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THE NATIONAL ASSEMBLY

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

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DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

THE CONSIDERATION OF THE FINANCE BILL, 2024

(NATIONAL ASSEMBLY BILL NO. 30 OF 2024)

THE NATIONAL ASSEMBLY
DATE 18 JUN 2024 Tuesday
Hon. CPA Kuria Kimani (Chairperson, Finance & National Planning committee)
M. Lempate.

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

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
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
KTGA	Kenya Tea Growers Association
KWAL	Kenya Wine Agencies Limited
LLP	Limited Liability Partnership
LPG	Liquefied Petroleum Gas
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 proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Finance Bill *(National Assembly Bill No. 30 of 2024,* published on 9th May 2024.

The Bill went through the First Reading on 13th May 2024 and was thereafter committed to the Departmental Committee on Finance and National Planning for consideration and reporting to the House under the provision of Standing Order 127.

The Bill has sixty-five (65) 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), the Tax Procedures Act (Cap. 469B); the Miscellaneous Fees and Levies Act (Cap. 469C); the Affordable Housing Act (No. 2 of 2024), the Industrial Training Act (Cap. 237), the Data Protection Act (Cap. 411C), the Public Finance Management Act (Cap. 412A)and the Kenya Revenue Authority Act (Cap. 469).

The proposed amendments to the above laws introduce a series of tax policy measures aimed at generating additional revenue for KShs. 302.253 billion for the Fiscal Year 2024/25, contributing to the projected KShs. 3.3432 trillion in revenues for the same year. These measures offer the Government an opportunity to enhance domestic resource mobilization, which is essential for economic recovery. Domestic resource mobilization provides the necessary funds to alleviate poverty and deliver public services. It represents a critical step towards reducing aid dependence and achieving financial self-sufficiency for the country.

Following the placement of adverts in the print media on 15th May 2024 requesting comments on the Bill from members of the public and relevant stakeholders under Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from at least two hundred and three stakeholders and four hundred and one online submission.

The Committee, in line with the requirements of Article 118(1) (b) of the Constitution and Standing Order 127(3), held meetings with stakeholders and experts from different fields of the economy, and stakeholders made oral presentations before the Committee. Additionally, the Committee held a town hall meeting at the Kenyatta International Convention Centre, where members of the public had the opportunity to engage with the Committee on various issues. In addition, the Committee had consultation meetings with the National Treasury and the Kenya Revenue Authority, the Attorney General, the Cabinet Secretary, the Ministry of Environment, Climate Change and Forestry, the Cabinet Secretary of the Ministry of Trade, Industry and Investments, and the Cabinet Secretary Ministry of Roads and Transport.

In its consideration of the Bill, the Committee was guided by the overarching objective to alleviate the burden on ordinary citizens while simultaneously bolstering domestic resource mobilization efforts to ensure the government could secure the necessary funds to finance its expenditures and sustain essential public services effectively. This deliberative process reflected the Committee's commitment to crafting policies that supported economic recovery and ensured equitable distribution of resources and stability within the fiscal landscape.

The Committee demonstrated dedication to considering all perspectives, highlighting its role in promoting responsible governance and responsive policymaking. Seeking to ease the strain on ordinary citizens and enhance revenue generation capabilities, the Committee aimed to foster an environment conducive to sustainable economic growth. This approach aimed to meet immediate fiscal needs and lay a foundation for reducing dependence on external aid and promoting long-term financial self-sufficiency. Through these efforts, the Committee navigated the

complexities of economic governance, striving to achieve inclusive prosperity and resilience in the face of evolving fiscal challenges.

In considering the Bill, the Committee proposes to revise the commencement date in clause 42(a)(i)(I),(J), and (K) from 1st September 2024 to 1st August 2024 to enhance revenue collections while recommending harmonization of the commencement provision for Clauses 19 and 25(b)(v) relating to CGT. Delete the words in Clause 2 (k) (b) "and include distribution of the software" In relation to the definition of "royalties" since distribution of software cannot be considered as an activity that would generate a royalty.

The Committee agrees with stakeholders in Clause 2(I) to expand the definition of "donations" to include grants as they are not necessarily taxable. In relation to the allowable period to recover foreign exchange losses, the Committee retains the period at five (5) years and not three (3) years as proposed in the Bill.

To support the formal employees, the Committee endorsed the proposal in clause 6(a)(ii) while agreeing to amend it further by increasing the rate to sixty thousand Kenya Shillings (KSH. 60,000). Additionally, the Committee proposes to limit the deductibility of contributions by an employee to a post-retirement medical fund to fifteen thousand shillings instead of ten thousand shillings to encourage a saving culture towards a post-retirement medical scheme.

In relation to top-up tax, the Committee observes that it is a global tax that has been adopted in over 60 countries, where some of the key multinational companies have a presence. Therefore, not having it in Kenya will jeopardize the mechanism for the tax application, even though a constituent company located in Kenya could end up underpaying its share of revenues.

The Committee notes the need to amend the definition of "adjusted covered taxes" to replace the reference to "constituent entity" with "covered person" to correct a drafting error. Similarly, it recommends clarifying that "person" does not include a partnership as this was inadvertently left out while proposing deletion in section 34.

Regarding motor vehicle tax, as provided in Clause 9(12H), the Committee notes that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act. In contrast, the proposed Motor Vehicle Tax is levied on an asset, not income within the definition. The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive. In addition, commercial vehicles are currently subject to advance tax; therefore, imposing this tax will amount to double taxation.

The Committee notes that registered trust schemes serve the same purpose as pension schemes and should not be discriminated against. Trust is pivotal in providing stability and security to vulnerable beneficiaries across generations. In this regard, the Committee resolved to retain trusts as exempt and, therefore, recommends deletion of the proposal.

The Committee supports the proposal in the Bill that intends to introduce WHT on interest from bonds, notes or securities whose maturity is less than three (3) years to encourage long-term investment and enable the government to earn revenue consistent with all other payments.

Aware of the importance of Kenya being an aviation hub, the Committee observes the need to keep the cost of spare parts low to support the nascent space industry in Kenya. Thus, the

Committee proposes deleting this proposal to tax aircraft, spacecraft and suborbital spacecraft lounge spare parts.

The Committee proposes to reverse the decision to exempt ordinary bread from VAT and retain it at zero rate among other items, namely unleavened bread, gluten bread, inputs and raw materials supplied to manufacturers of agricultural and pest control products, agricultural pest control products, transportation of sugarcane from farms to milling factories, supply of locally assembled and manufacture of mobile phones among others.

In relation to Eco Levy, the Committee notes that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. However, to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs, three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.

With respect to the Export Investment Promotion Levy, the Committee observes that the objective of the Levy is to protect the local manufacturing sector from unfair trade practices, increase the competitiveness of Kenya's Manufacturing sector and foster a sustainable and inclusive export sector, support local manufacturing which will lead to an increase in the contribution of manufacturing to GDP from 7% to 20% by 2027 and enhance the playing field for local manufacturers who have struggled to compete with cheaper imports to reduce overreliance on imports of goods and services. From the foregoing, the Committee proposes to have the Export and investment Promotion Levy imposed on articles of leather, imported footwear, denatured ethyl alcohol, ceramic sinks, and wash basins, amongst other products.

Additionally, the Committee supports the proposal by a number of stakeholders to remove the imposition of the levy on kraft liner, uncoated kraft paper and billets, amongst others from the Third Schedule (Export and investment Promotion Levy)

Finally, the Committee notes that the Road Maintenance Levy is charged for all petroleum fuels imported at the rate Ksh. 18 per litre of all petroleum fuels, with an anti-adulteration levy of the same amount charged on Kerosene. The levy is used for the annual repair and maintenance of roads under the administration by the Kenya Roads Board. The KRA collected Ksh. 84.143 billion in 2022/23, but the performance of the levy in 2023/24 has been negatively affected by the demand effects of the high fuel prices and the exchange rate depreciation. The fall in the collections under the road maintenance levy has continued to influence the repair and maintenance of highways, urban and rural roads. Recent *el nino* linked heavy rains and flooding has further worsened the extent of road destruction in the country. To help raise sufficient funds to maintain and repair roads across the country the Committee recommends an increase of the Levy pursuant to Section 3 of the Road Maintenance Levy Fund Act. The Committee further recommends that the expected increase in local Appropriations-In-Aid (AIA) to the State Department for Roads may be accompanied by a reduction in net GOK (exchequer) allocation to the State Department.

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, In a special way, 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 Finance Bill, 2024 (National Assembly Bill No. 30 of 2024) 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 Finance Bill, 2024 (National Assembly Bill No. 30 of 2024). This report represents the culmination of rigorous deliberations, careful consideration of diverse viewpoints, and a commitment to advancing sound fiscal policies that foster economic growth, support public welfare, and ensure financial sustainability for our nation. 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 one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216 (5)** 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. National Treasury and Planning;
    ii. Ministry of Devolution;
    iii. Commission on Revenue Allocation;
    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 facilitates the Committee:

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto **Deputy Director, Legal Service**	Mr. Salem Lorot **Legal Counsel I**
Mr. James M. Macharia **Media Relations Officer I**	Ms. Peninnah Simiren **Legal Counsel II**
Ms. Winfred Kambua **Clerk Assistant III**	Mr. George Ndenjeshe **Fiscal Analyst III**
Mr. Benson Kamande **Clerk Assistant III**	Ms. Nelly W.N Ondieki **Research Officer III**
Mr. Benson Muthuri **Serjeant-At-Arms**	Ms. Joyce Wachera **Hansard Officer III**

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

Dr. Martin M. Masinde	**Director, Parliamentary Budget Office**
Dr. Robert Nyaga	**Ag. Senior Deputy Director, Parliamentary Budget Office**
Dr. Abel Nyagwachi	**Fiscal Analyst I, Parliamentary Budget Office**
Ms. Vivienne Ogega	**Research Officer III, Parliamentary Research Service**
Ms. Gladwel Amimo	**Research Officer III, Parliamentary Research Service**
Ms. Terry Ondiko	**Fiscal Analyst III, Parliamentary Budget Office**
Mr. Mabuti Mutua	**Legal Counsel II, Directorate of Legal Services**

CHAPTER TWO

2.0 OVERVIEW OF THE FINANCE BILL 2024 (NATIONAL ASSEMBLY BILL NO. 30 OF 2024)

2.1 INTRODUCTION

7. A Finance Bill is an annual legislative instrument designed primarily to enable revenue collection by the National Government. It is rooted in the framework established by the approved annual Budget Policy Statement and the Budget Estimates. The Bill outlines key revenue-raising measures for funding government expenditures and initiatives outlined in the national budget. Through this legislative process, the government aims to ensure fiscal discipline, transparency, and accountability in the management of public finances.

8. Section 40(3) of the Public Finance Management Act, Cap 412A, mandates the Cabinet Secretary the National Treasury to present the Finance Bill to the National Assembly. This Bill details the specific revenue-raising measures proposed by the National government and includes a comprehensive policy statement that elaborates on the rationale behind these measures. The policy statement provides a strategic overview, outlining the government's fiscal priorities, objectives, and anticipated impacts of the proposed revenue measures on the economy and society. This process of parliamentary review and approval of the Finance Bill plays a critical role in shaping national economic policies and ensuring that financial resources are effectively mobilized and utilized for the benefit of all citizens.

2.2 OVERVIEW OF THE BILL

9. The Finance Bill 2024 encompasses many amendments across key tax legislation, including the Income Tax Act, VAT Act, Excise Duty Act, Miscellaneous Fees and Levies Act, Industrial Training Act, and Tax Procedures Act. These amendments aim to introduce various tax measures that enhance domestic resource mobilization and reduce tax expenditure. Notable proposals include:

2.2.1 INCOME TAX ACT CAP 470

10. The Bill seeks to amend the Income Tax Act (Cap 470) to, among others-
    I. impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents
    II. exempt amounts paid to an employee as per diem while on official duty outside their usual place of work, provided these amounts do not exceed 5% of the employee's gross earnings,
    III. increase the value of non-taxable meal benefits served to employees to KSh. 60,000 per year.
    IV. introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace.
    V. repeal of digital service tax and replace it with a significant economic presence tax at the rate of 30% on 20% deemed profit.
    VI. introduce motor vehicle tax calculated at 2.5% of the vehicle's value (Minimum charge: KES 5,000- Maximum cap: KES 100,000)

VII. introduce a minimum top-up tax of 15% on resident individuals or entities with a permanent presence in Kenya, affiliated with multinational groups earning over EUR 750 million annually.

VIII. raise the maximum deductible amount for employer contributions to registered pension schemes and provident funds from KSh. 20,000 to KSh. 30,000 per month

IX. reduces the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:

X. introduce Advance Pricing Agreements (APAs) in the Income Tax Act

XI. repeal capital deduction with certain buildings constructed in support of the Standard gauge Railway.

XII. subject income earned by amateur associations to tax, including membership fees paid to them

XIII. subject registered trust schemes to tax

XIV. subject Withholding tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for non-residents.

XV. subject the income of a registered family trust to tax at the rate of 30%

XVI. levy capital gains tax on the transfer of property to a family trust.

XVII. make the Transfer of property within a special economic zone to a licensed SEZ developer, operator, and enterprise CGT exempt.

XVIII. introduce an investment allowance deduction for the purchase of a spectrum license or a right to use a fiber optic cable issued to a telecommunication operator. For spectrum licenses purchased or acquired before July 1, 2024, the deduction will be restricted to the unamortized portion over the remaining useful life of the license.

XIX. repeal the reliefs on contributions made to the National Health Insurance Fund, post-retirement medical fund, and affordable housing scheme.

XX. increase the tax payable by ship owners and air operators from 2.5% to 3% of the gross amount received.

XXI. remove the threshold of KES 24,000 for payments such as management/professional fees made to residents.

XXII. reduce the Capital Gains Tax (CGT) rate from 15% to 5% for the transfer of investments, subject to certification by the Nairobi International Financial Centre Authority that the investment is at least three billion shillings in at least one entity incorporated or registered in Kenya within two years. Additionally, the transfer of investment must occur after five years from the date of the initial investment.

2.2.2 VALUE-ADDED TAX ACT CAP 476

11. The Bill seeks to amend the Value Added Tax (Cap 476) to, among others-

I. consider the time of supply for exported goods be when the registered person obtains the required export confirmation documents.

II. raise the threshold for VAT registration for businesses making taxable supplies from KES 5 million to KES 8 million.

III. introduce 16% VAT on ordinary bread, unleavened bread, gluten bread, Aeroplanes, and other aircraft on unladen weight exceeding 2,000 kgs but not exceeding 15,000kgs (8802.30.00) and Aeroplanes and other aircraft with unladen weight exceeding 2,000 kgs but not exceeding 15,000kgs (8802.30.00)
IV. subject 16% VAT on Betting, gaming, and lotteries services
V. limit VAT Exemption to Insurance and Reinsurance Premiums.
VI. make the transfer of business as a going concern exempt from VAT. Currently, VAT is applicable on such transfers at the standard rate of sixteen percent (16%).

2.2.3 EXCISE DUTY ACT CAP 472

12. The Bill seeks to amend the Excise Duty Act (Cap 472) to, among others-

I. introduce excise duty on vegetable oil at the rate of 25%
II. increase excised duty on telephone and data services from 15% to 20%
III. increase excise duty on betting, gaming, and lottery services on mount staked from 12.5% to 20%
IV. eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services
V. empower the cabinet Secretary responsible for National Treasury to exempt spirit made from sorghum, millet or cassava or any other agricultural products (excluding barley) in Kenya are subject to excise duty from excise duty.
VI. extend the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days.
VII. exempt clinkers, an intermediate product used in cement production, from excise duty. The duty will apply only to imported cement and not to clinkers, aiming to support domestic cement manufacturing by reducing production costs.
VIII. exempt eggs, onions, potatoes, and potato products originating from the East African Community (EAC) from excise duty.
IX. subject Excise Duty on Articles of Plastic of Tariff Heading 3923.30.00 and 3923.90.90:
X. increase the excise duty rate for imported sugar confectionery from Shs. 42.91 per kg to Shs. 257.55 per kg.
XI. levy excise duty on alcoholic beverages based on alcohol content
XII. raise the excise duty rate on fees charged for money transfer services by banks, money transfer agencies, and other financial service providers from 15% to 20% of their excisable value.
XIII. increase the excise duty rate on money transfer services provided by cellular phone and payment service providers from 15% to 20%.

2.2.4 MISCELLANEOUS FEES AND LEVIES CAP 469C

13. The Bill seeks to amend the Miscellaneous Fees and Levies Act to, among others-

I. raise the import declaration fee from 2.5% to 3% on the value of imported goods.
II. the proposal is that within the 10% allocation to the import declaration Fund,

10% will be designated for covering Kenya's commitments to the African Union and other international organizations. Additionally, twenty percent of this fund will go towards supporting revenue enforcement initiatives or programs.

III. introduce an Eco Levy on select goods manufactured in or imported into Kenya to mitigate their environmental impact. This includes diapers at KSh. 150 per kg, batteries or dry cells at KSh. 750 per kg, monitors and projectors not incorporated in television reception apparatus at KSh. 1,275 per unit, and telephone sets at KSh. 225 per unit, among others. The levy aims to incentivize more sustainable practices by reflecting the environmental costs associated with these products

IV. exempt inputs, raw materials, and machinery used in the manufacturing of mosquito repellents from Import Declaration Fees (IDF) and Railway Development Levy (RDL), subject to approval by the Cabinet Secretary responsible for health matters.

2.2.5 TAX PROCEDURE ACT CAP 469B

14. The Bill seeks to amend the Tax Procedures Act to, among others-

I. extend the period for the Kenya Revenue Authority to issue decisions from 60 to 90 days.

II. offer relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax.

III. subject zero-rated supplies and registered manufacturers, irrespective of their investment levels in the preceding three years, to withholding tax, thereby deleting the current provision that exempts those who have invested at least three billion shillings over three years

IV. authorize the Kenya Revenue Authority (KRA) to require businesses and financial institutions to integrate their electronic data management and reporting systems with the electronic tax system for the submission of electronic documents and transactional data. Non-compliance with this integration mandate will be deemed an offense, with penalties of up to two million Kenya shillings (KES 2,000,000) per month or part thereof. Similar penalties will apply to financial institutions that fail to submit electronic documents through the required systems.

V. exclude weekends and public holidays from the calculation of periods for acting under tax laws.

VI. the proposal that the registration of an employee who works remotely outside Kenya for an employer based in Kenya must include the requirement that the employee have a KRA PIN (Kenya Revenue Authority Personal Identification Number).

2.2.6 AFFORDABLE HOUSING ACT, 2024

15. The Bill seeks to amend the Affordable Housing Act to eliminate the requirement for owners of affordable housing units to obtain prior written consent from the Affordable Housing Board before selling their units.

2.2.7 DATA PROTECTION ACT CAP 411C

16. The Bill seeks to amend the Data Protection Act to authorize data controllers or processors to disclose personal data to KRA for tax or duty assessment, enforcement, or collection purposes as specified in written tax laws, without requiring explicit consent from the data subjects.

2.2.8 PUBLIC FINANCE MANAGEMENT ACT CAP 412

17. The Bill seeks to amend the Public Finance Management Act to empower the Public Sector Accounting Standards Board to develop a framework for implementing accrual accounting in government entities.

2.2.9 INDUSTRIAL TRAINING ACT CAP 237

18. The Bill seeks to amend the Industrial Training Act to extend the provisions of the Tax Procedures Act, regarding the collection of the training levy

19. From the above proposals, the Finance Bill 2024 aims to generate an additional KSh. 229.153 billion in revenue, which is intended to bolster the projected total revenues for the year to KShs. 3.3432 trillion. These measures are key for enhancing fiscal stability and supporting vital government programs. The Bill's provisions are geared towards ensuring sustainable economic growth and effective allocation of resources to meet the country's developmental goals.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

20. 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."*

21. 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 consider the views and recommendations of the public under paragraph (3) in its report to the House."*

3.2 STAKEHOLDER ENGAGEMENTS

22. The Committee placed an advertisement in the print media on 15th May 2024, inviting the public to submit written memoranda on the Bill. The Committee received memoranda from stakeholders in various sectors of the economy and individuals of all walks of life. Further, the Committee conducted public participation for two weeks where stakeholders presented their views on the Bill to the Committee. The public participation included a town hall meeting at KICC

23. Some of the Stakeholders that gave oral and written submissions included:

1. Centre for International Private Enterprise.
2. Fremodex Consult Limited
3. Electric Mobility Association of Kenya
4. KOKO Networks
5. Kenya Bodaboda Riders Association
6. Ministry of Investments, Trade and Industry
7. Munene Micheni & Co. Advocates
8. Kenya National Chamber of Commerce
9. Public Interest Group
10. AAK Grow/Croplife
11. Kenya Sweets Ltd
12. Texplas Industries Ltd
13. Transport Industries
14. Rhapta Road Residents
15. Modern Ways
16. ASSEK

17. East Africa Breweries and UDV
18. Taveta CVA
19. KWAL
20. Autoexpress Ltd
21. Ernest & Associates Ltd
22. Amnesty International
23. Mizani 254
24. Federation of Public Transport Sector
25. Bowmans
26. SG Johnson
27. Institute of Public Finance
28. Institute of Economic Affairs
29. ICPAK
30. Deloitte & Touche LLP
31. Fertilizer Association of Kenya
32. Okoa Uchumi
33. Clean Cooking
34. Federation of Kenya Pharmaceutical Manufacturers
35. FSD Kenya
36. Jeremy Otieno
37. Kamukunji Community Empowerment Centre
38. Kenya Association of Manufacturers
39. Cliff Decker Hofmeyr (CDH)
40. Kathambi Kinoti Advocates
41. Andersen
42. Digital Financial Services Association of Kenya
43. Coworkers
44. Consumer Information Network
45. Mr. Eric C. Buhasio
46. Ms. Nancy Wambura
47. Mr. Alvin Kabutu
48. RSM Consulting
49. Mr. Vincent Ndichu
50. Ms. Lydia Wahito
51. Nairobi Security Exchange
52. Kenya Stock Brokers Association
53. Capital Market Players
54. CM Advocates
55. Kenya Tea Growers Association (KTGA)
56. Safaricom Limited
57. PKF Consulting
58. Ernst and Young (E&Y)
59. County Assemblies Forum
60. Law Society of Kenya
61. Anjarwalla & Khanna
62. British Chamber of Commerce
63. USAID Health Equity
64. National Taxpayers Association (NTA)
65. Shippers Council of Eastern Africa

66. International Air Transport Association
67. Green Thinking Action Party
68. Care Champions
69. Telkom Kenya
70. Federation of Transport
71. Temu group
72. Landlords Association
73. Petroleum Institute of Eastern Africa
74. Water Resources Authority
75. Kenya Association of Air Operators
76. Retail Trade Association of Kenya
77. Mwalimu Muthisya
78. Youth Alive
79. Kilele Youth Association
80. Tile & Carpet Ltd
81. Civil Society Parliamentary Network.
82. Bayer E.A
83. Oraro & Co. Advocates.
84. Avocado Exporters Association of Kenya
85. Public Sector Accounting Standards Board
86. Association of Insurance Brokers
87. Retirees Benefits Association
88. Institute of Surveyors of Kenya
89. The Anglican Church of Kenya
90. Kisumu County Working Group
91. KPMG
92. Westminister
93. Irvine's Kenya
94. EADAK
95. Kenya Flower Council
96. Malbros/ Mjengo
97. Online Vioices
98. Kenya Private Schools Association
99. KETCA
100. Grant Thornton
101. Kenya Bora Tuitakayo
102. Kenya Muslim Women Alliance
103. Roam Electric
104. United Disabled Persons of Kenya
105. Non-communicable Diseases Alliance Kenya
106. Alliance K
107. Packaging Producer developers Association
108. Baker McKenzie
109. East Africa Law Society
110. Coca Cola Beverages Kenya
111. ATC Kenya Operations Limited
112. E-cart services Kenya limited
113. Koru Rum
114. Eezy Track limited

115. Student Campaign Against Drugs (SCAD)
116. HHL Consultancy
117. Nakuru drop in center
118. Green Bonds Programme
119. International Budget Programme
120. Breast Cancer Kenya
121. AATO-KE
122. Arise and Shine organizations
123. American Chamber of Commerce
124. Association of Kenya Insurers
125. UON Women Economic Empowerment
126. Africa cancer foundation
127. ICEA Lion
128. Treadsetters Tyres ltd
129. Political Parties Liaison Committee
130. Black Rose Consultancy
131. Little Angels Network
132. Kenya Network for Cancer Organizations
133. Evangelical Alliance of Kenya
134. Mjengo Limited
135. Women for Cancer Early Detection and Treatment
136. World Brewing Alliance
137. Save Family Foundation
138. Kenya Community Development Foundation (KCDF) & East Africa Philanthropy Network
139. Packaging Producer Responsibility Organization
140. Kenya Property Developers Association
141. Alcohol and Beverage Association of Kenya (ABAK)
142. Viffa Consulting
143. We Care
144. Kenya Bankers Association (KBA)
145. International Institute for Legislative Affairs
146. Edible oils sub-sector
147. Source Africa
148. KEWOPA
149. Taxwise Consulting
150. EAVCA
151. Ichiban
152. KEPSA
153. BDO
154. Association of Sisterhoods of Kenya
155. SKM Consulting
156. STRATHMORE
157. M-KOPA
158. Uber
159. Lexlink Consulting
160. Institute of Engineers of Kenya
161. Lawyers Hub
162. Kennedy Juma

163. Kenya Association of Tour Operators
164. Nakuru County Civil Society Organizations Forum
165. GSMA
166. CPF
167. Water Bottlers Association of Kenya
168. TESPOK
169. Motorist Association of Kenya
170. Federation of Kenya Employers (FKE)
171. Petroleum Outlets Association of Kenya (POAK)
172. Book Collector
173. Marketing Society of Kenya
174. Eldoret Business Association
175. East African Grain Council- EAGC
176. Kenya Development Corporation
177. Alpha Tax and Business Advisory Services
178. Creative Industry
179. APTAK
180. PWC
181. National Council of Churches of Kenya
182. Njane Associates
183. Kenya Renewable Energy Association
184. Brian Okeja
185. Kenya Conference of Catholic Bishops
186. Association for the Physically Disabled of Kenya (APDK)
187. Stallion Manufacturers LTD
188. Ministry of Defence
189. Kenya Christian Professionals Forum
190. Ministry of Roads and Transport
191. Ministry of Environment
192. Archbishop Rev. Anthony Muheria
193. Office of Data Commissioner

24. The feedback received from the interactions with stakeholders provided valuable input, highlighting specific concerns and suggestions for amendments. The following are the submissions on various clauses of the Bill:

1) KENYA WINE AGENCIES LIMITED (KWAL)

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services

25. Delete this provision because the proposal will have various adverse effects including: discouraging local manufacturing noting that local manufacturers will be subject to double taxation of the products at input stage and the finished foods stage, whereas imported products will only be charged excise tax on the finished goods; discouraging further investments in distilleries, jaggaries and ultimately leading to a significantly reduced offtake of cane from the sugarcane farmers; making Kenyan excisable goods to be uncompetitive in the export markets given manufacturers will have to pass over

the cost of raw material excise to the consumers in the export destination versus an importer; going against the Government Manufacturing Agenda as it will turn Kenya to be a net importer of excisable products, and becoming uncompetitive within the EAC region, where significant manufacturers exist; encouraging cross border illicit trade as products will be cheaper in surrounding regions; and increasing the price to consumers.

Committee Observation

26. **The Committee agreed with the proposal because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 41

Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days:

27. Delete this clause because the proposal will lead to the following challenges: cash flow strain, increased borrowing costs, reconciliation challenges, unrefunded excise duty on credit notes, administrative challenges and overtime, and lack of support structures to ensure that payments are done during weekends and public holidays.

28. KWAL, therefore, proposed that the excise duty be paid not later that the twentieth day of the succeeding year. This will alleviate manufacturers from the current and proposed punitive daily excise tax collection regime, secure the Government's corporate tax revenue which is being eroded by the extra cost of credit that manufacturers have to take to fund daily excise duty remittance, create a suitable investment climate with stable excise duty remittance regime, and align with most other regions tax regimes in paying on the 20th of every month.

Committee Observation

29. **The Committee acknowledged the stakeholder's proposal noting that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers. In this regard, the Committee recommended a change in the period to remit excise duty "by the 5th of every month."**

Clause 42 (a)(i)(K)

Proposal on increase of excise duty on ethyl alcohol, spirits liqueurs, and other spirituous beverages with an alcoholic strength exceeding 6%:

30. KWAL proposed that clause 42 (K) be amended as follows-

> *"in the description of "Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverage of alcoholic strength exceeding 6%, by deleting the corresponding rate of excise duty and substituting therefore the rate of excise duty be shs. 10.68 per centiliter of pure alcohol"*

31. KWAL observed that targeting the spirits category, which is seven times smaller than the beer category, and in current decline in contributing to excise revenue, will lead to further decline of spirits revenue. Further, the proposed 80% increase in excise tax will

make legitimate alcohol unaffordable thus fueling illicit alcohol trade due to manufacturers having to pass on such an increase to consumers.

32. It was KWAL's submission that they understood and supported the Government's agenda behind differentiation within alcohol categories and balancing revenue generation and appropriate tax measures. As such, in order not to distort the market and deter future investments in the industry, KWAL proposed that the 80% increase be introduced incrementally over 4 years to allow KWAL to plan, and consumer pricing to adjust.

33. KWAL offered that their proposal to reduce the excise rate on spirits will lead to consumers' ability to afford legal products; create a predictable and gradual increase of spirits excise tax; give the industry and consumers the much-needed time to absorb the proposed excise rates; and reduce the risk of harmful instances resulting from the consumption of illegal products.

Committee Observation

34. The Committee noted the potential distortion of the market due to the new **excise duty rate and therefore, recommended the reduction of the excise rate imposed on spirits of undenatured ethyl alcohol.**

Clause 44(a)

Proposal to increase of Import Declaration Fee Rate from 2.5% to 3%:

35. Deletion of the clause because the proposed increase went against the Government's draft Medium-Term Revenue Strategy which sought to have a duty-free rate for all raw materials and capital goods; will increase the cost of importing industrial materials i.e. packaging lines thus discouraging further investments in the manufacturing sector; and will be a threat to revenue because it will increase the premium for smuggling causing the Government to spend more resources on enforcement initiatives.

Committee Observation

36. **The Committee did not agree with the proposal noting that the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 occasioned a significant revenue loss amounting to at least Ksh. 10 billion, hence hurting the implementation of the FY2023/24 budget. An increase of IDF would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

2) KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY

Clause 34(b)(i)

Introduction of 16% VAT on financial services:

37. Delete this provision because applying VAT on banking services will make financial services unaffordable; financial institutions will shy away from uncollateralized lending since in the event of a default, the tax will not be fully transferred to the customer. Further, application of VAT on foreign exchange transactions will raise the cost of

international transactions thereby discouraging international trade and contradicting the government's commitment to promoting exports. In addition, the hike in the cost of banking services and money transfer will push Kenyans to cash transactions which will erode the gains made in tackling money laundering and terrorism financing among others.

Committee Observation

38. The **Committee agreed with the proposal to delete the clause as it would make financial services unaffordable. Consequently, frustrate efforts to achieve financial inclusion.**

Clause 42(b) (ii) and (iii)

Proposal to increase excise duty of money transfer from 15% to 20%:

39. Delete the proposal because the 5% increase in money transfer will make financial services unaffordable excluding Kenyans, particularly those at the bottom of the economic pyramid, from financial services.

Committee Observation

40. **The Committee agreed with the proposal to delete the clauses as it would make financial services unaffordable. Consequently, frustrate efforts to achieve financial inclusion.**

Clause 9(12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value vehicle:

41. KNCCI proposed that this clause be deleted because it is a contradiction with the fundamental purpose of income tax which should be applied on income but the motor vehicle tax is not an income but an asset. Further, requiring Insurance companies to act as tax-collecting agents for the government, remitting the tax within 5 working days, will push them to hire more staff further increasing their administration costs. It was KNCCI's opinion that the proposed tax somewhat criminalized vehicle ownership since owners currently pay taxes and levies when importing vehicles and buying fuel. In addition, KNCCI submitted that this proposal was impractical as it failed to account for the fact that insurance companies offer monthly and annual coverage. For the monthly cover, will owners pay the tax every month?

Committee Observation

42. **The Committee agreed with the proposal to delete the clause noting as follows:**
    i. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
    ii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

Clause 39

Removing the relief on Excise Duty paid on excisable raw materials:

43. The KNCCI proposed the deletion of this clause because manufacturers will be forced to dig into their already limited funds to remit excise tax and to transfer this cost to consumers further raising prices and making local production uncompetitive compared to imported finished products.

Committee Observation

44. **The Committee agreed with the proposal to delete the clause because it would make** Kenya's **products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 41

Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days:

45. The KNCCI proposed the amendment of the clause by deleting 'five working days' and substituting therefor with 'on or before the 20th day of the succeeding month'. This is because, in operational terms, companies will still be required to remit excise duty every day since the 7-day buffer (5 working days) becomes insignificant on the 8th day. Companies will still have to contend with high administration costs and working capital strain in an attempt to be compliant. Further, adopting the previous arrangement of payment by the 20th day of the following month will save businesses the hefty administration costs as well as finance costs from working capital facilities thereby lowering prices of commodities since the costs are often passed down to consumers.

Committee Observation.

46. **The Committee acknowledged the stakeholder's proposal noting that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers. In this regard, the Committee recommended a change in the period to remit excise duty "by the 5th of every month."**

Clause 44(a)

Proposal to increase Import declaration fee from 2.5% to 3%:

47. Delete the proposal because it will result in an increase in the cost of imported raw materials which will further increase the cost of finished goods making it unaffordable to Kenyans.

Committee Observation

48. **The Committee did not agree with the proposal noting that the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 occasioned a significant revenue loss amounting to at least Ksh. 10 billion, hence hurting the implementation of the FY2023/24 budget. An increase of IDF would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 57(b)

Penalty associated with the Integration of the electronic tax system with the data management and reporting system:

49. Delete the provision because the penalty of up to 2 million a month was overly harsh, particularly for MSMEs majority of whom had a monthly turnover of less than KShs. 2 million. It was their submission that as of March 31st 2024 (the deadline for adoption of eTIMS), the Kenya Revenue Authority had only registered 20% of the targeted businesses. The low adoption rate reflected the sensitization gap among MSMEs as businesses could not register for something they do not fully understand. Additionally, giving incentives such as tax discounts to businesses will yield better results as opposed to such inconsiderate penalties.

Committee Observation

50. **The Committee agreed that the penalty prescribed in the provision is too punitive and therefore recommended reducing it to be commensurate to the offence.**

Clause 8(12E)

Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

51. Delete the proposal because the Digital Service Tax was introduced only three years ago therefore a change in the tax rate will signify a haphazard tax policy that deters investors. Further, with 20% of gross income being subjected to the Significant Economic Presence tax, the effective rate surges by 300% which may cause negative shifts in the digital economy.

