment of excise rate on Beer from KES 22.50/centiliters to KES 20/centilitre of pure alcohol; and enactment of regulations to prevent tax evasion and ensure tax compliance before the provision is implemented.

Committee observation

The Committee noted that the aim of the proposal was to raise additional revenue for the Government and charge excise duty on alcohol content.

New Clause

422. Amend section 14 of the Excise Duty Act 2015, in subsection (1) to expand the relief granted to importers of raw materials in the inclusion of the following new words thus:

Relief for raw materials

(1) Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used

as raw materials, including but not limited to raw glass and similar materials, in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.

Committee observation

The Committee observed that this is provided for in Section 14.

New Clause

423. Amend Excise Duty Act 2015 and Regulations 2020 to allow spirits processing and transit losses.

424. Delete Section 36 (2) and replace it with: -

2) Where the Commissioner under paragraph (1) directs ascertainment by the volume shall be calculated—
   a) by use of a mass flow meter at twenty degrees centigrade
   b) With an accuracy of +/-3% of the measured volume in litres

Committee observation

The Committee noted this progressive proposal and recommends the proposal be accommodated in the future reviews of this section.

3.2.115 AMERICAN CHAMBER OF COMMERCE (AMCHAM)

Clause 2 (d)

425. Delete the proposal that seeks to expand the definition of royalty as its application conflicts with international best practices and recent court rulings (*Seven Seas Technologies Limited v Commissioner of Domestic Taxes*, Income Tax Appeal No. 8 of 2017).

Committee Observations

The Committee was of a different view that the provision does not deal with the distribution of software.

Clause 4

426. Delete the proposal on withholding tax on payments made by owners or operators of digital marketplaces and platforms to residents and non-resident persons.

Committee observations

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 5

427. Amend the clause on the introduction of the significant economic presence tax from 10% to 5%.

Committee observations

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs

Clause 6

428. The deterrent of implementing the proposed minimum top-up tax is pending guidance from the OECD on key aspects of the rules and regulations. Further, AMCHAM proposes amending the definition of a real estate investment vehicle (REIV) to be based on the meaning assigned to it in the country of residence of the ultimate parent entity

Committee observations

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 18

429. Delete the proposal under the section giving credit for input tax against out tax as the proposed amendment will create uncertainty and complexity for businesses, particularly those dealing with exempt and zero-rates supplies.

Committee observation

The Committee noted that this is a revenue raising measure.

Clause 20 (a) (x)

430. Delete the reclassification on agricultural pest control products to vatable status which will likely increase the cost of production for supplies hence passing the cost to the farmers and this lead to an increase in the cost of food.

Committee observation

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 20 (b) (iii)

431. Delete the proposal that seeks to charge VAT on air ticketing services supplied by travel agents and retain air ticketing services as VAT-exempt. The proposal to introduce VAT on air ticketing services will increase the cost of domestic and international travel within and outside Kenya, affect the operating costs and margins in the air travel sector and lead to loss of revenue streams for government. Further, this proposal raises an element of contradiction in the Convention on International Civil Aviation (Chicago Convention), International Civil Aviation Organisation (ICAO)

and Organisation for Economic Corporation and Development (OECD) international VAT guidelines which Kenya is a signatory as per Article 2 (5) of the Constitution of Kenya, 2010.

Committee observations

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 22

432. Delete the proposal seeking to charge excise duty on digital excisable services offered by non-resident from 15% to 20%.

Committee observations

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 25 (a) (i) (H)

433. Amend the proposal seeking to increase excise duty on imported sugar confectionary by reducing the current rate by KES 5.

Committee observations

The Committee noted that the stakeholders view, however, the proposal to increase the excise duty rate is meant to protect the local industry and give them competitive advantage.

Clause 25 (b) (i)

434. Delete the proposal to increase the excise duty rate from 15% to 20% regarding telephone and internet data services.

Committee observations

The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

New proposals:

Income Tax Act Section 16(1) (c)

435. Deferment of the condition that restricts businesses from claiming business expenditure not supported by invoices generated from an electronic tax invoice management system to 1 January 2026 by amending Section 16 (1) (c) of the ITA.

Committee observations

The Committee noted that eTIMS is currently in operation and all businesses are obligated to operate within the tax invoicing systems.

Excise Duty Act, 2015

436. Delete paragraph 6 of Part II of the first schedule, which provides for excise duty on fees charged by digital lenders at a rate of twenty percent. This is because the provision goes against the principle of fairness and equity.

Committee observation
The Committee did not agree with the stakeholder. However, this may be considered in future legislations.

Value Added Tax, Cap 476

437. Amend Part 1 Section A to the first schedule of the VAT Act by inserting the supply of denatured ethanol of tariff number 2207.20.00 to be VAT exempt.

Committee Observations
The Committee agreed with the stakeholder's proposal.

Income Tax Act, Cap 470

438. Amend Part I, paragraph 72 of the first schedule to the ITA to clarify that the exemption covers gains on the transfer of property earned by or accruing to a licensed special economic zone enterprise, developer, or operator.

Committee Observation
The Committee agreed with the stakeholder's proposal.

The Excise Duty Act, Cap 472

439. Amend section 2 of the Excise Duty Act to define a digital lender as a person holding a valid digital credit provider license issued by the Central Bank of Kenya.

Committee Observation
The Committee noted that the proposal. However, the Committee proposes the definition of a digital lender to mean "a person who provides a credit facility or loan services through a digital platform provided that the whole loan process including application, processing, and disbursement of the loan will be conducted through the digital platform"

3.2.116 EAST AFRICA VENTURE CAPITAL ASSOCIATION (EAVCA)

Clause 14 (d)

440. Deferment of the clause which proposes to get rid of the exemption applicable to interest income accruing from listed bonds, notes or similar securities used to raise funds for infrastructure and other social services that have a maturity of at least 3 years and instead charge withholding tax at a rate of 5%. EAVCA recommends that a study be done on the likely impact of this clause on imposing tax on bonds before its adoption.

Committee Observation
The Committee agreed with the stakeholder to delete the proposal.

New Proposal
Eighth Schedule, Paragraph 2

441. Amendment to the section providing a formula for the computation of tax from net gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust. This shall be computed as follows:

'Provided that the net gain in respect of which tax is chargeable shall be the amount computed according to the formula – AXB/A

Where–**A** is the amount of the net gain **B** is the value of the interest derived, directly or indirectly, from immovable property in Kenya; and **C** is the total value of the interest.'

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

Eighth Schedule, Paragraph 2

442. Amendment to the subparagraphs (b) and (c) to delete the words 'twenty' and replace them with 'fifty.' According to EAVCA, 20% is too low even compared to practice in other countries, and it aligns Kenya's capital gains tax regime with global best practices as recommends under Articles 13 (4) of the OECD and UN Model Tax conventions, which provide for a threshold of 50%.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.117 KENYA ASSOCIATION OF AIR OPERATORS (KAAO)

Clause 20

443. Delete Clause because the introduction of 16% VAT on the importation, hiring, leasing, and chartering of aircraft and spacecraft and direction-finding compasses, instruments, and appliances for aircraft will result in Kenyan operators losing their competitiveness due to increased costs of purchase, leasing, or financing of this equipment. This, in turn, will result in increased operational costs, which will be cascaded down to the consumers and travelling public. Additionally, 16% VAT on Air Ticketing Services supplied by travel agents will lead to an increase in tickets whose costs will ultimately be passed to the consumers, resulting in increased costs of travel within and out of Kenya, making Kenya less attractive as a tourist destination as most consumers are price sensitive.

Committee Observations.

The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard the Committee proposes to review the proposal in the Bill.

3.2.118 GSMA

Clause 25 (b)

444. GSMA proposed the deletion of a clause stating that a reduction in Excise duty on telephone, internet, and data services would be ideal in fast-tracking digital transformation by accelerating mobile broadband to achieve the government's objectives of digitizing the economy through digital highways. The current rate of 15% should be maintained to allow for sector and government stabilization.

Committee Observations.

The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

New Proposal

The second schedule of the Income Tax Act

445. Amend to introduce a tax deduction for telecommunication and spectrum license fee payable by Mobile Telecommunication Service Providers as follows.

(c) "Purchase or acquisition of an indefeasible right to use fiber cable or spectrum license by a telecommunication operator.

Committee Observations.

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.119 MARTIN NJUGUNA MUGO

Clause14 (d)

446. Mr. Mugo proposed deletion of the clause in its entirety stating that waiver of tax exemptions on infrastructure and green bonds will increase expected bond yield, which will increase the cost to the taxpayer. This proposal does not benefit the taxpayer.

Committee observation

The Committee agreed with the stakeholder and recommends deletion of the clause.

Clause 7 (a)

447. Maintain the clause since it will improve disposable income for salaried workers, given the high premiums levied to salaried employees under SHIF and Housing Levy.

Clause 4

448. Mr. Mugo proposed deletion of the clause in its entirety stating that this tax will result in increased costs of operating digital marketplaces in Kenya, as the operators may pass on these costs to the vendors and end consumers.

Committee observation

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 13

449. Mr. Mugo proposed deletion of the clause in its entirety stating that the tax will increase government expenditure and the resultant burden to the tax payer, as entities making supplies to the government will adjust their invoices to compensate for the upfront tax.

Committee observation

The Committee noted the concerns however the provision is intended to improve compliance and the rate is quite low.

3.2.120 TAXWISE

Clause 2 (d)

450. **Delete the clause** and retain the current definition of royalty. This is because the OECD Model Tax Convention (MTC), specifically Article 12, provides a definition of "Royalty" that closely aligns with the current definition under Section 2 of the Income Tax Act. Further, the OECD Commentary on Article 12 clarifies that payments for standard software, especially off-the-shelf software, are typically not royalties unless the user acquires a license to reproduce or exploit the software. As such. The amendment, therefore, conflicts with the international definition of Royalty.

Committee Observation

The Committee was of a different view that the provision does not deal with software distribution.

Clause 5

451. Taxwise proposed **an amendment to the definition of "Significant Presence"** indicating that while the shift from gross revenue-based taxation to a profit- based model, where 10% of profit is taxable is commendable, it is crucial to establish clear thresholds to ensure fairness and practicality. For instance, Nigeria introduced a threshold of ₦25 million in annual revenue to determine a non-resident's significant economic presence (SEP). A similar approach in Kenya would ensure the tax targets entities with substantial economic activity within the country while avoiding undue burden on smaller operators.

Committee observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 6

452. Taxwise proposed that **the implementation of this provision be halted atleast until 2026 or later** noting that Kenya should carefully analyze the implications of adopting the OECD's Global Minimum Tax (GloBE) rules, particularly for companies operating in the country. A detailed review is needed to identify the number of entities with annual revenues of €750 million or more and estimate the potential revenue Kenya could lose if other countries implement the rules. Moreover, many companies operating in Kenya, especially within Special Economic Zones (SEZs) and Export Processing Zones (EPZs), are protected by stabilization clauses. These clauses guarantee that changes in tax policy will not adversely affect them, meaning the Kenyan government may ultimately bear the financial burden of the global minimum tax. This would significantly reduce the intended fiscal benefits of adopting the GloBE framework while potentially eroding the effectiveness of Kenya's existing tax incentives, such as the 10% reduced rate for SEZ/EPZ companies during their initial 10 years.

Committee Observation

The Committee was of a different view that a minimum top-up tax is a global measure implemented in over 60 countries where major multinational companies operate. As such, excluding it in Kenya could undermine the tax's application mechanism, potentially resulting in a constituent company based in Kenya underpaying its fair share of revenue.

Clause 25

453. **Delete the entire clause** because all the proposed rates increases and changes are going to be detrimental to the various sectors of the economy.

Committee Observation

The Committee noted the stakeholders concerns however, this proposal's is a revenue raising measure.

Clause 26

454. **Taxwise proposed that the levy rate be maintained at 1.5%** since the proposal will directly impact importers by increasing the costs of bringing goods into the country, this will subsequently be passed on to consumers through increased process of imported goods.

Committee observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.121 NON- COMMUNICABLE ALLIANCE

Clause 25(a(J) (K)(L))

455. Non-Communicable Alliance supported the proposal but further proposed the clause be amended to read as follows:

KES. 35 per centiliter of pure alcohol for all alcoholic drinks of strength not exceeding 7% of alcohol content.

KES. 20 per centiliter of pure alcohol for all alcoholic drinks of a strength exceeding 7% of alcohol content.

456. The proposal is premised on the fact that No level of alcohol consumption is safe for our health and that the preferential treatment of beer means that the product will be so cheap for accessibility by children and youthful populations posing a health challenge like contraction of cancer, increased road accidents, and violence.

Committee Observation
The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

Clause 25(a (C) (D))

457. Non-Communicable Alliance supported the clause provision with slight proposed amendments as follows:

Delete the current descriptions "Cigarette with filters (hinge lid and soft cap)" and "Cigarettes without filters (plain cigarettes)," and substitute, therefore, the following: "Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs. 4,100 per mille."

458. **This** proposal will reduce tobacco consumption at the same increase revenue collected from tobacco products. Further, the unified rates will reduce the administrative cost of tax collection in the tobacco industry and reduce the possibility of substituting the two products.

Committee Observation
The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by cigarette smoking. Additionally, harmonization of the rate of both the filter and non-filtered cigarettes is meant to protect revenue leakage as a result of misdeclaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25((a)E)

459. The proposal is supported since the nicotine products and their substitutes are highly addictive and have been proven to have health effects, hence need to be taxed more in order to reduce affordability.

Clause 25(a)(F)

460. Non- Communicable Alliance supported the proposal but further proposed the clause be amended so that the electronic cigarettes and their delivery systems also

be subject to an upward tax review because nicotine is highly addictive and therefore needs to be taxed more to reduce its consumption.

Committee Observation

The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

3.2.122 SLUM CHILD FOUNDATION

Clause 25(a(J) (K)(L))

461. The stakeholder supported the proposal but further proposed the clause be amended to reads as follows:

> *KES. 35 per centiliter of pure alcohol for all alcoholic drinks of strength not exceeding 7% of alcohol content.*
>
> *KES. 20 per centiliter of pure alcohol for all alcoholic drinks of a strength exceeding 7% of alcohol* **content.**

462. The proposal is premised on the fact that No level of alcohol consumption is safe for our health and that the preferential treatment of beer means that the product will be so cheap for accessibility by children and youthful populations posing a health challenge like contraction of cancer, increased road accidents, and violence.

Committee Observation

The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

Clause 25(a (C) (D))

463. The stakeholder supported the clause provision with slight proposed amendments as follows:

> ***Delete the current descriptions "Cigarette with filters (hinge lid and soft cap)" "Cigarettes without filters (plain cigarettes)", and substituting, therefore, the following: "Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs. 4,100 per mille"***

464. This proposal will reduce tobacco consumption at the same increase revenue collected from tobacco products. Further, the unified rates will reduce the administrative cost of tax collection in the tobacco industry and reduce the possibility of substituting the two products.

Committee Observation

The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by cigarette smoking. Additionally, harmonization of the rate of both the filter and non-filtered cigarettes is meant to protect revenue leakage as a result of misdeclaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25(a)E)

465. The proposal is supported since the nicotine products and their substitutes are highly addictive and have been proven to have health effects, hence need to be taxed more in order to reduce affordability.

Clause 25(a)(F)

466. The stakeholder accepted the proposal but further proposed the clause be amended so that the electronic cigarettes and their delivery systems also be subject to an upward tax review because nicotine is highly addictive and, therefore, needs to be taxed more to reduce its consumption.

Committee Observation
The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

3.2.123 TIATY YOUTH DEVELOPMENT ASSOCIATION

Clause 25(a(J) (K)(L))

467. The stakeholder supported the proposal but further proposed the clause be amended to read as follows:

> *KES. 35 per centiliter of pure alcohol for all alcoholic drinks of strength not exceeding 7% of alcohol content.*
>
> *KES. 20 per centiliter of pure alcohol for all alcoholic drinks of a strength exceeding 7% of alcohol content.*

468. The proposal is premised on the fact that No level of alcohol consumption is safe for our health and that the preferential treatment of beer means that the product will be so cheap for accessibility by children and youthful populations posing a health challenge like contraction of cancer, increased road accidents, and violence.

Committee Observation
The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

Clause 25(a (C) (D))

469. The stakeholder supported the clause provision with slight proposed amendments as follows:

> ***Delete the current descriptions "Cigarette with filters (hinge lid and soft cap)" "Cigarettes without filters (plain cigarettes)", and substituting, therefore, the following: "Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs. 4,100 per mille"***

470. This proposal will reduce tobacco consumption at the same increase revenue collected from tobacco products. Further, the unified rates will reduce the

administrative cost of tax collection in the tobacco industry and reduce the possibility of substituting the two products.

Committee Observation

The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by cigarette smoking. Additionally, harmonization of the rate of both the filter and non-filtered cigarettes is meant to protect revenue leakage as a result of misdeclaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25 (a)(E)

471. The proposal is supported since the nicotine products and their substitutes are highly addictive and have been proven to have health effects, hence need to be taxed more to reduce affordability.

Clause 25((a)F)

472. The stakeholder supported the proposal but further proposed the clause be amended so that the electronic cigarettes and their delivery systems also be subject to an upward tax review because nicotine is highly addictive and, therefore, needs to be taxed more to reduce its consumption.

Committee Observation

The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

3.2.124 INTERNATIONAL INSTITUTE FOR LEGISLATIVE AFFAIRS

Clause 25 (a) (C, D)

473. The stakeholder supported the proposal by proposing a further amendment to delete the current descriptions "Cigarette with filters (hinge lid and soft cap)" and "Cigarettes without filters (plain cigarettes)" and substituting, therefore, the following:

"Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs.4,100 per mille"

474. They stated that uniformity in excise taxes on cigarettes will reduce tobacco consumption n, increase revenue collected from tobacco products, reduce the administrative cost of tax collection in the tobacco industry, and also reduce health, social, and economic burden to the government and the citizens due to reduced consumers of tobacco products.

Clause 25 (a) (E)

475. The stakeholder strongly supported the proposal and stated that nicotine products and their substitutes are highly addictive and have been proven to have health effects, hence need to be taxed more in order to reduce affordability. They added

that youths and women have been the main target for consumption of these products by the tobacco industry, hence increasing their taxes will reduce their affordability.

Clause 25 (a) (F)

476. The stakeholder supported the proposal and proposed an additional amendment where electronic cigarettes and their delivery systems should also be subject-ted to an upward tax review.

Clause 25 (a) (J,K and L)

477. Amend the proposal on the specific tax based on the alcohol content of the alcoholic beverages to read as follows—
   a) *KES. 35 per centiliter of pure alcohol for all alcoholic drinks of strength not exceeding 7% of alcohol content*
   b) *KES. 20 percentiliter of pure alcohol for all alcoholic drinks of strength exceeding 7% of alcohol content.*

478. The above proposal will help mitigate the "preferential treatment" beer is getting under the current proposals. Additionally, no level of alcohol consumption is safe for our health.

Committee Observation
The Committee noted the stakeholder's proposal. However, it considered the rates provided in the clause adequate.

3.2.125 HEALTH CONSCIOUS AFRICA

Clause 25 (a) (C,D)

479. The stakeholder supported the proposal by proposing a further amendment to delete the current descriptions "Cigarette with filters (hinge lid and soft cap)" and "Cigarettes without filters (plain cigarettes)", and substituting, therefore, the following:

   "Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs.4,100 per mille"

480. They stated that uniformity in excise taxes on cigarettes will reduce tobacco consumption n, increase revenue collected from tobacco products, reduce the administrative cost of tax collection in the tobacco industry and also reduce health, social and economic burden to the government and the citizens due to reduced consumers of tobacco products.

Clause 25 (a) (E)

481. The stakeholder strongly supported the proposal and stated that nicotine products and their substitutes are highly addictive and have been proven to have health effects, hence need to be taxed more in order to reduce affordability. They added that youths and women have been the main target for consumption of these products by the tobacco industry; hence, increasing their taxes will reduce their affordability.

Clause 25 (a) (F)

482. Health Conscious Africa supported the proposal and proposed an additional amendment where electronic cigarettes and their delivery systems should also be subject to an upward tax review.

Clause 25 (a) (J,K,L)

483. Amend the proposal on the specific tax based on the alcohol content of the alcoholic beverages to read as follows—
   a) *KES. 35 per centiliter of pure alcohol for all alcoholic drinks of strength not exceeding 7% of alcohol content*
   b) *KES. 20 per centiliter of pure alcohol for all alcoholic drinks of strength exceeding 7% of alcohol content.*

The above proposal will help mitigate the "preferential treatment" beer is getting under the current proposals. Additionally, no level of alcohol consumption is safe for our health.

Committee Observation
The Committee noted the stakeholder's proposal. However, it was of the view that the rates provided in the clause are adequate.

3.2.126 ICEA LION TRUST COMPANY LIMITED

Clause 14 (b)

484. Delete the proposal to remove tax exemption on family trusts because Registered family trusts play a vital role in succession matters as they provide a mechanism of distributing trust assets thereby reducing court disputes and backlogs currently faced by succession courts in Kenya. Therefore, tax should not be an impediment for families to set up trusts provided there is a proper legal framework governing the registration and operationalization of trusts.

Committee Observation
The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 14 (c)

485. Delete the proposal to remove tax exemption on any Capital Gains Tax relating to transfer of title of immovable property to a family trust. The transfer of assets/property by a settlor to a registered family trust does not constitute a transfer of the property to a third party since there is no consideration. Additionally, it will be punitive to levy CGT on the transfer of property into a family trust, which is considered a succession tool, and create an uneven playing field for families that opt to use family trusts a succession vehicle.

Committee Observation
The Committee noted that the proposal contravenes Section 3E(3) of the Trustees (Perpetual Succession) Act, Cap 184 which provides that a trustee shall not acquire

a better title to the trust property than the transferor had immediately before the transfer of the disposition.

3.2.127 THE NAIROBI SECURITIES EXCHANGE (NSE), THE KENYA ASSOCIATION OF STOCKBROKERS AND INVESTMENT BANKS (KASIB), THE REITS ASSOCIATION OF KENYA (RAK), AND THE KENYA NATIONAL REIT (KNR)

Clauses 14 (d), 15 (b) (i) (w) and 15 (b) (ii) (A)

486. Delete the proposals and retain the tax exemption for interest income earned from Green and Infrastructure bonds (publicly traded). There is an increased appetite for infrastructure and green bonds because of the very purpose for which they are issued. They noted that Infrastructure Bonds attract investors to whom infrastructural development is appealing to them. In contrast, green bonds attract investors who are subscribed to the global agenda of sustainability, maintaining a green environment, and ensuring a future for mankind.

Committee Observation

The Committee agreed to the proposal to make the securities attractive for investments.

New proposals

Stamp Duty Act

487. Delete section 96 A (4) on the exemption of stamp duty of the transfers relating to real estate investment trust. This exemption clause was in effect for five years, during which it demonstrated great impact as four (4) REITs were registered with a total market value of KES. 27Bn. This is empirical evidence that the tax incentive was effective. However, its subsequent expiry has created a significant disincentive to entry for new REITs and limits the growth of existing REITs in the market.