Committee's Observation

52. **The Committee noted that while the digital tax was introduced three years ago the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying lower production cost. However, to cushion the digital economy from the negative shifts, the Committee proposed to reduce the rate of deemed income of gross turnover.**

Clause 63

Proposal to access personal data by KRA:

53. Delete the provision to amend the Data Protection Act because changing the Act will set a precedence for the exemption of some institutions from the Data Protection Act or sections of it which ends up beating the purpose of having the Act in the first place. It was the KNCCI's submission that there was no problem with the current system of obtaining information from taxpayers by the revenue authority using court orders when seeking information from a taxpayer. Further, it was their submission that the public needs to be confident that the integrity of their personal information is guaranteed as such they queried whether safeguards had been put in place to ensure that the Kenya Revenue Authority (KRA) did not misuse the powers granted by the amendment of the Data Protection Act.

Committee Observation

54. **The Committee agreed with the proposal to delete the clause in line with the legal provisions on safeguarding personal data by the Data Protection Act.**

3) FERTILIZER ASSOCIATION OF KENYA

Clause 34(a)(i) Sections (A) and (U)

Standards rate (16%) to exempt:

55. Amend the provision to insert micronutrient foliar feeds and biostimulants into the Second Schedule making them zero-rated as other fertilizer products. This will make soil and crop nutrition products more affordable thus promoting soil-integrated fertility management, soil health, productivity, and sustainability towards food security.

Committee's Observation

56. **The Committee agreed with the stakeholder's proposal to reclassify locally manufactured micronutrient foliar feeds and bio-stimulants as zero-rate. However, the Committee was of the view that manufactured micronutrient foliar feeds and bio-stimulants be exempt.**

Clause 48

Introduction of Eco Levy:

57. Delete the provision because this is already provided for under the extended producer responsibility levy. The introduction of an ECO levy fee on plastic material will increase the cost packing of agricultural inputs like fertilizers, pesticides, seeds, etc by 50 %. This cost will then be passed on to the consumer making agricultural inputs more expensive. It will also make produce from Kenya more expensive and less competitive than those from our neighbors in the region.

Committee Observation

58. **The Committee noted that while the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya, there is need to reduce the eco levy fee on plastic packing material to mitigate against high cost of packaged products.**

4) AAK-GROW/CROPLIFE KENYA

Clause 34(a)(i)(U)

Standards rate (16%) to Exempt:

Standards rate (16%) to Exempt:

59. Delete the provision and insert the following new paragraph to guarantee affordable balanced crop nutrition solutions that promote productivity, soil health, and sustainability by providing micronutrients, foliar feeds, and bio-stimulants to be zero-rated—

"Micronutrients foliar feeds and bio-stimulants of Chapter 38."

60. Amend the proposed new paragraph 148 of the First Schedule to the VAT Act, Cap 476 to be zero-rated. This will enable local manufacturers of pest control products including mosquito coils to use the provision to grow the manufacturing industry in

Kenya, generate employment for the locals, and produce pest control products that are affordable to the farmer.

61. Amend the proposed new paragraph 149 of the First Schedule to the VAT Act, Cap 476 to be zero-rated to support good healthcare through preventive quality services that ensure the reduction of cases of transmission of diseases from animals to humans.

Committee Observation

62. **The Committee noted the need to zero-rate locally manufactured micronutrients foliar feeds and bio-stimulants, locally manufactured inputs, machinery and raw materials and mosquito repellant to make them affordable to the consumer.**

Clause 35(c)

Proposal to move agricultural pest control from zero-rated to exempt:

63. Delete paragraph 19 of the Second Schedule and move it to exempt status. This will prevent food insecurity, loss of competitiveness in the global horticultural market, and prevent an influx of counterfeit and illegal pesticides from neighboring countries.

Committee Observation

64. **The Committee agreed with the proposal to delete the clause, however, it was of a contrary view on the proposal to move agricultural pest control products to exempt. Instead, the Committee recommended that locally manufactured agricultural pest control products be zero-rated to guarantee food security.**

Paragraph 47 of the Fourth Schedule

Introduction of Eco Levy on plastic packaging materials:

65. Delete the ECO levy fee imposed on plastic packaging materials because the extended producer responsibility levy already covers that. Furthermore, the additional costs of these levies will result in increased input costs and may kill existing industries, making produce from Kenya more expensive and less competitive with produce from neighboring countries such as Tanzania and Uganda being more competitive.

Committee Observation

66. **The Committee noted that while the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya, there is need to reduce the eco levy fee on plastic packing material to mitigate against high cost of packaged products.**

5) KOKO NETWORKS

Clause 34(a)(i)(U)

Providing zero-rated VAT on denatured Ethanol:

67. Delete the proposed amendments to introduce an export and investment promotion levy of 3% of the customs value on denatured ethyl alcohol and other spirits of tariff number 2207.20.00 and of 3% of the customs value on cooking stoves for liquid fuel of tariff number 7321.12.00. This is because the levies will render these essential products unaffordable to customers. Moreover, imports are required to grow the demand given

local production shortages and exemptions from import tariffs and levies. This will directly result in lower consumer prices which will enable significant demand thus accelerating expansion into more urban areas and eventually into rural areas. By supporting the growth of such demand in this nascent industry, the Government will ultimately help to create the conditions that unlock major investments into agriculture and production, particularly within the sugar industry.

Committee Observation

68. **The Committee noted that the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase the competitiveness of Kenya's manufacturing sector and to foster a sustainable and inclusive export sector. Therefore, the Committee did not support the proposal for deletion of the items.**

6) MR.TED KAMAU

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

69. Delete the provision because introducing 2.5% tax on the market value of motor vehicles will place an additional financial burden on vehicle owners. It was his submission that the tax proposal aims at generating revenue for infrastructure projects, but fails to consider the significant economic strain it imposes on ordinary citizens who rely on vehicles for their daily commute and business operations.

Committee Observations

Clause 8

Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit and Income from the digital marketplace subject to withholding tax at the rate of 5% for residents and 20% for non-residents:

70. Delete clauses 7 and 8 of the Bill because the tax on income from non-residents and residents operating digital platforms, as well as the new Significant Economic Presence Tax, will stifle innovation and growth in the burgeoning digital sector.

Committee Observations

71. **The Committee notes that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost**

Clause 63

Proposal on access to personal data by KRA:

72. Delete clause 63 of the Bill on granting Kenya Revenue Authority (KRA) power to access personal data because it raises significant privacy issues. Whereas this tax measure aims at improving tax compliance, it exposes government institutions to a risk of mistrust

and may deter digital businesses from operating in Kenya due to concerns over data security and privacy.

Committee Observation(s)

73. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

7) BOLT

Clause 8

Introduction of significance economic presence tax:

74. Delete clause 8 because the introduction of the 6% Significant Economic Presence Tax will lead to a collapse of the Ride-Hailing Industry due to losses or low margins. The ride Hailing Industry in Kenya is governed by NTSA which has capped the industry's commissions to 18% thereby limiting the company's ability to generate revenue. The SEP Tax will impact earning opportunities to over 50,000 drivers in the Hailing industry since the additional burden of tax will be shared with businesses and drivers hence eroding the drivers' already limited earnings. The SEP tax may lead to the collapse of the ride hailing industry and hence lost revenues to the government in the form of the already existing VAT, DST, PAYE, and Levies.

Committee Observation

75. **The Committee acknowledged the impact of the Significant Economic Presence Tax on the industry thus proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clauses 20(a)(s) and (b)(n)

Introduction of withholding tax on payment received after supplying goods to a public entity at the rate of 3% for residents and 5% for non-residents and introduction of withholding tax when using digital marketplace at the rate of 5% for residents and 20% for non-residents:

76. The introduction of withholding tax on payments received for supplying goods to a public entity at the rate of 3% for residents and 5% for non-residents, as well as the introduction of withholding tax on the digital marketplace at the rate of 5% for residents and 20% for non-residents, requires reconsideration. Clause 20 should be deleted because the withholding tax on payments made through the digital marketplace will negatively impact taxi passengers and food purchasers using these platforms. This proposal places the responsibility of accounting for the WHT on the person making the payment for each ride or food purchase, which is impractical given the high volume of transactions.

Committee Observation

77. **The Committee was of the view that the introduction of withholding tax will not reduce the net income of suppliers because the suppliers are currently required to pay tax even without this amendment.**

8) MR. GEORGE MUNGAI

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the motor vehicle:

78. Delete clause 9 because the tax is punitive to the average Kenyan because all car owners already pay taxes on the importation or purchase if new.

Committee Observation

79. **The Committee agreed with the proposal to delete the clause noting that commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 34(b)(i)

Introduction of 16% VAT on financial services

80. Delete clause 34 because the proposal on imposing VAT on financial services will expose the consumer to double taxation and drive the economy back to "mattress banking" resulting to unfulfilled targets by KRA.

Committee Observation

81. **The Committee agreed with the proposal to delete the clause as it would make financial services unaffordable. Consequently, frustrate efforts to achieve financial inclusion and results in loss of revenue due to preference of 'mattress banking'.**

Clause 63

Proposal to allow KRA access to personal data for tax purposes:

82. Delete clause 63 which permits KRA to access data and information as it will directly affect the informal economy by totally ploughing back the innovation that MPESA brought to the world. In addition, with the frequently increasing cases of fraud in online banking, there is no assurance that KRA has the capacity to protect public data from fraud and manipulation.

Committee Observation

83. **The Committee agreed with the proposal to delete the clause in line with the legal provisions on safeguarding personal data per the Data Protection Act.**

9) MR. KEVIN WANAMBISI NDOMBI

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

84. Delete Clause 9 (12H) because it is discriminatory, elitist, and a mockery to Kenyans. The proposal is not clear on the rationale behind the motor vehicle tax; whether it is an

income tax or a wealth tax. The tax implies that the poor are forced to pay a minimum amount while the rich are being protected from paying the true value of 2.5%.

Committee Observation

85. **The Committee agreed with the proposal to delete the clause noting as follows:**
    a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
    b) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

Clause 42(b)(ii)

Increase in excise duty on money transfer services from 15% to 20%:

86. Delete clause 42 on the increase of excise duty on money transfer services by banks and other financial institutions because it is expensive for the consumer.

Committee Observation

87. **The Committee agreed with the proposal to delete the clauses as it would make financial services unaffordable. Consequently, frustrate efforts to achieve financial inclusion.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

88. The restriction on owners of affordable housing units from selling their units without prior written consent from the Affordable Housing Board should be reconsidered. Clause 61, which amends the Affordable Housing Act by removing this restriction, should be deleted. Repealing the section that prohibits buyers from selling affordable houses will lead to speculative purchases by the wealthy and well-connected, thereby excluding the citizens who are intended to be the primary and sole beneficiaries of the program.

Committee Observation

89. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

10) MR. ELTON NDERITU

Clause 63.

Proposal for access to personal data by KRA:

90. Delete clause 63 because access to bank balances and mobile money balances is an intrusion into the private financial affairs of individuals and undermines the fundamental right to privacy guaranteed by the Constitution of Kenya, 2010.This provision will set a dangerous precedent that could lead to widespread abuse of power, erosion of trust in financial institutions and ultimately, harm the economy.

Committee Observation

91. **The Committee agreed with the proposal to delete the clause in line with the legal provisions on safeguarding personal data under the Data Protection Act.**

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

92. Delete clause 9 (12H) because it is unjustifiable, particularly in light of the already hefty taxes and levies imposed on vehicle importation in Kenya. The proposal will significantly inflate the cost of owning a vehicle and impose a heavy financial burden on Kenyan motorists.

Committee Observation

93. **The Committee agreed with the proposal to delete the clause noting as follows:**
    a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
    b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 42(b)(i), (ii), and (iii)

Increasing excise duty on telephone, internet, and mobile money transfers from 15% to 20%:

94. Delete the clause because it will exacerbate the financial burden on ordinary Kenyans and hinder the country's socio-economic development. Imposing higher taxes on telephone, internet, and mobile money transfers will lead to higher operating costs for businesses across various sectors, stifling innovation, productivity, and competitiveness in the digital economy.

Committee Observation

95. **The Committee agreed with the proposal to delete the clauses as it would make financial services unaffordable. Consequently, frustrates efforts to achieve financial inclusion.**

11) RHAPTA ROADS RESIDENTS ASSOCIATION

Clause 9 (12H)

Introduction of motor vehicle tax at the of 2.5% of the value of the motor vehicle:

96. Delete clause 9 because it will increase the cost of vehicle maintenance and escalate the cost of living through the multiplier effect, where the transport and logistics industry may opt to pass through the additional cost to their customers.

Committee Observation

97. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

II. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 23 (c)

Withholding tax on interest from infrastructure bonds at the rate of 5% for residents and 15% for nonresidents:

98. Delete clause 23 on the introduction of withholding tax of 5% and 15% on interest paid to residents and non-resident persons, respectively, on bonds or other similar securities. The tax will be unfair to resident pensioners who have no other income save for pension earnings which they invest in similar bonds and, who also contributed to the national good during their active years.

Committee Observation

99. The Committee was of a contrary view on the deletion of the clause. It was the Committee's view that the impact of the clause will be to encourage long-term investment and enable the government to earn revenue consistent with all other payments.

Clause 23 (g)

Proposal to levy capital gains tax on the transfer of property to a family trust:

100. Delete clause 23 on the inclusion of any capital gains relating to the transfer of title of immovable property to a family trust as taxable income. The immovable assets are diverse and may not be income generating, and their transfer may be as a result of diverse reasons like ill health making it difficult to raise the capital gains tax.

Committee Observation

101. **The Committee concurred with the proposal to delete the clause noting that Section 3E(3) of the Trustees (Perpetual Succession) Act, Cap 184 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 25 (iii)(C)

Proposal to remove the threshold of KES. 24,000 for payments such as management/professional fees made to residents:

102. Delete clause 25 which deletes the minimum amount (Ksh.24,000.00) to be taxed concerning the management or professional fee and subjects any payment for the fees to a 5% withholding tax. This will lead to high administration costs compared to the taxable amounts which will highly affect the purchasing power of the unemployed hustlers who try to earn a living from offering small-time services in unpredictable environments.

Committee Observation

103. **The Committee does not support the proposal to delete the clause. Thresholds have become a planning tool for taxpayers. This will also serve to expand the tax base. In the event that a person whose income is below the taxation bracket has been withheld, the taxpayer is able to claim a refund of the tax paid.**

Clause 35 (i)

Introduction of 16% VAT on the supply of solar and lithium-ion batteries:

104. Delete clause 35 on the introduction of 16% VAT on the supply of solar and lithium-ion batteries because it will lead to increased prices which might hinder the operationalization of the green economy agenda. Further, the proposal is contrary to the Government's agenda of encouraging the use of clean and environmental energy sources.

Committee Observation

105. **The Committee agreed with the proposal to delete the clause since it undermines efforts towards clean energy. To promote the uptake of green energy, the Committee recommended moving the imported solar and lithium batteries to exempt while locally manufactured batteries will be zero-rated.**

Clause 48

Introduction of Eco Levy:

106. Delete item 46 of clause 48 on the introduction of goods to be subjected to Eco levy; primary cells and primary batteries. The proposed eco levy will lead to increased prices on primary cells and batteries. In addition, solar energy has a positive impact on the cost of production and home maintenance; hence, introducing the eco levy will increase the cost of solar power production.

Committee Observation

107. **The Committee noted that while the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya, there is a need to reduce the eco levy fee on batteries or dry cells of Chapter 85 to mitigate against the high cost of the items.**

12) MODERN WAYS

Clause 34

Clause 34(b)(i)

Introduction of 16% VAT on financial services:

108. **Delete clause 34 on the introduction of VAT on financial services because it** will increase the cost of all banking services that are not recoverable beyond an increase in product cost. The fee will also be levied on loans and other critical banking services under the current proposals that are already at historic highs in the interest rates imposed by banks.

Committee Observation

109. **The Committee agreed with the proposal to delete the clause as it would make financial services unaffordable and consequently frustrate efforts to achieve financial inclusion thereby resulting in the loss of revenue.**

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

110. Delete the clause because it will raise costs of transport, increasing the costs of receiving raw materials for manufacture from ports and other remote locations as well as the cost of distribution of finished products throughout Kenya from manufacturing sites. Furthermore, the structure of the proposed tax conflicts with the existing tax on vehicle purchases and use through the Road Maintenance Levy, Import Declaration Fee (IDF), Customs Duty, VAT and Fuel Levy and is neither a wealth nor an income tax and results to double taxation.

Committee Observation

111. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
b) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
c) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

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Clause 35(c)

Proposal to move agricultural pest control from zero-rated to exempt:

112. Delete the clause that reclassifies agricultural pest products from zero rating to exempt because it will increase the costs of these products as companies trading will not be able to claim or offset other VAT inputs. The change will affect costs for smallholder farmers who are already grappling with high costs of production and will harm agricultural production.

Committee Observation

113. **The Committee agreed with the proposal to delete the clause, however, it was of a contrary view on the proposal to move agricultural pest control products to exempt. Instead, the Committee recommended that locally manufactured agricultural pest control products be zero-rated to make the items affordable to the farmers.**

Clause 48 (item 47)

Introduction of eco levy on plastic packaging materials:

114. Delete the clause on plastic packaging materials because the proposed eco levy will have significant repercussions, including an increase in the costs of packaging products sold to smallholder firms. In addition, the proposal amounts to double taxation

because users of double taxation are part of EPR schemes regulated by NEMA and the Environmental Sustainability Bill where monthly and annual fees are paid as part of environmental responsibility.

Committee Observation

115. **The Committee noted that while the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya, there is need to reduce the eco levy fee on plastic packing material to mitigate against high cost of packaged products. In addition, the Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

Clause 52

A proposal that offers relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax:

116. Amend clause 52 by defining the specific criteria to be used by the Commissioner to determine that a debt is impossible to recover. This is because, without strict limits on the proposal, the clause is open to abuse and cost the taxpayer more through corruption and misuse.

Committee Observation

117. **The Committee agreed with the stakeholder's proposal noting that there is a potential abuse of the provision. To this extent, the Committee proposed additional checks and balances on the power of Commissioner thus recommended that the provision be amended to require the Commissioner to publish in the Kenya *gazette* on tax abandonment and submit it in the National Assembly for approval.**

Clause 56(a)

Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:

118. Delete clause 56 because it will exert undue pressure on taxpayers who must provide KRA with specified additional information under lodging a notice of objection.

Committee Observation

119. **The Committee agreed with the proposal and observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

Clause 56(b)

120. Delete the clause as the proposal allows more time for KRA to consider objections which is a significant hindrance to the expeditious resolution of tax disputes.

Committee Observation

121. **The Committee was of the view that there has been an increase in the volume of tax objections while the KRA workforce has remained static. Increase in the timelines will ensure that the objection decisions are based on merit and issued after comprehensive review of documents submitted to the Commissioner.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

122. Delete clause 61 because it creates the opportunity for taxpayer funding units being bought and sold by traders at a profit rather than restricting their sale. This clause allows for abuse that will only cost the taxpayer more through corruption and misuse.

Committee Observation

123. **The Committee agreed with the proposal to delete the clause noting that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse.**

Clause 63

Proposal on access to personal data by KRA:

124. Delete clause 63 as it goes against the right to privacy in the Constitution, is against the Data Protection Principles, and KRA already has wide powers to enforce tax compliance.

Committee Observation

125. **The Committee agreed with the proposal to delete the clause in line with the legal provisions on safeguarding personal data in accordance with the Data Protection Act.**

Clause 6 (b) (ii)

Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:

126. Amend the clause to ensure that ownership of such assets be of the state or government because it will result in the taxpayer bearing the burden of public officers who can purchase individual items tax-free and subsidized by taxpayers.

Committee Observation

127. **The Committee did not agree with the stakeholder's proposal noting that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it would be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 35(h), (i), (j)

Proposal to move supplies from zero-rated to standard rate (16%) VAT on the following supplies; electric bicycles, solar and lithium-ion batteries and electric buses:

128. Delete the clauses because changing environmentally desirable items from zero rate to exempt will increase their costs and disincentivize investment in environmentally cleaner technologies. The zero rating should be retained for all the items.

Committee Observation

129. **The Committee agreed with the proposal to delete the clause, however, it was of a contrary view on the proposal to move the items to exempt. Instead, the Committee recommended that locally manufactured items be zero-rated while imported ones be VAT exempt to encourage the use of environment-friendly items.**

Clause 42(b)(i), (ii) and (iii)

Increase of excise duty on the following Telephone and Internet Data Services, fees charged on money transfer services by banks, agencies, and other financial services, and Money Transfer Services Provided by Cellular Phone and Payment Service Providers from 15% to 20%:

130. Amend the clause by reducing the excise duty on excisable services to 5%. Excise duty aims at reducing the consumption of harmful items but the tax proposal is a stealth tax on Kenyans and makes no sense.

Committee Observation

131. **The Committee was of the view that the provisions be deleted to promote financial inclusion.**

Clause 31(c)

Proposal to remove the VAT input tax apportionment threshold:

132. **Delete clause 31 which deletes the fraction formula on deductible input VAT** by taxpayers with mixed supplies. This is because the proposal will preclude businesses already struggling with costs producing a high proportion of exempt output from seeking any relief through expanding their revenue base. This proposal is not equitable for companies that are forced to sell products that are exempted VAT and already penalized by not being able to offset input VAT incurred in product manufacture.

Committee Observation

133. **The Committee did not agree with the stakeholder's proposal. The proposal in the Bill is meant to expand the tax base and reduce pressure on VAT refunds.**

13) MR. KIMOTHO GIDEON

Clause 6

Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers.

134. Amend clause 6 have ownership of the Asset purchased and owned by the state or Government. The proposal will burden the Kenyan people who will be financing the

largesse of the public officers who will be purchasing shoes, watches, etc at the cost of the taxpayer.

Committee Observation

135. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it would be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:

136. Delete the clause because the tax will add to the financial burden on vehicle owners, especially those with limited income. It disproportionately affects low- and middle-income individuals and families. In addition, most people are unable to service comprehensive insurance at 4-5% of the value of the car. The tax proposal will increase the numbers and this affect the insurance industry.

Committee Observation

137. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
b) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
c) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 20 (a)(r)

Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:

138. Delete the clause imposing a withholding tax of 3% on payments to resident suppliers and 5% on payments to non-resident suppliers for the supply of goods to public entities. This clause encourages suppliers to inflate their prices, resulting in higher costs for the government and public entities.

Committee Observation

139. **The Committee was of a contrary view that this proposal is bringing in a withholding tax so that the income of persons who supply to the government is subjected to tax.**

Clause 25 (iii)(C)

Proposal to remove threshold of Ksh. 24,000 for payments such as management/ professional fees made to residents:

140. Delete the clause because it will be a high compliance burden for payments that amount to Kshs. 2,000 a month effectively.

Committee Observation

141. **The Committee does not support the proposal to delete the clause. Thresholds have become a planning tool for taxpayers. This will also serve to expand the tax base. In the event that a person whose income is below the taxation bracket has been withheld, the taxpayer is able to claim a refund of the tax paid.**

Clause 33

The VAT registration threshold was revised from KES 5 million to KES 8 million:

142. Amend clause 33 by increasing the rates of tax to KShs.20, 000,000 because the KShs.8, 000,000 may be low and result in numerous businesses falling within the mandatory registration threshold.

Committee Observation

143. **The Committee did not agree with the stakeholders because the upward adjustment in the VAT registration threshold is in consideration that the threshold has been eroded over time by inflation. The increase in the threshold will increase VAT efficiency and relieve the small taxpayers of compliance burden.**

Clause 48

Introduction of Eco levy:

144. Delete clause 48 that introduces the eco levy because it is going to make access to equipment such as computers, much harder for the poor people.

Committee Observation

145. **The Committee noted that while the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 52

A proposal that offers relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax:

146. Delete or amend clause 52 to create specific criteria that the Cabinet Secretary and KRA can use to determine that a tax debt is impossible to recover. Without the proposed amendments, the Cabinet Secretary is likely to decide on their own whim which may result to mischief.

Committee Observation

147. **The Committee agreed with the stakeholder's proposal noting that there is a potential abuse of the provision. To this extent, the Committee proposed additional checks and balances on the power of Commissioner thus recommended that the provision be**

amended to require the Commissioner to publish in the Kenya *gazette* on tax abandonment and submit it in the National Assembly for approval.

Clause 56(a)

Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:

148. Delete the clause because it will exert undue pressure on taxpayers who must provide KRA with specified additional information under lodging a notice of objection. This is unfair because KRA could request for documentation not maintained by the taxpayer deeming him/her to not have fulfilled its obligation of finding the additional information.

Committee Observation

149. **The Committee agreed with the proposal to delete the clause and observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection. In this regard, the Committee proposes to require the Commissioner to communicate the objection decision.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

150. Delete the clause which deletes the restriction on buying units built by taxes and reselling them at a profit. This will incentivize the corrupt individuals to take up units built with tax payer money, sell the same and pocket the difference and jump the queue for the cycle to continue.

Committee Observation

151. **The Committee agreed with the proposal to delete the clause noting that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse.**

Clause 63

Proposal on access to personal data by KRA:

152. Delete clause 63 because it goes against the right to privacy in the Constitution and is against the data protection principles.

Committee Observation

153. **The Committee agreed with the proposal to delete the clause per the legal provisions on safeguarding personal data by the Data Protection Act.**

14) AMNESTY INTERNATIONAL KENYA

Clause 63

Proposal on access to personal data by KRA:

154. Delete clause 63 that seeks to exempt KRA from the provisions of the Data Protection Act. The clause does not meet the criteria set under Article 24 of the Constitution of Kenya, 2010 which requires that any limitation to fundamental rights and freedoms

must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, considering all relevant factors. For the right to privacy to be limited, it still must satisfy the criteria laid down in the Constitution.

155. In addition, data processing for tax purposes involves data sharing with other State agencies or tax authorities in other countries for tax enforcement purposes. Amending the clause removes any obligation on KRA to implement data protection safeguards and data transfer mechanisms that guarantee adequate levels of protection for sharing or transferring data with third parties. The proposed amendment will deny taxpayers their rights as data subjects to know who else is accessing their data and for what purpose, as is required by the law.

156. Kenya's data protection law places a duty on all data controllers to ensure that all data that is collected is accurate and reasonable steps are taken to ensure that inaccurate data is erased or rectified without delay. Like all data controllers, KRA bears an obligation to maintain clear guidelines and policies on data retention and deletion of data collected. KRA is required to regularly delete unnecessary and outdated data to minimize privacy risks to taxpayers. The proposed amendment to the Data Protection Act will waive KRA's obligation to comply with this important duty.

Committee Observation

157. **The Committee agreed with the proposal to delete the clause per the Bill of Rights enshrined in the Constitution as read with the Data Protection Act on safeguarding personal data.**

15) MR. MARK WAMBURA NGOPHE

Clause 5

Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:

158. Amend clause 5 to provide for measures against public entities who fail to remit taxes on time because the unremitted taxes remain as debts in suppliers' books. In addition, the amendment should provide for channels through which the suppliers can make complaints to KRA.

Committee Observation

159. **The Committee was of the contrary view that the proposed clause is bringing in a withholding tax so that the income of the persons who supply to the government is subjected to tax.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

160. Amend clause 61 that removes the restriction to sell affordable housing units by owners because financially stable people will most likely abuse the intention of affordable housing program, whose purpose was not to make a profit. The amendment

should set a time limit within which the affordable units can be sold, to ensure that people who do not need the houses don't just buy the houses to sell them at a profit.

Committee Observation

161. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

162. Delete the clause because the capping on the proposed motor vehicle tax violates the canon of equality which stipulates that taxes are to be imposed by the principle of ability to pay. The burden of taxation must be distributed equally or equitably to the taxpayers' ability. For instance, it is unfair for an individual with just one Toyota Prado valued at 4.5 million to pay a similar tax as someone with a Toyota Prado VXL worth 15 million.

Committee Observation

163. **The Committee agreed with the proposal to delete the clause noting that the proposal to cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

16) TEXPLAST INDUSTRIES LIMITED

Clause 48

Introduction of eco levy:

164. Delete item 47 because the prices of all packaging will go up by 40%- 50% and the increase will be passed on to the customers and there will be a reduction in consumption. This will put inflationary pressure on all prices, especially Fast- Moving Consumer Goods (FMCG) products making Explant uncompetitive in all export markets and hindering industrial growth.

Committee Observation

165. **The Committee noted that while the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya, there is need to reduce the eco levy fee on plastic packing material to mitigate against high cost of packaged products.**

17) KENYA SWEETS LIMITED

Introduction of Eco levy

166. Delete clause 45 because this tax is poorly conceived, without any stakeholder consultation and no real thought of long-term consequences.

Committee Observation

167. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

18) CPA JAMES MWENDA

Clause 9

Introduction of motor vehicle tax at the rate of 2.5% of the vehicle's value:

168. Amend section 12H of the Income Tax Act, Cap. 470 by adjusting the tax rate from 2.5% to 1.5%. It can then be adjusted upwards to 2.0% in year 2 and 2.5% in year 3 and renamed motor vehicle circulation tax. This will ensure harmony with the Medium Team Review (MTR) and is also in line with the name provided by the organization for Economic Co-operation and Development (OECD) for such a tax.

Committee Observation

169. **The Committee was of a contrary view that the clause be deleted because the cap imposed on the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

19) MR. MOHAMMED DOYO ABDULLAHI

Clause 9 (12G)

Introduction of minimum top-up tax:

170. Delete Clause 9 (12G) because high rates may deter investment and foreign tax credits ensure fairness. Consider a lower rate like 10% and allow foreign tax credits to avoid double taxation.

Committee Observation

171. **The Committee was of the view that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues.**

Clause 9 (12H)

Introduction of the motor vehicle tax at the rate of 2.5% of the value of the vehicle:

172. Amend Clause 9 (12H) by lowering the rate between 1% to 1.5% without a cap, but with exemptions for commercial & public transport vehicles. A lower rate eases the burden on individuals and exemptions support economic activity.

Committee Observation

173. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal to cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 12

Proposal on advance pricing agreement:

174. Amend clause 12 to clarify circumstances for KRA to cancel an Advance Pricing Agreement (APA) and allow the taxpayer a right to appeal. APAs provide certainty but taxpayers should have recourse if KRA cancels unreasonably.

Committee Observation

175. The Committee noted that the proposal will enhance revenue determination in entities that belong to multinational groups or trade with related persons. Further, to allow for seamless implementation of the agreements, the Committee recommended the enactment of the Regulations to address circumstances where there is cancellation of the APAs by KRA to allow the taxpayer the right of appeal among other concerns.

Clause 23 (b)

Proposal to tax income of a registered trust scheme

176. Delete clause 23 (b), retain the current one, and amend to require qualifying conditions e.g. registration, annual disclosures, etc. Family trusts support orderly succession, but exemption should not be prone to abuse.

Committee Observation

177. **The Committee agreed with the proposal to delete the clause noting that registered trust schemes serve the same purpose as pension schemes and should therefore not be discriminated against as they play a crucial role in providing stability and security to vulnerable beneficiaries across generations.**

Clause 34 (b)(i)

Proposal to move various financial services and insurance services from exempt to standard-rated:

178. Delete clause 34 (b) and remove exemption gradually over 2-3 years and zero-rate essential services like deposit accounts. This will give financial institutions time to adapt while still keeping essential services affordable.

Committee Observation

179. **The Committee agreed with the proposal to delete the clause as it would make financial services unaffordable and consequently frustrate efforts to achieve financial inclusion thereby resulting in the loss of revenue.**

20) MS. KRISTINA MUSILI

Clause 9

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

180. Delete clause 9 (12H) because this is an additional tax burden and it will increase the overall cost of ownership and insurance premiums for individuals.

Committee Observation

181. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
b) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

c) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 42 (b) (ii)

Increase in excise duty on money transfer services:

182. Delete clause 42 (b) because increasing excise duty on money transfer services will directly affect the affordability and accessibility of crucial financial services for individuals who rely on mobile money platforms for everyday transactions.

Committee Observation

183. **The Committee agreed with the stakeholder's proposal to delete the clause to promote financial inclusion.**

21) MS. CECILIA

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:

184. Delete clause 9 (12H) because Kenyans are already paying several fees such as license renewal fees, significant taxes while purchasing motor vehicles, and NTSA inspection fees.

Committee Observation

185. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 35 (a)

Introduction of 16% VAT on ordinary bread:

186. Delete clause 35 because subjecting bread to 16% VAT will make it expensive.

Committee Observation

187. The Committee agreed with the proposal to delete the clause because it would make bread unaffordable.

Clause 63

The proposal to access personal data by KRA:

188. Delete clause 63 as exempting any public or private organizations and allowing access to citizens' data will be harmful and could lead to further data breaches.

Committee Observation

189. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

22) MS. KENDI NTHIOMI

prudencenthiomi@gmail.com

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value vehicle:

190. **Delete clause 9(12H) because by netting in private motor vehicles, there is an** incorrect assumption that personal vehicles generate income. Additionally, this tax amounts to double taxation as there are taxes like the road maintenance levy and the price of petroleum products that consumers pay at the pump.

Committee Observation

191. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 17

Proposal to repeal reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:

192. Amend clause 17 because doing away with this relief is counterproductive as this is the selling point of the program.

Committee Observation

193. **The Bill proposes to introduce a deduction and delete the relief. Deleting the provision would retain the relief which would necessitate deletion of the deduction as individuals cannot enjoy the two.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

194. Delete clause 61 because deleting the restriction creates a situation where houses may end up being sold to persons not entitled to benefit from the program.

Committee Observation

195. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

Clause 63

Proposal on data access by KRA:

196. Delete clause 63 because it contravenes CBK regulations on the rights of customer privacy and the right to privacy as enshrined in the Constitution of Kenya 2010.

Committee Observation

197. **The Committee agreed with the proposal to delete the clause in accordance with Article 31 of the Constitution on the right to privacy**

23) MR. DENNIS MWANGI MAINA

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the vehicle's value:

198. Delete clause 9 (12H) because the introduction of the tax has no legal basis and Kenyans pay other taxes.

Committee Observation

199. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 44

Proposal to increase import declaration fee from 2% to 3%:

200. Delete clause 44 because increasing the Import Declaration Fee (IDF) will affect the price of imported items noting that Kenya is a net importer.

Committee Observation

201. **The Committee did not agree with the proposal noting that the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 occasioned a significant revenue loss amounting to at least Ksh. 10 billion, hence hurting the implementation of the FY2023/24 budget. An increase of IDF would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

202. Delete clause 61 because repealing the restrictions will make affordable housing units a money laundering haven pushing the willing buyer willing seller situation making market forces of demand and supply take shape. This can be done after fifteen years.