488. There are several near-term prospective REITs in various sectors, such as affordable housing, office space, hospitality, student accommodation, warehousing, and even retail space, with an asset size of over KES. 15 Bn that are under consideration, but are unable to move forward, partly because of this barrier to entry.

Committee Observation

The Committee noted the stakeholder's proposal. However, it observed that this is not part of the legislations being amended.

Proposals by the Capital Markets Industry

i. Retain the tax exemptions for thematic bonds (listed and publicly traded). The appetite for thematic bonds (especially infrastructure bonds) is largely due to their tax-exempt nature.

ii. Encourage a wider scope of investors to reduce the interest rates. Government sponsored road shows to markets with high net-worth investors will attract more investment and reduce the interest rates.
iii. Promote thematic bonds that attract patient capital. Worldwide, green bonds and sustainability bonds attract patient capital at relatively low interest rates. Government to work with private sector in promoting the issuance of these bonds.
iv. Ring-fence infrastructure bonds. Infrastructure bonds shall attract more investors if they are ring-fenced as this gives a better perception of accountability. This shall undoubtedly increase demand and reduce interest rates.
v. Remove administrative bottle-necks. The requirement for foreign investors to have PIN registration has no benefit because the income they earn from bonds is taxed at source with no revenue loss to Government. However, this requirement discourages many foreign investors from investing in our bonds.
vi. Promote predictability of our taxation regime. Introducing taxes to thematic bonds will have the adverse effect of giving the perception that the country is unpredictable on its tax treatment of bonds at large. This would be undesirable.

Committee Observation
The Committee agreed with the stakeholder's proposal not to tax infrastructure bonds.

3.2.128 ASSOCIATION OF GAMING OPERATORS (AGOK)
Clause 25 (b) (ii)

489. Delete the proposal and instead amend to replace the current 12.5% excise duty on stakes is replaced with 5% excise duty on deposits (i.e., all sums deposited by a customer in their online wallet inclusive of the stake) made by punters / players on a daily basis.

490. In this regard, AGOK proposed that the First Schedule to the Excise Duty Act, 2015 is amended as follows—

In Part II- EXCISABLE SERVICES

i. At paragraph 4A, by deleting the words "twelve-point five percent" and substituting therefor the words "five percent" and by deleting the words "wagered or staked" and substituting therefor the words "deposited into the customers betting wallet";
ii. At paragraph 4B, by deleting the words "twelve-point five percent" and substituting therefor the words "five percent and by deleting the words "wagered or staked" and substituting therefor the words "deposited into the customer gaming wallet,
iii. At paragraph 4C, by deleting the words "twelve-point five percent and substituting therefor the words "five percent";

iv. At paragraph 4D, by deleting the words "twelve-point five percent and substituting therefor the words "five percent."

In Part II- INTERPRETATION OF SCHEDULE.

i. Deleting the definition "amount wagered staked".
ii. Inserting the following new definition in proper alphabetical sequence:
"amount deposited into the customer's betting wallet" means the amount of money transferred by a customer into the customer's wallet maintained by a licensed betting and gaming operator for betting and gaming purposes.

491. The effect of sudden and frequent increases in taxes creates an incentive for unscrupulous operators to game the will system in an effort to evade tax and illegal gambling, which will result in unregulated activities where minors cannot be protected.

Committee Observation

The Committee noted that imposing a higher excise duty rate on betting is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

Clause 25 (b) (vi)

492. Delete the entire proposal because increased taxes will undoubtedly result in less resources available for betting operators to support CSR and sports initiatives to support communities, specifically centered around women and youth. Additionally, there is a risk of shrinkage of the betting sector which may go as far as loss of jobs in a bid reduce employee costs as well as betting and gaming players in the market winding up from the Kenyan market.

Committee Observation

The Committee noted that imposing a higher excise duty rate is likely to yield more revenue. Additionally, it will discourage betting which is commendable.

Clause 20 b (i)

493. Delete the proposal because betting, gaming and lottery services should remain VAT exempt. The proposal, where VAT is applied on stakes, will be in addition to the excise duty (of 15% as per the Tax Laws (Amendment) Bill, 2024). This VAT value will erode the actual stake a customer places per bet, adversely impacting the withholding tax on winnings collected. Apart from this linear decrease in withholding tax, it should also be expected that customers will shy away from betting, leading to a drop in collections on betting tax (15% of GGR) and corporate tax (30% on net taxable income). Additionally, If betting and gaming services are made subject to VAT at 16%, all input VAT from marketing, advertising, technology, odds providers, cloud and cybersecurity and consultancy services (both local and foreign) will become claimable from a VAT perspective, leading betting companies to be in a perpetual VAT credit position.

Committee Observation

The Committee agreed to the stakeholder's proposal

New Proposal on the Income Tax Act, Chapter 470

494. AGOK proposed replacing the 20% WHT on winnings with a 5% WHT on withdrawals (i.e., the gross payout made by which is the stake plus the winnings) remitted to punters/players daily. This will allow a transparent and fair compliance mechanism for the industry. Transparency means that the tax revenues are easy to verify and audit.

495. The Income Tax Act to be amended as follows—

In Part I- PRELIMINARY

I. At Section 2 (1) by deleting the definition of "winnings" and substituting therefor –

"withdrawals" means the amount of money withdrawn by a customer from their betting or gaming wallet maintained by a person licensed under S the Betting, Lotteries and Gaming Act"

In Part II- 1MPOSITION OF INCOME TAX

At Section 10 (1) (g) by deleting the word "winnings and substituting therefor- "withdrawals."

In Part VI - RATES, DEDUCTIONS AND SET-OFF OF TAX AND DOUBLE TAXATION RELIEF

A - Rates of Tax

i. At Section 34 (1) (m) by deleting the word T "winnings" and substituting therefor- "*withdrawals*".
ii. At Section 34 (2) (i) by deleting the word "winnings and substituting therefor - "*withdrawals*"

B- Deduction of Tax

i. At Section 35 (1) (i) by deleting the word "winnings and substituting therefor - "withdrawals".
ii. At Section 35 (3) (h) by deleting the word "winnings" and substituting therefor "*withdrawals*".
iii. At Section 5A by deleting the word "winnings" and substituting therefore- "*withdrawals*".

In the Third Schedule - RATES OF PERSONAL RELIEF AND TAX

Head B-Rates of Tax

i. In paragraph 3 (i), deleting the words "in respect of winnings, twenty percent" and substituting therefore the words "in respect of withdrawals, five percent."

ii. In paragraph 5 (i), deleting the words "in respect of winnings, twenty percent" and substituting therefore the words "in respect of withdrawals, five percent."

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

New proposed amendments to the Betting, Lotteries and Gaming Act (BLGM)

496. ASSOCIATION OF GAMING OPERATORS also proposed a new definition of "winnings" for purposes of computing Gross Gaming Revenue (GGR).

497. Deleting the definition of "winnings" and substituting therefor-

"winnings" means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act, excluding the amount staked or wagered in that transaction."

498. The stated that definition of "winnings ought to be aligned in the relevant statutes that govern the taxation of betting and gaming activities i.e., the Income Tax Act and the BLGA.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.129 MAXWELL NG'ANG'A

Clause 25(a) (i) (K)

499. The Stakeholder supported the proposal to increase the excise duty rates but noted that the proposal was silent on the definition of "licensed small independent brewer" or how to become one. He proposed that the licensing board and KRA should come up with the meaning and favorable terms of what it means to be a "licensed small independent brewer" with consideration to capital, production volume, and requirements needed to acquire this specific license.

Committee Observation

The Committee agreed with the stakeholder's proposal.

3.2.130 KENYA TOBACCO CONTROL AND HEALTH PROMOTION ALLIANCE (KETCA)

Clause 25 (a) (C&D)

500. Amend the proposal on the description of cigarettes by deleting the terms "Cigarettes with filters (hinge lid and soft cap)" and "Cigarettes without filters (plain cigarettes)" and substituting them with "Cigarettes containing tobacco or tobacco substitutes." The corresponding excise duty rate should uniformly be set at "Shs.4,100 per mille." This unified excise tax structure will reduce tobacco consumption, increase government revenue from tobacco products, and lower the administrative costs associated with tax collection. Furthermore, the proposal will mitigate health, social, and economic burdens on citizens and the government, as a uniform rate discourages substitution between filtered and plain cigarettes.

Committee Observation

The Committee observed that the proposal's intent is to discourage the consumption of these products due to their negative externalities, such as the effect on health caused by cigarette smoking. Additionally, harmonization of the rate of both filter and non-filtered cigarettes is meant to protect revenue leakage as a result of misdeclaration and misreporting. The uniform rate of taxation will ease the administration of taxation of these products.

Clause 25(a)(E)

501. KETCA supported the proposal amending the description to impose an excise duty rate of "Shs. 2,000 per kg" on 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. Nicotine pouches are becoming increasingly popular, especially among young people and women. By increasing the excise duty to Ksh.2,000 per kilogram, we can curb the rising use of these products and discourage new users from starting.

Clause 25(a) (F)

502. KETCA proposed amending the excise duty on "Liquid nicotine for electronic cigarettes" by substituting the corresponding rate with "Shs.100 per milliliter" and conducting an upward tax review on the liquid nicotine and its delivery systems. They stated that the excise duty on liquid nicotine is doubled from Ksh.100 to Ksh.200 per milliliter. This measure aims to ensure comprehensive taxation of electronic cigarettes and their components, aligning with discouraging the consumption of harmful substances. E-cigarettes and liquid nicotine are often marketed as safer alternatives to traditional cigarettes. However, their health risks are significant, particularly for youth and non-smokers. Raising the excise duty to Ksh.200 per milliliter will help decrease their appeal and accessibility.

Committee Observation

The Committee observed that the intent of the proposal is to discourage consumption of these products due to their negative externalities such as effect on health caused by nicotine products. Additionally, the proposed taxation of tobacco products will also discourage their consumption.

3.2.131 UBER

Clause 4

503. Delete the proposal on the withholding obligation on income from the digital marketplace. This is to promote the principles of equity and fairness on the part of the non-resident's taxpayers.

Committee Observation

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 5

504. Uber proposes the following amendments under clause 5:

i) Amend the tax payable by companies carrying out business under a digital marketplace to be revenue-based in line with OECD recommendations in the taxation of the digital economy based on significant economic presence. It is their view that having a revenue-based factor in the determination of "significant economic presence" will clarify the extent to which a non-resident entity can be identified as having the same in Kenya and therefore liable to tax.

ii) Delete the clause providing that a non-resident person shall be considered to have significant economic presence where the user of the service is located in Kenya. It is their view that there is a lack of clarity on the user-based criterion which is being introduced to define significant economic presence tax.

iii) Amend Section 12E (3) to be amended to clarify that Section 9 (2) and Section 10 shall not apply to income, chargeable under Section 12E (1). This is to ease compliance for non-resident services, especially B2C customers who may not have the capability of withholding taxes on account of the payments made to no-resident persons. Further clarity should be provided that SEPT shall be a final tax for the non-resident payers.

iv) Delete the proposal seeking to compute the taxable profit at ten per cent of the gross turnover.

v) Amend the proposal where a person subject to tax shall submit a return and pay the tax due to the Commissioner on or before the 20th day of the month following the end of the month in which the service is offered. Given that non-residents providing digital services in Kenya are subject to foreign taxes in their home jurisdictions, subjecting them to SEPT in Kenya could result in double taxation where the same income is subject to tax in their home jurisdiction and where a double tax treaty does not exist. It is there view that this clause should read:

> *"Provided that where a non-resident person who is resident in a country which Kenya has an agreement in effect for the avoidance of double taxation; is subject to the significant economic presence tax in Kenya has paid a foreign tax on the same income in their country of residence, the foreign tax paid should be available as a unilateral tax credit against the significant economic presence tax due in Kenya."*

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses compared to businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

3.2.132 KPMG

Clause 13 (a)

505. Amend the clause that seeks to bring tax income from the supply of goods to a public entity and subject this to withholding tax at a rate of 0.5% for resident suppliers and 5% for non-resident suppliers. KPMG proposes to reduce the proposed rate to 2% for non-resident suppliers.

Committee Observation

The Committee was of a different view that this is a revenue raising measure and lowering the rate will lead to revenue loss.

Clause 14 (b)

506. Delete the proposal that proposes to remove tax exemption of capital gains relating to the transfer of title of immovable property to a family trust. Family estates are typically established for estate planning and asset protection. Further, when property is transferred to a family trust, the beneficial ownership does not change but remains with the family.

Committee Observation

The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 14 (d)

507. Amend the proposal to introduce a 5% withholding tax on interest paid to resident and non-resident persons on bonds, notes or similar securities. KPMG proposes harmonizing the provisions under paragraph 60 with paragraph 51 to avoid interpretation challenges related to tax exemptions for infrastructure bonds and ensure investor confidence.

Committee Observation

The Committee noted the stakeholder's concerns however, it was of a different view that taxing these securities will make them unattractive hence recommends deleting the clause

Clause 20 (b) (iii)

508. Delete the proposal seeking to move air ticketing services supplied by travel agents from exempt to standard rate. This VAT implication will significantly increase air ticket prices discouraging travel and tourism.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (x)

509. Delete the proposal seeking to move inputs and raw materials of agricultural pest control products from zero-rated to exempt. It is the opinion of KPMG that this reclassification will raise production costs for supplies who will in turn pass these costs onto farmers and ultimately lead to higher food prices.

Committee Observation

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 26

510. Delete the proposal to amend Section 8 of the Miscellaneous Fees and Levies Act by revising the railway development levy from 1.5% to 2.5% of the customs value of imported goods.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

New Proposal

511. KPMG proposes the following:

i) Delete and substitute paragraph 2(h) of head B of the Third Schedule of the ITA given that large capital expenditures were invested in SEZs, none of the entities were profitable and could pay the corporate tax within the first 10 years of operation. The new section will read as follows:

> "*special economic zone developers, operators and enterprises shall be exempted from paying any corporation tax for a period of ten years commencing with the year in which production, sales or receipts relating to the activities for which that developer, operator or enterprise has been licensed as a special economic zone and thereafter fifteen percent for the next ten years of operation and thereafter revert to the prevailing corporate tax rate.*"

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

ii) Amend Paragraph 72 of the First Schedule of the ITA by inclusion of the phrase 'by licensed' immediately before the words enterprise, developer and operator. This is to provide clarity on the loophole where unlicensed entities could potentially misrepresent themselves as eligible enterprises, developers or operators within the SEZs.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

iii) Amend Section 2(1) of the Excise Duty Act by introducing the definition of a digital lender to be 'a person holding a valid digital credit providers license issued by the Central Bank of Kenya.'

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.133 BRITISH CHAMBER OF COMMERCE KENYA

Williamson Tea Kenya Plc

Clause 18

512. Delete the clause since the deletion of sub-sections 7 & 8 means the portion relating to exempt supplies will be nondeductible and will not be apportioned. This VAT adjustment will lead to an increase in VAT cost to the business.

Committee Observation

The Committee emphasized that the rationale of the clause was to curb misuse of the apportionment formula thus recommends retention of the clause.

Clause 20 (a)(x)

513. Delete the clause and retain the zero-rated supplies. This is because the proposed amendment will increase the cost of farming, which will further lead to an increase in the cost of food.

Committee Observations

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

3.2.134 EAST AFRICAN BREWERIES PLC (EABL)

Clause 23

514. The proposal is welcome because the inclusion of Spirits products in the excise remission regime is good and will increase the level of local raw material sourcing which will benefit agricultural value addition, not to mention positively impact socioeconomic status of farmers and value chain players in Kenya.

Clause 24

515. The proposal is welcome because the intended policy objective of collecting alcohol excise tax within 24 hours to discourage illicit trade has not been achieved. Furthermore, under the current provision, managing cash flow and working capital has been adversely affected by the payment of excise within 24 hours since most manufacturers have, on average 30, 30-day payment terms with distributors, which necessitates borrowing to pay taxes.

Clause 25 (a) (i)(A)

516. **EABL highlighted that the registered manufacturers should be defined** to clarify who should benefit from exclusion from payment of the tax. Similar incentives (e.g., import duty exemption on industrial spare parts) took manufacturers too long to implement due to similar administrative gaps.

517. **EABL also stated that the excise duty on imported sugar be maintained at KES 5/ kg** since KES 5 /kg has already increased the cost of locally produced products, considering there is no industrial sugar production in Kenya.

Committee Observations
The Committee observed that it is vital to protect the local sugar industry and give them competitive advantage. However, the Committee noted the need to exempt imported sugar for industrial use as they are raw materials.

Clause 25 (a) (i)(K)

518. EABL proposed that the following amendments be made;

i. *Lower the tax rate from KES 10/cl to KES 8.9/cl*
ii. *Retain the Excise Rates for Ethanol (raw material) at the specific rate of KES 356.42/liter or remove it altogether.*
iii. *Define the abv tolerance for assessment/determination of excise tax due to taxpayers at an Alcohol content tolerance of ±0.4% – this will close the administrative gap and prevent escalation of tax disputes*
iv. *Define licensed small independent brewers.*
v. *Enact regulations to prevent tax evasion and ensure tax compliance before the provision is implemented.*
vi. *Change the excise rate on Beer from KES 22.50/centilitres to KES 20/ centilitre of pure alcohol.*
vii.

519. The above amendments were based of the fact that tax revenue losses due to increased illicit will be mitigated and also the industry's competitiveness will be enhanced thus encourage investment and help create employment.

Committee Observations
The Committee noted that the aim of the proposal was to raise additional revenue for the Government and charge excise duty on alcohol content.

New Proposal

EXCISE DUTY ACT, 2015

Paragraph 1 of Part I of the First Schedule

520. Amend the above provision by deleting the following item
   i. *Description Rate Imported Glass 35% bottles (excluding imported glass bottles for packaging of* pharmaceutical products)

521. This is because imposing an excise tax on glass is in violation of COMESA Treaty provisions on most favored nation treatment and provisions that prohibit Member States from enacting legislation or applying administrative measures that directly or indirectly discriminate against the same or like products of other Member States. Kenya has only two glass manufacturers with a total installed production capacity of 90,425 tonnes/annum against a higher demand by glass users in Kenya, necessitating the need to import.

Committee Observations
The Committee did not agree to the proposal, noting that the provision was meant to protect the local manufacturing industry

New Proposal

Section 36 (2)
522. **Delete Section 36 (2) and replace it** with:

2) Where the Commissioner under paragraph (1) directs ascertainment by the volume shall be calculated—
(a) by use of a mass flow meter at twenty degrees centigrade
(b) With an accuracy of+/-3%of the measured volume in litres

523. The proposal is based on the argument that the process of measuring volume of Spirits sold by distillers or received by manufacturers of spirits has changed due to the introduction of mass flow meter which are approved by Weights and Measures for custody transfer application. Further, temperature has an effect on ethanol volume readings. When the readings are taken at warmer temperatures, the ethanol quantity is usually higher as opposed to a colder temperature. This lack of standardisation normally results in significant losses. Prior to 2015, the Customs and Excise tax law in Kenya used to provide for a 1% spirits process and transit loss allowance on excisable raw materials. Regulations in other jurisdictions such as South Africa, Europe, US and UK provide for allowances for spirits processing losses3.

Committee Observations

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.135 JANESH PATEL
Clause 20 (b) (iii)

524. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence, the exemptions should remain.

3.2.136 HYLINE MORAA
Clause 20 (b) (iii)

525. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain

3.2.137 ZAHRA JINA
Clause 20 (b) (iii)

526. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is

particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain.

3.2.138 ALVIN CHECHE MWAMBILA

Clause 20 (b) (iii)

527. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain.

3.2.139 FELIX ODHIAMBO

Clause 20 (b) (iii)

528. Delete the proposal to subject VAT to air ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.140 SUKHMINDER CHIMA

Clause 20 (b) (iii)

529. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines,

international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.141 JOHN OIRE

Clause 20 (b) (iii)

530. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.142 SONALI KUMARI ZACHARIAH

Clause 20 (b) (iii)

531. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence, the exemptions should remain.

3.2.143 RENISH ACHILLA

Clause 20 (b) (iii)

532. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT

and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.144 JACKLINE NDEVE
Clause 20 (b) (iii)

533. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.145 JOSHUA MUNYAO
Clause 20 (b) (iii)

534. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.146 SHABINA MUGHAI
Clause 20 (b) (iii)

535. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain.

3.2.147 EDNA MWALWALA
Clause 20 (b) (iii)

536. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.148 VERITY CHAO
Clause 20 (b) (iii)

537. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.149 PIVOT TRAVEL SOLUTIONS LIMITED
Clause 20 (b) (iii)

538. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence, the exemptions should remain

3.2.150 MIMI HIRANI
Clause 20 (b) (iii)

539. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.151 ELIZABETH MWEU
Clause 20 (b) (iii)

540. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is

particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain.

3.2.152 RODRICK LUCHETU
Clause 20 (b) (iii)

541. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.153 GITUMA NTURIBI
Clause 20 (b) (iii)

542. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector. Hence, the exemptions should remain.

3.2.154 BERYL OMONDI
Clause 20 (b) (iii)

543. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT

increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.155 DINAH CHELANGA

Clause 20 (b) (iii)

544. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.156 KALIDINDI RAJU

Clause 20 (b) (iii)

545. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain

3.2.157 ARWA SHEKAT TAYABALI

Clause 20 (b) (iii)

546. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.158 PATRICK MAINA KAMANGA

Clause 20 (b) (iii)

547. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs), creating an uneven playing field and driving businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector; hence the exemptions should remain

3.2.159 MARTIN BARASA

Clause 20 (b) (iii)

548. Delete the proposal to subject VAT on Air Ticketing. The proposed VAT rate increase will raise the cost of domestic and international travel within and outside Kenya, significantly impacting the air travel sector. Ticket prices will rise due to higher VAT and additional indirect airport charges, increasing operating costs. Notably, the VAT increase targets only local air ticketing service providers, excluding airlines, international agents, and online travel agents (OTAs). This creates an uneven playing field and drives businesses away from local providers. This policy change is particularly detrimental as travel agents operate on thin margins, and the increased VAT will further erode their profitability.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

3.2.160 PRICEWATERHOUSECOOPERS LIMITED (PWC)

Clause 5

549. Amend the proposal through an introduction of a threshold in line with international best practice, perhaps matching the VAT registration threshold, below which the non-residents will not be required to pay the significant economic presence tax. Further, they proposed an alignment between clause 4,13 and 15 on Withholding tax.

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses than businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

3.2.161 IRVINE'S KENYA LIMITED

New Clause

550. Amend the Excise Duty Act to consider the exemption on the excise duty rate of 25% on fertilized hatching eggs for incubation (HS Code 0407.11.00) originating from EAC countries. A hatching egg is not the final product. Rather, it is a raw material used in the incubation to produce a live day-old- chick. For East Africa to ensure food security in the long term and increase chicken consumption across the EAC there needs to be free movement of raw materials across the region.

Committee Observation

The Committee noted the stakeholder's proposal and recommends exempting eggs meant for hatching as opposed to table eggs.

3.2.162 WESTMINISTER CONSULTING

Clause 5

551. Westminister supports this proposal introduce a "Significant Economic Presence Tax" applicable to Non-residents earning income from providing services in Kenya via the digital marketplace. Considering the nature of business transactions, it may be virtually impossible to track and hold accountable the innumerable travel agents all over the world working in affiliation to the National carrier.