Committee Observation

203. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

Clause 63

Proposal to access personal data by KRA:

204. Delete Clause 63 because this will not only be used as a spy on Kenyans but can also be used to gather information about persons and government agents that will rather remain private and confidential.

Committee Observation

205. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

24) MR. IAN ARUASA

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the vehicle's value:

206. Delete clause 9 (12H) because the introduction of the tax has no legal basis and Kenyans pay other taxes.

Committee Observation

207. **The Committee agreed with the proposal to delete the clause noting as follows:**

- **c) Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
- **d) The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 44

Proposal to increase import declaration fee from 2% to 3%:

208. Delete clause 44 because increasing the Import Declaration Fee (IDF) will affect the price of imported items noting that Kenya is a net importer.

Committee Observation

209. **The Committee did not agree with the proposal noting that the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 occasioned a significant revenue loss amounting to at least Ksh. 10 billion, hence hurting the implementation of the FY2023/24 budget. An increase of IDF would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

210. Delete clause 61 because repealing the restrictions will make affordable housing units a money laundering haven pushing the willing buyer willing seller situation making market forces of demand and supply take shape. This can be done after fifteen years.

Committee Observation

211. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

Clause 63

Proposal to access personal data by KRA:

212. Delete Clause 63 because this will not only be used as a spy on Kenyans but can also be used to gather information about persons and government agents that will rather remain private and confidential.

Committee Observation

213. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

25) MS. ESTHER NGARE

estherngare@gmail.com

Clause 9 (12H)

Introduction of Motor Vehicle at the rate of 2.5% of the value of vehicle:

214. **Delete clause 9 (12H) and retain the Road Maintenance Levy.**

Committee Observation

215. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
b) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
c) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
d) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 17

Proposal to repeal reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:

Delete clause 17 and retain the housing levy as it is important to Kenyans. Or better yet reduce the housing levy by 15%.

Committee Observation

216. **The Bill proposes to introduce a deduction and delete the relief. Deleting the provision would retain the relief which would necessitate deletion of the deduction as individuals cannot enjoy the two.**

Clause 34 (b) (ii)

Introduction of 16% VAT on financial services:

217. Delete clause 34 (b) (ii) because cheaper banking services have encouraged banking for every other Kenyan which has seen the growth in circulation of services across the country and region. Introducing a tax on banking services will make people avoid banking and result in cash payments.

Committee Observation

218. **The Committee agreed with the proposal to delete the clause as it would make banking services unaffordable thereby undermining efforts to achieve financial inclusion and resulting in loss of revenue as people will prefer cash transactions.**

Clause 35

Introduction of 16% VAT on ordinary bread:

219. Delete clause 35 because bread is a staple food for literally every Kenya from primary school kids to college students to people who are starting life. It was her submission that now that the government has scrapped school feeding programs let people enjoy bread without the tax.

Committee Observation

220. **The Committee agreed with the proposal to delete the clause since it will make bread unaffordable to many Kenyans.**

Clause 42 (b) (ii)

Increase in Excise duty on money transfer services, telephone, and internet data services from 15% to 20%:

221. Delete clause 42 (b) (ii) and retain the excise duty rate at fifteen percent.

Committee Observation

222. **The Committee agreed with the proposal to delete the clause as it would make financial services unaffordable and undermine efforts to achieve financial inclusion.**

Clause 45

Introduction of the eco levy:

223. Amend clause 45 by excluding Arts & accessories and telephones (including smartphones) from the eco levy. These are the items used by youth and SMEs for income-generating activities. These two are essential for driving the Kenyan economy.

Committee Observation

224. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 57

Proposal of a penalty on failure to Integrate the electronic tax system with the data management and reporting system:

225. Amend clause 57 penalty amount to Kshs 200,000. KES 2 million for failure to integrate into KRA eTIMS is extremely punitive and unfair. SMEs, especially, will have to provide budget & resources for this integration which may hurt their business revenues.

Committee Observation

226. **The Committee agreed that the penalty prescribed in the provision is too punitive and therefore recommended reducing it to be commensurate to the offence.**

26) MR. MICHAEL MWANGANGI

Clause 9 (12H)

Introduction motor vehicle tax at the rate of 2.5% of the value of the vehicle:

227. Delete clause 9 (12H) because currently, taxes paid by Kenyans when importing a vehicle are higher than the cost of the vehicle. Additionally, if this is implemented then the Railway Development Levy should be scrapped.

Committee Observation

228. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 17

Proposal to repeal reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:

229. Delete clause 17 because many Kenyans are against the deductions and removing the relief will be catastrophic.

Committee Observation

230. **The Bill proposes to introduce a deduction and delete the relief. Deleting the provision would retain the relief which would necessitate deletion of the deduction as individuals cannot enjoy the two.**

Clause 63

Proposal for access to personal data by KRA:

231. Delete clause 63 because granting KRA 100% access to taxpayers' information without checks will lead to a massive violation of Kenyans' privacy which is enshrined in the Constitution.

Committee Observation

232. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

Clause 34 (b) (ii)

Introduction of 16% VAT on financial services:

233. Delete clause 34 (b) because this will make financial services expensive and most people opt for cash transactions which has several ramifications including tax evasion, and money laundering.

Committee Observation

234. **The Committee agreed with the proposal to delete the clause as it would make banking services unaffordable thereby undermining efforts to achieve financial inclusion and resulting in loss of revenue as people will prefer cash transactions.**

27) MR. ALEX WARUI

Clause 9 (12H)

Introduction of the motor vehicle at the rate of 2.5% of the value of vehicle:

235. Delete clause 9 (12H) because it will place an undue financial burden on citizens, especially considering the prevailing economic challenges. Such measures risk exacerbating inequalities and imposing disproportionate hardships on already struggling segments of the population.

Committee Observation

236. **The Committee agreed with the proposal to delete the clause noting that commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 63

Proposal for access to personal data by KRA:

237. Delete clause 63 because the exemption violates the fundamental right to privacy enshrined in our Constitution but also undermines the principles of accountability and transparency essential for a functioning democracy.

Committee Observation

238. **The Committee agreed with the proposal to delete the clause in accordance with the right to privacy enshrined in the Constitution.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

239. Delete clause 65 because repealing the restrictions defeats the purpose of affordable housing restriction. Owners should not be allowed to sell or transfer ownership for at least five to ten years to ensure maximum benefit is taken of the house.

Committee Observation

240. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

28) MS. ELIZABETH NYANGARA

Clause 6(b)(ii)

Proposal to exempt reimbursement of expenses incurred in asset purchase during official duties by public officers:

241. Delete Clause 6(b)(ii) or amend to have ownership of the Asset purchased and owned by the State or Government. Otherwise, the Kenyan people will be financing the generosity of the Public Officers. Shoes, watches, etc will be purchased tax-free and at the taxpayer's cost. Further, regulations on limits on amounts, type of asset, and ownership of purchased assets must be implemented.

Committee Observation

242. **The Committee agreed with the proposal to delete the clause noting that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it would be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clauses 9 and 25(v)(15)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

243. Delete clauses 9 (12H) and 25(15) because, as currently drafted, it seems geared to benefit the rich and those who are living off the state. In the alternative, have a minimum valuation for vehicles of, say, 1.5million Kenya shillings and above. This way the lower income citizens will not be affected.

Committee Observation

244. **The Committee agreed with the proposal to delete the clause because the cap imposed on the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

Clause 18

Proposal to repeal reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:

245. Delete clause 18 because the relief helps in offsetting the cost of insurance. Change the NHIF to SHIF.

Committee Observation

246. **The clause seeks to align with clause 10(a)(iiii) which makes NHIF tax deductible.**

Clause 20 (a) (r)

Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:

247. Delete clause 20 (a) (r) because this will only make suppliers quote even more exorbitant figures to supply items to the government or other public entities.

Committee Observation

248. **The Committee was of a contrary view because the proposal is only bringing in a withholding tax so that the income of the persons who supply to the government is subjected to tax.**

Clause 33

The VAT registration threshold was revised from KES 5 million to KES 8 million:

249. Amend clause 33 to increase the limit to KShs. 20,000,000. The threshold of Five million Kenyan shillings (KShs. 5,000,000) has been in place for many years despite increased inflation. Kenya's monthly inflation rate has varied between 6% and 9%. The Eight million Kenya Shillings (KShs. 8,000,000) threshold may still be quite low and result in numerous businesses falling within the mandatory registration threshold.

Committee Observation

250. **The Committee did not agree with the stakeholders because the upward adjustment in the VAT registration threshold is in consideration that the threshold has been eroded over time by inflation. The increase in the threshold will increase VAT efficiency and relieve the small taxpayers of compliance burden.**

Clause 42 (b)(i)

Increase in Excise Duty Rate on Internet Data Service from 15% to 20%:

251. Delete clause 42 (b) and reduce the levy to 5% because excise is meant as a "sin-tax" to reduce consumption of harmful items but it has now morphed into areas that are now just harming Kenyans. The proposal will increase the cost of manufacturing and internet data and a subsequent increase in the cost of the excisable goods.

Committee Observation

252. **The Committee agreed with the proposal to delete the clause as it would make telephone and internet data services unaffordable and undermine efforts to achieve financial inclusion.**

Clause 48

Introduction of eco levy:

253. Delete clause 48 because the Eco Levy is only going to make access to equipment such as computers much harder for the poor to access.

Committee Observation

254. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 52

A proposal that offers relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax:

255. Delete the clause or amend it to create specific criteria that the Cabinet Secretary and KRA can use to determine that a tax debt is impossible to recover. Without this, the Cabinet Secretary will likely decide on their whim and mischief will occur with the politically connected or those with enough money to corrupt public officials.

Committee Observation

256. **The Committee noted that there is a potential abuse of the provision. To this extent, the Committee proposed additional checks and balances on the power of Commissioner thus recommended that the provision be amended to require the Commissioner to publish in the Kenya *gazette* on tax abandonment and submit it in the National Assembly for approval.**

Clause 56(a)

Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:

257. Delete clause 56 because if adopted, it will exert undue pressure on taxpayers, who must provide KRA with specified additional information under lodging a notice of objection. This is quite unfair since KRA could request for documentation not maintained by a taxpayer and since the taxpayer does not maintain such documents as part of its business, the taxpayer is then deemed not to have fulfilled its obligation of finding the additional information.

Committee Observation

258. **The Committee agreed with the proposal to delete the clause and observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection. In this regard, the Committee proposes to require the Commissioner to communicate the objection decision.**

Clause 61

Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

259. Delete clause 61 because selling the units incentivizes corrupt individuals to take up units built with taxpayer money, sell the same, pocket the difference, and jump the queue again to do it all over again.

Committee Observation

260. **The Committee noted that the current provision in the Affordable Housing Act limits the right to property as enshrined the Constitution and would be subject to abuse and therefore recommended deletion of the clause.**

Clause 63

Proposal on personal data access by KRA:

261. Delete clause 63 because it goes against the right to privacy in the Constitution and is against the Data Protection Principles. No good reason has been given to exclude the KRA from Data Protection law.

Committee Observation

262. **The Committee agreed with the proposal to delete the clause in accordance with the right to privacy enshrined in the Constitution.**

29) MS. BERYL MISWA

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

263. Delete clause 9 (12H) there are high insurance premium rates and high fuel prices, consequently making the cost of operating motor vehicles in Kenya very expensive. There will be a negative impact on the transport and logistics industry which may opt to pass through the additional cost to their customers thus escalating the cost of living through the multiplier effect.

Committee Observation

264. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **The proposal will have adverse effects on the insurance-taking behavior of motor vehicle owners and further lead to negative effects on the insurance sector.**

II. **Commercial vehicles are subject to advance tax, and therefore, imposing this tax would amount to double taxation.**

Clause 57(a)

Integration of the electronic tax system with the data management and reporting system:

265. Delete clause 57 because this will discourage compliance and uptake of the Electronic Tax and System. The implementation should be gradual to allow individuals and businesses time to adjust.

Committee Observation

266. **The Committee did not agree with the stakeholder's proposal as the clause will help in increasing tax compliance and more revenue collection. The integration does not require substantial cost to comply.**

Clause 63

Proposal on personal data access by KRA:

267. Delete clause 63 because this will allow entities who hold individual data e.g. telecommunication companies to share with KRA upon request. In the past, some of

the data controllers/processors have been subject to lawsuits from various parties who have been adversely affected by the sharing of their information with KRA.

Committee Observation

268. **The Committee agreed with the proposal to delete the clause per the legal provisions on safeguarding personal data.**

30) MR. ENOCK WAMBUA

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

269. Amend clause 9 (12H) because this percentage-based fee disproportionately burdens vehicle owners, particularly those with lower-valued vehicles. He proposed that transitioning to a standardized annual fee structure based on vehicle categories to ensure fairness and equity.

Committee Observation

270. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 57(a)

Integration of the electronic tax system with the data management and reporting system:

271. **Delete clause 57 because the enforcement of eTIMS will pose significant** challenges for SMEs, especially with the imposition of monthly fines for non-compliance. This punitive approach could be detrimental to small businesses, leading to financial strain and potential closures.

Committee Observation

272. **The Committee did not agree with the stakeholder's proposal as the clause will help in increasing tax compliance and more revenue collection. The integration does not require substantial cost to comply.**

Clause 63

Proposal on personal data access by KRA:

273. Delete clause 63 because this measure undermines the fundamental right to privacy and poses data misuse and abuse risks.

Committee Observation

274. **The Committee agreed with the proposal to delete the clause under the legal provisions on safeguarding personal data.**

31) MS. SUSAN KINUTHIA

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

275. Delete clause 9 (12H) because the proposed 2.5% charge for motor vehicle owners is punitive since the customs duty payable while importing the car is heavy as it is, and adding more taxes will be unfair. Taxes are supposed to be fair.

Committee Observation

276. **The Committee agreed with the proposal to delete the clause noting as follows:**

- **e) The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
- **f) The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 35

Introduction of 16% VAT on ordinary bread:

277. Delete clause 35 because the proposed VAT on bread is just absurd, most Kenyans live on that bread, noting that *unga* is unaffordable to many.

Committee Observation

278. The Committee agreed with the proposal to delete the clause as it would make bread unaffordable to many.

Clause 42 (b) (iv)

Increase of excise duty for gaming and betting from 12.5% to 20%:

279. Delete clause 42 (b)(iv), because the proposal to increase the duty to 20% will not sort out the issue of curbing young gamblers. The industry currently has no minimum amount. She proposed the introduction of a minimum bet of KShs. 1000 to block out many of the young population who will not afford KShs. 1000/- to gamble. The current practice of allowing up to KShs.10/- bet enables the masses to be able to access the betting shops.

Committee Observation

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

32) KENYA BREWERIES LTD AND UNITED DISTILLERS VINTNERS (KENYA) LIMITED

Clause 41

Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days:

281. **Delete Clause 41 because section 36(1) already provides for payment of excise** tax not later than the twentieth day of the succeeding month. This is because the first intended policy objective of collecting alcohol excise tax within 24 hours to discourage illicit trade has not been achieved. This is evidenced by ban and vetting process of

Spirts manufacturers in March and April 2024. Further, the change to 5 days provides a limited reprieve for the first 7 days and then it reverts to payment every day.

Committee Observation

282. **The Committee acknowledged the stakeholder's proposal noting that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers. In this regard, the Committee recommended a change in the period to remit excise duty "by the 5th of every month."**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

283. Delete clause 39 and retain section 14 of the Excise Duty Act because the proposal will lead to loss of manufacturers' ability to offset input excise tax. This will increase the cost of locally manufactured goods by 252% and the final price of local spirits by 166%. Deletion of section 14 will constitute double taxation on consumption tax where excise tax is payable both on raw materials and finished goods as a final consumption tax. The deletion will discourage local manufacturing and encourage the importation of finished products that will be more than 35% cheaper than the price of locally manufactured spirits. Moreover, it will lead to an increase in illicit trade which is already at 59% of the total alcohol consumed in Kenya.

Committee Observation

284. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42 (K)

Proposal to levy excise at a rate of Shs. 16 per centiliter of pure alcohol from the rate of KSh. 356.42 per litre:

285. Change the excise rate to KShs. 11/ centilitre of pure alcohol and retain the Excise Rates for Ethanol (raw material) at the specific rate of KShs. 356.42/litre or remove it all together. KShs. 11/ centilitre of pure alcohol translates to 24% increase in excise tax from the current rate. KShs. 16/ centilitre of pure alcohol is a 70% increase which is most definitely going to distort the market and increase levels of illicit. Additionally, the cost of Ethanol is KShs. 168/litre and the proposed tax will be KShs. 1600/litre which is significantly high in proportion to the cost (10 times higher).

Committee Observation

286. **The Committee noted the potential distortion of the market due to the new excise duty rate and therefore, recommended the reduction of the excise rate imposed on spirits of undenatured ethyl alcohol.**

Clause 42(J)

Proposal to levy excise duty on beverages, including beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages with an alcoholic strength not exceeding 6% at the rate of shs. 22.50 per centiliter of pure alcohol from Sh. 142.44 per liter:

287. Adopt the clause because the freeze of excise tax increase on alcohol in 2023 and the deletion of the annual inflation adjustment clause from the law has led to 19% excise tax revenue growth for beer, from a decline of 6.9% in 2022. The proposed rate is a reduction in the excise tax for beers below 6.33%, which was an outcome of a National Treasury research that demonstrated that the tax burden on beer is the highest not just within EAC but also globally. This new rate will help reverse the decline in excise tax revenue from beer, which has been declining at a compound annual rate of 2.1% since 2015.

Committee Observation

288. **The Committee agreed with the proposal noting that the clause will enhance revenue collection.**

33) FREMODEX CONSULT LIMITED.

New Proposal

On Enhancing Environmental Rights Through Accessible Waste Management Service:

289. Amend the first schedule of the VAT Act to include solid waste collection and disposal because the imposition of VAT on waste collection and disposal impedes the implementation of Article 42 of the Constitution in the realization of environmental rights because it makes the service inaccessible, expensive, and negatively impacts the cleanliness and healthiness of the people.

Committee Observation

290. **The Committee noted the proposal however, did not consider the proposal fro it was not subjected to public participation.**

34) AUTOXPRESS LIMITED

Clause 48

On the introduction of eco levy:

291. Delete items 44 and 46 under clause 48 because the gap in import cost between the formal importers and smugglers will widen even more and formal importers will be driven out of business. With formal importers out of this space, the KRA will collect minimal taxes for tires and batteries.

Committee Observation

292. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

35) FEDERATION OF PUBLIC TRANSPORT SECTOR

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:

293. Delete clause 9 (12H) because it will drastically push up the cost of insuring a PSV and hence increase the cost of doing business. If this tax is introduced to public transport operators who insure new PSVs (that are normally on commercial bank loan terms) comprehensively will opt for third-party insurance which will increase risk to financiers and investors themselves since their damage repair costs will increase to the detriment of their profitability.

Committee Observation

294. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

36) MR. EUGENE MURIU NGUMI

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:

295. Delete clause 9 (12H) because tax it is not an income tax, its purpose and use are not properly defined, neither is the inflationary effect it will have. It was his submission that the introduction of the Motor Vehicle Tax levied on the value of the vehicle goes against all good tax policy principles.

Committee Observation

296. **The Committee agreed with the proposal to delete the clause noting as follows:**

a) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

b) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

c) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 34 (b) (ii)

Introduction of 16% VAT on financial services:

297. Delete clause 34 (b) (ii) because the introduction of VAT on financial services is counterproductive and recessive.

Committee Observation

298. **The Committee agreed with the proposal to delete the clause as it would make banking services unaffordable thereby undermining efforts to achieve financial inclusion.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

299. Delete clause 39 because repealing the excise duty relief will have significant impacts and discourage manufacturers from investing in the Kenyan market. Further, inflation will increase due to the cost of manufactured goods increasing, consumers will have less disposable income and Kenyan goods will also become even less competitive for export due to the increase in the cost of production.

Committee Observation

300. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 45

Introduction of eco levy:

301. Delete clause 45 because the Levy will serve to increase inflation, reduce disposable income, and discourage investors and businesses from investing in or expanding in Kenya.

Committee Observation

302. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya. Further, the levy will enhance revenue collection**

37) ANDERSEN IN KENYA

Clause 2

On the expanded definition of digital content monetization:

303. Amend the clause to state that digital content monetization includes money earned from creative works. Leaving the proposal as it is, is not proper as it makes it look like every creative work earns money which is not the case. Not all creative works generate income.

Committee Observation

304. **The Committee agreed with the proposal noting that not all creative works earn an income and therefore there is need to specify that only the creative works that generate income are subject to the tax.**

Clause 2(k)

On the expanded definition of royalty to include software:

305. In the definition of "royalty" delete or amend the definition in (b). This proposal goes against global best practices as outlined under the Organization for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on

Capital, which recognizes that software distributors make payments for copyrighted software but do not commercially exploit such software.

Committee Observation

306. **The Committee agreed with the proposal noting that distribution of software cannot be considered as an activity that would generate a royalty.**

Clause 4

Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:

307. Retain the current provision as it is at five years. The Bill proposes to limit the period within which a person can defer and claim a foreign exchange loss from five years to three years from the date the loss is realized. This will negatively affect taxpayers who are not able to claim foreign exchange losses within three years. This proposal comes a year after the Finance Act 2023 capped the deferment and claim of foreign exchange losses to five years. This annual change in laws creates uncertainty and negatively impacts the ease of doing business in Kenya.

Committee Observation

308. The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.

Clause 6(b)(ii)

Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers.

309. Delete Clause 6 because this is prone to abuse in that the ownership aspect will not be put into consideration. Public servants will end up buying assets not required in the performance of their duties, registering the assets in their name and seeking reimbursement for the money spent.

Committee Observation

310. **The Committee agreed with the proposal to delete the clause noting that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it would be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 8

Proposal to repeal of digital service tax and replace it with significant economic presence tax at the rate of 30% on 20% deemed profit:

311. Delete the clause because the key difference is that the tax burden for non-residents under the Significant Economic Presence Tax (SEPT) will be significantly higher as opposed to the current Digital Services Tax (DTS) that applies at the rate of 1.5% of the gross revenue. This proposal aims to tax businesses that are carried out via a digital

marketplace at the rate of 6 % which will discourage non-resident investors in the digital market.

Committee Observation

312. **The Committee noted that while the digital tax was introduced three years ago the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying lower production cost. However, to cushion the digital economy from the negative shifts, the Committee proposed to reduce the rate of deemed income of gross turnover.**

Clause 9 (12G)

Introduction of minimum top-up tax:

313. Delete the provision entirely since the introduction of the minimum top-up tax at the rate of 15% is likely to work against incentives provided to SEZs and EPZ which might discourage investments.

Committee Observation

314. The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues.

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

315. Delete the clause since this will lead to citizens opting to take up third-party insurance covers as opposed to comprehensive vehicle covers, which will leave them exposed to loss of property in the event of accidents as they will not be covered under third party. Further, the proposal will increase the administrative and compliance burden on insurers required to collect and remit the motor vehicle tax within five (5) working days after the issue of a motor vehicle insurance cover. This will also likely give rise to foul play in the insurance industry through unscrupulous valuations to reduce the tax burden on vehicle users.

Committee Observation

316. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

III. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

IV. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 23(b)

Proposal to subject income from a registered family trust to a tax of 30%:

317. Delete the provision since the Bill proposes the taxation of income or principal sum of a registered family trust. As at now, the registration of trusts is prevalent and is a preferred method of estate and succession planning which can be tied to the current exemptions. Further, under the current tax regime, the income of the trust will be taxed upon distribution to the beneficiaries.

Committee Observation

318. **The Committee agreed with the proposal to delete the clause noting that registered trust schemes serve the same purpose as pension schemes and should therefore not be discriminated against as they play a crucial role in providing stability and security to vulnerable beneficiaries across generations.**

Clause 31(c)

Proposal on deduction of input Tax concerning taxable supplies made to an aid-funded project:

319. **Retain Section 17 (8) as is in the Act. This is because this change could** discourage persons from engaging in business with official aid-funded projects approved by the Cabinet Secretary by the First Schedule.

Committee Observation

320. **The Committee did not agree with the stakeholder's proposal. The proposal in the Bill is meant to expand the tax base and reduce pressure on VAT refunds.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

321. Retain the provision as it is because manufacturers will no longer be able to offset the excise duty paid on imported raw materials on the excise duty payable on the finished goods thereby discouraging investment in the manufacturing sector. Licensed internet data service providers will no longer be able to offset the excise duty paid on the purchase of bulk data for resale on the excise duty payable on the internet data services sold to the final consumer.

Committee Observations

322. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase**

the cost of production unnecessarily and increase the prices of the products to consumers.

Clause 44

Proposal on the increase of import declaration fee from 2.5% to 3%:

323. Retain the rate at 2.5% since 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 Observation

324. **The Committee did not agree with the proposal noting that the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 occasioned a significant revenue loss amounting to at least Ksh. 10 billion, hence hurting the implementation of the FY2023/24 budget. An increase of IDF would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 57

Integration of the electronic tax system with the data management and reporting system:

325. Amend the clause to reduce the threshold to KShs. 500,000. Considering that majority of Companies carrying out VATable services are compliant for purposes of eTIMS, the provision lacks efficacy due to its punitive application to SMEs and Small-Scale Businesses. A penalty should encourage compliance rather than causing irrecoverable detriment to the applicable recipients.

Committee Observation

326. **The Committee agreed that the penalty prescribed in the provision is too punitive and therefore recommended reducing it to be commensurate to the offence.**

38) INSTITUTE OF ECONOMIC AFFAIRS

Clause 8

Proposal on repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

327. Amend clause 8 to include consideration of a long-term gradual implementation of the increase in the tax rates to mitigate the immediate impact on digital marketplaces and allow time for adjustments. It will ensure that Kenya's Tax code remains competitive compared to other jurisdictions to avoid deterring digital economic activity.

328. The non-resident digital platforms are likely to pass the additional tax costs to consumers. This means that the burden of the tax will fall on the digital service users in Kenya, increasing the cost of goods and services supplied via these platforms. Further, the high withholding tax rate for non-residents may discourage international digital platforms from operating in Kenya and existing non-resident digital platforms might

choose to exit the Kenyan market if the tax burden becomes unsustainable. This could reduce the availability of diverse digital services and content in the Kenyan market.

Committee Observation

329. **The Committee noted that while the digital tax was introduced three years ago the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying lower production cost. However, to cushion the digital economy from the negative shifts, the Committee proposed to reduce the rate of deemed income of gross turnover.**

Clause 9

Introduction of motor vehicle tax at the rate of 2.5% of the value vehicle:

330. Delete Clause 9 Section 12(H). The proposed motor vehicle tax constitutes double taxation for the reason that the value of a motor vehicle already includes substantial taxes including import duty, excise duty, and VAT. These taxes significantly inflate the cost of vehicles in Kenya, and the proposed additional tax will exacerbate this burden. Imposing an additional 2.5% tax on the insured value of the vehicle, effectively penalizes vehicle owners twice on the same asset, which contravenes equitable taxation principles. This is especially onerous given that vehicle owners already contribute significantly to government revenue through existing taxes and related road and fuel levies.

Committee Observation

331. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
III. **The proposal will adversely affect the insurance-taking behavior of motor vehicle owners, further damaging the insurance sector.**
IV. **Commercial vehicles are subject to advance tax, and therefore, imposing this tax would amount to double taxation.**

Clause 30

Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:

332. Provide clarity for the kind of export confirmation documents required because there are a number of documents that are declared for the exportation of goods. This is to identify the due date for payment of taxes by the government and enhance revenue collection.

Committee Observation

333. The Committee agreed with the stakeholder's view that there is need for clarification on what constituted export confirmation documents and there recommends an amendment to cure the concern.

Clause 35

Introduction of 16% VAT on ordinary bread:

334. Delete Clause 35, 2nd schedule (a). This is because reclassification of the supply of ordinary bread from zero-rated to exempt will lead to passing the input tax to the consumer and consequently increasing the cost of living.

Committee Observation

335. **The Committee agreed with the proposal to delete the clause as it would make bread unaffordable to many.**

Clause 31

Claim of Excess VAT:

336. Delete this provision to maintain the current status because deletion of claiming the excess input VAT will make the cost of goods supplied to official aid-funded projects more expensive.

Committee Observation

337. **The Committee acknowledged the concern. However, the objective of the proposed amendment is to align the VAT provision related to applying for refunds with the provisions of the Tax Procedures Act (TPA). Under the new proposed provisions of the TPA, VAT refunds will now need to be claimed within 6 months, compared to the previous allowance of 24 months.**

Clause 34(a)(i)(Aa)

Proposal to move aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000kgs (8802.30.00) from Exempt to VAT Standard rate (16%):

338. Delete clause 34 because the additional tax will increase the cost of acquiring the aircraft subsequently increasing the safety concern. It may also bring in behaviour change for fliers and induce use of older planes. Further, introduction of VAT at standard rate will discourage investment in the tourism sector. In addition, the clause should be deleted to ensure that the Cabinet Secretary responsible for matters relating to health does not attain powers that violate the Constitution by making decisions on determining eligibility of exemptions for the construction of specialized hospitals with accommodation facilities.

Committee Observation

339. **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 37

Proposal to Expand Excise Duty to Non-Resident Digital Service Providers:

340. Delete clause 37 because this provision will raise the cost of consuming digital services.

Committee Observation

341. **The Committee did not agree with the stakeholder's proposal. The registration of non-resident persons for excise duty purposes is an administrative matter and guidelines will be developed to support the implementation for ease of compliance burden.**

Clause 38.

Proposal on empowering the Cabinet Secretary responsible for National Treasury to exempt spirit made from agricultural products in Kenya from excise duty:

342. Amend clause 38 to apply a rate, keep it for at least five years, and remove discretion by bureaucrats.

Committee Observation

343. **The Act provides remission of excise duty wholly or partially in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products (excluding barley), grown in Kenya. This proposal is meant to grant equal treatment to manufacturers of spirit who will make use of agricultural products grown in Kenya to promote local farmers. therefore the Committee does not agree with the stakeholder's proposal.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

344. Delete this provision because it will lead to the misapplication of excise tax for raising revenue. This will further lead to raising costs of imported raw materials used on excisable goods manufactured in Kenya.

Committee Observation

345. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 41

Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days:

346. Amend clause 41 to create a certain date each month for the remittance of excise duty. This will help reduce the complexities in the reconciliation and refund process for excise duty.

Committee Observation

347. **The committee noted that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers, in this regard, the Committee recommends a change in the period to remit excise duty "by the 5th of every month."**

Clause 34(b)(i)

Introduction of 16% VAT on financial services:

348. On b) in part II the Institute recommended retaining the status quo because the application of Excise tax on financial services will affect affordability and also represent a violation of the principles of excise taxation.

Committee Observation

349. **The Committee agreed with the proposal to maintain the status quo on taxation of financial services as it would make banking services unaffordable thereby undermining efforts to achieve financial inclusion.**

Clause 44

Proposal to increase import declaration fee from 2.5% to 3%:

350. On amendment of section 7 subsection 2 the team recommended retaining the current status because the regular reviews of tax rates violate the principles of good taxation as this creates uncertainty.

Committee Observation

351. **The Committee did not agree with the proposal noting that the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 occasioned a significant revenue loss amounting to at least Ksh. 10 billion, hence hurting the implementation of the FY2023/24 budget. An increase of IDF would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 52

A proposal that offers relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax:

352. Delete this provision as it grants the oversight and approval role to the Cabinet Secretary as this will negate the oversight role that Parliament is supposed to play.

Committee Observation

353. **The Committee noted that there is a potential abuse of the provision. To this extent, the Committee proposed additional checks and balances on the power of the Commissioner and thus recommended that the provision be amended to require the Commissioner to publish in the Kenya Gazette on tax abandonment and submit it to the National Assembly for approval.**

Clause 57(a)

Integration of the electronic tax system with the data management and reporting system:

354. The Institute supported the provision as it will ensure that detailed transactional data can be submitted and processed efficiently to enhance accuracy and compliance. However, adequate training and support should be available to adopt to the new system.

Committee Observation

355. **The Committee agreed with the stakeholder's proposal as this will help in ensuring tax compliance and more revenue collection. Further, the integration does not require substantial cost to comply.**

39) Iworkers

Clause 2

Proposal to expand the definition of royalty to include ssoftware:

356. Amend the definition of "royalty" to consider the difference between trading in software and assignment of license over the right to software. Whereas this proposal clarifies the meaning of royalty, it does not distinguish between the different types of transactions that attach to trading in software.

Committee Observation

357. **The Committee observed that deletion of the words in subclause (b) "and includes distribution of the software" in line with international best practices will address the difference between trading in software and assignment of license over the right to software.**

Clause 7

Proposal on refining the definition of related person:

358. Amend the clause to read as follows:

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

359. This is because the Bill as currently drafted places a tax compliance burden on non-resident owners and operators of digital marketplaces to deduct withholding tax when facilitating payments to another non-resident. Consequently, such two entities who are not resident in Kenya and who do not accrue or derive income from Kenya will be subject to taxation laws in Kenya. In any case, enforcement of tax in such circumstances will be difficult.

Committee Observation

360. **The Committee did not agree with the proposal to delete Clause 7. It was the Committee's view that the provision is aimed at ensuring that everyone pays tax appropriately and to reduce the inherent challenges of the traditional tax regime. Further, the proposal is clear since non-resident persons are already paying their taxes through the digital service tax and VAT on cross-border digital services and this should not portend compliance challenges.**

Clause 8

Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

361. Amend the clause to provide for taxation on actual income earned from Kenya as opposed to deemed taxable profits and include a threshold of KShs. 5,000,000 to trigger the tax obligation; exempt from provisions of the significant economic tax, entities based in jurisdictions that have a Double Tax Treaty (**DTT**) or multilateral agreements with Kenya; and provide for regulations to outline the detailed implementation of the proposed tax. This is because based on the OECD guidelines and given the nature of significant economic tax, it is a generally accepted principle that the tax should apply to actual revenue earned from a given jurisdiction. In addition, a turnover threshold would ensure that the tax only applies to entities that have significant operations in Kenya.

Committee Observation

362. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 25(b)(iii)(C)

Proposal to remove the threshold of KES. 24,000 for payments such as management/professional fees made to residents.

363. Delete clause 25 because this proposal will disadvantage low-income earners and lead to additional costs of compliance which may not justify the amount of tax realized. The persons making payments to the independent contractors will be required to withhold a percentage of the amount paid. For such small amounts that fall below Kshs. 24,000 per month, the compliance cost of both the infrastructure and the personnel may not justify the amounts of taxes to be collected.