Clause 7

552. The stakeholder supported the proposal by noting that these provisions ought to have been introduced at the point when these contributions were constituted. Westminister recommends that these provisions are backdated to the effective date of the respective deductions so that the expense for the same is not unfairly borne by the employer and as a show of fairness and equity. Recent media reports show shocking numbers of lay-offs and restructuring by large corporations in a bid to

manage their payroll costs. This move will definitely support and encourage employers.

Clause 8

553. The stakeholder supported the proposal stating that it is a positive initiative to encourage higher contributions to individual retirement funds. The proposal also supports government efforts to promote retirement savings across diverse groups, including self-employed individuals. Implementation of the proposal is expected to result in higher pension contributions as employees will utilize increased thresholds.

Clause 18(b)

554. Westminister proposed a deletion of the proposal on the removal of the provision enabling manufacturers to claim refunds for excess input tax from supplies to official aid-funded projects approved by the Cabinet Secretary, National Treasury & Economic Planning. This change may impact manufacturers engaged in such projects, potentially leading to financial implications for these entities as supplies to such project are exempt from VAT and the manufacturers will not be eligible for VAT input claim on the same.

Committee Observation
The Committee noted that this is a revenue-raising measure.

Clause 20 (a) (i iii,iv,vii)

555. Delete the proposals to remove the exemption on aircraft parts in the airline industry in the country because they are detrimental to the tourism sector. In a developing economy such as Kenya, airlines form a vital element of the transport infrastructure. They provide the only worldwide transportation network essential for tourism and global business. Every year, The Jomo Kenyatta International Airport handles more than 8 million passengers, mostly tourists or business passengers visiting and leaving Kenya.

556. Westminister added that the majority of airlines globally are operated not for profit but to promote tourism and other government agendas. In return the government has provided subsidies and reduced the cost of operations by exempting all taxes to remain competitive. Other governments also offer subsidies for visa processing fees to attract tourist to their countries. These countries are better placed and supported in terms of infrastructure, large-scale equipment, tax incentives, and direct and indirect interventions to reduce costs incurred by their airlines.

557. The stakeholder outlined a comparison with other countries in terms of the relief measures put in place by their respective governments, which revealed that most governments are supporting their aviation industry through direct financial aid, tax reliefs, and loans. The International Air Transport Association (IATA) has also been at the forefront in appealing to governments to put in place relief measures to aid the airline industry as the impacts of the COVID-19 crisis in Africa deepen.

558. Additionally, most multinational companies have been using Kenya as a launching pad of their ventures into the African markets due to the added benefits that Kenya has to offer. Our affiliations to the developed countries and local set-ups of prominent world organizations like the United Nations, presence of a high number of international embassies are some of the factors that have always placed Kenya at a higher level than our neighbors. However, we expect all these multinationals to be more opportunistic and looking for the best offers in the global market to support their international trade.

559. Westminister Consulting recommended the deletion of the proposals and appealed for support for the aviation industry in Kenya to enable the airlines to remain afloat amid other factors that have been ailing the industry.

Committee Observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard the Committee proposes to review the proposal in the Bill.

CLAUSE 18

560. **THAT**, clause 18 of the Bill be amended by adding the following new paragraph immediately after paragraph (b)—

(c) in subsection (5), by adding the following new paragraph immediately after paragraph (e)—

(ea) in the case of a taxable supply that is zero-rated or exempted, such excess arose on account of permanent credit position in favour of a registered person due to the difference between the rate applicable on the 1st July, 2022, and a lower rate of tax and that such credit position existed on the date that the taxable supply became zero-rated or exempted:

Provided that notwithstanding the provisions of subsection (5), a registered person who incurred such a credit shall apply to the Commissioner for relief within six months after the commencement of this provision.

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 20 (a) (viii)

561. Delete the proposal and reinstate the exemption for denatured ethanol to encourage its supply instead of illicit substitutes that penetrate the market when the cost of denatured ethanol goes higher. The stakeholder also recommends exemption from VAT of inputs or raw materials locally purchased or imported by manufacturers of denatured ethanol as approved from time to time by the Cabinet secretary responsible for Agriculture.

562. In Kenya, the sugar and sugar by-products industries stand as fundamental pillars of the economy, contributing significantly to employment, rural development, and food security. This sector, with a rich history dating back to the early 20th century, plays a pivotal role by offering livelihoods to thousands of Kenyan families and addressing our nation's economic needs. Specifically focusing on deriving ethanol from sugar crops, such as sugarcane, propels the growth of the agro-processing sector, aligning with the East African Community's vision for value addition within the community. This approach ensures a stable market for our sugar producers, contributing to the sustainability of the sugar industry and improving farmers' livelihoods

Committee Observation
The Committee agreed with the stakeholder's proposal.

CLAUSE 20

563. THAT, clause 20 of the Bill be amended—

(a) in paragraph (a)—
- (i) by deleting item (i);
- (ii) in item (ii), by inserting the words "including parts" immediately after the expression "Chapter 88";
- (iii) by deleting item (iii);
- (iv) by deleting item (vi);
- (v) in item (x), by adding the following new items immediately after the proposed new item 152—

  153. The supply of denatured ethanol of tariff number 2207.20.00.

  154. Inputs or raw materials locally purchased or imported by manufacturers of ethanol as approved, from time to time, by the Cabinet Secretary responsible for matters relating to industry.

(b) in paragraph (b) by deleting item (ii).

Committee Observation
The Committee agreed with the stakeholder's proposal

Clause 20 (a) (ix)

564. Delete the proposal because the VAT exemption is a mere cash flow boosting mechanism that allows investors to free up cash flow to fund working capital requirements where they would claim the same VAT over a period of time against their sales. As an economy grappling for foreign direct investment, it is critical that the government encourages investors of such magnitude to continue investing in the country.

Committee Observation
The Committee noted the proposal and recommended consideration of this matter in future legislation.

Clause 25 (a) (i) (G)

565. Delete the proposal on the introduction of excise duty on **coal**, because coal is a raw material utilized across various sectors and any increment could hamper the cost of production. One of the key sectors where coal is utilized is in the construction industry, in particular in the manufacture of clinker – a raw material for production of cement and the negative impact this amendment will have on the entire supply chain if it is adopted.

566. The proposal will affect the quality of construction where higher costs will easily translate to poor quality cement and also steel that still utilises coal in its manufacturing process. Additionally, the Government's agenda on affordable housing will definitely be impacted by increased cost of inputs as proposed. Importation of clinker as opposed to local manufacturers will definitely hamper the foreign exchange situation that is being addressed with more imports.

Committee Observation

The Committee noted that the proposed excise duty of KShs. 27000 per MT is way above the cost of coal in international market. Therefore, there is need to review the proposed excise duty.

Clause 25 (a) (i) (G)

567. The stakeholder supports the proposal to impose excise duty on **imported printing ink** in the spirit of supporting local manufacturers and local purchase of what can be produced locally. Westminister Consulting acknowledged that trade supports key sectors of the Kenyan economy, including agriculture, manufacturing and service industries. In addition, trade also plays a pivotal role in poverty reduction through employment creation. For these reasons, among others, trade is a key component of the economic pillar if the overall Kenya Vision 2030 has to be realized. The deepening and expansion of both regional and continental markets, in particular, the operationalization of the East African Community Common Market Protocol, provides a unique opportunity for Kenya to re-assess the fundamental facets of the nation's trade regime with a view to ensuring its competitive growth. The government can only ensure our manufacturers are competitive buy providing them with the necessary support against cheaper imports.

Committee Observation

The Committee agreed with the stakeholder

Clause 26

568. Delete the proposal and retain the 1.5% rate for local manufacturers to support key industries locally. increasing the railway development levy will translate to an increased cost of production for local manufacturers who import various raw materials. This will make it more costly to supply to the local market and render local manufacturers uncompetitive in the global markets.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected for the proposed increase shall be committed to developing an electric light rail system within the big metropolis in Kenya. The Committee, however, proposed a new rate of 2%.

New proposed amendments

569. Amend by inserting the following new clause immediately after clause 29—

> 29A. Section 12 of the Value Added Tax Act, 2013, is amended in subsection (1), by adding the following proviso: "Provided that in the case of a national flag carrier, the time of supply shall be the date on which the goods are delivered or services performed."

Committee observation.

The Committee agreed with the stakeholder.

Clause 43(a)(iii)

570. Amend Clause 43(a)(iii) the proposal to read as follows: "*by inserting the word imported immediately before the tariff description "Articles of plastic of tariff heading 3923.30.00" and by inserting the expression "and 3923.90.90" immediately after the expression "3923.30.00"* appearing in the tariff description "*Articles of plastic of tariff heading 3923.30.00*". The Finance Act, 2022 made a mistake by referring to the provision that was being amended as "*Imported Articles of plastic of tariff heading 3923.30.00*". However, the 2021 Finance Act did not refer to imported plastic articles. The 2022 amendment was worded in such a way as to infer that the 2021 Finance Act introduced excise duty only to imported plastics. The current proposal will be moot as it is seeking to amend a provision of the law that is non-existent in the first place.

Committee observation.

The Committee agreed with the stakeholder.

571. Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, 3921.19.90 being levied 25% excise duty

Committee observation

The proposals were accepted by the Committee.

Amend section 17 of the VAT Act- LPG Industry

572. Introduce a provision allowing for refund of the permanent credit position arising for the sector as a result of the restrictive nature of the law as provided for under Section 17 of the VAT Act. This measure will go a long way in supporting companies have adequate cashflows to sustain their business activities that are critical to the niche of the market they serve – the local mwananchi.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.163 LAW SOCIETY OF KENYA (LSK)

Clause 2(d)

573. The LSK recommends that this proposal be deleted and the current definition of royalty be maintained to ensure that it aligns with international best practices and to avoid placing an unfair tax burden on software distributors, which could potentially increase their cost of doing business and, which would ultimately be passed onto the final consumers.

Committee Observation

The Committee was of a different view that the provision does not deal with software distribution.

Clause 5

574. The LSK proposed introducing a threshold based on quantum and the user-based definition for SEP to clarify how the significant economic presence is established to avoid creating a catch-all mechanism. Additionally, the deemed taxable profit be set at 5%, ensuring that the effective tax rate remains at 1.5%.

Committee Observation

The Committee observed that digital service providers typically enjoy higher profit margins since they have lower operational expenses than businesses with a physical presence. Consequently, the purpose of the increase is to adjust the deemed profit to reflect what it would have been if these companies did not benefit from reduced production costs.

Clause 13(a)

575. The LSK proposed that exemptions from these provisions be introduced on a revenue basis to cushion genuine small and medium sized enterprises (SMEs). Specifically, suppliers of goods valued at Kshs. 1 million and below should not be subjected to withholding tax.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

Clause 13(b)

576. The LSK proposed that the clause be deleted because due to the slim profit margins that affect digital marketplace as they intend to capitalise on volumes, we might see significant increase in the prices of goods and services distributed through digital platforms hampering the adoption of e- commerce in Kenya. Further, the high rate for non-resident entities may discourage potential investors from getting into the

market and expanding a steadily expanding sector which is still in its budding stages of growth.

Committee Observation
The Committee noted the concerns however the provision is intended to improve compliance and the rate is quite low.

Clause 18(b)

577. The LSK proposed that the clause be deleted because the proposal could undermine the cost-efficiency of aid-funded projects as manufacturers will seek to pass any additional costs to the aid funded projects. Additionally, this could lead to increased operational costs for manufacturers and project implementers, negatively affecting aid funded projects.

Committee Observation
The Committee noted that this is a revenue raising measure.

Clause 19

578. The LSK propose that the amendment be retained.

Clause 20 (a) (i), (iii), (vi)

579. The LSK proposed that the clause be deleted because the proposals are likely to result in an increase in costs in the aviation sector.

Committee Observation
The Committee agreed with the proposal to delete the clause noting that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition, the Committee observed that a tax on aircraft spare parts would lead to high cost of operation of airlines in Kenya thus making the country uncompetitive as a regional hub. In this regard the Committee proposes to review the proposal in the Bill.

Clause 20 (a) (ii)

580. The LSK propose that the amendment be retained.

Clause 20 (a)(vii)

581. The LSK propose that the clause be deleted because removal of VAT exemptions in the tourism sector is likely to dampen investment prospects in the sector, despite tourism's substantial contribution to the country's GDP.

Committee Observation
The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (a)(viii)

582. The LSK proposed that the clause be deleted because removing exempt status of taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 where the agreement or contract provided for exemption from value added tax contradicts the legitimate expectation of the parties involved and contradicts the contracts. This is contrary to the constitutional principles of fairness and certainty in imposing tax.

Committee Observation
The Committee noted that the provision accords tax exemptions, which is not necessarily fair to other taxpayers, nor is it good for the mobilization of revenue. Thus, the Committee retained the proposal as is in the bill.

Clause 20 (a)(ix)

583. The LSK propose that the clause be deleted because removing exempt status on capital goods used in manufacturing will also discourage investment in manufacturing

Committee Observation
The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 20 (a) (iv)

584. The LSK notes that the proposal is welcome. However, they recommend that the supplies be zero rated noting that providing exempt status will deny manufacturers the opportunity to deduct input tax, thus loading the costs onto the consumer. The need to address period poverty and gender tax inequalities cannot be overemphasized, and this is best achieved by zero- rating these suppliers.

Committee Observation
The Committee noted that the proposal is not to subject manufacturers to VAT but to exempt them

Clause 20 (a) (x)

585. The LSK propose that the clause be deleted because removing these products from zero-rated status to exempt status is adverse, as it will deny suppliers the much-needed opportunity to claim input tax. This will likely result in the costs being passed on to farmers, leading to an increase in food prices.

Committee Observation
The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 20 (b) (ii), (iii), (iv) & (v)

586. The LSK propose that the clause be deleted because introducing tax on the hiring, leasing, and chartering of aircraft will adversely affect the aviation sector by raising costs. Furthermore, imposing tax on air ticketing, park entry fees, and tour operator services will negatively impact the tourism sector, discourage the use of entry parks, reduce the use of tour operators, and potentially prejudice employment opportunities. Introducing tax on air ticketing services by travel agents will discourage the use of travel agents, leading to a loss of employment and commercial opportunities.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 20 (b) (i)

587. The LSK proposes that the clause be retained.

Clause 20 (b) (vi)

588. The LSK propose that this supply be zero rated noting that in as much as an exemption on the transfer of a business as a going concern may be intended to cushion the buyer who incurs VAT costs and is thus welcomed as a step in the right direction, it will, however, preclude the seller from claiming input tax. Therefore, it would be more beneficial for the transfer to be zero-rated.

Committee Observation

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 21

589. The LSK propose that the clause be deleted because it will deny suppliers the much-needed opportunity to claim input tax. This will likely result in the costs being passed on to farmers, leading to an increase in food prices.

Committee Observation

The Committee noted the proposal however, they recommends exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 22

590. The LSK stated that the proposal remains unclear on how its implementation shall occur, especially on whether the non-resident persons shall be required to register and be licensed to provide excisable services. As such, Guidelines/ Regulations be issued to give clarity on the implementation aspect.

Committee Observation

The Committee was of a different view in that the intention of the provision was to raise revenue for the government. Further, the Committee noted that the tax is being imposed on the owner of the digital platform and not on local users.

Clause 24

591. The proposal is welcome as it will provide taxpayers with ample compliance time to remit excise duty to the Commissioner. Additionally, the amendment is expected to ease the cash flow constraints currently faced by manufacturers of alcoholic beverages, who are required to remit excise duty payments within twenty-four hours of removing goods from the stockroom, often before receiving payment from purchasers.

Clause 25 (b) (i)

592. The LSK proposed that the clause be deleted because this change will directly impact the costs associated with telephone and internet services. Considering the crucial roles that internet data and telephone services play in business operations, this proposed amendment is expected to have an adverse impact on the overall cost of doing business in Kenya.

Committee Observation
The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

Clause 26

593. The LSK proposed that the clause be deleted noting that whilst a higher RDL is aimed at increasing revenue for the Government, an increase in RDL will directly increase the cost of imports, as importers will pay more for goods brought into the country. This is likely to result in higher prices for goods, particularly those that are essential or commonly imported. Importers will likely these costs to consumers, potentially causing inflation in the price of imported goods and consumer goods in general.

Committee Observation
The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.164 RSM (EASTERN AFRICA) CONSULTING LTD (TAX LAWS)

Clause 2(e)

594. Amend the proposal as follows:

> *"by deleting the definition of "wife's employment income and wife".*

595. The reason for the is amendment is to complete the clean-up process·

Committee Observation
The Committee agreed with the stakeholder's proposal.

Clause 3(b)(i)

596. Amend the proposal to read:

> *"(f) seventy two thousand shillings per employee, per year on the value of meals served by the employer, whether the meals are supplied by the employer or not, within his premises to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer, whether the meals are supplied in the premises of the employer or the premises of the third party, shall be excluded in the calculation of his gains or profits subject to such conditions as the Commissioner may specify".*

Committee's Observation
The Committee noted the stakeholder's proposal. However, the rates provided in the bill which balances the revenue collection with the exemptions granted.

Clause 6 (12G.) (5)

597. Amend the Clause as follows:

> *"adjusted covered taxes" of a covered person for the year of income shall be equal to the current tax expense accrued in its accounting net income or loss with respect to covered taxes for the year of income adjusted by: the net amount of its additions to covered taxes for the year of income and reductions to covered taxes for the year of income, and total deferred tax adjustment amount"*

Justification

This revised definition provides certainty especially to MNEs who rely on OECD definitions for their global operations without giving the Commissioner too much room to adjust the definitions which may not be in line with OECD guidelines.

Committee Observation
The Committee noted that the definition of "adjusted covered taxes" as provided in the bill is adequate.

Clause 14(b) and (c)

598. Delete the proposals because by introducing this amendment, the income will be subjected to double taxation as the income of the trust will be taxed and the same will be taxed upon distribution to the beneficiaries. Family trusts are generally formed for estate planning. Currently, trust income is taxed when distributed to beneficiaries.

Committee Observation

The Committee noted that the principal income of a family trusts comprises of assets that include cash transferred into the trust by the settlor, as such should not be considered as an income of the trust and therefore not subject to tax.

Clause 15(b)(ii)

599. Amend the Clause include the following proviso:

> "Provided that the withholding tax deducted under this paragraph shall be a final tax."

Justification

The proposal seeks to subject to tax interest income arising from any of the above investment securities that will be put in place after the proposed change comes into effect. However, this Bill does not clarify whether the WHT deducted on the interest is a final tax, or whether the bond-holder would be subjected to further taxation. We therefore propose to include a proviso in the paragraph, to expressly state that the WHT deducted on the interest from these bonds would be a final tax.

Committee Observation

The Committee noted the stakeholder's concerns however, it was of a different view that taxing these securities will make them unattractive hence recommends deleting the clause

Clauses 20(a)(vii) and 20(b) (ii) (iv) and (v)

600. Delete the proposals. This combined with the recent significant increases in entry fees to national parks and bed nights would lead to an increased cost to tourists, which would make Kenya a less attractive tourist destination, which may negate the gains that the sector has seen over the period, should these proposals come to pass. There is also ambiguity on place of supply for air ticketing as it would create unfairness in the pricing of the same ticket if booked from different locations.

Committee Observation

The Committee agreed with the stakeholder to incentivize the tourism sector hence the exemptions should remain

Clause 25(b)(i)

601. Reject the proposal because telephone, internet and money transfer services as essential in trade and social spheres (e.g sending money to dependants). The hike in internet and telephone service costs could result in a decrease in their usage and a heavier burden given that several compliance obligations (such as filing tax returns and submitting data via eTIMS) can only be done over the internet.

Committee Observation

The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

NEW PROPOSALS

602. Under Clause 12(3), insert the following new sub sections: -

> "(4) the tax in respect of a qualifying interest shall be charged at the rate specified in the Third Schedule and shall not be subject to further taxation"
>
> "(5) the tax in respect of a qualifying dividend shall be charged at the rate specified in the Third Schedule and shall not be subject to further taxation"

603. This proposal seeks to rectify this so that qualifying interest and qualifying dividends are subjected to WHT and that is final tax.

Committee Observation

The Committee noted this is a clean up to remove unnecessary details and to provide that the rates shall of tax shall be specified in the third and ninth schedule respectively.

New Proposals under Vat Act

604. Amend Section 34 of the VAT Act, to increase the VAT registration threshold as follows:

> "(a) has made taxable supplies or expects to make taxable supplies, the value of which is fifteen million shillings effective from 1st January 2025, twenty million shillings effective from 1st January 2026 and twenty-five million shillings effective from 1st January 2027 or more in any period of twelve months; or
>
> "(b) is about to commence making taxable supplies the value of which is reasonably expected to exceed fifteen million shillings effective from 1st January 2025, twenty million shillings effective from 1st January 2026 and twenty-five million shillings effective from 1st January 2027 in any period of twelve months"

Justification

It would be prudent to increase the VAT registration to factor in inflationary changes. The increase in the VAT threshold will also align it with the TOT threshold over 3 years and remove the requirement for taxpayers to register for both VAT and TOT. It is important to understand that the purpose of the TOT regime was to simplify tax administration, by requiring traders not to maintain full records. The new ETIMs also have a simplified option for traders not to keep stock records up to 25M. ETIMs was introduced to ensure that all B2C transactions are compliant. However, the VAT regime would require the trader to maintain extensive records, in order to support the VAT charged, and the VAT claimed. This would defeat the purpose of the TOT regime, and increase the burden of compliance to MSMEs, who accommodate those under the TOT regime. Therefore, it is important to have the VAT registration threshold to align with the TOT threshold. The rationale behind 25M of TOT was such businesses have a margin of 5% to 10% giving an average net profit per month between 100,000 to 200,000.

Committee Observation

The Committee noted this is a clean up to remove unnecessary details and to provide that the rates shall of tax shall be specified in the third and ninth schedule respectively.

605. Amend Section 17 of the Value Added Tax Act in subsection (5), by inserting the following paragraph immediately after paragraph (e):

> *(f) such excess arising from making zero rated supplies but was not recovered by the registered person within two years as a result of the Commissioner's reliance on the apportionment formula under Paragraph 8(2) of the Value Added Tax Regulations, 2017.*

606. Section 17(5) of the Value Added Tax Act, is amended by adding the following proviso immediately after the provisos to Subsection (5):

> *"Provided further that, notwithstanding any other provision of this Act, a registered person may apply for a refund under Section 17(5)(f) within two years from the commencement of this provision"*

607. The reason behind this proposal is because the regulations under the VAT Act were gazetted in April 2017 (hereinafter "the 2017 Regulations"), which provided a formula to calculate the amount of input VAT refundable to registered persons making both standard-rated and zero-rated supplies. However, the said formula was defective, resulting in companies making both zero-rated and standard-rated supplies not receiving the full refunds as envisaged under Section 17 of the VAT Act. To correct this, the refund formula was amended through Regulations gazetted in July 2019 (hereinafter "the 2019 Regulations"). Nonetheless, taxpayers who made refund applications prior to the gazettement of the 2019 Regulations received Credit Adjustment Vouchers ("CAVs") for amounts not refunded (despite being refundable). These CAVs cannot be utilized to settle outstanding, current or future VAT liabilities, or other tax liabilities. This has negatively affected taxpayers' liquidity and cash flows, as they must pay any tax liabilities, despite having unpaid but approved refunds, in the form of CAVs. This amendment will entitle taxpayers with CAVs to a refund of the CAVs.