Committee Observation

364. **The Committee does not support the proposal to delete the clause. Thresholds have become a planning tool for taxpayers. This will also serve to expand the tax base. In the event that a person whose income is below the taxation bracket has been withheld, the taxpayer is able to claim a refund of the tax paid.**

Clause 37

Proposal to expand of Excise Duty to Non-Resident Digital Service Providers:

365. Delete the clause entirely since there is a risk that the non-residents offering the above services may shy away from Kenya as a result of the additional tax registration and compliance burden. In addition, the additional excise duty cost would inevitably be passed on to Kenyan consumers by both resident and non-resident service providers thus making the services costlier.

Committee Observation

366. **The Committee did not agree with the stakeholder's proposal. The registration of non-resident persons for excise duty purposes is an administrative matter and guidelines will be developed to support the implementation for ease of compliance burden.**

Clause 60

Proposal for the requirement of a KRA PIN for Registration of Employees Working Remotely outside Kenya for Kenyan Employers:

367. Delete the proposal since, if adopted, will ensure that non-resident employees are liable for taxes in Kenya for income that is accrued or derived from Kenyan employers. Currently, these individuals are already subject to employment taxes in Kenya (pay as you earn – **PAYE**) on the income earned from rendering employment services to Kenyan employers.

Committee Observation

368. **The Committee was of the contrary view with that of the stakeholder because the objective of the proposal is to expand the tax base and introduce into the tax net persons who are currently not paying taxes to lessen the burden of those complying and paying.**

40) MR. JEREMY OTIENO

Clause 42(b) (i)

Proposal to increase excise duty mobile phone services from 15% to 20%:

369. Amend the provision to a gradual increase of Excise Duty rather than an immediate jump to 20% because the increased cost of mobile services can strain household budgets as more income will be directed towards communication expenses.

370. Small and medium-sized enterprises (SMEs) that depend on mobile services for business operations may face higher operational costs. This could affect their profitability and ability to expand, potentially leading to reduced economic growth.

371. Higher costs for mobile services could exacerbate the digital divide particularly affecting rural and low-income populations who may find it more difficult to afford mobile connectivity. This could hinder access to digital services and opportunities.

Committee Observation

372. **The Committee agreed with the proposal to delete the clause as it would make telephone and internet data services unaffordable and undermine efforts to achieve financial inclusion.**

Clause 45

Introduction of the eco levy:

373. Phase in the Eco Levy gradually to help businesses and consumers adapt to the new costs because enforcing the Eco levy tax effectively requires robust monitoring and regulatory mechanisms. The Government will need to invest in administrative infrastructure to ensure compliance which could be resource-intensive causing more burden on the taxpayer.

Committee Observation

374. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

375. Delete the proposal because manufacturers will be forced to dig into their already limited funds to remit excise tax. In addition, the cost of credit at the moment is painfully high and manufacturers will have to transfer this cost to consumers further raising prices making local production uncompetitive compared to imported finished products.

Committee Observation

376. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the vehicle's value:

377. Delete this proposal as it will particularly impact middle and low-income earners who use public transport and middle-level income earners who pay insurance in installments.

Committee Observation

378. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed**

Motor Vehicle Tax is levied on an asset and not income within the definition.

II. **Commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

41) CLEAN COOKING ASSOCIATION OF KENYA

Clause 34 (a)(i) (U) (153)

Proposal to move Bioethanol vapor (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel) from zero-rated supplies to Exempt:

379. Amend the provision to provide for VAT zero-rating on the supply of denatured ethanol of tariff no. 2207.20.00. This is because 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. The opportunity exists to unlock KShs. 25 billion in new investment into agriculture and bio-ethanol fuel production. Zero rating VAT on denatured Ethyl Alcohol Cooking fuel will enable the accelerated investment and growth of the local production industry by allowing producers to claim input VAT.

Committee Observation

380. **The Committee agreed with the stakeholders to amend the provision to zero-rate locally manufactured BEV stoves to strive for clean energy and enhance environmental conservation.**

Clause 35(k)

Proposal to move Bioethanol vapor (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel) from zero-rated supplies to exempt:

381. Amend to reinstate 25 % on import duties effective 1st July 2024. It was their submission that due to the current 35% import duty, half of the clean cookstove companies had not been able to sustain themselves and had since gone out of business or exited their operations in Kenya. Currently, with just two companies operating in Kenya, the private sector was now at risk of becoming a de-facto monopoly.

Committee Observation

382. **The Committee agreed with the stakeholder to amend the provision to zero-rate locally manufactured BEV stoves to strive for clean energy and enhance environmental conservation.**

42) SC JOHNSON AND SON, INC.

Clause 34(a)(i)(U)

Proposal to move from standard rated to exempt:

383. Amend the proposal to read as follows:

" Inputs, machinery, and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health."

OR

384. **Amend** Part I of the First Schedule to the VAT Act, 2013 to introduce a new paragraph 156 as follows:

"Plant and machinery of chapter 84 and 85 imported or locally purchased to be used for manufacturing mosquito repellents upon the recommendation of the Cabinet Secretary responsible for matters relating health."

385. Imposition of VAT on capital goods, a capital-intensive investment, purchased by SC Johnson for use to manufacture the mosquito repellents will result in the repellents being more expensive to the global health partners who will distribute them in the endemic areas where they are most needed. Further, the government should consider exempting from VAT, machinery used in the manufacture of repellents that are crucial in the fight against malaria. The recommended change will ensure the affordability of the repellents for public health partners distributing the repellents to Kenyans in the endemic regions.

386. Additionally, VAT exemption will ensure additional cash flow to be used to expand production and reach more people in the endemic areas in need of the repellents. GOK has already implemented similar reprieves for the treatment of human diseases where VAT is exempted under Paragraph 140 of the First Schedule to the VAT Act. While the above exemption lowers the cost of treatment of human disease like malaria through buying curative pharmaceutical products, disease prevention is always recommended as it prevents negative impacts of diseases in a society, even if the diseases were to be treated later. Therefore, the Government should enhance its support for companies trying to prevent diseases like malaria as this will significantly reduce the cost of treating disease.

Committee Observation

387. **The Commitee agreed with the proposal by the stakeholder and its proposed amendments.**

43) MR. ERIC C. BUHASIO

Clause 9(12H.) and Clause 25(15)

Introduction motor vehicle tax at the rate of 2.5% of the value of the vehicle:

388. Mr. Buhasio proposed the deletion of these provisions because, whereas the proposal is classified as income tax, in practice it would not be so. A motor vehicle, once purchased is an asset, not an income. This proposed tax would be more accurately termed as Wealth Tax. This is double taxation. Kenyans pay quite a high amount of tax when purchasing vehicles. Motor vehicle users also pay huge amounts in the form of VAT and other levies on fuel. It was his opinion that this was unfair and reckless to demand more taxes on motor vehicle owners keeping in mind that the

majority have low incomes. He submitted that this tax will increase the operation costs for businesses and Individuals. He offered that passing this will give an impression that 'everything is fair game for taxation' in the country which will scare away investments in the country. Further, Mr. Buhasio stated that many Kenyans strived to own a car and it is frustrating when this goal is made unattainable for many, year in year out fostering a despondent spirit discourages hard work and industry.

Committee Observation

389. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

III. **The proposal will adversely affect the insurance-taking behavior of motor vehicle owners, further damaging the insurance sector.**

IV. **Commercial vehicles are subject to advance tax, and therefore, imposing this tax would amount to double taxation.**

Clause 63

Proposal on the access of personal data by KRA:

390. Mr. Buhasio proposed the deletion of the proposal because privacy is the cloth that protects freedom and liberty. As such, giving a government agency an almost free hand in accessing such important private information as financial records is a big mistake. Freedom to spend one's income without worrying about the watching eye of the Government should be protected. Section 28(f) of the Data Protection Act provides the tax authority ways to catch and punish tax cheats. Access to personal data should be supervised.

391. He offered that this proposal will create more bureaucracy for financial services providers which discourages growth, and creates barriers to entry. Many potential entrants into the financial services industry will be killed before inception. Also, many will resort to using cash instead of bank and mobile money services for fears of their privacy being violated.

Committee Observation

392. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

44) MR. ALVIN KABUTU

Proposal on motor vehicle tax at the rate of 2.5% of the value of the vehicle:

393. Mr. Kabutu submitted that the proposed Motor Vehicle Tax will not only affect the ownership of private vehicles but also the public transport sector and cargo transportation. The cost of running trucks, and ferrying cargo will increase thus leading to a domino effect of increased cost of items sold in the Kenyan market. Further, he

was of the opinion that repealing post-retirement medical fund relief will be detrimental to the retired populace considering the fact that these people paid taxes for over three decades and will also demotivate the younger population leading to a reduced productivity hence stunted economic growth.

Committee Observation

394. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

III. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

IV. **Commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 63

Proposal on Access to Data by KRA:

395. The proposal to amend the Data Protection Act to exempt data processing related to tax and duty assessment and enforcement raises significant concerns about the security of Kenyan taxpayers' information. The Kenya Revenue Authority (KRA), which oversees these tax operations, would have extensive access to sensitive data. If the KRA's database were to be compromised, millions of taxpayers could be at risk of having their personal information exposed to malicious entities.

Committee Observation

396. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

Clause 42(b)(i)

Proposal to increase excise duty on telephone and Internet data services from 15% to 20%:

397. Amendment of the Excise Duty Act to increase the rates of excise duty for telephone and Internet data services, fees charged for money transfer services by financial service providers, and money transfer services provided by cellular phone service providers will also have severe effects on the cost of living and the economy as a whole. Higher Excise Duty fees will discourage Internet Service Providers (ISPs) from improving internet connectivity. Mobile money is a major supporting pillar in financial transactions, and as we progress towards a cashless society, mobile money services are to be used more since they are easier to set up than credit/debit cards. Increasing Excise Duty fees on money transfer services will reverse this progress, as netizens will opt

to use cash, which is less safe as transactions will be monitored less, increasing the rate of corruption that is already plaguing the country.

Committee Observation

398. **The Committee noted that the clause would make telephone and internet data services unaffordable and undermine efforts to achieve financial inclusion and hence proposed deletion of the clause.**

45) MS. NANCY WAMBURA

Introduction on eco levy tax:

399. Ms. Wambura submitted that she opposed the provisions in the Finance Bill, 2024. It was her opinion that the Motor Vehicle Tax is illogical given the existing high taxes on fuel, the Eco Levy on electronics will increase operational costs which can be devastating to small businesses, and taxes on digital content creators especially those who turned to this field after struggling to find traditional employment will hinder innovation and growth. Further, she stated that the constant changes in tax policies create a volatile business environment making it hard for citizens to plan and invest for the future. She offered that piling more taxes on struggling businesses and Kenyan citizens would be counterproductive. As such the focus should be on efficient use of taxes already collected and addressing corruption to ensure that every shilling counts.

Committee's Observation

400. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

46) MR. VINCENT NDICHU

Introduction of 16% VAT on ordinary bread:

401. Mr. Ndichu submitted that the economy is already straining, and reclassifying the supply of ordinary bread from zero-rated to standard-rated, if passed, will increase the price of the product, which is a staple for ordinary Kenyans.

Committee's Observation

402. **The Committee agreed with the proposal to delete the clause as it would make bread unaffordable to many.**

47) Ms. LYDIA WAHITO

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

403. Ms. Wahito submitted that the **Introduction of Motor Vehicle Tax** should be reconsidered as it is excessive and fails to account for the high insurance premiums that many Kenyans have been paying in recent years which has led to preference for third-party insurance. Further, Kenyans were already burdened with a fuel levy and VAT

on fuel, exacerbating the financial strain. It was her opinion that this proposal did not consider the needs of people with disabilities who rely on private vehicles due to the inadequacies of the public transport system. As such, Persons with Disabilities face significant struggles and this additional tax would unjustly penalize them for systemic issues beyond their control.

Committee Observation

404. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

III. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

IV. **Commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 34 (b)(i)

Proposal to subject 16% VAT on financial services:

405. The proposal to remove VAT exemptions for several financial services, issuing of credit and debit cards, foreign exchange transactions and cheque processing is concerning. Given the ongoing challenges with financial inclusion, removing VAT exemptions from banking services and M-Pesa will make these services prohibitively expensive for many people.

Committee Observation

406. **The Committee agreed with the proposal to maintain the status quo on taxation of financial services as the proposed amendment would make the services unaffordable thereby undermining efforts to achieve financial inclusion.**

Clause 35 (a)

Introduction of 16% VAT on ordinary bread:

407. Ms. Wahito noted that adding VAT to bread is deeply troubling as this will exacerbate the financial burden on families. As such, it was vital to preserve the zero-rating of bread to protect one of the essential meals that Kenyans rely on.

Committee Observation

408. **The Committee agreed with the proposal to delete the clause noting subjecting bread to 16% VAT would make it unaffordable to many.**

Clause 51 (2)(1)

Standardization of Requirements for Electronic Tax Invoices under the Tax Procedures Act:

409. Further on the proposal to integrate the eTIMS into business operations with significant penalties for non-compliance could lead to the closure of many businesses. It was her opinion that, while compliance is important, the Government should adopt a collaborative approach with businesses to achieve mutual goals. In addition, the proposed penalties should be revised to support rather than hinder business operations.

Committee Observation

410. **The Committee noted the challenges in the implementation of the Electronic Tax invoice system, particularly with regard to small-scale farmers (subsistence farmers) and micro-enterprises. One of the biggest challenges is that the system has locked out these producers from supplying to formal businesses which is deleterious for the economy at large. To correct this the Committee proposes to exempt subsistence farmers and microenterprises whose gross turnover is below one million shillings. The Committee further recommends the issuance of guidelines by the revenue authority on the operationalization of this proposal.**

48) DELOITTE & TOUCHE LLP

Clause 5

Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:

411. Deloitte recommended a lower withholding tax rate on the supplies of goods and services to public entities from 3% and 5% for residents, and non-residents to 1% and 2%, respectively by amending Paragraphs 3(u) and 5(m) of the Third Schedule to the Income Tax Act, Cap 470. A reduced withholding tax rate would be beneficial to the extent that it cushions low-profit margin suppliers, such as market intermediaries who incur significant direct costs to acquire stock for supplies to the government.

Committee Observation

412. **The Committee noted that clause is not introducing a new tax and is only bringing in a withholding tax so that the income of the persons who supply to the government is taxed to increase revenue collection.**

Clause 6(a)(i)

To exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:

413. Deloitte submitted that the following proviso be inserted immediately after the word "profit":

> *"Provided where the employer has no policy or where an employee's gross earnings are below KES 40,000 per month, the first five thousand per day shall be deemed to be a reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits."*

414. The recommendation is based on the following grounds- the current proposal would negatively impact the employees with gross earnings below KShs. 40,000 since 5% of their gross earnings will be lower than the threshold of KShs. 2,000 per day as currently provided in the Income Tax Act, Cap 470. Further, there will be increased administration costs for employers without a per diem policy as they will be required to ensure their employees account for all amounts paid out as subsistence allowance or subject the full allowance to PAYE.

415. Deloitte noted that the National Treasury ought to consider periodic reviews for situations where employers do not have a per diem policy and for low-income earners to ensure equity and alignment with the economic realities of the high cost of living.

Committee Observation

416. **The Committee observed that the current provision in the Act is sufficient.**

Clause 6(b)(ii)

Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:

417. Deloitte recommended the deletion of the clause in its entirety or in the alternative, a deletion of the words "Notwithstanding the ownership or control of any assets purchased" and insertion therefor with "Provided that any assets so purchased shall be under the sole ownership and control of the public entity making the reimbursement". Further, Deloitte submitted that the proposed amendment includes all employees to read as follows:

> *"Any amount paid or granted to an employee to reimburse an expenditure incurred to perform official duties provided that any assets so purchased shall be under the control and ownership of the employer."*

418. Deloitte was of the view that the clause as drafted, could create opportunities for the misuse of public funds through the purchase of private assets. Further, Section 5(2) of the Income Tax Act, Cap 470 sufficiently covers for any amounts paid or granted to public officers as reimbursements for expenditure incurred for the purposes of performing official duties.

Committee Observation

419. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 8

Proposal to repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

420. Deloitte recommended the amendment of the proposed Section 12E (3) to read as follows:

> *"For purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be five percent of the gross transactional value."*

421. These amendments are informed by the fact that the proposed significant economic presence tax of 6% is quite steep in comparison to the digital service tax of 1.5% and hence the taxable profit should be deemed 5% of the turnover to retain an effective tax rate of 1.5%. This shall encourage foreign direct investment in the digital economy.

422. In line with the doctrine of fairness and equity and to align with the Digital Service Tax, Deloitte recommended the amendment of the proposed Section 12E(1) to read as follows:

> *"Notwithstanding any other provisions of this Act, a tax known as significant economic presence tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace and exceeds ten million shillings annually.*

423. It was the submission of Deloitte that the proposed tax should only apply to persons with a significant presence in Kenya and that this would be achieved by setting a KShs. 10 million thresholds for the tax similar to the approach taken by other countries such as Nigeria.

Committee Observation

424. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9(12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

425. Deloitte recommended the amendment of the proposed Section 12H (2) to read as follows:

> *"Motor vehicle tax shall be payable based on the value of the motor vehicle, at the rate of zero-point five percent.*
> *Provided that the amount of tax payable –*
> *(a) shall not be less than one thousand shillings; and*
> *(b) shall not be more than twenty thousand shillings."*

426. Deloitte further proposed the amendment of the proposed Section 12(H)(5) as follows:

"An insurer who fails to collect and remit motor vehicle tax shall be liable to pay a penalty equal to that specified under Section 83A of the Tax Procedures Act, 2015."

427. Deloitte premised its proposals on the fact that the tax would negatively impact motor vehicle owners who are already struggling with reduced disposable income due to high fuel prices coupled with regular repairs and maintenance costs for their vehicles due to poor road networks as a result of the heavy rainfalls experienced.

428. Moreover, it was Deloitte's view that the tax would also increase the operational costs of the Public Transport Vehicles (PSVs) which were also impacted by the increased advance tax by the Finance Act, 2023. A further tax increase would result in an increased cost of doing business in the country and could potentially hurt the insurance sector by increasing the cost of insurance cover thus reducing insurance penetration in the country which is already too low at less than 3%.

429. Additionally, the requirement for insurance companies to remit the tax to KRA poses an administrative burden to the former who could be heavily penalized in the event of non-compliance. The penalties proposed for non-compliance are also extremely punitive and inconsistent with other similar penalties. Therefore, there was a need to align the penalties proposed in the clause to those applicable to other taxes.

Committee Observation

430. **The Committee acknowledged the stakeholder's proposal noting that the clause be deleted for the following reasons:**

a) **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
b) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
c) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
d) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 23(a)

The proposal that all income earned by amateur sporting associations will be subject to income tax:

431. Deloitte proposed the deletion of the clause because the tax would discourage investment in the amateur sporting sector which plays a big role in talent nurturing and identification for the majority of youths. The tax could also result in reduced subscriptions by taxpayers in such Associations which would greatly impact the affairs of the Associations.

Committee Observation

432. **The Committee noted that the proposal seeks to make "amateur sporting associations" amenable to pay tax, however to support investments in this sector and incentivize nurturing of sporting talent the Committee recommends deletion of the proposal.**

Clause 23(c) and 25(b)(iii)(A)

Withholding Tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for nonresidents:

433. Deloitte recommended the deletion of the clauses in their entirety to encourage investment in infrastructure bonds because such a tax would make infrastructure bonds unattractive to investors thereby jeopardizing raising funds for social and infrastructural developments for the government.

Committee Observation

434. **The Committee was of the view that the clauses encourage long-term investment and enable the government to earn revenue which is consistent with all other payments.**

Clause 25(b)(iii)(C)

Proposal to remove the threshold of KES. 24,000 for payments such as management/professional fees made to residents:

435. Deloitte recommended that the withholding tax threshold be maintained at KShs. 24,000 by deleting the clause in its entirety to prevent overburdening businesses with tax administration at the expense of their operations. This will relieve small businesses, including small and medium enterprises of an unfavourable economic environment. Furthermore, the reinstatement of this threshold is in line with the draft National Tax Policy on the *de minimis non curat lex* rule which is to the effect that the Commissioner should not be concerned with small payments.

Committee Observation

436. **The Committee does not support the proposal to delete the clause. Thresholds have become a planning tool for taxpayers. This will also serve to expand the tax base. In the event that a person whose income is below the taxation bracket has been withheld, the taxpayer is able to claim a refund of the tax paid.**

Clause 30

Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:

437. Deloitte proposed an amendment of the clause to specify the confirmation documents required to prevent ambiguity and potential disputes between the KRA and taxpayers as follows:

> *"The time of supply for exported goods shall be the time when the registered person is in possession of a certificate of export; or exit notes and road manifest in the case of goods exported to East African Community member states."*

438. While the proposed amendment seeks to enhance taxpayers' compliance with the provisions of the VAT Regulations, 2017 that provides a list of the documentation required as proof of exportation of goods. Deloitte noted that the documents listed under the Regulations as 'export confirmation documents' are issued at different dates hence the need for clarity to eliminate any ambiguities.

Committee Observation

439. **The Committee agreed with the stakeholder's proposal noting that there is need for clarification on what constitutes export confirmation documents and there recommends an amendment to cure the concern.**

Clause 34(b)(i)

Proposal to subject 16% VAT on Issuing of credit cards:

440. Deloitte proposed the deletion of the clause in its entirety because the proposal shall have a detrimental effect on the Government's efforts to make Kenya a financial hub and a gateway to Africa. Moreover, the clause is likely to create disputes between KRA and the taxpayers since the proposed deletions are connected and relate to some of the retained provisions.

441. Furthermore, financial services are offered to taxpayers as a means of paying for goods and services already subjected to VAT thus amounting to double taxation. Deloitte submitted that there being no fees charged in relation to foreign exchange transactions, the proposal is ambiguous and would result in prolonged disputes between the KRA and taxpayers as the KRA may seek to stretch the interpretation by using varying the VAT bases.

Committee Observation

442. **The Committee agreed with the proposal to maintain the status quo on taxation of financial services as the proposed amendment would make the services unaffordable thereby undermining efforts to achieve financial inclusion.**

Clause 34(b)(ii)

Proposal VAT exemptions on insurance and reinsurance premiums:

443. Deloitte submitted that the clause goes against the established principles where VAT is levied on the underlying supply of goods or services by Section 5 of the VAT Act, Cap 476 hence proposed the amendment of the proposed Paragraph 2 to read as follows:

> *"insurance and reinsurance services as defined under the Insurance Act and Reinsurance Regulations."*

444. **It was Deloitte's submission that the proposal should only exempt insurance and** re-insurance services as defined by the Insurance Act and Insurance Regulations to ring-fence the VAT exemption to insurance services and comply with Section 5 of the VAT Act, Cap 476.

Committee Observation

445. **The Committee was of the view that removal of the exemptions is to rationalize tax expenditure, expand tax base and raise revenue to bridge the revenue gap.**

Clause 35(a)

Proposal to subject 16% VAT on ordinary bread:

446. Deloitte stated that the imposition of VAT on bread would significantly increase the price of bread, an essential commodity to the food basket, especially to the Kenyan household. It, therefore, submitted that Paragraph 13A of Part A of the Second Schedule to the VAT Act, Cap 476 be retained and instead, be amended to read as follows:

"All types of bread"

Committee Observation

447. **The Committee agreed with the proposal to delete the clause, noting subjecting bread to 16% VAT would significantly increase the price of bread, which is an essential commodity to the food basket.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

448. Deloitte proposed the deletion of the clause in its entirety and instead recommended that Section 14(1) of the Excise Act, Cap 472 be amended by inserting the words "*and packaging material*" immediately after the words "*raw materials*". A repeal of Section 14 would result in double taxation of excisable raw materials and bulk internet purchased for resale. This would have an overall effect of increasing the cost of manufacturing the affected excisable goods, including juices and alcoholic beverages, and discouraging the local manufacture of the affected goods where the cost of importing the finished products is cheaper.

Committee Observation

449. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42(a)(i)(P)

Introduction of excise duty on vegetable oil at the rate of 25%:

450. Deloitte stated that the introduction of excise duty on vegetable oils, a basic commodity in most Kenyan households, would cause an increase in the price of vegetable oil and its by-products by 69%. Consequently, increasing the cost of living at a time when the cost of living is already too high for a majority of Kenyans. By making vegetable oils unaffordable, many will resort to using alternative fats associated with high cholesterol which is unhealthy.

Committee observation

451. **The Committee accepted the proposal by the stakeholders to exempt excise** duty **on vegetable oils to curb the increase in consumer prices.**

New Proposals relating to the VAT Act, Cap 476

452. Deloitte proposed the amendment of Section 47(13) of the Tax Procedures Act, Cap 496B to have refund decisions treated as tax decisions, rather than appealable decisions. This would rid Section 47 of the Act of the ambiguity introduced by the Finance Act, 2022 and empower taxpayers to challenge refund decisions before the Tax Appeals Tribunal.

453. To reduce the cost of doing business and prevent potential disputes between the KRA and taxpayers on whether such costs are directly attributed to taxable supplies, Deloitte proposed the amendment of Section 17(4)(a) of the VAT Act, Cap 476 to provide for claiming of input tax to read as follows:

> *"...other than—*
>
> *i. Costs incurred on vehicles specifically designed or modified and primarily used for the supply of taxable goods or services; or*
>
> *ii. Costs incurred on vehicles specifically used in the ferrying of employees in plantations or mining sites subject to prior approval by the Commissioner."*

454. Deloitte added that while Section 17(2) of the VAT Act, cap 476 as amended by the Finance Act, 2023 imposes upon taxpayers the responsibility to enforce compliance and ensure that suppliers declare sales to KRA, taxpayers lack the resources and capability to compel their suppliers to make declarations to KRA. It was Deloitte's submission that the current provision would only work if TIMS was fully operational, such that all supplier transactions, including those incurred six months before the beginning of the tax period in which the supply or importation occurred, were auto-populated in the VAT return. Furthermore, it would be unjust to withhold customers' ability to claim input tax based on invoices they have paid for due to their suppliers neglecting to declare sales in their VAT returns. To address this issue, Deloitte has recommended an amendment to the section, suggesting that taxpayers should be allowed to claim input tax if they possess the appropriate documentation or if the supplier has reported the sale in their VAT return.

Clause 45

455. Deloitte recommended that the clause be deleted in its entirety because the introduction of Eco levy would increase the cost of critical goods such as computers and office machines which would in turn increase the cost of running businesses in Kenya, making local manufacturing of products such as diapers unsustainable resulting in potential job losses and the ultimate decline in economic growth. Instead, Deloitte proposed that the Government consider measures that incentivize responsible waste management such as exemptions on waste recycling plants.

Committee Observation

456. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 56(a)

457. Deloitte recommended the amendment of the proposed subsection (4A) in sub-clause (a) to provide as follows to ensure that the Commissioner officially communicates the disallowance of an objection in writing to enable the taxpayer to have a record of the decision against s/he may appeal before the Tax Appeals Tribunal:

> *"Despite subsection (3), where a taxpayer fails to provide information required under subsection (4) or fails to provide the information within the specified period, the Commissioner shall proceed to disallow the objection in writing.*
> *Provided that such disallowance shall constitute an appealable decision."*

Committee Observation

458. **The Committee noted that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection. In this regard, the Committee proposes to require the Commissioner to communicate the objection decision.**

Clause 57

459. Deloitte submitted that the penalties imposed under the proposed Section 59A(5) and (6) of the Tax Procedures Act, Cap 469B are excessive and unproportionate to the prescribed offence, would have the effect of jeopardizing the going concern of taxpayers' businesses and be counterproductive in incentivizing cooperation between taxpayers and the KRA. In addition, Deloitte noted that there is a need to prevent penalizing taxpayers for factors beyond their control such as technical mishaps. To this end, it proposed the amendment of the subsections to read as follows:

> *"(5) A person who fails to comply with the notice referred to in subsection (1A) commits an offense and shall be liable, on conviction, to:*
> *(i) a penalty of one hundred thousand shillings or 5% of the value of the transaction, whichever is higher; and*
> *(ii) interest at 1% per month for every month or part thereof that the failure continues."*
>
> *"(6) A person who fails to comply with the notice referred to in subsection (2) commits an offence and shall be liable, on conviction, to the penalty referred to under subsection (5).*
> *Provided that the Commissioner shall refrain from imposing the penalty under this section if the failure to comply with the integration of the electronic tax system was due to reasonable factors beyond the taxpayer's control."*

Committee Observation

460. **The Committee agreed that the penalty prescribed in the provision is too punitive and therefore recommended reducing it to be commensurate to the offence.**

Clause 63

Proposal on access of personal data by KRA:

461. Deloitte recommended the deletion of the clause since the proposal would pose a risk of data misuse, raise legal and ethical concerns relating to data protection which

the Data Protection Act, Cap 411C Act was enacted to resolve and contravene the right to privacy.

Committee Observation

462. **The Committee agreed with the proposal to delete the clause in accordance with the legal provisions on safeguarding personal data.**

49) MIZANI254

Clause 9(12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of motor vehicle:

463. Delete the clause because the proposal is a wealth tax as it proposes the taxation of an asset based on value. Similarly, the Constitution of Kenya under Article 209 does not provide for the imposition of a wealth tax.

Committee Observation

464. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

Clause 34 (b) (i)

Proposal to subject 16% VAT on financial services:

465. Delete the clause because the proposal would reverse the progress made in financial inclusion. The financial sector is grappling with non-performing loans and clients and businesses are faced with a high cost of credit. This is due to the tightened monetary policy and the adoption of the risk-based model by banks which has made credit costlier to businesses and individuals with poor credit score.

Committee Observation

466. **The Committee agreed with the proposal to maintain the status quo on taxation of financial services as the proposed amendment would make the services unaffordable thereby undermining efforts to achieve financial inclusion.**

50) INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA

Clause 4

Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:

Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:

467. Delete clause 4 on the reduction of time of deductibility of differed realized foreign exchange losses as this will be problematic for investors. This proposal could potentially cause financial instability, unexpected tax liabilities and discourage investment both in

the short and long run, reducing Kenya's competitiveness. The Government should ensure stability of tax policies and give enacted legislation time to achieve the intended objectives.

Committee Observation

468. **The Committee supported the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 5

Proposal to impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:

469. Amend the clause because taxpayers supplying goods to public entities have faced challenges where tax is paid, while payment for the goods (and services) supplied is received much later, in a different year of income from the year of income of supply, which has inflicted severe pain on persons doing business with public entities. Inclusion of suppliers of services will eliminate the perceived bias and discrimination. The proposal would read as follows:

> *"The Payment received by a person from a public entity for supply of goods and services shall be deemed to be the income of the person for the year of income in which the payment is received."*

Committee Observation

470. **The Committee was of the view that the clause is not introducing a new tax and is only bringing in a withholding tax so that the income of the persons who supply to the government is taxed to increase revenue collection.**

Clause 6(b)(ii)

Proposes to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:

471. Delete clause 6 because it is prone to abuse and may lead to serious leakage of payroll taxes. It is also not clear why the proposed amendment is only applicable to public officers and not applied uniformly to all employees. In addition, the same proposal had been introduced under the Finance Bill 2023 but was dropped by the National Assembly.

Committee Observation

472. **The Committee agreed with the proposal to delete the clause noting that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it would be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 8 (12H)

Proposal to repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

473. Amend clause 8 subsection 3 on the introduction of Significant Economic Presence Tax by reducing the proposed rate of 20% on taxable profit to 5%. This is because the reasonable rate will create a tax environment that is fair, competitive and conducive for economic growth while ensuring digital businesses operating within Kenya contribute reasonably to the national coffers.

Committee Observation

474. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

475. Delete the **clause** because the motor vehicle industry is already taxed through other forms of taxes including vehicle import taxes which are almost 50% of the value of the car. The proposed tax will negatively impact on insurance penetration which is already very low in Kenya and would also have negative ripple effects to other facets of the economy. In addition, Imposing Motor Vehicle Tax on public service vehicles is likely to lead to increased cost to *Mwananchi* as the owners of the motor vehicles are likely to pass the burden to them.

Committee Observation

476. **The Committee agreed with the proposal to delete the clause noting as follows:**

I. **Section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
III. **The proposal will adversely affect the insurance-taking behavior of motor vehicle owners, further damaging the insurance sector.**
IV. **Commercial vehicles are subject to advance tax, and therefore, imposing this tax would amount to double taxation.**

Clause 23 (a)

Proposal to subject all income earned by amateur sporting associations to tax:

477. Delete clause **23** (a) on taxation of amateur sporting associations because it may cripple sporting activities in the country. Many amateur sporting associations do not operate for profit but operate to promote sporting activities within the country and

serve the community. Additionally, Kenya's sporting sector has not fully developed hence introducing tax may undo the progress made so far.

Committee Observation

478. **The Committee agreed with the proposal to delete the clause noting that it seeks to make "amateur sporting associations" amenable to pay tax, however to support investments in this sector and incentivize nurturing of sporting talent the Committee recommended deletion of the proposal.**

Clause 23 (g)

Proposal to levy capital gains tax on the transfer of property to a family trust:

479. Delete the **clause** because the transfer of titles of immovable property to a family trust is not a capital gain since the beneficial ownership does not change. Additionally, family estates are not commercial transactions but rather a means to manage and protect family wealth.

Committee Observation

480. **The Committee concurred with the proposal to delete the clause noting that Section 3E(3) of the Trustees (Perpetual Succession) Act, Cap 184 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 25(b) (iii) (A) (iv)

Proposal to subject withholding tax on Interest from infrastructure Bonds at the rate of 5% for residents and 15% for nonresidents:

481. Amend the **clause** by harmonizing withholding tax rates on infrastructure bonds by both resident and non-resident at 5%, with the withholding tax deducted being the final tax. The proposed amendments are likely to mitigate the risk of making this category of bonds unattractive whereas the high tax rate is likely to discourage investment.

Committee Observation

482. **The Committee was of the view that the clauses encourage long-term investment and enable the government to earn revenue which is consistent with all other payments.**

Clause 25 (b) (i)- New proposal

483. Amend the clause by introducing a new provision that reads as follows-

> *"Fifteen percent will continue to apply to a company that had received construction approval from the County Government before the commencement of this proviso."*

484. With the **Amendment**, inclusion of a transition clause would ensure that the Government achieves its objective of repealing the incentive but also provide certainty for investments which are already underway. In addition, this is critical in earning the trust of investors on predictability and certainty of tax laws.

Committee Observation

485. **The Committee noted that Affordable Housing as one of the critical pillars in the BETA Economic Model Agenda and therefore the retention of the 15% preferential tax rate would go a long way to address the housing shortfall in the country and supply the needed number of houses to fill this gap. Further, in keeping with the spirit of ensuring the predictability of the tax structure the Committee recommends the deletion of the proposal to remove the incentive. The Committee noted the new proposal but was of the view that it would expand the scope of the provision.**

Clause 25(b)(iii) (C)

Proposal to remove the threshold of KES. 24,000 for payments such as management/professional fees made to residents:

486. Delete the clause because the administrative burden of the proposal is too taxing, would lead to increased costs for tax compliance, and may incentivize taxpayers to evade taxes.