Committee Observation

The Committee noted the stakeholder's views and recommended that the National Treasury and KRA find a way to resolve the matter.

New Proposal Under Excise Duty Act

608. Amend Section 2(1) of the Excise Duty Act by introducing the following definition in alphabetical order: "resident" in relation –

(a) To an individual means a person who offers services from within Kenya;
(b) To a body of persons shall take the meaning provided under Section 2(1) of the Income Tax Act.

Committee Observation
The Committee noted the stakeholder's proposal, which has been defined in the TPA.

3.2.165 MINISTRY OF DEFENCE

New proposals on Paragraphs 11 and 12 of Part A of the Second Schedule to the Excise Duty Act

609. Amend paragraph 11 to include supplies to Defence Forces welfare Services are for official use by the Kenya Defence Forces to read as follows—

(11) All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces, ***the Defence Forces Welfare Services*** *and the National Police Service*

610. Amend paragraph 12 to change the name from Kenya Defence Forces Canteen Organization to Defence Forces Welfare Services for it to read as follows—

(12) Alcoholic or non-alcoholic beverages supplied to ***the Defence Forces Welfare*** *Services.*

Committee Observation
The Committee agreed with the stakeholder's proposals.

New Proposals on Paragraphs 57 and 101 of Part I, Section A of the First Schedule of the Value-Added Tax Act

611. Amend paragraph 57 to include Supplies to the Defence Forces Welfare Services are for the official use by the Kenya Defence Forces, for it to read as follows—

(57) All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces, ***the Defence Forces Welfare Services,*** *and the National Police Service.*

612. Amend paragraph 101 to change of name from Kenya Defence Forces Canteen Organization to Defence Forces Welfare Services to read as follows—

*(101) Alcoholic or non-alcoholic beverages supplied to **the Defence Forces Welfare Services**.*

Committee Observation
The Committee agreed with the stakeholder's proposals.

New proposal to amend Paragraphs ix and xxv of Part A of the Second Schedule of the Miscellaneous Fees and Levies Act.

613. Amend paragraph (ix) to include Supplies to the Defence Forces Welfare Services are for the official use by the Kenya Defence Forces to read as follows—

*(ix) All goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces, **the Kenya Defence Forces Welfare Services**, and the National Police Service;*

614. **Amend paragraph xxv to include** Supplies to the Defence Forces Welfare Services are for the official use by the Kenya Defence Forces to read as follows—

*(xxv) All goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces, **the Defence Forces Welfare Services,** and National Police Service;*

Committee Observation
The Committee agreed with the stakeholder's proposals.

3.2.166 HON. GATHONI WAMUCHOMBA, HSC

615. Through a written submission Hon. Gathoni Wamuchomba, HSC submitted that the economy is facing both recession and inflation and increasing taxes makes the situation worse. She noted that the proposed amendments will sink the economy and destroy the livelihoods, incomes and jobs.

616. She noted that the tax amendments proposed will create severe consequences. They include; the imposition of withholding tax on goods supplied to public entities within the Income Tax Act, shifting the focus of the ITA from taxation of income to a turnover tax system.

Clause 5

617. She noted that the clause is replacing the Digital Services Tax with a Significant Economic Presence tax. She highlighted that this the fifth time in four years that the current and previous administrations have attempted to introduce a Digital Service Tax to tax Kenyans on digital platforms.

Committee Observation

The Committee noted the proposal by the Hon. Member and consequently accommodated her proposed amendment by setting the threshold to Ksh.5million which is equivalent to the VAT threshold.

Clause 21

618. She noted that the proposal to delete these items will increase the cost of the supplies making them more expensive to an already overwhelmed citizenry.

Committee Observation

The Committee noted its overall policy is to curb zero-rated products which often lead to cumbersome refunds that result to institutions being in perpetual credit position. Additionally, where the amount allocated for refunds has always fallen short of the amount owed which affects the liquidity of the businesses. To address this the Committee has moved both the final products and raw materials from zero-rated to exempt which makes them Exempt-Exempt (EE). This therefore does not make these essential agricultural products expensive.

Clause 26

619. She noted that increasing RDL will result in corresponding increases in the cost of goods imported in Kenya. This will adversely impact end consumers as both traders and manufacturers will pass on the cost through the local prices of goods.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The proposed increased from 1.5% to 2.5% increases the RDL by 66% which is very steep and will lead to increased cost of imports including raw materials impacting the cost of living. Therefore, the Committee recommends reducing the levy to 2% from the proposed 2.5%.

3.2.167 Ernst and Young

Clause 2

620. Delete the clause since the proposed change may have significant negative impacts by putting Kenya digital companies at a disadvantaged position compared to countries with more favorable tax regimes. Additionally, the stated definition is not aligned to the OECD article 12 on royalties.

Committee Observation

The Committee noted that the definition of royalty provided in the bill relates to the payment made to the owner of the software and not distribution.

Clause 5

621. The proposal is welcome however, the annual turnover threshold should be provided for to align with the Kshs. 5,000,000 VAT threshold.

Committee Observation

The Committee agreed with the stakeholder's proposal.

Clause 6

622. The proposal is welcome however, EY proposes that entities under any preferential treatment in Kenya be exempted from the tax since the incentives offered are aimed at increasing investment in the desired economic sector of the economy. Applying this tax on entities with preferential tax regimes would create additional tax burdens to the targeted entities thus discouraging FDI and limiting other intended objectives.

Committee Observation
The Committee noted that entities that enjoy preferential treatment under SEZs should be excluded from this provision.

Clause 15

623. EY welcomes the proposal stating that IFB have historically been oversubscribed of up to 4 time the offered amount.

New proposed amendment

624. EY proposes a revision of the Kenyan income tax bands to ensure equitable spread and align with other tax rates especial corporate tax rate. Further, EY indicates that South Africa has progressive taxes with more tax bands with various rates. They propose the following bands to be considered.

- **i.** First Kshs. 24,000 p.m (Kshs. 288,000 p.a) ----------10%
- **ii.** Kshs. 24,001 -----100,000 p.m (288,001---------1,200,000 p.a) ----------20%
- **iii.** Kshs. 100,001------250,000 p.m (1,200,001-------3,000,000 p.a) ---------22.5%
- **iv.** Kshs. 250,001-------500,000 p.m (3,00,001------6,000,000 p.a) ----------25%
- **v.** Kshs. 500,001-------800,000 p.m (6,000,001------9,600,000 p.a) ---------27.5%
- **vi.** Amount exceeding Kshs. 800,000 p.m (Kshs. 9,600,001 and above p.a) ---- 30%

Committee Observation
The Committee noted the proposal and recommends consideration of this matter in future legislations.

New proposed amendment

Section 5(2) (a)(iii) of the Income Tax Act

625. Amend the Kshs. 2,000 daily limits for tax free per diem threshold and increase the limit because the current limit was provided for in law in the year 2006 and has not been revised ever since despite the rise in inflation and increased cost of living.

Committee Observation
The Committee noted the proposal and recommends consideration of this matter in future legislations.

3.2.168 FAHAGRAPHICS

NEW PROPOSAL

626. Fahagraphics proposed the exclusion of import duties and excise taxes on raw materials for domestic manufacturing inks. These raw materials are:

HS CODE	DESCRIPTION	% USED IN INKS
3815.90.00	ADHESION PROMOTER	4%
3909.50.00	POLYURETHANE RESINS	20 TO 30 %
3906.90.00	ACRYLIC RESINS	12%
3905.12.00	POLYVINYL BRUTAL RESIN(PVB)	8%

Committee Observation

The Committee agreed with the stakeholders proposal on the removal of excise duty and recommends to the National Treasury to consider the proposals on the exclusion of import duties on materials for domestic manufacturing inks as it is a matter of CET.

3.2.169 ERNEST & ASSOCIATES LLP

Clause 2

627. Ernest & Associates LLP proposed that the definition of 'Royalty' be amended in Clause 2(d)(b) by deleting the word 'training' that appears after development. The stakeholder indicated that training has its own definition and is taxed under Section 10(1) (a) of the Income Tax Act.

Committee Observation

The Committee noted that the definition of royalty provided in the bill relates to the payment made to the owner of the software and not distribution.

New Proposal

628. Delete the following definitions in the Income Act as they're no longer in use within the Act or that the requirements or particular provisions were moved to the Tax Procedures Act.

"Assessment", "Authorized tax agent", "Compensating tax", "Court", "Information technology", "Interstate tax", "Local committee"; "Notice of objection", "Registered venture capital company", "Tax computerized system", "Tribunal", "Venture Company.

Committee Observation

The Committee noted the proposal and recommends consideration of this matter in future legislations.

New Proposal

629. Delete section 2(2) of the Income Tax Act that provides as follows:

''*(2)In relation to any year of income in respect of which an order relating to tax or personal reliefs has been made under the Provisional Collection of Taxes and Duties Act (Cap. 415), reference in this Act to rates of tax and personal reliefs shall, so long as the order remains in force, be construed as references to the rates or reliefs specified in that order; and if, after the order has ceased to have effect, the rates of tax and of personal reliefs in relation to that year of income as specified in this Act as amended are different from those referred to in the order, and assessments have already been made having regard to those rates in the order, then all necessary adjustments shall be made to the assessments to give effect to the rates of tax and of personal reliefs for that year of income as specified in this Act as amended for that year of income.*''

Committee Observation
The Committee noted the Act referenced was declared unconstitutional hence there's need for the Committee to consider the legality of the legislation and provision.

Clause 5

630. Earnest & Associates proposed an amendment to Clause 5 to include the following subsections: -

''4A. *(1) A person liable to the tax under subsection (4) of this section by notice in writing addressed to the Commissioner, may elect to be liable to tax under paragraph 2(b) of head B of the third schedule in which case the person shall not be subject to Significant Economic Tax and the other provisions of this Act shall apply to such a person, with necessary modifications.*

4(B) *Where a person exempted from this section under subsection 3(b) requires payment of any amount of the consideration, by way of debit or credit card payment or through an electronic payment system and requires full payment of the consideration without allowing for withholding of any amounts liable to under sections 9(2) or 10, then the person shall be liable to pay tax required under sections 9(2) or 10 and not under this section*.''

631. It was the view of Ernest & Associates LLP that this amendment would ensure that persons collecting payment of any amount of the consideration, by way of payment using a debit or credit card or electronic payment system, and which person does not facilitate deduction of withholding tax, then the responsibility to pay taxes per sections 9(2) or 10 shifts to that person.

Committee Observation
The Committee noted that SEPT as currently defined is sufficient to address non-residents.

Clause 6

Ernest & Associates LLP proposed that Section 12G(4)(b) of the Income Tax Act be amended by adding the following words '' of this Act or under paragraph 1 of the

SECOND SCHEDULE of the *Public Benefits Organizations* No. 18 of 2013" after the word "schedule".

Committee Observation
The Committee noted the proposal and recommended consideration of this matte in future legislations.

632. The stakeholder further proposed that the proposed new Section 12G subsection 4 be amended by adding the following new paragraphs:

(i) Entities operating under the SEZ and EPZ tax framework

(j) Enterprises eligible for or that qualify for the Investment Allowance of 50% or more under the second schedule, in that year of income.

(k) Enterprises whose only income in Kenya is income exempt from tax under the first schedule of this act

(l) interest taxable under section 6A and Section 12C of this Act.

Committee Observation
The Committee noted the proposal and recommended consideration of this matter in future legislations.