Committee Observation

487. **The Committee does not support the proposal to delete the clause. Thresholds have become a planning tool for taxpayers. This will also serve to expand the tax base. In the event that a person whose income is below the taxation bracket has been withheld, the taxpayer is able to claim a refund of the tax paid.**

Clause 25 (b) (ii) (C) (u)

488. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:**

489. Amend the **proposed** rates of withholding taxes in the clauses by reducing the resident rates to 1% and non-resident rates to 2%. This proposal would enhance cash flow for businesses, especially for Small and Medium Enterprises ("SMEs") and allow them to reinvest in operations, manage expenses and pursue growth opportunities. Additionally, the reduced withholding tax rates will reduce refund claims for low-margin businesses which been a headache for the KRA.

Committee Observation

490. **The Committee did not agree with the proposal to delete the clause. This is because the clause is not introducing a new tax and is only bringing in a withholding tax so that the income of the persons who supply to the government is taxed to increase revenue collection.**

Clause 25 (b) (ii) (C)(v)

Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace:

491. Amend the **proposed** withholding tax rates for income deemed to have accrued in or been derived from a digital marketplace for non-residents from 20% to 10%. This is because requiring owners or operators of digital marketplaces or platforms to withhold taxes at 20% on the payments made to non-residents is quite steep and may have repercussions on Kenya's competitiveness in the digital economy. The amendment would encourage foreign investment and growth in this sector.

Committee Observation

492. **The Committee was of the view that the introduction of withholding tax will not reduce the net income of suppliers because the suppliers are currently required to pay tax even without this amendment.**

Clause 30

Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:

493. **Amend** clause 30 to read as follows-

"The Time of supply for exported goods shall be the time when the registered person has-

a) the bill of lading, airway bill or road manifest;
b) C17B duly passed in the customs system; and
c) confirmation of exit from the Customs system."

494. This is **because** as currently proposed it is not clear on the documents required. The amendment would help avoid disputes on whether goods have been exported.

Committee Observation

495. **The** Committee **agreed with the stakeholder's proposal noting that there is need for clarification on what constitutes export confirmation documents and therefore recommended an amendment to that effect.**

Clause 34 (b) (i)

Proposal to introduce 16% VAT on financial services:

496. Delete the clause that introduces a standard rating on selected financial services because this will lead to a substantial increase in the cost of accessing financial services. This proposal would likely discourage Kenyans from using the formal financial systems which will erode the gains that have been made over the years in growing the uptake of financial services. This is in addition to watering down gains made towards financial inclusion.

Committee Observation

497. **The** Committee **agreed with the proposal to delete the clause as it would make financial services unaffordable and undermine the efforts to achieve financial inclusion.**

Clause 34 (b) (ii)

Proposal to limit VAT exemption on insurance and reinsurance premiums:

498. Delete this clause because the imposition of standard VAT on insurance services would increase the final cost of accessing insurance services since insurance companies will pass on the associated VAT to consumers.

Committee Observation

499. **The** Committee **agreed with the proposal to delete the clause as it would make financial services unaffordable and undermine the efforts to achieve financial inclusion.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services

500. Amend clause 39 by reintroducing the previous section on the Relief for Raw Materials and amending it 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 raw materials and packaging materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw shall be offset against the excise duty payable on the finished goods."*

501. The proposal is in contravention of international best practice on consumption taxes and contravenes policy guidelines as enshrined in the National Tax Policy and the Medium-Term Revenue Strategy. Further, the proposal would subject manufacturers to double taxation where input excise will be included as part of the cost of the final product which will then be subject again to excise and VAT (on a base that includes excise tax).

Committee Observation

502. **The** Committee **noted that the clause contravenes international best practice on consumption taxes and contravenes policy guidelines as enshrined in the National Tax Policy and the Medium-Term Revenue Strategy hence proposed its deletion.**

Clause 42(G)

The proposal to levy an excise duty of 10% on all plastics whether they are imported or domestically:

503. Delete the clause because it introduces excise duty on locally manufactured plastic which would increase the costs of goods that require the use of plastic packaging. Additionally, it would result in multiple taxation on the same product increasing the costs of businesses and consumers.

Committee Observation

504. **The** Committee **agreed with the stakeholder's proposal to delete the clause noting that this would prevent the increase in the costs of goods requiring plastic packaging.**

Clause 42 (a) (I) (P)

Introduction of excise duty on motor vehicles at the rate of 2.5% of the valuer of the vehicle:

505. Delete the clause that introduces excise duty on vegetable oils at 25% because cooking oil is a basic need for most families and increasing their prices will increase inflation making the oils unaffordable.

Committee Observation

506. **The** Committee **agreed with the stakeholder's proposal noting that the excise duty rate imposed on vegetable oils will result in financial strain, increased meal costs and nutritional concerns. The Committee therefore resolved to delete the clause.**

Clause 42(b)(i)

Proposal to increase excise duty of telephone and internet data services from 15% to 20%:

507. Delete the clause as the current 15% excise duty supports the growth of the digital economy by keeping communication and internet costs relatively affordable. The proposal could discourage the use of 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

508. **The** Committee **agreed with the proposal to delete the clauses as it would make financial services unaffordable and undermine efforts to achieve financial inclusion.**

Clause 45

Introduction of eco levy tax:

509. Delete clause 45 which introduces the Eco levy because it poses a significant threat to businesses in several sectors of the economy. Further, it imposes punitive levies on the goods, and there is a lack of certainty in the framework for determining which goods are deemed to be significant contributors to environmental degradation, and how the rates for these are arrived at.

Committee Observation

510. **The** Committee **noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 56(b)

511. Proposal **to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Amend the clause by introducing a new subsection that "*Shall stand disallowed to the extent of the information is not provided within sixty days after the date on which the notice of objection was lodged*". This is because a taxpayer can only appeal to the Tax Appeals Tribunal (TAT) based on an objection decision and failure to issue one would appeal to the TAT fatal.

Committee Observation

512. **The** Committee **was of the view that there has been an increase in the volume of tax objections while the KRA workforce has remained static. Increase in the timelines will ensure that the objection decisions are based on merit and issued after comprehensive review of documents submitted to the Commissioner.**

Clause 57(b) (5)

Proposal of penalty on failure to Integrate the electronic tax system with the data management and reporting system:

513. Delete this clause because the penalty is too steep and will scare investors and hurt the country's economy. In addition, the Commissioner already has other penalty provisions in the law.

Committee Observation

514. **The Committee agreed that the penalty prescribed in the provision is too punitive and therefore recommended reducing it to be commensurate to the offence.**

New proposal under Excise Duty

515. ICPAK proposed the introduction of Section 47(a)(v) of the Finance Act 2023 to increase the excise rate on imported glass bottles from 25% to 35%. The excise tax was introduced at a 25% excise duty on imported glass bottle jars (excluding imported glass bottles for packaging of pharmaceutical products, or glass originating from within the EAC) through the Business Law (Amendment) Act, 2020. They stated that in the proviso, glass bottles imported from COMESA Regions should be excluded. The excise tax on glass violates COMESA Treaty provisions on most favored nation treatment and provisions that prohibit Member States from enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Member States.

Committee Observation

516. **The** Committee **noted the stakeholder's proposal.**

New Proposal Relating to the VAT Act

517. Amend Section 17 (2) (b) by deleting the words "*has not declared*" and replace with ... "*has issued a Tax invoice*". This would ensure Taxpayers comply with eTIMS invoicing.

Committee Observation

518. **The** Committee **noted the stakeholder's proposal.**

New Proposal Relating to the Tax Appeals Tribunal Act

519. Amend Section 32 by inserting the following words, immediately after the words High Court, "*failure to which the decision of the Tribunal shall be final and binding on both parties*". This is to ensure that the provision is not misused and to guarantee adherence to Article 47 of the Constitution on fair administration of justice.

Committee Observation

520. **The** Committee **noted the stakeholder's proposal but was of the view that it sought to amend an Act of Parliament that had not been included in the Bill.**

Proposal on withholding tax on Income Tax Act

521. The Finance Act 2023 amended the Income Tax Act to introduce a requirement that taxpayers remit withholding tax to the Commissioner within five working days where the tax has been deducted on qualifying payments. This scenario has created an onerous administrative burden to the taxpayer. ICPAK proposed the harmonization of the due date to 10th day of the following month. This can be done across all taxes to ease the administrative burden. This is because every tax ought to be levied at the time, or in the manner in which it is most likely convenient for the contributor to pay it. Where a timeline is not applicable/practicable, taxpayers are vulnerable to non-compliance, thus increasing time wasted in firefighting unreasonable targets.

Committee Observation

522. **The** committee **noted that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers, in this regard the Committee recommends a change in the period to remit excise duty "by the 5th of every month".**

Proposals on PAYE

523. ICPAK proposed the expansion of the PAYE bands. They offered that the National Treasury could carry out a study and do comparative analysis of the tax bands in comparative jurisdictions to arrive at more expansive bands that will be optimal for both the government and salaried individuals. The proposal also aims at harmonization of the marginal tax rate to the corporate income tax rate to pre-empt tax planning, ensure equity and make Kenya competitive.

Committee Observation

524. **The** Committee **noted the stakeholder's proposal and was of the view that this could be considered in the future.**

Proposals on Terminal dues

525. **The** Institute proposed the reduction or waiver of tax on benefits paid to dependents of deceased employees to provide a stable source of income to those who lose their breadwinner.

Committee Observation

526. **The** Committee **noted the stakeholder's proposal but was of the view that this be interrogated in the future.**

51) KATHAMBI KINOTI ADVOCATES

Clause 9 (12H)

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

527. **Delete this clause because the taxes on cars will add financial burdens** on households.

Committee Observation

528. **The Committee agreed with the proposal to delete the clause noting as follows:**
    a) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
    b) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

Clause 25 (b) (iii) (C)

Proposal to remove the threshold of KES. 24,000 for payments such as management/professional fees made to residents:

529. Delete the clause because it would increase the cost of compliance since it would be administratively onerous to implement and would have a negative cash flow impact, especially for small traders.

Committee Observation

530. **The Committee does not support the proposal to delete the clause. Thresholds have become a planning tool for taxpayers. This will also serve to expand the tax base. In the event that a person whose income is below the taxation bracket has been withheld, the taxpayer is able to claim a refund of the tax paid.**

Clause 21

Proposal to repeal the provision that provides for the imposition of a penalty of twenty percent (20%) where a taxpayer has underpaid installment tax:

531. Amend clause 21 to delete the provision that provides for the imposition of a penalty of twenty percent (20%) where a taxpayer has underpaid installment tax because the prescribed penalty is quite punitive.

Committee Observation

532. **The Committee did not agree with the stakeholder's proposal. It was the Committee's view that the prescribed penalty is consumerate to the offence.**

Clause 39

Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:

533. Delete clause 39 because it would increase the cost of production which is against the Kenya Kwanza Manifesto of making Kenya self-sufficient in terms of feeding the population. In addition, the high cost of production will make Kenyan products less competitive in the regional market thereby deny farmers the much-needed market for the farm produce. The taxation will result in increased food importation in the country leading to negative effects on the balance of trade thereby exerting pressure on the dollar reserves.

Committee Observation

534. **The Committee agreed with the proposal to delete the clause because it would make Kenya's products uncompetitive within the EAC region. Additionally, it would increase**

the cost of production unnecessarily and increase the prices of the products to consumers.

Clause 35(a)

Proposal to introduce 16% VAT on ordinary bread:

535. Delete the clause because it imposes a 16% VAT on ordinary bread which will inevitably drive up its price by at least the same percentage, yet it is a staple breakfast food in urban Kenya.

Committee Observation

536. **The Committee agreed with the proposal to delete the clause noting subjecting bread to 16% VAT would significantly increase the price of bread which is an essential commodity to the food basket.**

Clause 34 (b) (i) (ii)

Introduction of 16% on banking services:

537. Delete the clauses because introducing the 16% standard rate would drive up the cost of these services. This proposal may cause people to turn to the black market and mattress banking which will see most business transactions done outside the banking system thereby denying KRA much-needed taxes on business income making it counterproductive from the income tax perspective.

Committee Observation

538. **The Committee agreed with the proposal to delete the clause as it would make financial services unaffordable. Consequently, frustrate efforts to achieve financial inclusion.**

Clause 42 (b) (i) (iii)

Proposal to increase excise duty on money transfer from 15% to 20%:

539. Delete the clauses because they would probably trigger many to stay away from money transfer platforms.

Committee Observation

540. **The Committee agreed with the proposal to delete the clause as it would make telephone and internet data services unaffordable and undermine efforts to achieve financial inclusion.**

Clause 45

Introduction of eco levy:

541. Delete the clause because the cost would most likely be passed on to the end user/consumer.

Committee Observation

542. **The Committee noted that the purpose of the eco levy is to help redress environmental damage and pollution caused by the importation of certain finished products into Kenya.**

Clause 57

Proposal to Integrate the electronic tax system with the data management and reporting system:

543. Delete the clause that seeks to force all businesses to be on the e-Citizen and eTIMS platforms because it would further buttress the eTIMS regime and would lead to higher compliance and administrative costs for businesses adapting to the new system.

Committee Observation

544. **The Committee did not agree with the stakeholder's proposal. ETIMS will help in increasing tax compliance and more revenue collection. Further, the integration does not require substantial cost to comply.**

Clause 63

Proposal to allow KRA access to personal data:

545. Delete the clause because the taxpayers' privacy rights are protected under Article 31 of the Constitution of Kenya. These rights would be violated if their data relating to tax and duty is exempted from the Data Protection Act (Cap. 411 C).

Committee Observation

546. **The Committee agreed with the proposal to delete the clause in accordance with Article 31 of the Constitution on the right to privacy.**

Clause 61

Proposal on restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:

547. Delete clause 61 because lifting the restriction may defeat the government's intention of making housing affordable if the resale is done at market value. Also, it is likely to drive the cost of affordable housing upwards.

Committee Observations

548. **The Committee agreed with the Stakeholder that the current provision in the Affordable Housing Act was limiting transfers of the affordable housing units .**

Clause 63

Proposal to allow KRA access to personal data:

549. Delete clause 63 because this exemption, without adequate safeguards, could lead to potential misuse, allowing KRA access to personal and private data such as MPESA and bank transaction messages. As an alternative, the government should consider prioritizing streamlining of tax declaration and payment processes, particularly for taxes such as withholding tax and other deductible taxes at source.

Committee Observations

550. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection**

Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law

52) KAMUKUNJI COMMUNITY EMPOWERMENT CENTRE
Clause 34 (a) (i)

Proposal to subject 16% VAT on ordinary bread:

551. Delete clause 34 (a) (ii) because consumers will have to pay a higher price for bread. Conduct an impact assessment to understand how this change would affect vulnerable populations, especially those who heavily rely on bread as a staple food.

Committee Observations

552. **The Committee agreed with the Stakeholders and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 34 (b) (ii)

Proposal to subject 16% VAT on banking services:

553. **Delete** clause 42 (b) (ii) because the increase could impact the cost of mobile banking services for users.

Committee Observations

554. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfer services by banks and financial institutions.**

Clause 42 (P)

555. **Proposal to subject excise duty on vegetable oil at the rate of 25%:** Delete clause 42 (P) because it will make cooking oil too costly and out of reach for most Kenyans. If implemented, this excise duty is projected to skyrocket the price of cooking oil by 80%, rendering it unaffordable for millions of Kenyans. Additionally, this will potentially leave many Kenyans unemployed, as the edible oils sector directly employs approximately 10,000 individuals and indirectly supports over 30,000 jobs.
Committee Observations

556. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable Oils to curb increase in consumer prices.**

Clause 48

557. **Proposal on eco levy:** Amend this provision to cover a wider range of products, including those with significant environmental footprints.
Committee Observations

558. **The Committee agreed with the stakeholder taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of**

certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.

Clause 63

559. **Proposal for access of personal data by KRA: Delete** clause 63 because data protection remains a critical concern. The government should prioritize enacting comprehensive data protection laws because Kenya needs robust data privacy regulations to safeguard citizens' personal information.
Committee Observations

560. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

561. **In** addition, the Kamukunji Community Empowerment Centre proposed the following amendments-
New Proposal on Tax amnesty

562. Amend Section 37E of the Tax Procedures Act to extend the sunset date of the ongoing tax amnesty programme from 30th June 2024 to 30th June 2025. The covered period should include the year of income ending 31 December 2023. With the increased collections witnessed by the KRA from this programme, and the previous Voluntary Tax Disclosure Programme (VTDP), extending the current amnesty programme may boost revenue collection by encouraging self-disclosure of liabilities by taxpayers. It will also grant more taxpayers an opportunity to clean up their tax ledgers, and consequently, help the KRA to clean up its receivables.
Committee Observations

563. **The Committee was of the view that this proposal will lead to revenue losses. Additionally the committee observed that the tax amnesty period given was sufficient.**

New Proposal on Indirect transfers for Capital Gains Tax purposes

564. **Amend** paragraph 2(b) of the Eighth Schedule to the Income Tax Act, to increase the threshold for the value of interest derived from immovable property in Kenya from 20% to 50%. This will align Kenya with global best practices as recommended under Articles 13(4) of the OECD and UN Model Tax Conventions, which similarly provide for a threshold of 50%.
Committee Observations

565. **The Committee was of the view that this proposal is too high and resolved to retain it at the current rate.**

New Proposal on Excise duty for digital lenders

566. Amend Paragraph 6 of Part II, First Schedule to the Excise Duty Act, to specifically exclude interest charged by digital lenders from the scope of fees subject to excise duty. Digital lenders play a crucial intermediary role for many Kenyans in the informal and low-income sectors, by granting them access to credit without the restrictions of traditional lenders, such as collateral. By exempting interest charged by digital lenders from excise duty, the cost of accessing credit for this demographic is likely to reduce.
Committee Observations

567. **The Committee was of the view that this proposal will lead to reduced revenues from Excise duty tax head.**

New Proposal on Waivers

568. Reinstate the granting of waivers on penalties and interest under the Tax Procedures Act, which was deleted by the Finance Act, of 2023. This will provide relief for taxpayers with penalties and interest on their ledgers arising from genuine cases, such as the erroneous imposition of penalties/interest by iTax.

Committee Observations

569. **The Committee observed that there is a running amnesty on penalties and interest for which taxpayers should take advantage of.**

New Proposal on Deductibility of Expenses

570. Delete Section 16(1)(c) of the Income Tax Act, as introduced by the Finance Act, 2023. This provision currently disallows the deduction of expenditure or loss which is not supported by an eTIMS invoice, with effect from 1 January 2024. The continued effect of this provision risks the disallowance of genuine expenses incurred exclusively in the production of income, and the consequent bearing of an unfair tax burden. Such effects will likely be exacerbated by the low uptake of eTIMS among taxpayers, implying that a significant proportion of business expenses for the current year of income will not be eTIMS-supported.
Committee Observations

571. The **Committee observed that the introduction of the eTIMS and the associated restrictions is to help boost tax revenues by bringing all tax payers. The committee was of the view that this proposal would negate the objectives of introduction of eTIMS.**

53) RETAIL TRADE ASSOCIATION OF KENYA
Clause 9- 12H

572. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Amend the proposal and exempt commercial and Agricultural vehicles from the tax. Further, lower the proposed rate from 2.5% to 1%. This is because subjecting all vehicles **to the tax will increase the operating costs of all our suppliers.**
Committee observation(s)

573. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the**

proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.

Clause 18 section 31

574. **Proposal to repeal of the reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:** Delete the proposed amendment since the proposed deletion will repeal relief for all health policies including private health policies.
Committee observation(s)

575. **The Committee agrees with the stakeholder and proposes to delete the clause to retain the reliefs.**

Clause 20 section 35

576. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend the clause to provide guidelines with regards to taxing the supply of goods to public entities.
Committee observation(s)

577. **The Committee observed that there are sufficient legal instruments and guidelines on withholding tax to cater for its administration.**

Clause 42(b)(ii)

578. **Proposal to increase excise duty on mobile money services from 15% to 20%:** Delete the amendment and reinstate it as it was at 15%. If the proposal is passed it will lead to slowing down the use of mobile money services.
Committee observation(s)

579. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

Clause 45 -7B

580. **Introduction of eco levy:** Delete the clause since the adoption of the eco levy will amplify inflationary pressures, diminish disposable income, and deter both foreign and domestic investment activities within Kenya.
Committee observation(s)

581. **The Committee observed the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 56(a)

582. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Delete the amendment because if passed, the proposal may prejudice objections that have multiple grounds of objection due to one faulty ground.

Committee observation(s)

583. **The Committee noted the challenges experienced by the commissioner in handling the increased number of tax objections and therefore proposes to increase to ninety days.**

54) KILELE YOUTH ASSOCIATION
Clause 34 b(ii)

584. **Proposal to introduce 16% VAT on money transfer services:** Delete the provision since money transfer services will be very expensive to Kenyans.
Committee observation(s)

585. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

Clause 9 section 12H

586. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Delete the clause in its entirety because motor vehicles are not eligible for classification under the Income Tax Act.
Committee observation(s)

587. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 25(b) (iii) C

588. **Proposal to remove the threshold of KES. 24,000 for payments such as management/professional fees made to residents:** Amend the clause to put into consideration the gross amount payable to the same.
Committee observation(s)

589. **The Committee observed that the threshold occasions revenue losses in instances where a tax payer splits payments in batches of amounts under the threshold to avoid paying tax.**

55) PETROLEUM INSTITUTE OF EAST AFRICA
Clause 2 section 2

590. **New Proposal:** Amend the provision in the definition of 'natural resource income' to provide as follows-

i. *an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea but does not include fees, levies or charges for the use of water from water resources, paid to government agencies in discharge of the a statutory mandate; or*

ii. *an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea but excluding the use of water from all water resources and the territorial waters of Kenya.*

Committee Observation(s)

591. **The Committee was of the view that the definition as currently provided sufficiently captures its intent and purpose.**

Clause 7 section 10(i)(b)

592. **Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace:** Amend the proviso by adding the following new clause:

provided that- iv) this subsection shall not apply to any such payment made or revenue generated as a result of water use charges imposed by a government agency as a fee or regulatory levy in execution of a statutory mandate'.

593. **This** is on the basis that the statutory and regulatory levy is imposed to facilitate a duty imposed on the government to its citizens.

Committee Observation(s)

594. **The Committee was of the view that the definition of a digital marketplace sufficiently describes what falls within the scope amenable to pay WHT**

56) RSM EASTERN AFRICA CONSULTING

Clause 1. (b)

595. **The effective rate:** Amend the clause to have the deletion come into effect on 1st January 2025 as most institutions that are covered under this exemption have their years ending in December and have already earned income for the year 2024. It will increase the burden of compliance.

Committee observation(s)

596. **The Committee agreed with the proposal as it harmonizes the commencement provision for Clauses 19 and 25(b)(v) relating to CGT.**

Clause 6(a)(i)

597. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend the provision *in paragraph (a) (i)* as follows –

by deleting the words 'the first two thousand shillings' and substituting therefor the words 'and the employer has a policy on the payment and accounting for subsistence, traveling, entertainment or other allowances an amount not exceeding five percent of the monthly gross earnings of the employee but not less than the first four thousand shillings.

598. **The** capping of per diems to five percent of the gross salary without putting in a minimum amount would be prejudiced against low-income earners.

Committee observation(s)

599. **The Committee observed that the current provision in the Act is sufficient.**

Clause 8

600. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Amend the clause in *subsection (2)(1) to provide that the provisions shall not apply to -*

(a) a non-resident person who offers the services through a permanent establishment; or
(b) an income chargeable under section 9(2) or section 10.
(c) a person who qualifies to pay taxes under section 12G.

Committee observation(s)

601. **The Committee observed that Significant Economic Presence Tax (SEPT) has not relationship with minimum top tax, because SEPT will apply to non-residents whereas Minimum Top up applies to resident entities.**

Clause 9 12(G) 5

602. **Introduction minimum tax top-up:** Amend the provision to read as follows –

'adjusted covered taxes of a constituent entity for the year of income shall be equal to the current tax expense accrued in its accounting net income or loss concerning covered taxes for the year of income adjusted by the net amount of its additions to covered taxes for the year of income and total differed tax adjustment amount.'

Committee observation(s)

603. **The Committee observed that the definition as proposed in the Bill is sufficient.**

Clause 9 section 12(H)

604. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Amend the provision to add after subsection (6) the following—

'if an insured person procures their insurance cover for periods less than twelve months or pays their premiums in installments, the tax shall be collectible by the insurer at the point of issuing the first cover or first installment for the next twelve months.'

Committee observation(s)

605. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 12 section 18(G)1
Introduction of Advance Pricing Agreements (APAs) in the Income Tax Act:

606. Amend the section by adding the following proviso: *provided that—*

A) Where a person makes an application to the Commissioner for an advance pricing agreement, the Commissioner shall determine the application within ninety days of receiving such application:

B) Should the Commissioner fail to issue a decision within the prescribed time, the application shall be deemed allowed and the Commissioner will be deemed to have entered into an advance pricing agreement with that person.

Committee observation(s)

607. **The Committee agreed with the stakeholder but resolved that to allow for seamless implementation of the Agreements, the commissioner publishes regulations to address the operations of the Advance pricing agreements.**

Clause 18 section 31
Proposal to repeal of the reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:

608. Delete the provision since the deletion of insurance relief in totality would hurt private insurers as policyholders would have less incentive and disposable income to take up private covers.

Committee observation(s)

609. **The Committee agrees with the stakeholder and proposes to delete the clause to retain the reliefs.**

Clause 25 (b) (ii)
Withholding Tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for nonresidents:

610. Delete the proposal because it seeks to subject to tax, and interest income arising from any of the investment securities that will be put in place after the proposed change comes into effect. This will make such securities very unattractive.

Committee observation(s)

611. **The committee observed that there is need to encourage investments in long term bonds to finance government initiatives.**

Clause 25(b)(v)
The proposed rate of motor vehicle tax of 2.5%:

612. Delete the provision since most motor vehicle taxes are levied at the time of importation or are already included in the cost of fuel.

Committee observation(s)

613. **The Committee notes that the proposal seeks to provide for a rate of tax at 2.5 percent on the value of a Motor Vehicle. Noting the recommendation in Clause 9(12H) the Committee further recommends deletion of the rate**

Clause 33 section 34

614. **Proposal to revise the VAT registration threshold from KES 5 million to KES 8 million:** Amend the clause in subsection 1 to include the following—

a) *By deleting the words five million and substituting them with fifteen million effective from 1st July 2025 and twenty-five million effective from 1st July 2026.*

b) *In paragraph (b), by deleting the words 'five million shillings and substituting therefor the words 'eight million shillings' with fifteen million effective from 1st July 2024, twenty million effective from 1st July 2025, and twenty-five million effective from 1st July 2026'.*

Committee observation(s)

615. **The Committee observed that the proposed increase as per the Bill is sufficient and in line with Kenya's revenue raising initiatives.**

Clause 34(b)(i)

Proposal to introduce 16% VAT on the value-added tax:

616. Delete the proposal since this would increase the cost of financial services in Kenya, particularly the costs of cashless transactions.

Committee observation(s)

617. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

Clause 35(a)

Proposal to introduce 16% VAT on ordinary bread:

618. Delete the proposal since the cost will be transferred to the consumer hence raising the cost of living.

Committee observation(s)

619. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 42(b)

Proposal to increase excise duty on financial services from 15% to 20%:

620. Delete the proposal since the increase in financial services costs could lead to an increase in payments outside of financial systems.

Committee observation(s)

621. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

Clause 47

Proposal on export and investment promotion levy:

622. Delete the clause because the combined effect of the levy, proposed introduction of VAT, and excise duty of at least 10% of the excisable value may lead to a significant increase in the price of electric motorcycles leading to lower sales.

Committee observation(s)

623. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.**

Clause 48

Proposal to impose eco levy:

624. Amend the proposal by inserting the following provision after paragraph 47:

'provided that manufacturers and importers who can demonstrate that they have in place proper waste disposal and recycling mechanisms shall be exempted from the levy.'

Committee observation(s)

625. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 53(c)

Agency notices:

626. Delete the provision since empowering the Commissioner to issue an agency notice for assessed taxes despite an ongoing dispute regarding the assessment would prejudice taxpayers' rights to justice, right to appeal, and fair administrative action, as enshrined under the constitution.

Committee observation(s)

627. **The committee agreed with the stakeholder but proposed to amend to provide that the appeal be lodged within a month.**

Clause 56(a)

Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:

628. Delete the clause since if passed, the proposal may prejudice objections that have multiple grounds of objection due to one faulty ground. This will be unfair to taxpayers.

Committee observation(s)

629. **The committee agreed with the stakeholder noting that proposal to deem objections disallowed will be limit a tax payers right to access to justice.**

Clause 57(5)

Integration of the electronic tax system with the data management and reporting system:

630. Amend the penalties to read as follows—

(5)a person who fails to comply with the notice referred to in subsection (1A) commits an offense and shall be liable to a penalty not exceeding ten percent of the value of the sales not transmitted through the system.

Committee observation(s)

631. **The Committee noted that the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offence.**

Clause 58

Exclusion of weekends and public holidays from the calculation of periods for taking action under tax law:

632. Amend the clause to read as follows—

a) submitting or lodging application, notice or other document.

633. **This** is because including lodging of tax returns in the computation of time provision would increase the administrative and compliance burden on a taxpayer and increase the risk of late filing penalties while hampering efficient collection of taxes.

Committee observation(s)

634. **The Committee observed that this is already provided for.**

Clause 63 section 51(2)

Proposal for KRA to access personal data:

635. Delete the provision since if the proposal is approved, it will grant KRA access to sensitive information held by data controllers and processors and this will be a violation of privacy rights.

Committee observation(s)

636. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

57) ORARO AND CO. ADVOCATES

Clause 2

637. **Proposal to expand the definition of royalty to include software:** Delete the proposal on the definition of royalty since the Bill proposes to impose withholding tax on payments for software purchases, regardless of whether the intellectual property rights are transferred to the buyer. This contradicts international best practices and past rulings by the High Court of Kenya, which align with OECD tax principles.

Committee observation(s)

638. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with international best practices.**

Clause 6

639. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend the clause to Insert the following definition within Clause 6(a)(i) of the Bill: *"monthly gross earnings" includes basic salary and any other cash allowances that are regularly paid to an employee."* This is because it is necessary to define "monthly gross earnings" to avoid disputes arising from the interpretation of the term.

Committee observation(s)

640. **The Committee observed that the current provision in the Act is sufficient.**

Clause 6 (b)(ii)

641. **Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:** Delete Clause 6 (b)(ii) of the Bill because the proposal is discriminatory and contrary to Article 27 of the Constitution of Kenya.

Committee observation(s)

642. **The Committee observed that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 7

643. **Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace:** Amend the proposal to amend section 10 (4) of the Income Tax Act to introduce the following provision—

> *"Provided that payments made from one non-resident person to another non- resident person shall not be deemed to be income accrued in or derived from Kenya."*

Committee observation(s)

644. **The Committee observed that this provision may lead to revenue losses because there could be non-residents with Significant economic activity deriving income from Kenya.**

Clause 8

645. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Amend the proposed new section 12E to introduce a new subsection 12E(2)(C)—

> *"to a non-resident person who derives from Kenya, a gross turnover of less than KES 20 million."*

Committee observation(s)

646. **The committee noted the need for providing a threshold for significant economic presence but recommends that the threshold will be provided for in the regulations. Clause 9 section 12(H)**

647. **Introduction of motor vehicle tax at the rate of 2.5% of the vehicle:** Delete the provision since the proposed Motor Vehicle Tax is not an income tax, as it does not tax gains or profits, and may conflict with constitutional principles established by the Court of Appeal in *Kenya Revenue Authority v Waweru & 3 others, Institute of Certified Public Accountants & 2 others (Interested Parties) (Civil Appeal E591 of 2021) [20221 KECA 1306 (KLR) December 2022)*

Committee observation(s)

648. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 34

649. **Proposal to subject 16% VAT on financial services:** Delete Clause 34(b)(i) of the Bill since this amendment proposes to delete the VAT exemption on financial services. Imposing VAT on the financial services will directly increase the cost of these services which may limit the access and affordability of the services to the ordinary Kenyan.

Committee observation(s)

650. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

Clause 37

651. **Expansion of Excise Duty to Non-Resident Digital Service Providers**: Delete clause 37 (a) and (b) of the Bill. This proposal is likely to impact the operations and pricing strategies of non-resident service providers with the result that the excise duty costs will be passed on to Kenyan consumers.

Committee observation(s)

652. **The committee observed that the proposal by the stakeholder will lead to revenue losses.**

Clause 39

653. **Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services**: Delete Clause 39 of the Bill. The proposed deletion of section 14 which provides for the relief for raw materials used in manufacturing finished goods can be offset against the excise duty payable on those finished goods. Further, excise duty paid on internet data services purchased in bulk for resale can be offset against the duty payable on those services supplied to the final consumer.

Committee observation(s)

654. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 44

655. **Proposal to increase import declaration fee from 2.5% to 3%**: Delete clause 44(a) of the Bill and retain section 7 of the Miscellaneous Fees and Levies Act that is proposed to be amended. Raising the rate of Import Declaration Fees (IDF) from the current 2.5% to 3% of the customs value of the goods to be paid by the importer of such goods at the time of entering the goods for home use will negatively impact on the costs of raw materials and the overall cost of imported goods.

Committee observation(s)

656. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 48

657. **Introduction of eco levy:** Amend Clause 48 to reduce the rates set out for the Eco Levy. Eco Levy is expected to introduce a cost burden to manufacturers.

Committee observation(s)

658. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tires of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 56(a)

659. **Proposal to give KRA to deem an objection disallowed:** Delete clause 56(a) since this amendment would mean that where the Commissioner requests the taxpayer for further information after the objection is lodged and the taxpayer fails to avail this within the specified timelines, the objection will be deemed disallowed. The Commissioner would no longer be obligated to respond in writing because the failure in production would automatically lead to a dismissal of the objection. This would hinder the taxpayers' right of appeal contrary to the constitutional right to access to justice.

Committee observation(s)

660. **The committee agreed with the stakeholder noting that proposal to deem objections disallowed will be limit a tax payers right to access to justice.**

Clause 63

661. **Proposal to allow KRA to access personal data for tax purposes: Delete the new** paragraph (ba) proposed to be introduced immediately after paragraph (b) in section 51 (2) of the Data Protection Act. The Data Protection Act (DPA) provides crucial safeguards to sharing personal data and any information that tends to negatively affect a citizen's right to privacy as guaranteed under Article 31 of the Constitution. To exempt KRA from these crucial safeguards would undoubtedly result in abuse of power and harassment of citizens contrary to section 31 of the Constitution.

Committee observation(s)

662. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

58) TEMU GROUP

Clause 9 section 12H

663. Delete the clause in its entirety since if allowed to pass, the cost will be passed on to consumers, making the cost of living unbearable.

Committee observation(s)

664. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

59) THE NAIROBI SECURITIES EXCHANGE (NSE), THE KENYA ASSOCIATION OF STOCKBROKERS AND INVESTMENT BANKS (KASIB), THE REITS ASSOCIATION OF KENYA (RAK), CUSTODIANS' ASSOCIATION, CENTRAL DEPOSITORY AND SETTLEMENT CORPORATION OF KENYA (CDSC) AND ADMINISTRATORS & PENSION TRUSTEES ASSOCIATION OF KENYA (APTAK)

Clause 23 (e)

665. **Proposal to subject family trust to income tax at 30%:** Delete clause 23 (e) and allow deeper engagement and collaboration between the government, family trust representatives, and stakeholders.

Committee Observation(s)

666. **The Committee noted that the principal income of a family trusts typically consists of the assets including 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 including subsequent distribution of the same to beneficiaries and therefore recommends deletion of the proposal to tax income or principal sum of a registered family trust.**

Clauses 23 and 25

667. **Withholding Tax on Interest from Infrastructure Bonds at 5% for residents and 15% for nonresidents**: Delete clauses 24 and 25 because the introduction of withholding tax on infrastructure bonds (IFBs) will make them less attractive to investors.

Committee Observations

668. **The committee observed that there is need to encourage investments in long term bonds to finance government initiatives.**

Clause 34 (b) (i) (e)(f)(g)(m)

669. **Proposal to subject 16% VAT on financial services:** Delete clause 34 (b) (i) subparagraphs (e)(f)(g)(m) because this will lead to an increase in the fees charged by the market intermediaries as they shall pass on the cost proportionate to the levied VAT to the consumer and therefore increase the cost of doing business in the Capital Markets. Additionally, VAT on financial services will make it unattractive to investors and against international best practices.

Committee Observations

670. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

New proposals

671. Amend Section 96A (1) (b) of the Stamp Duty Act by allowing exemption of stamp duty on all REIT transactions and capital gains tax on noncash transactions. This exemption clause was in effect for five years and expired on 31st December 2022, where it demonstrated great impact as four (4) REITs were registered with a total market value of KShs. 27 Billion, and over 4,000 investors participating in the issuances.

Committee Observations

672. **The Committee noted the proposal but observed that the amendment proposed cannot be done in the Finance Bill as currently published.**

60) ANJARWALLA & KHANNA (ALN)

Clause 2 (k)

673. **Proposal to expand the definition of royalties to include software:** Delete clause 2 (k) because this it will result in payments made for the distribution of software to being classified as royalties. This goes against international tax practices and the OECD Model Tax Convention which guides that royalties are payable where there is "use" or the "right to use."

Committee Observations

674. The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.

Clause 7

Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace: Delete clause 7 because it contradicts existing provisions on the person that should bear the responsibility to

withhold tax. In addition, there will be a significant increase in compliance requirements for the owners/operators of digital marketplaces in Kenya which will be challenging to comply with.

Committee Observations

675. **The Committee observed that it will be administratively inconvenient to impose WHT obligations on individuals. The committee observed that it is possible for digital platform to adjust their platforms to require payments to be processed through them.**

Clause 8

676. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Amend clause 8 to include a definition of a 'significant economic presence' which may be based on the conditions identified by the OECD: Revenue-based conditions, user-based conditions; or digital conditions. This will clarify the extent to which a non-resident entity can be identified as having the same conditions in Kenya and therefore be liable to tax. Additionally, the proposal does not provide for the turnover threshold required for non-resident companies that fall under the SEPT regime. The computation should be amended to include the "*gross turnover of that person derived from Kenyan users* ". To read "*...the taxable profit of a person liable to pay the tax shall be deemed to be twenty percent of the gross turnover of that person derived from Kenyan users.*" Also, include a rate of 1.5%.

Committee Observations

677. **The committee noted the need for providing a threshold for significant economic presence but recommends that the threshold will be provided for in the regulations.**

Clause 8(12E)

678. Amend section 12E by inserting a new subsection (6) to include a sunset clause to allow for the suspension of the SEPT when global consensus is achieved. It should read—

> "*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*".

Committee Observations

679. **The Committee noted that Significant Economic presence Tax is already aligned to the pillar two solution under article 40 of the Multilateral Convention on amount A**

Clause 34(a)(i)(N)

680. **Proposal to move Plant, machinery, and equipment used in the construction of a plastics recycling plant from exempt to standard-rated VAT:** Delete clause 34(a)(i)(N) to continue incentivizing the industry to encourage further investor participation.

Committee Observations

681. **The Committee noted that there is need to exempt from VAT certain locally manufactured products so as to promote local industries.**

Clause 34(a)(i)(S)

682. **Proposal on operating arrangement agreements between a human vaccine manufacturing company and the government, effective from July 1, 2017, stipulates that the supply of taxable goods, inputs, and raw materials, whether imported or locally purchased, will be subject to taxation and not exempt:** Amend clause 34(a)(i)(S) to read *"Provided that this paragraph shall not apply to a special operating framework arrangement entered into by the Government on or before the 1st of July 2017."* Passing the provision as it is in the Bill creates uncertainty in the tax regime, noting that many strategic investors in Kenya have relied on the special operating framework arrangements to make decisions on undertaking certain investments in Kenya.

Committee Observations

683. **The Committee Observed that**

Clause 34(b)(i)

684. **Introduction of 16% VAT on financial services:** Delete clause 34(b)(i) because the introduction of VAT on these services will make it unattractive for Kenyan businesses to restructure their financing arrangements due to the additional VAT cost which is likely to be irrecoverable for most businesses. The proposed introduction of VAT on other financial services will also increase the cost of access to banking services which would discourage the uptake of banking services and encourage a hard cash economy.

Committee Observations

685. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is a need to exempt financial services from the value-added tax.**

Clause 34(b)(iii)

686. **Introduction of 16% VAT on betting, and gaming:** Delete clause 34 (b) (iii) because the application of VAT will increase the tax burden on betting and gaming customers since VAT is a consumption tax and will eventually be borne by the punters/players, in addition to excise duty. Further, currently, betting and gaming are VAT exempt, VAT incurred by operators cannot be claimed. If betting and gaming change their status to standard rated, operators will be required to claim input VAT from the various services they procure, and the ultimate effect is that they will be in a perpetual VAT credit position which will not be ideal for the KRA.

Committee Observations

687. **The Committee observed that the gambling sector incurs tax on a number of tax heads and imposing VAT on the sector will be too punitive, thus the committee agreed with the Stakeholder.**

Clause 39

688. **Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services**: Delete clause 39 because the provision will significantly increase the cost of manufactured excisable goods, as they will not be able to offset excise duty paid upon purchase of the excisable raw materials. The proposal will lead to a loss of manufacturers' ability to offset input excise tax which will increase the cost of locally manufactured goods by 252% and the final price of local spirits by 166%. Additionally, bulk purchasers of internet data for resale

are likely to pass this additional cost on to final consumers, resulting in higher internet data prices. The increase in internet cost is bound to have a ripple effect on the rest of the economy, given that many businesses and Kenyans are dependent.

Committee Observations

689. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 41

690. **Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days:** Amend clause 41 by changing the timelines for remitting excise duty to the twentieth day of the following month. The proposed five-day period is insufficient as managing cash flow and working capital will still be adversely affected by this proposed provision. This is because manufacturers typically have 30-day payment terms with distributors, necessitating borrowing to pay taxes on short notice, which pressures regulatory ratios and significantly impacts interest costs.

Committee Observations

691. **The committee noted that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers, in this regard the Committee recommends a change in the period to remit excise duty "by the 5th of every month."**

Clause 42 (K)

692. **Proposal to levy excise duty on alcoholic beverages based on alcohol content:** Delete clause 42 (K) because levying excise duty on a centiliter basis will be more precise, ensuring that the duty is imposed specifically on the alcohol content rather than the overall composition of the beverage.

Committee Observations

693. **The Committee observed that imposing excise duty on a centiliter basis is a global best practice recommended by the WHO.**

Clause 42 (a) (i)

694. **Amendment on Excise Duty Calculation for Certain Motorcycles: 10% or Shs. 12,952.83 per unit, whichever is higher:** Delete clause 42 (a) (i) because the proposal to impose excise duty on electric motorcycles will make electric motorcycles more expensive and discourage their uptake. This could slow down the transition to clean energy vehicles, undermining efforts to combat climate change and reduce pollution.

Committee Observations

695. **The Committee agreed with the Stakeholder that imposition of the rate of excise at 10% will adversely increase the costs of motorcycles and resolved to retain the current rate.**

Clause 42 (b) (iv-vii)

696. **Proposal to increase duty on betting and gaming from 12.5% to 20%:** Amend clause 42(b) (iv-vii) to lower the excise duty rate to 5% to be applied on deposits i.e., the sums that a customer puts in their online wallet with a betting or gaming operator, inclusive of the portion that shall be utilized as the stake. The taxation regime also ought to be consistent and predictable to enable proper investment planning and decision-making. Inconsistency creates unpredictability and uncertainty for investors.

Committee Observations

697. **The Committee observed that the gambling sector incurs tax on a number of tax heads and therefore resolved to only increase the excise duty marginally**

Clause 42 (b) (viii)

698. **Proposal to expand the scope of excise duty to include fees charged on advertisement on the internet and social media platforms and television, print media, billboards, and radio stations for alcoholic beverages, betting, gaming, lotteries, and prize competitions:** Delete clause 42 (b) (viii) as the introduction of excise duty may discourage the operators from engaging in these activities which will have the effect of reduced tax collection, contrary to the intended objective. This will also have the effect of shrinkage of the sector.

Committee Observations

699. **The Committee observed that internet and social media advertisement is gaining traction and becoming commonplace, in this regard, the Committee observed that the sector should be taxed to contribute its rightful share of revenue.**

Clause 45

700. **Introduction of eco levy:** Delete this clause and allow for further consultation with players in this sector to avoid unintended consequences. The introduction of the Eco-levy will increase the cost of doing business, particularly for the companies that will be required to account for eco- levy. This will result in increasing the price of the products and the costs shall be passed on to the final consumers.

Committee Observations

701. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 54

702. **The proposal to delete the zero-rated supplies and supplies made to certain manufacturers and subject them to withholding VAT:** Delete clause 54 because businesses that supply zero-rated supplies will suffer a 2% withholding VAT on their invoices in respect of zero-rated supplies and will consequently be in a perpetual tax credit position, thus creating acute cash flow problems. Additionally, the proposal would inflate the number of VAT refund applications made by taxpayers, creating an additional administrative burden on the KRA.

Committee Observations

703. **The committee noted that the proposed amendment is a clean-up since the date for which the exemption applied was 1st July 2022.**

Clause 63

704. **Proposal on KRA to access personal data:** Delete clause 63 because excluding the KRA in totality from the provisions of the Data Protection Act, removes any obligation for KRA to comply with data privacy laws while collecting taxpayers' data and processing such data. This would deny taxpayers their rights as data subjects to have their data safeguarded especially where the KRA shares the data with other State Agencies.

Committee Observations

705. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

New proposals

706. **Amend** Section 117 of the **Stamp** Duty Act to provide for stamp duty exemption on the transfer of property by an individual to a company wholly owned by the individual. They proposed a new Section 117 (1)(q) which reads as follows: (q) "transfer of property by an individual to a company wholly owned by the individual." The stamp duty exemption will mirror and complement the capital gains tax exemption to ensure that the intended objective of promoting the growth of sole proprietorships and business reorganizations, is achieved.

Committee Observations

707. **The Committee noted the proposal but observed that the amendment proposed cannot be done in the Finance Bill as currently published**

61) INTERNATIONAL AIR TRANSPORT ASSOCIATION

Clause 34 (a) (i) (B)

708. **Proposal to move Aeroplanes and other aircraft with unladen weight exceeding 2,000 kgs but not exceeding 15,000kgs (8802.30.00) from exempt to standard rated:** Delete clause 34 (a) (i) (B) because the proposal will lead to high aircraft acquisition costs that will increase the investment costs and increase the risks on capital, hence attracting fewer investors. Additionally, the 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 Observations

709. **The Committee 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 34 (b) (iv)

Proposal to move Hiring, leasing, and chartering of aircraft, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00 services from exempt to standard rated VAT

710. Delete 34 (b) (iv) because the imposition of VAT on the acquisition of small aircraft and hiring, leasing, and chartering of aircraft will represent an additional and irrecoverable cost to domestic airlines in Kenya as no input tax credit is available on domestic transport services noting that domestic transportation of passengers by air is exempt from VAT. By increasing VAT, this segment will be disenfranchised and will create an adverse social impact.

Committee Observations

711. **The Committee 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.**

62) TELKOM KENYA

Clause 6(a)(i), (ii); (b)(i) and Clause 10(b)

Proposal to increase the reliefs up to KES 360, 000 per annum or KSh. 30,000 per month for an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

712. Telkom Kenya supported the proposals as they would motivate employees by increasing their disposable income and encourage saving into registered pension funds and acquisition of mortgage homes.

Committee Observation

713. **The Committee agreed with the Stakeholder that the benefit conferred is an enhancement from the current forty-eight thousand shillings to sixty thousand shillings and therefore is sufficient and is beneficial to the employees.**

Clause 8

Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

714. Delete Clause 8 because the proposal will increase taxation in the digital economy by 30% which goes against the Government's agenda of promoting the digital economy as a key pillar of Kenya's economic growth. Further, digital services will become uncompetitive, and highly burdensome for customers, especially the youth who largely rely on the Internet as an avenue for self-employment and income generation.

Committee Observation

715. The Committee notes that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.

Clause 9-12H

Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:

716. Delete Clause 9 because the introduction of the motor vehicle tax will increase general insurance premiums relating to motor vehicle insurance thus compromising the agility of telecommunication companies to access infrastructure for operation and maintenance purposes including fueling and repairs.

Committee Observation

717. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 24

718. **Proposal to introduce an investment allowance deduction in respect of a purchase of a spectrum license or a right to use a fiber optic cable issued to a telecommunication operator. Provided that, in the case of the spectrum license purchased or acquired before the 1st July 2024, the deduction shall be restricted to the unamortized portion over the remaining useful life of the spectrum license:** Telkom Kenya supported the proposal as it would boost investment in the telecommunication sector.

Committee Observation

719. **The Committee observe that part of the BETA economic model, is digitization and promotion of the digital economy, thus the committee agrees with the Stakeholder that offering investment allowance deductions will spur the digital economy.**

Clause 42(b)(i)

Proposal to increase excise duty on telephone and internet data services from 15% to 20%:

720. Telkom Kenya proposed retention of the excise duty rate on telephone and internet data services at the current rate with a plan to reduce it over time to zero or near zero. In addition, the existing KShs. 50 excise tax on foreign SIM cards should be scrapped off to encourage the uptake of telecommunication services. The 10% excise tax on imported mobile devices should be scrapped once there are operational manufacturing plants in the country. This is because excise tax is a sin tax applied to discourage indulgence in harmful and addictive substances or habits and is contrary to the positive gains that would arise from great investment in the ICT sector.

Committee Observation

721. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

Clause 44(a)

Proposal to increase import declaration fee from 2.5% to 3%:

722. Delete the proposal because increasing the import declaration fee would result in increased SIM cards and capex costs resulting in additional consumer costs for subscription to mobile services and acquisition of mobile devices. The overall effect would compromise the Government's agenda for the digitization of government

services and increased uptake of ICT services for both economic and social development of the populace.

Committee Observation

723. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

Proposal on the introduction of eco levy:

724. Delete the proposal for it would result in additional costs of acquiring assets, particularly network equipment, thereby resulting in negative consequences for both investors and consumers in the telecommunication industry.

Committee Observation

725. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 63

Proposal to allow KRA access to personal data for tax purposes:

726. The KRA must work with the Office of the Data Protection Officer to develop a framework for data sharing aimed at protecting personal information as opposed to compromising the existing Data Protection Act without effective public consultation and conducting a regulatory impact assessment.

Committee Observation

727. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

63) PUBLIC SECTOR ACCOUNTING STANDARDS BOARD

Clause 9

728. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Amend the proposal on the introduction of motor vehicle tax to include the following:

a) Tax credits for comprehensive insurance premium payments to incentivize vehicle owners to maintain valid comprehensive insurance coverage to read as follows:

"Provided tax credits equivalent to a percentage of the motor vehicle insurance premiums paid by vehicle owners for

comprehensive insurance. These credits can be used to offset the motor vehicle tax liability."

b) Phased implementation of tax increases to allow vehicle owners and the insurance industry to adjust to the new tax regime and prevent a potential drop in insurance uptake to read as follows:
"Implement any proposed increases in motor vehicle tax rates in phases over three to five years, with incremental adjustments each year."

c) Exemptions for electric and hybrid vehicles to encourage the adoption of environmentally friendly vehicles:
"Exempt electric and hybrid vehicles from the motor vehicle tax or provide significant reductions in tax rates for these vehicles."

d) Discounts for early payment to improve cash flow for both insurers and the government reducing administrative costs and enhancing compliance:
"A discount of 5% on the motor vehicle tax shall be granted to policyholders who pay the tax at least one month before the due date."

Committee Observation

729. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 34(b)(i)

730. Delete the proposal since it would have a significant negative impact on businesses consuming the enlisted services. The overall effect would be the following potential consequences: increased operational costs; difficulty meeting financial obligations; and an uncompetitive market for businesses relying on financial services.

Committee Observation

731. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

Clause 34(b)(ii)

732. **Proposal to limit VAT exemptions to insurance and reinsurance premiums only:** Delete the proposal as it would lead to trading losses and in turn, result in detrimental effects in the insurance industry including increased operational costs, service delivery challenges, risk management, and actual services, reduced profit margins, impact on premium rates, and decreased investments in technology and innovation. Moreover, the proposal would impact the country's economy in various ways including a

reduction in professional services sector growth, an increase in unemployment, negative impact on GDP.

Committee Observation

733. **The Committee observed that there is need to raise additional revenue from other insurance services but to allow the industry to thrive the committee exempts insurance and reinsurance premiums.**

Clause 64(a)

734. **Proposal on transfer from cash accounting to accrual accounting:** Amendment of the new proposed (i) to read as follows:

"prescribe risk management guidelines"

Committee Observation

735. **The Committee observed that the provisions of the Bill are sufficient in respect of the proposed accrual accounting.**

New Proposals Relating to the Public Finance Management Act, Cap 412A

736. **Amendment** of Section 192 to read as follows:

"There is established a Public Sector Accounting Standards Board which shall be a body corporate and shall perform the functions set out in this Part."

737. Amendment of Section 193(5) to read as follows:

"The Board shall, in consultation with the National Treasury, where appropriate, recruit its own staff as may be necessary for the Board to effectively perform its function."

738. **Amendment** of Section 194(1) by inserting a new paragraph (j) as follows:

"To prescribe Sustainability Reporting Standards for the public sector."

Committee Observation

739. **The Committee observed that although the proposals are good, they cannot be done through the Finance Bill.**

64) BRITISH CHAMBER OF COMMERCE OF KENYA

Clause 9

740. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Cap the motor vehicle tax at KES 5,000/= to prevent a great increase in insurance cost and lease rentals and the inability to budget for insurance tax costs for second-hand vehicle units upon valuation.

Committee Observation

741. – **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 34 (b)(i) and (ii)

742. **Proposal to limit VAT exemptions to insurance and reinsurance premiums only:** No imposition of VAT tax on financial services, the management and related insurance consultancy services, services of insurance assessors and loss adjusters, and actuarial services. This is to avoid an increase in fees by brokers and underwriters, an increase in assessment fees and, a bad claims ratio.

Committee Observation

743. – **The Committee observed that there is a need to raise additional revenue from other insurance services but to allow the industry to thrive the committee exempts insurance and reinsurance premiums.**

Clause 48

Introduction of eco levy:

744. Removal of the eco levy fee on plastic packaging materials as the extended producer responsibility levy already covers that and to ensure that agricultural products remain affordable to farmers, enhance crop productivity towards food security, and prevent Kenya's produce from being less competitive compared to Uganda's and Tanzania's.

Committee Observation

745. – **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 63

746. **Proposal for access of personal data by KRA:** Deletion of the clause as drafted because it goes against the objective of the Data Protection Act and deviates from standard provisions of similar data protection laws worldwide such as the General Data Protection Directive.

747. **In** the alternative, create separate provisions under each law specifying the entities and thresholds under which the KRA may request disclosures of tax assessment and incorporate protection of due process to avoid arbitrary demands. Further, this must be done in a separate dedicated process from the Finance Bill to enable proposer discourse on Kenya's tax model.

Committee Observation

748. – **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

65) ERNST & YOUNG LLP

Clause 4

749. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:** Amend the provision. Three years is not adequate time for companies that are funded by non-resident financiers to have recovered the deferred foreign exchange losses. The period be retained at five years and the realized foreign exchange losses should be restricted to that which relates to foreign debt only. This will continue to make Kenya more attractive as a Foreign Direct Investment (FDI) destination and will also align with our competitors such as Nigeria.

Committee Observation

750. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 9(12H.) and Clause 25(15)

751. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Delete the provision. The introduction of the tax will be an additional burden to owners and users of motor vehicles. The automotive and transport (logistics Sector relies heavily on motor vehicles to move passengers and goods from one. Introduction of this tax will lead to increase in cost of transportation, hence cost of living.

752. Motor Vehicle owners are already subject to VAT and excise duty on the use of motor vehicles through purchase of fuel. There are also other levies including road maintenance levy, petroleum development levy, petroleum regulatory levy and anti-adulteration levy. Hence, introducing an additional tax for motor vehicles owners will be increasing their tax burden. This proposal will lead to double taxation for commercial vehicles since they currently owners pay advance tax under Section 12A of the Income Tax Act (ITA).

753. The proposal is also likely to discourage motor vehicle owners from taking comprehensive insurance covers given that the already high premium rates will be increased by a further 2.5%. Consequently, this would have a negative impact on insurance penetration in Kenya which is currently estimated at 3% and is the third lowest insurance penetration rate in Sub-Saharan Africa.

Committee Observation

754. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax**

Clause 8(12E.) and Clause 25(iv) (12)

755. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Amend the provision to ensure that Significance Economic Tax (SEPT) be payable based on the revenue generated by the non-resident The proposal does not provide a minimum amount threshold on which the SEPT will be applicable. They recommend an annual turnover of KShs. 8,000,000 is provided. This will align with the annual turnover that is being proposed for VAT.

756. The proviso does not accommodate income earned by non-residents whose jurisdictions have pre-existing bilateral agreements with Kenya. Clarity should be provided on who is supposed to pay SEPT. The turnover threshold will help to clarify on the taxpayers who are within the SEPT threshold.

Committee Observation

757. **The Committee notes that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9(12G.) (5)

758. **Introduction of minimum top-up tax:** Amend the Clause on the definition of adjusted covered tax to a covered person instead of a constituent entity. The reference to a 'constituent entity' in the definition of adjusted covered taxes seems to be a drafting error. The proposed provision is that minimum tax will be payable by 'covered entities' hence the adjusted taxes to be computed would be those of the 'covered entity' as opposed to those of a 'constituent entity'.

Committee Observation

759. **The Committee observed that the proposed definition is sufficient.**

Clause 2(k)

760. **Proposal to expand the definition of royalty to include software:** Amend the proposal to peg the definition of 'royalty' on the OECD definition. The definition of "royalty" should follow international best practice and the OECD definition where the right-based approach is used.

761. **Under** the right-based approach, only payment for the right of use, right to use and copyrights qualify as royalties. The expanded definition of "royalty" deviates from the globally accepted definition of "royalty" that borrows heavily from the OECD's rights-based approach under which only payments for the use of, or the right to use, copyrights qualify as royalties. Payments for copyrighted products (such as off-the-shelf or pre-packaged software) do not qualify as royalties under the OECD's rights-based approach.

762. **The** OECD Model Tax Convention states that royalties arise where payments are for the right to use the copyright in the program (i.e., to exploit the rights that would otherwise be the sole prerogative of the copyright holder).

Committee observation

763. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 20, Clause 25(b)(ii)(C) and Clause 25(b)(iii)(F)

764. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend the Withholding tax on payment on goods supplied to a public entity to 1% and 3% for residents and non-residents respectively. While the intention may be to bring to the ambit of tax, persons who supply goods to the government, the rate of 3% and 5% is high and may disrupt their cash flows.

Committee Observation

765. **The Committee observed that there is need to raise additional revenue, the proposal to charge WHT at 3% and 5% is reasonable.**

Clause 6(b)(ii)

766. **Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:** Amend the proposal to replace the word 'Public Officer" with "an individual' or delete the proposal. The amendment should cater to both public and private sectors to enhance equality and accountability to avoid revenue leakage through abuse of legislation. Alternatively, the proposal is prone to misuse and thus should be expunged in totality.

Committee Observation

767. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 2(l)

768. Definition of donations: The provision is acknowledged. Additionally, amend the term "donation" in the Income Tax (Charitable Donations) Regulations, 2007 under Paragraph 4(a). This expands the coverage of deductible donations to donations given in kind. This will ensure certainty in the interpretation and application of the tax law.

Committee Observation

769. **The Committee noted that grants are not necessarily taxable and therefore expanding the definition of donations to include grants will not be prejudicial.**

Clause 6(a)(i)

770. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend the provision to delete the words" *and amount not exceeding five percent of the monthly gross earnings of the employee*" and substitute therefor with "*an amount not exceeding the higher of, fiver percent of the monthly gross earnings of the employee or five thousand shillings*" The proposed amendment will ensure there is equity by putting into consideration low-income employees.

Committee Observation

771. **The Committee observed that the current provision in the Act is sufficient.**

Clauses 23(c)and 23(j)

772. **Withholding Tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for nonresidents:** Amend the provisions to exclude retail resident investors (individuals) while the non-resident rate be set at 7.5% to align with the rate for bonds issued outside Kenya. This is to encourage local investors to take up bonds on offer and provide level playground with terms of Euro bond.

Committee Observation

773. **The committee observed that the intention is to impose WHT on short term bonds and to encourage investment in long term securities.**

Clause 25(b)(iii)(B)

774. Amend the Clause to have the waiting time covered under Paragraph 5(d)(ii) of the Third Schedule of the Income Tax Act from 15 years to 20 years. This move is aimed at incentivizing Kenyans to retain their savings within the registered schemes, and to some extent ensure it is well utilized only in their retirement.

Committee Observation

775. **The Committee noted that the paragraph erroneously made reference to item (i) which has been deleted in paragraph (Aa) and therefore made an amendment to make reference to the correct item (ii)**

Clause 39

776. **Proposal to empower the cabinet Secretary responsible for the National Treasury to exempt spirit made from sorghum, millet cassava, or any other agricultural products (excluding barley) in Kenya are subject to excise duty from excise duty:** Delete the provision because the proposal deprives manufacturers of excisable products such as alcoholic and non-alcoholic beverages the ability to offset input excise tax paid on excisable raw materials/inputs. This will hurt their competitiveness against imported products. Prices of products are likely to increase with an unintended consequence of increased consumption of illicit brews/smuggling.

777. **For** internet data services, prices are likely to increase undermining digital penetration and growth of digital economy.

Committee Observation

778. **The excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42(a)(i)(A)

779. **Amendment to Excise Duty Calculation for Certain Motorcycles i.e 10% or Shs. 12,952.83 per unit whichever is higher:** Amend by deleting the description in this provision and substitute therefor "Motorcycles of tariff 8711 other than motorcycle

ambulances and locally assembled motorcycles to attract excise duty at either 10% of value or KShs. 12,952.83 per unit whichever is higher" The proposal in effect removes imported internal combustion engine (ICE) motorcycles from the scope of excise duty. Previously all imported motorcycles (whether fossil fuel or powered on electricity) were subject to excise duty save for motorcycle ambulances. About the proposal, only imported electric motorcycles would be subject to excise duty (save for electric motorcycle ambulances). This leaves out imported fossil fuel-powered motorcycles. The removal of ICE motorcycles from the scope of excise duty is not in line with the government's efforts at increasing the uptake of e-mobility and tackling climate change.

Committee Observation

780. **The Committee agreed with the Stakeholder that imposition of the rate of excise at 10% will adversely increase the costs of motorcycles and resolved to retain the current rate.**

Clause 42(a)(i)(P)

781. **Proposal to impose excise duty on vegetable oil:** Amend to delete the description and substitute therefor with:

"Imported refined vegetable oils and products of tariff headings 1511, 1512, 1515, and 1517, other than crude oils"

782. **They** proposed the following specific tariff lines:

i. 1511.90.30-RBD Palm Olein
ii. 1511.90.00-Other
iii. 1512.19.00-Refined sunflower oil
iv. 1515.29.00-Refined corn oil
v. 1517.10.00-Margarine
vi. 1517.90.00-Other

783. **With** the amendment, there will be fair prices for cooking oil and other edible oil products. This will keep the cost of living in check and ensure that local manufacturers remain competitive against imports.

Committee Observation

784. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable Oils to curb increase in consumer prices.**

Clause 42(b)(i)

785. **Proposal to impose excise duty on telephone and internet data services:** Delete the Clause to retain the excise duty rate for telephone and internet data services at 15%. If the provision is left as it is, there will be a high cost of telephone and internet data services (bearing in mind proposal scraps relief on inputs). This undermines the government's digital transformation agenda. Further, there will be slow-down progress made in the digital economy and related sectors that are reliant on data services.

Committee Observation

786. The Committee agreed with the Stakeholder in respect to excise duty on **telephone and internet data the Committee proposes to maintain the prevailing rate of excise**

duty on telephone and internet data to allow penetration and accessibility in the rural areas.

Clause 44(a)

787. **Retain** Clause 44(a) but reintroduce the preferential Import Declaration Fee (IDF) rate of 1.5% on raw materials, equipment, and other inputs imported by approved manufacturers. This will lower production costs for manufacturers and there will be fair pricing of finished goods to the benefit of *Mwananchi*. Additionally, it will enhance the competitiveness of local manufacturers against imported finished goods, as well as EAC industry peers.

Committee Observation

788. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 44(b)

789. **Amendment to Allocate Import Declaration Fee Funds for Domestic Revenue Enforcement Initiatives**: Delete description in Clause 44(b) and substitute therefor with:

> *"20% of IDF fees collected under subsection (2) shall be paid into a Fund for revenue enhancement initiatives/programmes." The Fund described in subsection (6) comprises 10% of the IDF fees collected under subsection (2). This is used in payment of AU contributions and international obligations as per subsection (7)."*

790. **The** Bill proposes that 10% of this Fund be used for payment of contributions and obligations, and 20% for revenue enforcement initiatives or programs. It is not clear what the remaining 70% of the fund is to be used for.

Committee Observations

791. **The committee observed that the proposed allocations have been earmarked to cater for Kenya's obligations to the African Union and revenue enforcement initiatives in respect to custom revenues to promote trade.**

Clause 45

792. **Introduction of eco levy:** The proposal is agreed to. This will align the levy with stakeholders including NEMA, KRA, environmentalists, KAM, KEPRO, manufacturers, and importers among others. However, for effective implementation, suspend implementation of the eco levy until 1st July 2025 to give room for the Cabinet Secretary to publish regulations for its implementation and administration.

Committee Observation

793. **The Committee agreed with the Stakeholder and observed that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya**

Clause 48

794. **Proposal on eco levy:** In the new proposed Schedule:Delete the description in Item 45 and substitute therefor: "Diapers of Chapter 96 other than adult diapers" Delete the description in Item 46 and the corresponding rate and substitute therefor: "Batteries or dry cells of Chapter 85 other than lithium-ion batteries to attract eco levy at a rate of Ksh750 per unit"

Committee Observation

795. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 47

796. **On export and investment promotion levy:** Delete motorcycle ambulances of tariff 8711.20.10 from scope of levy. Exempt imports of motorcycle Completely Knocked Down (CKD) kits by approved local motorcycle assemblers from levy. Motorcycle ambulances are essential for health care delivery and ought not to be subjected to the levy.

797. The local motorcycle assembly is an essential industry and relies mainly on imported motorcycle CKD kits. As per the EAC Common External Tariff, these kits share the same tariff code as fully built units implying that they will be subject to the levy. Therefore, to cushion the local motorcycle from high costs of inputs, imports of CKD kits of tariff lines listed in the Third Schedule by approved assemblers must be exempted from the levy

Committee Observation

798. The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.

Clause 56(a)

799. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Delete the proposal. This proposal is quite risky as it does not give a minimum time indication within which the Commissioner should give a taxpayer to provide the requested documents. It may therefore be subject to exploitation due to the ambiguity.

Committee's Observation

800. **The Committee noted the challenges experienced by the commissioner in handling the increased number of tax objections and therefore proposes to increase to ninety days.**

Clause 54(b)

801. **Proposal on Failure to remit withholding tax** Amend the Clause to increase the timeline for submission of withholding tax to 10 working days to ease the compliance burden from taxpayers. This will increase compliance by taxpayers.

Committee Observation

802. **The Committee observed that early remission of excise duty allows efficient operation of Government programs.**

Clause 61

803. **Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:** Delete the proposal. It will open up room for misuse of this provision. The purpose of Affordable housing will be eroded if the property can be sold in the open market. This is noting that the properties will be purchased at a reduced rate and then sold at market rate. Once in private hands, the same will be supplied at an even higher rate.

Committee Observation

804. **The Committee noted that the current provision in the Affordable Housing Act was limiting the right to property under the Constitution.**

Clause31(c)

805. **Proposal to prohibit taxpayers from applying for VAT tax refunds on supplies made by a manufacturer to official aid-funded projects approved by the Cabinet Secretary, as stipulated in the First Schedule of the VAT Act:** Delete the provision to cushion official aid-funded projects from additional costs due to the transfer of the cost of input VAT to the supplies made to these projects. And, to allow manufacturers to accrue the benefits of deducting input and applying for VAT refunds in official aid-funded projects.

Committee Observation

806. The committee was of the view that the provision is to allow manufacturers to **claim input tax with respect to taxable supplies to approved official aid funded projects is discriminatory as it allows claim of input tax attributable to exempt supplies.**

Clause 31(a)(ii)

807. **Proposal on the claiming process for excess VAT:** The proposal be deleted and aligned with other tax heads (5-year limit to apply for tax refunds). Removal of the 24-month limit to apply for a VAT refund is unfair. For other tax heads, taxpayers are allowed 5 years to seek a refund. Alternatively, the government should align VAT refund applications within a 5-year limit like other tax heads. This will promote fairness in tax administration and ensure this is aligned with the statute of limitations.