Clause 15

633. Ernest & Associates LLP proposed deletion of Clause 15(b) HEAD B – Rates of Tax, paragraph 1 and proposed replacing it with: -

''1. The individual rates of tax on the total income of an individual, other than that part of the total income comprising fringe benefits and the qualifying interest, shall be the rates of tax on the total fringe benefits provided by an employer shall be charged at the resident corporation rate for that year of income.

Committee Observation
The Committee noted the proposal and recommended consideration of this matter in future legislations.

Clause 20

634. The stakeholder proposed the deletion of clause 20 (a)(x) paragraphs 149 and 150 that seek to make the some zero-rated items VAT exempt.:

Committee Observation
The Committee noted the proposal however, they recommended exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 21

635. The stakeholder proposed the deletion of Clause 21 subparagraph(c) which proposes to delete fertilizer from the Second Schedule of the VAT Act. It is the view of Ernest & Associates LLP that these items should remain zero-rated, until such a time when we see adequate policy interventions to increase accessibility.

Committee Observation

The Committee noted the proposal however, they recommended exemption of these goods will partly reduce the costs of the inputs and further reduce the burden of tax refunds.

Clause 25

636. Delete the proposed new description for imported sugar and replace it with: -

> *"Imported sugar of chapter 17 excluding sugar imported by a registered manufacturer for exclusive use for manufacture of other products KES. 7.5 per kg raw sugar of tariff heading 17.01 imported for processing by a licensed sugar refinery, where the processed sugar is not supplied to registered manufacturer for exclusive use for manufacture of other products" KES. 3.5 per kg.*

637. The stakeholder proposed that Sugar of Chapter 17 imported by a registered manufacturer should be for exclusive use for the manufacture of other products raw sugar of tariff heading 17.01 should be taxed at KES. 3.5 per kg since this is a semi-finished product.

Committee Observation

The Committee observed that it is vital to protect the local sugar industry and give them competitive advantage. However, the Committee noted the need to exempt imported sugar for industrial use as they are raw materials.

Clause 25

638. Delete Clause 25 (b) (i).

The provision aims to increase excise duty on telephone and internet data services from 15% to 20% of their excisable value

Committee Observation

The Committee agreed with the stakeholder's proposal to delete the clause and maintain the current rate of 15%. This will help curb the increase in consumer prices and support the Bottom-Up Economic Transformation Agenda (BETA) pillar on promotion of the digital superhighway agenda.

Clause 26

639. Delete the entire Clause.

Committee Observation

The Committee noted that the proposed amendment in respect of the RDL has been increased marginally. The additional money collected on account of the proposed increase shall be committed to the development of electric light rail system within the big metropolis in Kenya. The Committee however, proposed a new rate of 2%.

3.2.170 ALPHARAMA LIMITED

Proposal to amend the Bill to Remove Excise Duty on Locally Sourced Raw Hides/Skins

640. Whereas the government recognizes the importance of the leather industry and associated sectors as a key driver of economic growth, employment, and export potential, it is imperative to promote the local sourcing and processing of raw hides and skins. In light of the economic benefits and to stimulate the domestic leather manufacturing industry, the stakeholder proposed that the excise duty on locally sourced raw hides and skins be removed to ensure competitiveness, foster industry growth, and enhance value addition within the local economy. This includes:

    - HS Code 1404.90.00 - Other vegetable products, including bark and wood parts of plants used in tanning or dyeing.
    - HS Code 1518.00.00 - Tallow, fatty substances, or animal and vegetable fats used in the manufacturing of leather products.
    - HS Code 3208.90.90 - Other paints and varnishes, including solutions used for industrial purposes in leather processing.
    - HS Code 3209.90.10 - Other preparations used in the tanning of hides and skins.
    - HS Code 3209.90.90 - Other products used for the treatment and preservation of hides/skins.
    - HS Code 210.00.10 - Animal-based raw materials or products related to leather tanning.

641. The exemption from excise duty under this amendment to apply only to raw hides and skins locally sourced, and shall not extend to imported products or to raw hides and skins that are processed or used for purposes unrelated to leather or tannery manufacturing. This amendment aims to bolster the local leather industry, reduce the financial burden on manufacturers, and ensure that the country becomes a competitive player in the global leather market.

    Committee Observation

    The Committee noted the stakeholder's proposal; however, it noted that import duty is under the CET and therefore cannot be amended by the proposed bill. The Committee also notes that the products used in the tanneries have other uses and any proposed deletion of excise duty will have unintended ripple effect on revenue.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

642. The Committee having considered the Tax laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024) observed that

I. There is need to explore innovative approaches such as targeted incentives, simplified tax processes, and enhanced taxpayer education can encourage voluntary compliance and broaden participation in the formal tax system. Bringing more Kenyans into the taxpayer fold will align our tax revenue collection with economic expansion, enabling us to finance crucial investments in infrastructure, social programs, and sustainable development.

II. The bill proposes increasing the Railway Development Levy from 1.5% to 2.5%. The Committee noted that this represents a 67% increase in the levy, which will significantly raise the cost of goods and services that rely on rail transport for distribution. The increase in the levy is likely to have a cascading effect on the prices of goods, particularly in industries that rely heavily on rail freight, such as manufacturing, agriculture, and construction.

III. The Bill proposes to introduce an excise duty of 35% of the customs value on imported ceramic sinks, wash basins, and tiles. While there is a valid need to protect local manufacturers, it is crucial to recognize that the country cannot currently produce the required quantity of these products to meet the demand of all Kenyans. As such, the proposed excise duty may limit access to these essential goods, potentially increasing consumer costs and affecting industries that rely on these imports for construction and infrastructure projects. Given the current supply gap and the potential negative impact on consumers and key sectors, the Committee has considered deleting the proposal.

IV. Further, the Bill proposes to increase the excise duty rate on telephone and internet data services from 15% to 20% of their excisable value. The Committee recommends dropping this proposal, as the increased tax burden could make essential communication services less affordable for many Kenyans, particularly in low-income and rural areas. This could exacerbate the digital divide, hindering access to information, education, and business opportunities that are increasingly dependent on the internet. Additionally, it could strain businesses that rely on these services for operations, potentially slowing down economic growth and technological advancement.

V. The Bill proposes to impose a 25% excise duty on coal, or KSh. 27,000 per metric ton, whichever is higher. The introduction of excise duty on coal will increase the cost of coal, which is a critical energy source for many industries, including manufacturing, power generation, and cement production. As coal prices rise, businesses that rely on coal for energy production will face higher operational costs. This could lead to an increase in the cost of goods and services, particularly in sectors that depend heavily on coal, such as the cement and steel industries. Consequently, the price of construction materials, infrastructure development, and other products could rise, which may ultimately lead to inflationary pressures on the economy.

VI. The Bill proposes to introduce VAT on several aviation and aerospace-related goods and services, including helicopters, spacecraft (including satellites), suborbital and spacecraft launch vehicles, direction-finding compasses, instruments and appliances for aircraft, and various aircraft spare parts imported by aircraft operators or businesses involved in aircraft maintenance. Additionally, it proposes the inclusion of VAT on air ticketing. The imposition of VAT on these items could significantly increase operating costs for aviation companies, leading to higher prices for air tickets and making air travel less affordable for consumers. This could negatively impact the aviation sector, particularly in a competitive market where price sensitivity is high. Furthermore, aircraft maintenance and repair businesses, which rely on imported specialized parts, could face higher input costs, leading to increased maintenance fees and potentially reduced investment in business expansion. This added tax burden could also lead to delays in maintenance schedules, compromising the safety and reliability of the aviation sector.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

643. The Committee having considered the Tax laws (Amendment) Bill, 2024 (National Assembly Bills No. 47 of 2024) recommends that the House approves the Bill with amendments as proposed in the schedule.

SIGNED...DATE 3rd December 2024

HON. CPA KURIA KIMANI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 03 DEC 2024 TUE
TABLED BY: Hon. Kuria Kimani, MP Chairperson
CLERK-AT THE-TABLE: Joyce Lemerelle

CHAPTER FIVE

6.0SCHEDULE OF PROPOSED AMENDMENTS

644. The Committee proposed the following amendments to be considered by the House in the Committee stage:

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024)

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Monday, 2nd December 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - **CHAIRPERSON**	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP – **VICE CHAIRPERSON**	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETTING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

MINUTES OF THE 103RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON MONDAY 2ND DECEMBER, 2024 IN HILTON GARDEN HOTEL, MACHAKOS COUNTY AT 6:00 PM.

PRESENT

1. Hon. CPA Kuria Kimani, MP - Chairperson
2. Hon. (Amb.) Benjamin Kipkirui Langat, MP - Vice- Chairperson
3. Hon. (Dr.) Adan Keynan Wehliye, MP
4. Hon. Joseph Makilap Kipkoros, MP
5. Hon. David Mwalika Mboni, MP
6. Hon. CPA. Joseph Maero Oyula, MP
7. Hon. Joseph Kamau Munyoro, MP
8. Hon. CPA Julius Kipletting Ruto, MP
9. Hon. George Sunkuiya Risa, MP
10. Hon. Dr. John Ariko Namoit, MP
11. Hon. Paul Kibichiy Biego, MP
12. Hon. Umul Ker Sheikh Kassim, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Shadrack Mwiti Ithinji, MP
2. Hon. Andrew Adipo Okuome, MP
3. Hon. Mohamed Soud Machele, MP

SECRETARIAT

1. Ms. Jennifer Ndeto	-	Deputy Director, Legal Services
2. Dr. Martin Masinde	-	Director, Parliamentary Budget Office
3. Mr. Robert Nyagah	-	Deputy Director PBO
4. Mr. Benjamin Magut	-	Principal Clerk Assistant II
5. Ms. Brigitta Mati	-	Legal Counsel I
6. Mr. Salem Lorot	-	Legal Counsel I
7. Ms. Winfred Kambua	-	Clerk Assistant III
8. Mr. Benson Kamande	-	Clerk Assistant III
9. Mr. George Ndenjeshe	-	Fiscal Analyst III
10. Ms. Joy Kyalo	-	Fiscal Analyst III
11. Ms. Nelly Ondieki	-	Researcher Officer III
12. Ms. Gladwel Amimo	-	Fiscal Analyst III
13. Mr. Onyango Adera	-	Fiscal Analyst III
14. CPA Cyrille Mutali	-	Fiscal Analyst
15. Mr. Lenny Muchangi	-	Legal Counsel II
16. Ms. Joyce Wachera	-	Hansard Reporter II
17. Mr. Benson Muthuri	-	Serjeant At Arms
18. Mr. Allan Kimani	-	Intern

IN ATTENDANCE

AGENDA
Consideration and adoption of The Tax Laws (Amendment) Bill (National Assembly Bill no. 47 of 2024)

MIN No. NA/F & NP/2024/352: PRELIMINARIES
The meeting was called to order at 6.10 pm followed by prayer by Hon. Dr. John Ariko Namoit, MP.

MIN No. NA/F & NP/2024/353: CONFIRMATION OF PREVIOUS MINUTES
Confirmations of the minutes of the previous sittings was differed to the next sitting.

MIN No. NA/F & NP/2024/354: CONSIDERATION AND ADOPTION OF THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024)
The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter four and five of the Report. The Report was thereafter adopted with amendments having been proposed by Hon. David Mwalika Mboni, MP and seconded by Hon. Joseph Makilap Kipkoros, MP.

(Comprehensive details of the proposed amendments are contained in Chapter Five of the Report on the Consideration of The Tax Laws (Amendment) Bill (National Assembly Bill no. 47 of 2024)

MIN No. NA/F & NP/2024/355: ADJOURNMENT
There being no other business, the meeting was adjourned at 9:55 PM. The next meeting will be held on notice.

SIGNED: .... **DATE**...3/Dec/2024...............

HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.