Committee Observation

808. **The committee was of the view that for proper tax planning there is need to reduce the period as proposed in the Bill.**

Clause 34(i)(G)

809. Proposal **to reclassify taxable goods intended for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity**

of fifty, approved by the Cabinet Secretary, from exempt status to standard rated: The proposal be deleted in its entirety to cushion Kenyans from the higher costs of health services. Proper and affordable healthcare is an essential service in Kenya. Construction of the specialized hospitals is part and parcel of providing affordable healthcare to Kenyans. Affordable healthcare is one of the government's bottom-up economic transformation agenda. Therefore, removing this exemption would mean the government does not intend to promote the affordable health agenda as it had been proposed

Committee Observation

810. **The** Committee **observed that the incentive was introduced through the Finance Bill 2023 to support government's effort in the Universal Health Coverage agenda, and in keeping with the spirit of predictability and certainty of Kenya's structure the committee proposes to retain the incentive.**

Clause 34 (b)(ii)

811. **Proposal to** limit **VAT exemptions on insurance and reinsurance:** Delete the proposal to cushion Kenyans from the heavy costs of insurance. There is low insurance penetration in Kenya, and this was evident during the recent heavy rains which led to the destruction of property and most Kenyans had not insured their property from the eminent risks. Therefore, introduction of VAT on other insurance services will further negatively affect insurance uptake due to increased costs.

812. **Additionally**, premiums (which is the ultimate price an insured pays for the insurance service) are based on other insurance inputs and /activities that are undertaken by insurance companies. Exempting only the premiums and leaving out the associated inputs and /or services will hurt this sector as well as the high cost of insurance.

Committee Observation

813. **The Committee** observed **that there is need to raise additional revenue from other insurance services but to allow the industry to thrive the committee exempts insurance and reinsurance premiums.**

66) CARE CHAMPIONS

Clause 9(12H.)

814. **Introduction of motor vehicle tax at the rate of 2.5% on the value of vehicle:** Amend the provision to be revise down the rate and set it at 0.5% with a floor of KShs.1,000 and a ceiling of KShs. 20,000. The cost of operating motor vehicles in Kenya has been impacted by the revised insurance premiums and high fuel prices. Introduction of this tax will have a negative impact on the transport industry whose players will automatically cushion themselves while transferring the burden to an already overwhelmed *Wanjiku*.

Committee Observation

815. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 63

816. **Proposal to allow KRA access to personal data for tax purposes:** Delete the provision that gives KRA access to taxpayers' personal data to avoid taking tough measures on poor Kenyans making ends meet through their own ways.

Committee Observation

817. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

Clause 9(12G)(5)

818. **Introduction of minimum top-up tax:** Amend the Clause on the definition of adjusted covered tax to a covered person instead of a constituent entity. The reference to a 'constituent entity' in the definition of adjusted covered taxes seems to be a drafting error. The proposed provision is that minimum tax will be payable by 'covered entities' hence the adjusted taxes to be computed would be those of the 'covered entity' as opposed to those of a 'constituent entity'.

Committee Observation

819. The Committee noted need to amend the definition of "adjusted covered taxes" to replace reference to "constituent entity" with "covered person" to correct a drafting error.

Clause 35(a)

820. **Introduction of 16% VAT on ordinary bread:** Delete the provision because introduction of 16% VAT will increase the price of bread by at least KShs. 9 depending on the type of bread. Previously, manufacturers of bread were able to claim VAT on inputs and at the point of sale, contributing to a lower price of bread, an idea introduced to subsidize the consumption of products by poor. The proposal is against SDG 2: Zero hunger. Bread remains our staple food with majority of Kenyans heavily dependent on bread thus heavy taxation on bread is a huge blow especially after the recent floods.

Committee observation

821. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 20, Clause 25(b)(ii)(C) and Clause 25(b)(iii)(F)

822. **Proposal to Impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend the Withholding tax on payment of goods supplied to a public entity to 1% and 3% for residents and non-residents respectively. While the intention may be to bring to the ambit of tax, persons who supply goods to the government, the rate of 3% and 5% is high and may disrupt their cash flows given.

Committee Observation

823. **The Committee observed that there is need to raise additional revenue, the proposal to charge WHT at 3% and 5% is reasonable.**

Clause 42(b)(i)

824. **Proposal to increase excise duty on telephone and internet services from 15% to 20%:** Amend the proposal for excise duty on telephone and internet data to remain at 15 %. By hiking taxes for calls and internet access, telecommunication companies will pass on the extra costs to Kenyans making the cost of making phone calls or accessing internet high. In the era of the internet of worlds, job opportunities and relevant information including health and education are easily accessed online. This proposal will negatively impact majority of Kenyans who rely on phone calls and internet.

Committee Observation

825. **The Committee agreed with the Stakeholder in respect to excise duty on telephone and internet data the Committee proposes to maintain the prevailing rate of excise duty on telephone and internet data to allow penetration and accessibility in the rural areas.**

Clause 2(l)

826. **Proposal to define donations**: The provision is acknowledged. Additionally, amend the term "donation" in the Income Tax (Charitable Donations) Regulations, 2007 under Paragraph 4(a). This expands the coverage of deductible donations to donations given in kind. This will ensure certainty in the interpretation and application of the tax law.

Committee Observation

827. **The Committee noted that grants are not necessarily taxable and therefore expanding the definition of donations to include grants will not be prejudicial.**

Clause 45(7B)

828. **Introduction of eco levy:** Amend the provision to delete diapers from the goods subject to Eco Levy. Kenyans struggling to lead decent lives, some can't feed their families or take their kids to school. Diapers will be afforded by only the most privileged members of the society. All mothers are equal.

Committee Observation

829. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clauses 23(c) and 23(j)

830. **Withholding Tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for nonresidents:** Amend the provisions to exclude retail resident investors (individuals) while the non-resident rate be set at 7.5% to align with the rate for bonds issued outside Kenya. This is to encourage local investors to take up bonds on offer and provide level playground with terms of Euro bond.

Committee Observation

831. **The committee observed that there is need to encourage investments in long term bonds to finance government initiatives.**

Clause 42(a)(P)

832. **Introduction of excise duty on vegetable oil at the rate of 25%:** Delete the provision because this proposal is going to negatively impact the livelihood of Kenyans. The percentage of Kenyans with eateries who depend on cooking oil to operate their business is huge. This proposal will deny most parents an opportunity to properly feed their children leading to malnutrition.

Committee Observations

833. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable Oils to curb increase in consumer prices.**

Clause 34(b)(vii)

834. **Proposal to reclassify taxable goods intended for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary, from exempt status to standard rated:** Delete the proposal. This will make the cost of getting services in specialized hospitals even a harder challenge to patients who only depend on over-the-counter drugs due to high medical care in the country. This may increase the ultimate cost of constructing specialized hospitals. Kenyans are not as privileged as the political class to afford plane tickets to big hospitals in Europe or India.

Committee Observation

835. **The Committee agreed with the Stakeholder noting that the provision will contribute to improving access to healthcare services where such facilities are scarce**

67) INSTITUTION OF SURVEYORS OF KENYA

Clause 2 (k)

836. **Proposal to expand the definition of royalties to include software:** Delete clause 2 (k) because this approach goes against International Best Practice as envisaged under the Organization for Economic Co-operation and Development Model Tax Convention on Income and on Capital which recognizes that software distributors make payment for copyrighted software but do not commercially exploit such software.

Committee Observations

837. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with international best practices.**

Clause 5

838. **Proposal to impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend clause 5 to read "*The payment received by a Person from a Public Entity for the supply of goods less the expenses incurred shall be deemed to be the income of the person for the year*

of income in which the payment is received" The payment received cannot be deemed as income without taking into consideration the expenses incurred. There is a need to focus on taxable income as opposed to just any other income.

Committee Observations

839. **The Committee Observed that the rate of WHT is applied under the simplified tax regime at a considerably low rate of 3% and 5% for residents and non-residents respectively.**

Clause 9 (12H)

840. **Introduction motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete clause 9 (12H) because there is no justification for this provision and having a motor vehicle is not an income that can be taxed. Also, there is uncertainty on the valuation of cars whose amount reduces each year.

Committee Observations

841. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 45 (2)

842. **Introduction of eco levy: Delete clause 45 (2) because this will hurt local** manufacturers and hence further cripple the local manufacturing industry.

Committee Observations

843. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 63

844. **Proposal to authorize the Kenya Revenue Authority (KRA) to access personal data for tax purposes:** Delete clause 63 because this is infringing on the rights of Kenyans as to the safety of the data in the Commissioner.

Committee Observations

845. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data to administer a tax law.**

68) THE ANGLICAN CHURCH OF KENYA
Clause 5

846. **Proposal to impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Delete clause 5 because it will reduce the net income of suppliers, particularly affecting smallholder farmers and SMEs. The reduced income may discourage participation in government tenders and contracts, limiting market opportunities for these businesses. It may also increase the cost of goods supplied to public entities, impacting government budgets and service delivery.

Committee Observations

847. **The Committee observed that there is need to raise additional revenue, the proposal to charge WHT at 3% and 5% is reasonable.**

Clause 9 (12H)

848. **Introduction motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete clause 9 (12H) because this will increase the cost of owning and operating vehicles, impacting both private vehicle owners and public transport users. The higher costs may lead to a reduction in vehicle ownership, affecting mobility and economic activities. Public transport operators might pass on the additional costs to commuters, increasing transportation costs. It could also lead to job losses in the transport and logistics sector and discourage investments in the automobile industry.

Committee Observations

849. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 34 (b) (i) (c),(e),(f),(g)

850. **Introduction of 16% VAT on financial services:** Delete clause 34 (b) (i) (c),(e),(f),(g) because this will increase the cost of financial services, discouraging their use. This could hinder access to essential banking services, reduce transaction volumes, and promote cash hoarding. Financial exclusion may increase, particularly for lower-income individuals who rely on affordable financial services.

Committee Observations

851. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions and mobile and cellular money transfers.**

Clause 35 (a)

852. **Introduction of 16% VAT on ordinary bread: Delete clause 35 (a) because** increasing the cost of bread through VAT will directly exacerbate the cost of living, deepen poverty, and increase vulnerability among the population. Additionally, this could lead to higher demand for informal, untaxed bread production, reducing government revenue and compromising food safety standards.

Committee Observations

853. **The Committee agreed with the Stakeholders and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 35 (d)

854. **Proposal to subject 16% VAT on transportation of sugarcane from farms to milling factories:** Delete clause 35 (d) because this will directly raise the final product price, leading to several adverse effects. The increase in the locally produced sugar will decrease its competitiveness against cheaper imported sugar. Additionally, the higher prices will negatively impact food security as sugar is a staple in many diets. Transportation of sugar should remain zero-rated.

Committee Observations

855. **The Committee agreed with the Stakeholder noting that transportation of sugarcane is bulky and cost intensive hence need for the incentive.**

Clause 35, (k)

856. **Proposal to reclassify Bioethanol Vapor (BEV) stoves under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel), from zero-rated to exempt:** Delete clause 35(k) because suppliers will no longer claim input leading to higher costs for these goods and services. This change threatens food security by increasing agricultural production costs, deters the adoption of green energy technology like BEV stoves, and slows the transition to electric motorcycles which are critical for reducing carbon emissions and urban pollution.

Committee Observations

857. **The Committee agreed with the stakeholder on the strength that the Bioethanol stoves promote clean cooking in line with climate change mitigation measures.**

Clause 42 (a) (i) (P)

858. **Proposal to introduce excise duty on vegetable oil at the rate of 25%.** Delete clause 42 (a) (i) (P) because this will lead to higher costs of household items such as cooking oil. This will affect low-income families increasing the cost of living while reducing their disposable income. Additionally, the higher production costs may result in massive job losses in the manufacturing sector and hinder the competitiveness of Kenyan products in regional markets.

Committee Observations

859. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable oils to curb increase in consumer prices.**

Clause 42 (b) (i), (ii), (iii)

860. **Proposal to increase excise duty on banking services from 15% to 20%:** Delete clause 42 (b) (i), (ii), (iii) because this will raise the cost of accessing banking and insurance services potentially reducing their usage. Higher costs could encourage cash hoarding, reduce financial transactions, and undermine financial inclusion efforts.

Committee Observations

861. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

Clause 44

862. Increase **Import Declaration Fee Rate from 2.5% to 3%:** Delete clause 44 because this will directly impact consumers leading to higher prices for imported goods. Customers will face an increase in costs for a wide range of products, affecting their purchasing power and standard of living.

Committee Observations

863. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25**

69) KENYA MUSLIM WOMEN ALLIANCE

Clause 42 (a) (i) (J)

864. **Proposal to levy excise duty of alcoholic beverages based on alcohol content:** Amend clause 42 (a) (i) (J) by increasing the excise duty from KShs. 22.50 per centiliter of pure alcohol to KShs. 33.00 per centiliter. The projected tax share and revenue collection from beer are likely to be reduced if passed as it is. Beer is likely to be so cheap as to be easily accessible by vulnerable populations like children and youths, and ultimately, beer becomes the initiation drink to higher alcohol content beverages such as spirits.

Committee Observations

865. **The Committee observed that imposing excise duty on a centiliter basis is a global best practice recommended by the WHO. However, the committee noted that increasing the rate of excise duty to Ksh. 33.00 Per percentiliters will adversely affect the sector.**

70) PACKAGING PRODUCER RESPONSIBILITY ORGANIZATION

Clause 34 (a) (i) (N)

866. **Proposal to reclassify plant, machinery, and equipment used in the construction of a plastics recycling plant from exempt to standard rate VAT:** clause 34 (a) (i) (N) because the expansion of the recycling sector is crucial for facilitating the collection and transformation of waste materials into new products, thereby preventing environmental degradation. The removal of tax incentives for recycling establishments will impede the sector's growth and development.

Committee Observations

867. **The Committee observed that in keeping with the policy to promote recycling of plastics and other non-biodegradable materials, the committee agreed retain the incentives to promote climate change mitigation measures.**

Clause 48 (item 47)

868. **Introduction of eco levy on plastic packing materials of chapter 39 at the rate of KSh. 150 per Kg:** Delete clause 48 (item 47) because importers are already subject to import duty and excise duty (for excisable goods) when they bring goods into Kenya. Introducing a further levy will result in double taxation and high costs for importers and these costs will likely be passed on to consumers. This will discourage investors from further investment or expansion of their operations within Kenya due to the high cost of doing business. The ripple effect is that this will negatively impact direct and indirect employment given that companies may impose cost-cutting measures such as termination of employment contracts.

Committee Observations

869. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to reduce the rate of eco levy on plastic packing materials.**

71) GRANT THORNTON

Clause 12(1)

870. Introduction **of advance pricing agreement:** This proposal should be adopted as it will entrench certainty in the determination of arm's length price. The Guidelines to guide the advance pricing agreement process ought to be included in the draft income tax (transfer pricing regulations) regulations. The regulations ought to speak on how the process of an advance pricing agreement will be guided, various types of advance pricing agreement (multilateral and bilateral).

Committee Observation

871. **The Committee agreed with the stakeholder that the introduction of the advance pricing agreements is a positive step to** entrench certainty in the determination of arm's length price**. To promote seamless implementation of the Agreements The Committee proposes that the further guidelines be included in the regulations.**

Clause 9(12H)

872. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Amend the Clause on motor vehicle tax such that it is to be paid at the rate of 1.5% and further the upper limit cap should be removed. As per section 3(2) of the Income Tax Act, tax is chargeable in respect of an income gained, one having a motor vehicle is not an income. The imposition of Motor Vehicle Tax is not based on an income generating model. Further, the threshold should be removed to enhance fairness in taxation.

Committee Observation

873. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 8

874. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** This provision should be adopted. The introduction of the Significant Economic Presence Tax will overhaul the taxation of the

digital economy to ensure no revenue leakage by Multinational enterprises. However, there's need to consider transaction materiality thresholds where the non-resident incomes earned from Kenya are not substantial, therefore reducing compliance administrative burden.

Committee observation

875. **The Committee agreed with stakeholder that the introduction of the Significant Economic presence tax is positive step towards creating consistency with the OECD tax principles. The Committee proposes that further guidelines be provided for in the regulations.**

Clause 6

876. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend the Clause to ensure that per diem is based on a graduated scale. Persons receiving less Ksh39,999 will be adversely affected as the per- diem threshold will be less than the current allowable tax per limit.

Committee Observation

877. **The Committee observed that the current provision in the Act is sufficient.**

Clause 4

878. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:** Amend the proposal to include definition of what a foreign exchange loss is, to avoid uncertainty. There is no definition of what a foreign exchange loss is and is open to wide interpretation. It should be specific to loans.

Committee Observation

879. **The Committee was of the view that the term "foreign exchange losses" is a notorious term that does not need a definition.**

Clause 57

880. **Proposal for penalties on failure to integrate the electronic tax system with the data management and reporting system:** Amend the provision to shillings to a lower and reasonable penalty amount which shall be capped. This excessive penalty will hurt Micro small and Medium Enterprises (MSME) in Kenya, in consideration of the fact that the majority of these MSMEs do not even make monthly revenues that exceed KShs. 1,000,000. Therefore, subjecting them to such punitive penalties will force most of them to close shop to the detriment of the Kenyan economy.

Committee Observation

881. **The Committee agreed with the stakeholder that the penalty proposed for failure to integrate to eTIMS, is too punitive compared to the offense. In this regard the committee proposes to reduce the penalty to be commensurate to the offence.**

Clauses 56

882. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Delete the provision to guarantee fairness in the tax appeals processes. It will also make it extremely tedious for taxpayers and their agents

to ensure that they are extremely cautious and nit-pick through their documents to ensure that they have provided all the documents required. This is almost a herculean task and very unfair to taxpayers challenging the tax assessments by KRA.

Committee Observation

883. **The committee noted the potential abuse of the proposal for deemed disallowed objections and consequently proposes to require the commissioner to communicate. However, the Committee noted the need for more days for the commissioner owing to the increase in the number of objections.**

Clause 35

884. **Proposal to subject 16% VAT on electric vehicles and motorcycles:** Delete the provision. Standard rating supply of electric cars, buses, motorcycles solar, and lithium batteries will reduce their usage due to the increased costs. This is not a welcome move if the country is looking at reducing carbon emissions through the use of electric cars and motorcycles. This proposal goes against the government's drive for clean energy and environment conservation through tree planting exercises.

885. The effect of this proposal is that it will affect the manufacturing of locally assembled mobile phones as investors in the assembly and manufacture of mobile phones will be discouraged as they will incur additional VAT costs.

Committee Observation

The Committee agreed with the stakeholder noting that the country is keen on reducing carbon emissions through the use of electric cars and motorcycles.

Clause 34(a)(i)(N)

886. **Proposal to reclassify plant, machinery, and equipment used in the construction of a plastics recycling plant from exempt to standard rate VAT:** Amend the proposal to exempt plant, machinery, and equipment. Exempting of the plant, machinery, and equipment used in the construction of recycling plants will increase the cost of building recycling plants and discourage recycling plastics in the country as factories to accommodate the same will not be built resulting in unemployment among the people who work in the recycling industry.

Committee Observation

887. **The Committee agreed with the stakeholder noting that Kenya is keen on reducing carbon emissions and promoting climate change mitigation measures.**

Clause 35(d)

888. **Proposal to subject 16% VAT on transportation of sugarcane from farms to milling factories**: Delete the Clause because this proposal will hurt various sectors of the economy. Sugar is a key commodity in various manufacturing industries in Kenya. Making transportation of sugarcane from farms to milling factories will have the effect of increasing the cost of production of sugar with the consequence of increasing the price of sugar. Increased price of sugar will affect industries that are dependent on sugar like confectionaries and beverage industries.

Committee Observation

889. **The Committee agreed with the Stakeholder noting that transportation of sugarcane is bulky and cost intensive hence need for the incentive.**

Clause 34(b)(iii)

890. **Proposal to subject 16% VAT on betting, gaming and lottery services:** Delete the Clause because betting, gaming and lottery services ought to remain VAT exempt. Where VAT is applied on stakes, this will be in addition to the excise duty (of 20% as per the Finance Bill, 2024). This VAT value will erode the actual stake a customer places per bet and therefore will adversely impact 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).

Committee Observation

891. **The Committee observed that the gambling sector incurs tax on a number of tax heads and imposing VAT on the sector will be too punitive, thus the committee agreed with the Stakeholder.**

Clause 42(a)(i)(P)

892. Introduction **of excise duty on vegetable oil at the rate of 25%:** Delete the provision **because** Vegetable oil is a vital ingredient in Kenyan cuisine, and a rise in its cost will inevitably lead to higher prices for basic commodities that rely on it. This will disproportionately burden low-income families who dedicate a significant portion of their income to food, impacting food security and nutrition, especially for vulnerable populations.

Committee Observation

893. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable oils to curb increase in consumer prices.**

Clause 42(b)(iii)

894. **Proposal to increase excise duty on financial services from 15% to 20%:** Delete the **proposal** because Excise Duty will reduce the affordability of this service. Explore other revenue streams that do not impede financial inclusion efforts.

Committee Observation

895. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

Clause 39

896. **Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services**: Delete the Clause because it will negatively affect the commercial viability of manufacturing in Kenya. The offset mechanism as it is currently, is designed to encourage growth of *manufacturing* industry and reduce the cost of manufactured excisable products. In this mechanism, prior excise duty that was paid on the raw materials used to make manufactured excisable goods was offset against Excise duty payable on these finished products. This reduced the cost

of those products. Implementing this proposal will have the contrary effect by increasing substantially the cost of manufactured excisable goods.

Committee Observation

897. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42(b)(iv)

898. **Proposal to increase excise duty on betting and gaming from 12.5% to20% on the amount staked:** Amend the proposal where 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 daily.

Committee observation(s)

899. **The Committee observed that there is need to raise additional revenues and therefore proposes to marginally increase excise duty.**

Clause 44

900. **Proposal to increase import declaration fee from 2.5% to 3%: Amend** the Clause to **retain** the Import Declaration Levy (IDL) at the current rate of 2.5% or zero rate IDF on raw materials. This will increase the quality of goods locally manufactured to compete with other global goods.

Committee Observation

901. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

902. **Introduction of eco levy:** Amend the Clause to harmonize the imposition of Eco **Levy** to cater to both interests of environment conservation and common *mwananchi*. This levy will lead to a surge in prices on all plastic packaging materials, batteries, and bar soaps. These are common commodities used by common *mwananchi* like *Mama Mboga*. Eco Levy will hurt local manufacturers in the sense that whereas local manufacturers must remit the Eco Levy to the Commissioner upon removing the goods from the excise stock room, importers are responsible for payment upon entry of imported goods into the country.

Committee Observation

903. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

New Proposal

904. 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.

905. Most withdrawals by customers are made through mobile money, which data is **easily** verifiable. Withdrawals through Mobile Network Operators (MNOs) is therefore an assured method of tax collection and provides much-needed visibility on the transactions. The recommendation to apply withholding tax on withdrawals will streamline the taxation of the sector and result in growth in tax collections and easier verification of revenues. Taxation of withdrawals as opposed to winnings will lead to a 50% growth in revenue collections, translating to KShs 6.5 billion in additional revenue annually without negatively affecting the industry.

Committee Observation

906. **The Committee observed that this proposal will be a tax on an amount belonging to the punter as opposed to his gains.**

72) SAFARICOM

Clause 34 (b)(i)(G)

907. **Introduction 16% VAT on money transfer services:** Delete the clause because introduction of VAT on money transfer services will have an adverse impact as it will discourage people from utilizing M-PESA. In addition, the cost of this tax will end up being factored into the authorized money transfer fees to make up for the cost and this becomes a burden for the consumer to bear. The tax measures will increase the cost of formal transactions, risk driving more people towards unregulated and untaxed cash-based transactions (black market) thereby undermining the Government's revenue mobilization efforts.

Committee Observations

908. **The Committee observed that, to protect the financial sector and enhance financial inclusion there is need to exempt financial services from the value added tax.**

Clause 34 (b)(i)(C)

909. Introduction **of 16% VAT on forex transactions:** Delete the clause because with the introduction of VAT on forex transactions, businesses and customers alike will be affected by the increased cost of business. Safaricom's products which involve foreign exchange transactions will become more expensive to the customer.

910. In addition, the Kenyan legislation has remained stable as relates to the tax treatment of financial services from the VAT standpoint. However, with the proposed change, businesses will need to implement new systems to track and report VAT on forex transactions accurately in order to meet compliance and reporting requirements.

Committee Observations

911. **The Committee agreed with the stakeholder that forex transactions should not be subject to VAT since it will cause inflation on goods.**

Clause 42 (b) (i)

912. **Proposal to increase excise duty on telephone and internet services from 15% to 20%:** Delete these provisions that increase excise duty on telephone and internet services as they may exacerbate digital exclusivity by making access to the digital space only affordable to the well-off. This is detrimental to the digital inclusivity agenda such as access to essential services offered through digital platforms.

Committee Observations

913. **The Committee agreed with the stakeholder that increasing excise duty on telephone and internet data services will lead to exclusivity and exacerbate the attainment of the digital economy initiative by the Government.**

Clause 42 (b) (iii)

914. **Proposal to increase excise duty on money transfer services from 15% to 20%:** Delete the clause because it opens doors to black market money transfer options which is not in line with the Government's objective of expanding the tax net. The frequent changes in the excise duty rates on money transfer fees by cellular phone service providers are disruptive and cause instability in the industry.

Committee Observations

915. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

73) PKF KENYA

Clause 2 (k)

Proposal to expand the definition of royalty to include software: Amend the clause by deleting the distribution of software from the definition of royalty to bring into the ambit of the definition of royalty any payment for the purchase of software **even** where the distributor transfers the software without exploiting the intellectual property rights in the software. Consequently, the purchaser will have to withhold tax on payments to the distributor for the software. The proposal will signal a shift from international best practices in the taxation of software payments, as captured under Article 12 of the Organization for Economic Co-operation and Development (OECD) Model Tax Convention, which generally requires that such payments should only be subject to WHT if they are made as consideration for rights to the software's underlying Intellectual Property rights.

Committee Observation

916. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 4

917. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:** Delete the clause because with the proposal taxpayers will

have a shorter time frame of 3years within which they can claim their deferred foreign exchange losses hence reducing their flexibility in managing tax and financial affairs.

Committee Observations

918. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 6 (a)

919. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend the clause to revise the subsistence allowance to a standard subsistence allowance of Kshs.10, 000 to cater for the low-income earners in consideration of high cost of living. The proposal is discriminative to low income employees earning below Kshs.40, 000 as the non-taxable benefit will be lower than the current Kshs.2,000.

Committee Observations

920. **The Committee observed that the current provision in the Act is sufficient.**

Clause 8

921. **Proposal to repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Amend the clause by revising the SEPT rate downwards to make Kenya attractive to non-resident investors and make the services affordable to final consumers. The clause is likely to hamper growth in the digital economy and negatively affect Kenya's competitiveness being a fintech hub. Further, the ultimate consumers of digital services will bear the burden as non-resident digital service providers are likely to pass on the additional tax costs to their customers by increasing the cost of digital services supplied via a digital marketplace and platform.

Committee Observations

922. **The Committee observed that this provision may lead to revenue losses because there is a number of non-residents with Significant economic activity deriving income from Kenya and are not incurring any other tax liabilities.**

Clause 9 (12H)

923. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the clause because it is punitive to persons owning private vehicles since they do not generate any income and will be required to pay Motor Vehicle Tax. This will also be against the tenets of section 3 of the Income Tax Act, which subjects income tax on incomes of a person accrued in or derived from Kenya. The proposal will similarly result to double taxation of commercial vehicles that are already subjected to advance tax. Further, the proposed penalty of 50% is bound to result in disputes since it does not align with the provisions of Section 83A of the Tax Procedures Act, 2015 which imposes a 5% penalty on account of late payment. Additionally, the proposed floor and ceiling amounts defy the equitable principle of taxation as middle-income households will feel the impact of the Motor Vehicle Tax more.

Committee Observations

924. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 12

925. Introduction **of Advance Pricing Agreements (APAs) in the Income Tax Act:** Amend the provision to provide for the Commissioner to provide more guidelines in relation to the implementation of the advance pricing agreements. The Guidelines should also provide clarity on the powers of the Commissioner to declare an advance pricing agreement null to ensure that the Commissioner's powers are not used arbitrarily. The proposal will help resolve Transfer Pricing disputes by providing certainty to taxpayers with related party transactions. The amendment will provide an opportunity for the Commissioner to provide more guidelines on how the advance pricing agreements will be implemented.

Committee Observations

926. **The Committee agreed with the stakeholder but resolved that to allow for seamless implementation of the Agreements, the commissioner publishes regulations to address the operations of the Advance pricing agreements.**

Clause 23 (e)

927. **Proposal to subject registered family trust to 30% tax:** Delete the clause because the proposed amendment to subject registered family trusts to Income Tax is detrimental as it will discourage Kenyans from establishing registered family trusts that are beneficial for succession planning. This may also encourage Kenyans to register family trusts outside Kenya, especially in low-tax jurisdictions.

Committee Observations

928. **The Committee noted that the principal income of a family trusts typically consists of the assets including 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 including subsequent distribution of the same to beneficiaries and therefore recommends deletion of the proposal to tax income or principal sum of a registered family trust.**

Clause 25(b)(i)

929. **Proposal to Delete Clause to Encourage Private Sector Involvement in Affordable Housing Projects:** Delete the clause for it will discourage the private sector from rolling out mass housing projects. The increased tax burden will raise the overall costs for property developers, which could lead to higher prices of residential housing units as developers will seek to preserve their profit margins. The government should encourage the private sector's involvement in the construction of affordable residential houses until the housing gap has been sufficiently closed in line with the affordable housing agenda.

Committee Observations

930. **The Committee notes that Affordable Housing as one of the critical pillars in the BETA Economic Model Agenda and therefore the retention of the 15% preferential tax rate would go a long way to address the housing shortfall in the country and supply the**

needed number of houses to fill this gap. Further, in keeping with the spirit of ensuring the predictability of the tax structure the Committee recommends the deletion of the proposal to remove the incentive.

Clause 23(g)

931. Amendment **to Exempt Family-Owned Company Asset Transfers from Capital Gains Tax:** Amend the proposal to introduce an "/ or" immediately after the word "and". The additional amendment proposes for the provision of Capital Gains Tax exemption where there is transfer of assets to a company owned by immediate family members only. As currently constituted, the Capital Gains Tax exemption is only applicable to a company owned by both a spouse and immediate family members, thereby subjecting to Capital Gains Tax, transfer of assets to a company owned by immediate family members only.

Committee Observations

932. **The Committee noted that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition.**

Clause 53 (a)

933. **Proposal to Remove KRA's Immediate Agency Notice Issuance Post-Court Judgement:** Delete the proposal because it is detrimental and goes against the fair administration of tax procedures. This proposal implies that an agent e.g. a bank or debtor can be held equally liable for a taxpayer who owes taxes to the Kenya Revenue Authority and will only be discharged from their agency duties after one year or after revocation of the agency notice by KRA. Further, it means that any money owing to the taxpayer by the agent should be remitted/paid to KRA during the one year thus creating cash inflow constraints for taxpayers.

Committee Observations

934. The Committee **noted** that there is need to make provision for the lifting of agency notices where taxes have been paid in full in execution of a court order to cure ambiguity with respect to the validity of agency notices.

Clause 56 (a)

935. Proposal **to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Delete the proposal because it will be punitive to taxpayers especially where the Commissioner may request for information that is **not** readily available or within the reach of the taxpayer as per the stipulated timelines. Additionally, this will deny the taxpayer the right to a favorable objection decision especially taking into consideration that the tax assessment may have been issued with no basis at all.

Committee Observations

936. The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision.

Clause 39.

937. Proposal **to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services**: Delete clause 39 for it will lead to an increase in the cost of locally manufactured excisable goods and **internet** data services. In addition, it will discourage both domestic and foreign investment in these industries, limit job opportunities, slow down economic growth, and impede innovation. Consequently, companies will be compelled to pass on the cost of the non-refundable excise duty paid on raw materials to the final product, which also attracts excise duty, leading to double taxation.

Committee Observations

938. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42 (b) (ii) & (iii)

939. **Proposal to increase excise duty on financial services from 15% to 29%:** Delete the clause because the increase in excise duty on these financial services would erode the progress made by the sector players in increasing financial inclusion in Kenya. Consequently, both businesses and consumers will face higher transactional costs, leading to reduced access to financial services and an increase in cash transactions, which carries its own set of risks.

Committee Observations

940. **The Committee agreed with the Stakeholder in respect to excise duty on financial services the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

Clause 63

941. **Proposal to allow KRA to access personal data for tax purposes:** Delete the clause as the **proposed** exemption violates the fundamental right to privacy of individuals as contained under Article 31 of the Constitution of Kenya. By allowing the Commissioner to access personal data without adherence to data protection principles, individual's private information could be exposed and misused. This proposal grants immense powers to the Commissioner. Additionally, confidentiality is a key cornerstone of professional ethics and deviating from this could erode trust between professionals and their clients while at the same time negatively impacting fundamental rights and freedoms. The Courts have further determined that any laws that limit an individual's fundamental rights and freedoms must be clear enough to be understood and precise enough to cover only the activities connected to the intended purpose

Committee Observations

942. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

Clause 44(a)

943. **Proposal to increase import declaration fee from 2.5% to 3%:** Delete the proposed amendment for it will impose additional costs to importers. This rise in operational expenses will affect their profit margins and financial stability. The importers will pass these additional costs down to consumers and as a result, the prices of imported goods will be higher.

Committee Observations

944. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 47(1)

945. **Introduction of export and investment promotion levy:** This proposal should be dropped as it is not in line with the Government's Fourth Medium Term Plan (2023-2027) launched in April 2024, which aims to boost production through a value chain approach targeting leather and leather products. The introduction of EIPL on articles of leather; saddlery and harness; travel goods, handbags, and similar containers, and articles of animal gut will hurt the local leather tanning industry and reduce the competitiveness of Kenyan products internationally.

Committee Observations

946. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.**

Clause 48

947. Introduction **of eco levy on packaging materials:** Delete item 47 on plastic packaging material under clause 48 because will be a disincentive to eco-friendly investments in the sector and negate the efforts to create sustainable packaging which **ensures** protection of products, while keeping ecological footprint to a minimum e.g. through recycling. With lack of alternatives for packaging materials that are clear, strong and lightweight such as plastics, there will be an increase in the overall cost of many goods, where plastic packaging materials are used.

Committee Observations

948. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 48

949. **Introduction of eco levy on diapers:** Delete item 45 in clause 48 for it introduces eco levy on diapers, a unique product with very few viable substitutes. The lack of substitutes only leaves **families** with no option, but to bear the increased costs. An increase in retail price will place an additional burden on families, particularly those from low- income households.

Committee Observations

950. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 31(c)

951. **Proposal to prohibit taxpayers from applying for VAT tax refunds on supplies made by a manufacturer to official aid-funded projects approved by the Cabinet Secretary, as stipulated in the First Schedule of the VAT Act:** Delete the clause for it is punitive because it imposes an additional cost burden to manufacturers who will not be able to recover the input VAT incurred in supplying official aided projects and seek a refund for the same value. 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 Observations

952. **The committee observed that there is need to curb the losses in tax revenues occasioned by many tax refunds.**

Clause 35(a)

953. **Proposal to introduce 16% VAT on ordinary bread**: Delete the clause on the proposal to reclassify **ordinary** bread to be subject to VAT at 16% as this will cause a significant increase in the cost of living for *Mwananchi* since bread is common food item in most households in Kenya.

Committee Observations

954. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 35(b)

955. **Proposal to subject 16% VAT on agricultural pest control products:** Delete this clause because reclassification of the VAT status of these products from exempt to VATable will increase **the** cost of producing agricultural pest control products. This proposal has a resultant effect to increase the price of agricultural products since every player in the production chain will load VAT on their products.

Committee Observations

956. **The Committee proposes to exempt imported agricultural inputs and inputs for manufacture pest control products and zero rate locally manufactured products to protect the agricultural sector.**

Clause 34 (a)(i)(F)

957. **Proposal to move taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more from exempt to standard rated:** Delete this clause because the proposal will increase the cost of constructing tourism facilities given that the goods and equipment purchased for use in construction will go up by 16%. It is detrimental and will not only discourage foreign investors from establishing tourism facilities in Kenya but will affect the rapid expansion of the tourism sector as the major source of foreign exchange in Kenya. This industry has not fully recovered from the negative impact of the COVID-19 pandemic.

Committee Observations

958. **The Committee noted that there is need to promote and encourage investments in tourism and recreational facilities to promote the tourism industry and engaging in recreational activities.**

74) KENYA ASSOCIATION OF AIR OPERATORS (KAAO)

Clause 34 (a) (i) (Ab)

959. **Proposal go subject 16% VAT on importation of aircraft and spacecraft under Chapter 88:** Delete the clause because the introduction of 16% VAT on importation of aircraft and spacecraft under Chapter 88 will result in Kenyan operators losing their competitiveness due to increased cost of purchase, leasing or financing of these equipment. This in turn will be cascaded down to the consumers and travelling public. Additionally, increased costs will also discourage investors from registering aircraft in the Kenyan registry, which will impact revenue generated by the Kenya Airports Authority and Kenya Civil Association Authority in the form of fees.

Committee Observations

960. **The Committee observed that to help support the nascent space industry in Kenya it is important to keep the cost of spare parts low thus the committee proposes the deletion of this proposal to tax space craft and sub-orbital spacecraft lounge.**

75) YOUTH ALIVE

Clause 9 (12H)

961. **Introduction of motor vehicle at the rate of 2.5% of the value of vehicle:** Delete the proposal **because** Kenya lacks proper public transport and the majority of Public Service Vehicles that run the transport sector are privately owned the tax will make the cost of transport balloon passing it down to the population.

Committee Observations

962. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 35(a)

963. Delete the clause for it will increase the cost of bread, a widely consumed food commodity, making **it** unavailable to the common man.

Committee Observations

964. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 45.

965. Introduction **of eco levy:** Delete items 16,17,19,20 1nd 23 in clause 45 because introduction of eco levy on the items will not only increase the cost of the products but also services provided from utilization of these goods. Owing to the shift of the world to the online space and utility of this as a source of employment for the majority of Kenyan youth, the new costs will make access of these essential products hard limiting the potential of the youth utilizing these platforms.

Committee Observations

966. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 45.

967. Introduction **of eco levy on diapers: Delete** item 45 in the clause because the addition of Kshs.150 per **Kg** to diaper materials will attract an extra cost for the product leaving the already struggling young mothers with more pain.

Committee Observations

968. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 3 (ba)

969. **Proposal on definition of digital marketplace:** Delete the clause because the digital market place, **having** been largely dominated by the youth of this country and the proposal will lead to the likely collapse of the already growing momentum.

Committee Observations

970. **The Committee noted the proposal by some stakeholders to expand the definition of "digital marketplace" to broaden the definition of on the item 'professional services' to include consulting services.**

76) YOUTH ALIVE

Clause 9 (12H)

971. **Introduction of motor vehicle at the rate of 2.5% of the value of vehicle:** Delete the proposal because Kenya lacks proper public transport and the majority of Public

Service Vehicles that run the transport sector are privately owned the tax will make the cost of transport balloon passing it down to the population.

Committee Observations

972. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 35(a)

973. Delete the clause for it will increase the cost of bread, a widely consumed food commodity, making it unavailable to the common man.

Committee Observations

974. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 45.

975. **Introduction of eco levy:** Delete items 16,17,19,20 1nd 23 in clause 45 because introduction of eco levy on the items will not only increase the cost of the products but also services provided from utilization of these goods. Owing to the shift of the world to the online space and utility of this as a source of employment for the majority of Kenyan youth, the new costs will make access of these essential products hard limiting the potential of the youth utilizing these platforms.

Committee Observations

976. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 45.

977. Introduction **of eco levy on diapers: Delete** item 45 in the clause because the addition of Kshs.150 per **Kg** to diaper materials will attract an extra cost for the product leaving the already struggling young mothers with more pain.

Committee Observations

978. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 3 (ba)

979. **Proposal on definition of digital marketplace:** Delete the clause because the digital market place, **having** been largely dominated by the youth of this country and the proposal will lead to the likely collapse of the already growing momentum.

Committee Observations

980. **The Committee noted the proposal by some stakeholders to expand the definition of "digital marketplace" to broaden the definition of on the item 'professional services' to include consulting services.**

77) KISUMU COUNTY WORKING GROUP

Clause 63

981. **Proposal to allow KRA to access personal data for tax purposes:** Delete the clause for it would potentially **conflict** with the principles of data minimization and purpose limitation outlined in the Data Protection Act, 2019.In addition, the Data Protection Act provides that a data processor, when collecting personal data, must notify the data subject as to whether the collection is voluntary or mandatory. The proposal undermines individual's right to privacy and transparency as guaranteed by the Data Protection Act.

Committee Observations

982. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

78) KPMG

Clause 4

983. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:** Delete the clause because reducing the deferment period for realizing exchange loss from 5 to 3 years will lead to increased financial and operational challenges for business in Kenya. It will impact cash flow management, increase tax burdens, create volatility in financial reporting, and complicate long-term financial planning. In addition, most of the loans obtained by the companies do not have a below 3 years repayment term and interest and foreign exchange losses are high in the first 5 years which is punitive. Further it will discourage the already aggrieved investors. The high volatility of the current exchange rate and the shortened deferred period for claiming realized forex losses may strain businesses involved in cross border transactions. As a result, such businesses may suffer an additional tax burden in comparison with the counterparts who only engage in local currency transactions

Committee Observations

984. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 9 (12H)

985. **Introduction of motor vehicle tax at the rate of 2.5% of the value of motor vehicle:** Amend the clause by **lowering** the rate of Motor Vehicle Tax to 1% of the value of the motor vehicle with no cap to the maximum amount taxable to ensure uniformity across the board.

Committee Observations

986. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 5

987. **Amend** the clause by inserting the words "*and services*" between goods and shall. This is because goods to public entities have faced challenges where tax is paid, while payment for the goods (and services) supplied is received much later, in a different year of income from the year of income of supply, which has inflicted a heavy burden on persons doing business with public entities. Therefore, inclusion of suppliers will eliminate the perceived bias and discrimination.

Committee Observations

988. **The Committee observed that the intention was only to incorporate goods only**

Clause 20.

989. Proposal **to impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend the clause by reducing the rate of the proposed to 1% for resident suppliers and 2% for non-resident suppliers. Non-resident suppliers might reduce their participation in the Kenyan market due to the higher tax burden, leading to potential disruptions in the supply chain for certain goods. Resident suppliers may pass on the cost of taxes to the public entities in the form of higher prices for goods, potentially increasing the overall cost of public procurement.

Committee Observations

990. **The Committee observed that there is need to raise additional revenue, the proposal to include services was not intended and therefore recommends the adoption of the proposal as per the Bill.**

Clause 6 (b) (ii)

991. Proposal **to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:** Delete the clause because exempting public officers while subjecting private officers to tax on reimbursements creates a disparity between two groups performing similar functions. This unequal treatment is be perceived as unfair and discriminatory leading to undermining of the principle of neutrality and equity as envisioned in the Constitution of Kenya. The proposal is also open to abuse especially where it appears to suggest that costs for purchase of assets can be reimbursed regardless of who owns the assets.

Committee Observations

992. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that**

even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.

Clause 23 g

993. **Proposal to subject registered family trust to tax at the rate of 30%:** Delete the clause as family estates are typically established for estate planning and asset protection and are not commercial **transactions** but rather a means to manage and protect family wealth. The proposal will negatively impact the social and economic welfare for many families and will result in double taxation.

Committee Observations

994. **The Committee noted that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition.**

Clause 35 a

995. **Proposal to subject 16% VAT on ordinary bread:** Delete the proposal as its implementation will lead to increased **cost** of burden that would affect the most vulnerable segments of society, alleviating issues of food insecurity and poverty.

Committee Observations

996. **The Committee agreed with the Stakeholders and resolved to zero rate only the most critical consumption items in most households, such as bread.**

Clause 30

997. **Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:** Amend the clause to clearly state what export documentation is and to read as follows:-

The Time of supply for exported goods shall be the time when the registered person is in possession of:
a) the bill of lading, airway bill or road manifest;
b) C17B duly passed in the customs system; and
c) confirmation of exit from the Customs system

998. The amendment will help avoid disputes on whether goods have been exported.

Committee Observations

999. **The Committee noted that clarification on what constitutes export confirmation documents is needed, and it recommends an amendment to address the concern.**

Clause 34(b)(i)

1000. **Proposal to limit VAT exemption on insurance and reinsurance premiums only:** Delete the proposal because it will increase the cost of the various financial and insurance services which might limit the access of these services to ordinary Kenyans. The proposed imposition of VAT will imply that consumers will be required to pay 20% excise duty plus 16% VAT on the affected services. This is likely to discourage Kenyans from

using the formal financial systems which will erode the gains that we have made over the years in growing the update of financial services.

Committee Observations

1001. **The Committee observed that there is need to raise additional revenue from other insurance services but to allow the industry to thrive the committee exempts insurance and reinsurance premiums.**

Clauses 35 (b) &(c)

1002. **Proposal to move agricultural pest control and inputs/ materials for fertilizer manufacturing from zero rated to exempt:** Delete the proposed change to reclassify agricultural pest **control** products and inputs/raw materials for fertilizer manufacturing from zero-rated to exempt as it is likely to significantly impact the agriculture sector and the broader economy. This reclassification is anticipated to raise production costs for suppliers, who will in turn pass these costs onto farmers. Consequently, this will lead to higher food prices.

Committee Observations

1003. **The Committee proposes to exempt imported agricultural inputs and inputs for manufacture pest control products and zero rate locally manufactured products to protect the agricultural sector.**

Clauses 35 (h) &(j)

1004. **Proposal to subject 16% VAT on electric bicycles and buses:** Delete the clause as it is against the government's agenda to promote the use of clean and environment friendly energy sources. Increasing the costs of electric bicycles and buses through **charging** VAT might discourage their adoption, consequently, slowing down the transition to sustainable transportation. This move could undermine efforts to reduce carbon emissions and combat climate change. It is essential to consider the long-term environmental and economic benefits of maintaining lower costs for green transportation solutions.

Committee Observations

1005. **The committee observed that imposing VAT on e-mobility sector will adversely impede Kenya's quest to adoption of climate change mitigation practices. In this regard, the committee agreed to delete the proposal.**

Clause 34 (a) (i) (F)

1006. **Proposal to subject 16% VAT taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more:** Delete the clause because the proposal counters Government's efforts to encourage investment in the **tourism** sector. This is despite intense efforts by the Government to promote the growth of the sector. Kenya is heavily reliant on international tourism as a source of foreign exchange. Additionally, domestic tourism has been on an upward trajectory and the proposal may slow down the growth of the sector.

Committee Observations

1007. **The Committee noted that there is need to promote and encourage investments in tourism and recreational facilities to promote the tourism industry and engaging in recreational activities.**

Clause 39

1008. **Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services**: Delete the clause for this will increase costs for manufacturers and licensed internet providers will likely pass these costs on the end users with the resultant price reducing consumption, hence decreasing government revenue. This proposal will cripple the manufacturers of alcoholic beverages especially spirits and vodka which have high alcoholic content and significant excise duty is paid on importation of the raw materials.

Committee Observations

1009. **The excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause *42 (a)(i)(A)*

1010. **Amendment to Excise Duty Calculation for Certain Motorcycles i.e 10% or** Shs. **12,952.83 per unit whichever is higher:** the proposed amendment for it will make importation of electric **motorcycles** more expensive compared to other types of motorcycles, discouraging their importation. This contradicts the government's green energy initiative.

Committee Observations

1011. **The Committee agreed with the Stakeholder that imposition of the rate of excise at 10% will adversely increase the costs of motorcycles and resolved to retain the current rate.**

Clause *42 (a)(i)(P)*

1012. **Proposal to introduce excise duty on vegetable oil at the rate of 25%:** Delete the introduction of Excise Duty on vegetable oils will increase the cost of the vegetable oil products making it expensive for the citizens. In addition, soap made from vegetable oils will also be expensive this cost be passed to the citizens.

Committee Observations

1013. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable Oils to curb increase in consumer prices.**

Clause 44 (b)

1014. **Amendment to Allocate Import Declaration Fee Funds for Domestic Revenue Enforcement Initiatives:** Amend the proposal by clarifying the utilization of the

remaining monies in the **fund**. Providing a detailed breakdown of the fund allocation will promote transparency and accountability in fund management.

Committee Observations

1015. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

1016. **Introduction of eco levy:** Amend this clause that introduces eco levy by changing the rates to be a percentage of the value of the items rather than specific rates and by providing **clarity** on the utilization of fund, the collecting entity and how the fund will be managed. This will enhance compliance by manufacturers and importers and will ultimately increase government revenue from these goods through improved compliance.

Committee Observations

1017. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 48 (item 10)

1018. **Introduction of eco levy:** Amend the clause by clean-up of the entries to ensure consistency in the levy rates for tariff number 8472.90.00 to bring clarity in the correct rate for goods under the tariff.

Committee Observations

1019. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 47 (2)

1020. **Export and investment promotion levy on motorcycles:** Amend the clause to correct the discrepancy which causes confusion regarding which type of motorcycle is subject to the levy. The proposal seeks to subject motorcycles under tariff 8711.20.10 to the Export Promotion and Investment Levy. However, the tariff description for 8711.20.10 is incorrectly stated as "Motorcycles with internal combustion engines exceeding 50cc but not exceeding 250cc," while the East African Community Common External Tariff describes it as "Motorcycle ambulances."

Committee Observations

1021. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.**

Clause 54

1022. **Proposal to subject zero-rated supplies and registered manufacturers, irrespective of their investment levels in the preceding three years, to withholding tax, thereby deleting the current provision that exempts those who have invested at least three billion shillings over three years:** Delete the clause because it will create an extra burden on both KRA and the zero-rated suppliers who will also be in a constant tax credit position thereby affecting their cashflow position.

Committee Observations

1023. **The committee noted that the proposed amendment is a clean-up since the date for which the exemption applied was 1st July 2022.**

Clause 56

1024. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection: Amend** the clause by considering an addition of 30 days to make it 60 days within which a Taxpayer can submit a notice of objection to an assessment by the Commissioner. Therefore, propose to substitute section 51 (2) of the Tax Procedures Act, 2015 as follows:

*51. (2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within **sixty** days of being notified of the decision.*

1025. This will guarantee an equal opportunity to a taxpayer to submit the necessary documentation needed to support an objection against the Commissioner's assessment. Taxpayers have always been caught up with time in retrieving documents leading to their appeals being dismissed for failure to provide documents at the objection stage.

Committee Observations

1026. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

Clause 57(b)

1027. **Proposal on failure to integrate of the electronic tax system with the data management and reporting system: Amend** the clause by substituting the proposed amendments with the following new paragraph –

"A person who fails to comply with the notice referred to in subsection (1A) commits an offence and shall be liable to a penalty not exceeding twenty thousand shillings for every month or part thereof that the failure continues."

1028. The penalty proposed in the Bill is extremely punitive and goes against the principles of natural justice. It will also be responsible for the closure of many small and medium enterprises contrary to the current national development blueprint.

Committee Observations

1029. **The Committee noted that the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offence.**

NEW PROPOSALS

1030. **New proposed amendment of the Income Tax on the Income from supply of goods to public entity**

1031. A new clause 36A be added to the Bill to amend the VAT Act by inserting the following new subsection immediately after Section 12(4)(d) to read as follows:

(e) for goods supplied by a person to public entities, the time when the payment is made by the public entity.

1032. **The** amendment stipulates that for goods provided by an individual to public entities, the time of supply for VAT purposes will be when payment is received from the public entity. This adjustment aims to harmonize with the proposed provisions in the Bill seeking to amend the Income Tax Act. The proposal will assist businesses in managing cashflow by ensuring the pay the VAT once the receive payment for the goods supplied to government.

Committee observations

1033. **The Committee noted that the proposal is already provided for as proposed in the Bill.**

New proposed amendments of the Excise Duty Act,First Schedule ; on the scope of excise duty fees charged by digital lenders.

1034. The current Excise Duty **has** two provisions that are, potentially, conflicting. These provisions are: -

- Part II, Paragraph 6 of the First Schedule of the Excise Duty Act, 2015 (EDA) provides for *"excise duty on fees charged by digital lenders at a rate of twenty percent"*.
- *Part II, Paragraph 4 of the First Schedule of the EDA provides for "excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value."*

1035. The above two provisions **present** ambiguity, particularly, for digital lenders who are licensed by the Central Bank of Kenya. This is because, it is unclear on which provisions these lenders fall into. A digital lender should be defined and therefore, the amendment will not only eliminate the ambiguity, which is likely to lead to unnecessary disputes, but it will also ensure that there is level playing ground among digital lenders who are licensed under other legislations such as the Banking Act.

Committee observations

1036. **The Committee noted that proposal but was of the view that since the clause would significantly affect the operations of digital lenders it would be prejudicial to adopt it without the input of digital lenders.**

New proposal on the Excise Duty Act under Section 4; Time of supply or importation.

1037. To amend section 4 by adding the following subsection immediately after sub-section 1A—

> *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 partially or in full.*

1038. The proposed amendment will ensure that the digital lender accounts for excise duty on the **actual** income earned and not estimated income.

Committee observations

1039. **The Committee noted that the amendment needs to be done through the regulations as provided in the *Central Bank of Kenya (Digital Credit Providers), Regulations 2022***

New proposal to amend section 15 of the Tax Appeals Tribunal Act,2013

1040. **Amend** sub-section 4 to **read** as follows:

> *(4) The Tribunal may, upon application in writing by the Commissioner, extend the time for submitting and serving the statement of facts and the documents referred to in this section **to a maximum of 14days**, where it is proved to the satisfaction of the Tribunal, that the delay is not inordinate or other reasonable cause that may have prevented the Commissioner from submitting and serving the statement of facts and the documents within the specified period.*

1041. **The** specific timelines will provide both the taxpayer and the Commissioner with clarity on the timelines for extension.

Committee observations

1042. **The Committee noted that amending the proposal will be unfair to tax payers since it was not subjected to public participation for consideration by the public**

79) ICEA LION

Clause 23 (b)

1043. **Proposal to subject tax on income of registered trust scheme:** Delete the clause that imposes income of registered trust schemes to taxation because these schemes play a crucial role in providing stability and security to vulnerable beneficiaries. Registered trust schemes serve the same purpose as pension schemes and should therefore not be discriminated against. The schemes also cushion against the risk of misappropriation of funds and benefits that would arise where these are paid through individual guardians as opposed to a registered trust scheme.

Committee Observations

1044. **The Committee noted that registered trusts schemes serve the same purpose as pension schemes and should therefore not be discriminated against as they play a**

crucial role in providing stability and security to vulnerable beneficiaries across generations, in this regard the Committee resolved to retain trusts as exempt and therefore recommends deletion of the proposal.

Clause 23 (e) (g)

1045. **Proposal to subject income from family trust to income tax:** Delete clause 23 (e) **because** the income from family trusts should not be subjected to tax and it's only the income generated by a trust's investment and its assets such as interest income, dividends and rental income that should be subject to tax, where applicable.

Committee Observations

1046. **The Committee noted that the principal income of a family trusts typically consists of the assets including 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 including subsequent distribution of the same to beneficiaries and therefore recommends deletion of the proposal to tax income or principal sum of a registered family trust.**

1047. **The Committee also noted that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition.**

80) ERNEST & ASSOCIATES LLP

Clause 2

1048. **Amend** Clause 2 to ensure that it is well worded and be in line with section 13(8) of the VAT Act so that it reads as follows:

Related person means a person is related to another person if-

I. either person participates, directly or indirectly, in the management, control or the capital of the business of the other;

II. a third person participates, directly or indirectly, in the management, control or the capital of the business of both;

III. an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in in the management, control or capital of the business of the other;

IV. this definition shall apply, with necessary modification, for the purposes of section 3 (2) (f)

Committee Observation

1049. **The Committee observed that the definition of related person as captured in the Bill is sufficient.**

1050. **Proposal to expand the definition of royalty to include software**: Amend Clause 2 in the definition of "royalty" by inserting the words "excluding software distributed in physical media" after the words "distribution of software" so as to exclude software sold in CDs, and other physical media.

Committee Observation

1051. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the**

words in subclause (b) "and includes distribution of the software" in line with international best practices.

1052. **Proposal on definition of donations:** Amend Clause 2 in the definition of "donation" by inserting the word "or grants" after the word "donation" to include grants in the definition of donation.

Committee Observation

1053. The **Committee** noted that grants are not necessarily taxable and therefore expanding the definition of donations to include grants will not be prejudicial.

Clause 5

1054. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend Clause 5 marginal note by inserting the words "or services" after the word "goods" to read as follows: "Income from supply of goods or services to public entity"

Committee Observation

1055. **The Committee observed that additional revenue is needed, the proposal to include services was not intended, and therefore recommends the adoption of the proposal as per the Bill.**

Clause 6

1056. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend Clause 6 (a) (i) by: deleing the words "traveling allowance" and replacing it with "subsistence, traveling, entertainment or other allowances", inserting the words "provided the employer has a written policy on substantiation, traveling, entertainment or other allowances" and further inserting the words "Further provided, the amounts per day expended by him shall not exceed the higher of five percent of the monthly gross earnings of the employee or such travel rates as approved, from time to time, by the Salaries and Remuneration Commission". This is because it was rendered redundant in the Finance Act 2023.

Committee Observation

1057. **The Committee observed that the current provision in the Act is sufficient.**

1058. **Proposal to limit of non-taxable benefits granted concerning employment from KSh. 36,000 to KSh. 48,000:** Amend Clause 6 (a) (ii) by deleting paragraph (b) and replacing it to read as follows: "Save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than thirty-six thousand."

Committee Observation

1059. **The committee noted the proposal by the Stakeholder and resolved that the clause in the Bill is sufficiently captured.**

1060. **On proposal to increase the value of non-taxable meal benefits served to employees to KSh. 60,000 per year**: Amend Clause 6 (b) (i) by deleting paragraph (f) and replacing it to read as follows: (f) "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 by the third party where the value of the meal does no exceed the sum of forty-eight thousand shillings per year per employee".

Committee Observation

1061. **The Committee observed that the proposal seeks to confer a benefit to employees and has been sufficiently captured.**

Clause 9 (12H)

1062. **Introduction of motor vehicle tax at the rate of 2.5% of the value of motor vehicle :** Delete the proposed Section 12H on Motor Vehicle Tax because it is not an income tax act according to Section 3(1) of the Income Tax Act and Article 209(a) and 260 of the Constitution.

Committee Observation

1063. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 15

1064. **Proposal to raise the maximum deductible amount for employer's contributions to registered pension schemes and provident funds from KSh. 20,000 to KSh. 30,000 per month:** Amend Clause 15 by inserting a new paragraph (c) that reads as follows: (c) "in subsection 2(c) by deleting the words 'reduced by the amount of the contribution made by the individual or by an employer on behalf of the individual to the National Social Security Fund in that year." This is because similar wording is not found in Section 22A of the Income Tax Act making it unfair for members of individual schemes as opposed to members of an employer's scheme.

Committee Observation

1065. **The Committee noted that the proposal seeks to increase the deductible amounts contributed to a registered pension scheme. The Committee also observed that NSSF contributions are deductible.**

Clause 18

1066. **Proposal to repeal of the reliefs on contributions made to the National Health Insurance Fund and affordable housing scheme:** Amend Clause 18 by deleting and replacing it as follows: "Section 31 of the Income Tax Act is amended in paragraph (v) of the proviso to subsection (1) by deleting the words 'or a contribution made to the National Hospital Insurance Fund' because medical insurance should still be eligible for insurance relief and it's only NHIF that is being replaced by SHIF under Clause 10(a)(iii).

Committee Observation

1067. **The Committee agrees with the stakeholders and proposes to delete the clause to retain the reliefs under the Social Health Insurance and the Affordable Housing Scheme.**

Clause 22

1068. **Proposal to do away with the deduction accorded to entities that participated in the construction of the SGR and incurred significant capital costs in the course of construction of the SGR:** Delete Clause 22 because Section 133(6) has a sunset date of 31st December 2024 according to the Finance Act 2023 and thus it should 'die a natural death.

Committee Observation

1069. **The Committee noted that the clause has a sunset provision effective on 31st December 2024 deleting it will cause unnecessary tax expenditures.**

Clause 23

1070. **Proposal to levy capital gains tax on the transfer of property to a family trust:** Amend Clause 23 by deleting paragraph (g) because it is similar to the exemption in Paragraph 6(2)(v) of the 8th Schedule.

Committee Observation

1071. **The Committee noted that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition.**

Clause 24

1072. **Proposal to introduce an investment allowance deduction in respect of a purchase of a spectrum license or a right to use a fiber optic cable issued to a telecommunication operator. Provided that, in the case of the spectrum license purchased or acquired before the 1st July 2024, the deduction shall be restricted to the unamortized portion over the remaining useful life of the spectrum license:** Amend Clause 24 paragraph 1(a) by deleting the words "ten percent" and replacing it with "twelve and a half percent".

Committee Observation

1073. **The Committee observe that part of the BETA economic model, is digitization and promotion of the digital economy, thus the committee agrees with the Stakeholder that offering investment allowance deductions will spur the digital economy.**

Clause 30

1074. **Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:** Amend the clause by deleting the words "the required export confirmation documents" and replacing it with the words "the export confirmation documents required in the regulations to this Act" to ensure clarity on the documents required.

Committee Observation

1075. **The Committee noted that there is need for clarification on what constituted export confirmation documents and there recommends an amendment to cure the concern.**

Clause 35

1076. **Proposal to 16% VAT on ordinary bread:** Amend Clause 35 by deleting Clauses 35(a).

Committee Observation

1077. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical consumption items in most households such as bread.**

Clause 42 (a) (i) (P)

1078. **Proposal to subject excise duty on vegetable oil at the rate of 25%:** Amend Clause 42 (a) (i) by deleting (P) since it is a bad idea

Committee Observation

1079. **The Committee agreed with the Stakeholder on the need to exempt certain products such as vegetable Oils to curb increase in consumer prices.**

Clause 44 (a)

1080. **Proposal to increase import declaration fee from 2.5% to 3%:** Delete Clause 44 (a) and retain the 2.5% rate of the Import Declaration Fee (IDF) because the proposal would increase the cost of importation of goods into the country and will increase the uncertainty and instability brought about by the change in laws affecting imports.

Committee Observation

1081. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 48

1082. **Introduction of eco levy on diapers:** Amend Clause 48 by deleting item 45 on diapers of Chapter 96 since it is contrary to Articles 21, 43, and 53 of the Constitution **and** it is meant for children, adults, and infirm persons, especially through age or illness.

Committee Observation

1083. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 51

1084. **Standardization of Requirements for Electronic Tax Invoices under Tax Procedures Act:** Amend Clause 51 by adding a new paragraph (6) to Section 23A that **reads** as follows: "The Commissioner shall issue a certificate of registration to any person in business who as onboarded to the electronic system". This would facilitate the documentation for businesses to trade with eTIMS-compliant persons.

Committee Observation

1085. **The Committee noted the challenges in the implementation of the Electronic Tax invoice system, particularly with regards to small scale farmers (subsistence farmers) and micro-enterprises. One of the biggest challenges is that the system has locked out these producers from supplying to formal businesses which is deleterious for the economy at large. To correct this the Committee proposes to exempt subsistence farmers and microenterprises whose gross turnover is below one million shillings. The Committee further recommends the issuance of guidelines by the revenue authority on the operationalization of this proposal.**

Clause 53

1086. **Proposal to Remove KRA's Immediate Agency Notice Issuance Post-Court Judgement:** Delete Clause 53(c) it as it is important to have all litigation completed **before** any agency notices are issued.

Committee Observation

1087. **The committee noted the proposal by the stakeholder and proposes to provide for the instances in which lifting of the agency notice would occur.**

Clause 54(a)

1088. **Proposal to subject zero-rated supplies and registered manufacturers, irrespective of their investment levels in the preceding three years, to withholding tax**, thereby deleting the current provision that exempts those who have invested at least three billion shillings over three years: Delete Clause 54(a) as it proposes withholding tax on zero-rated supplies.

Committee Observation

1089. **The Committee noted that the proposed amendment is a clean-up since the date for which the exemption applied was 1st July 2022.**

Clause 56

1090. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Delete Clause 56 and maintain 60 days because 90 days to make an objection decision is too long and unfair as the taxpayer is only given 30 days to object. Furthermore, EACCMA Section 229(4) provides for 30 days for the Commissioner to issue a review decision.

Committee Observation

1091. **The Committee noted the challenges experienced by the commissioner in handling the increased number of tax objections and therefore proposes to increase to ninety days.**

Clause 59

1092. **Penalty on late submission and failure to submit returns by an export processing zone enterprise from KSh 2,000 per day to KSh. 20,000 per month:** Amend Clause 59 by adding the words "or fails to submit a return" after the words "submits a tax return after the due date" in Section 83(1) of the Tax Procedures Act.

Committee Observation

1093. **The committee observed that the proposal, as captured in the Bill, is sufficient as it seeks to address instances of failure to submit returns by an export processing zone.**

Clause 61

1094. **Restriction of the owners of affordable housing units from selling their units without obtaining prior written consent from the Affordable Housing Board proposed to be removed:** Delete Clause 61 because the Affordable Housing Act should be dealt with by both Houses of Parliament. That is; The National Assembly and the Senate.

Committee Observation

1095. **The Committee agreed with the stakeholder noting that the amendment seeks to amend the Affordable Housing Act and housing is a shared function thus it would necessitate the input and consideration by both Houses of Parliament.**

Clause 64

1096. **Proposal to Empower the Public Sector Accounting Standards Board to Develop a Framework for Implementing Accrual Accounting in Government Entities**: Amend Clause 64 by deleting the words "commencement of this Act" and replacing it with "commencement of this subsection".

Committee Observation

1097. **The Committee noted the submission by the stakeholder but resolved that the general commencement date of the Act applies as from 1st July 2024.**

81) MUNENE MICHENI & CO. ADVOCATES

Clause 23 (g)

1098. **Proposal to subject to registered family trust to tax at the rate of 30%:** Delete Clause 23(g) because the property would only be moving from the individual's ownership to his own family's trust hence there is no potential for any commercial gain. Furthermore, removing the initial tax incentives before Kenyans realize the benefits of proper estate planning via trust would therefore be retrogressive.

Committee Observation

1099. **The Committee noted that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition.**

82) PUBLIC INTEREST GROUP

Clause 9 (12H – Motor Vehicle Tax)

1100. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Delete Clause 9 **and** impose a rate of 10% for private vehicles and exclude public service vehicles from the motor vehicle tax.

Committee Observation

1101. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the**

proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.

Clause 42(b) (iii)

1102. **Proposal to increase excise duty on transfer of money services from 15% to 20%:** Amend **Clause** 42(b) (iii) by deleting the proposed 20% rate on mobile money transfer and replacing as follows: 10% from Mpesa to Mpesa and 15% Bank to Mpesa and vice versa.

Committee Observation

1103. **The Committee agreed with the Stakeholder with respect to excise duty on financial services. The Committee proposes to maintain the prevailing rate of excise duty on money transfer services by banks and financial institutions.**

Clause 42(a)(i)(P)

1104. **Proposal to introduce excise duty on vegetable oil at the rate of 25%:** Amend Clause 42(a)(i)(P) by deleting the 25% excise duty on edible oils and replacing it with zero-rated.

Committee Observation

1105. **The Committee agreed with the Stakeholders on the need to exempt certain products, such as vegetable Oils, to curb the increase in consumer prices.**

Clause 35 (a)

1106. **Proposal to subject 16% VAT on ordinary bread:** Amend Clause 35(a) by deleting it and **applying** a **zero** rate on ordinary bread.

Committee Observation

1107. **The Committee agreed with the Stakeholders and resolved to zero rate only the most critical consumption items in most households, such as bread.**

83) USAID HEALTH EQUITY

Clause 34 (a) (i) (G)

1108. Delete Clause 34 (a) (i) (G) because the removal of VAT exemption would lead to **interruption** of health service delivery.

Committee Observation

1109. **The Committee observed that the incentive was introduced through the Finance Bill 2023 to support the government's effort in the Universal Health Coverage agenda, and in keeping with the spirit of predictability and certainty of Kenya's structure, the committee proposes to retain the incentive.**

84) BOWMANS

Clause 4

1110. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:** Delete Clause 4 and the duration for deferment and claim of any foreign exchange losses be retained as five years because the proposal comes

barely a year after the Finance Act 2023 capped the deferment and claim of foreign exchange losses to five years. If passed, this will negatively affect taxpayers who are not able to claim foreign exchange losses within three years since they will have to forgo the losses that will have been incurred in generating their taxable income. This would negatively impact taxpayers by increasing their taxable profit or reducing their tax losses.

Committee Observation

1111. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 7

1112. **Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace:** Amend Clause 7 to read as follows:

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

1113. **This** is because the Bill as currently drafted places a tax compliance burden on non-resident owners and operators of digital marketplaces to deduct **withholding** tax when facilitating payments to another non-resident.

Committee Observation

1114. **The Committee observed that imposing the obligation to withhold tax is best placed on the entities as opposed to individuals since corporate entities are sophisticated and have the ability to take measures to ensure compliance, unlike individual consumers.**

Clause 8

1115. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Amend Clause 8 to provide for taxation on actual income earned from Kenya as opposed to deemed taxable profits and include a threshold of KES 5,000,000 to trigger the tax obligation, exempt from provisions of the significant economic tax entities based in jurisdictions that have a double tax treaty (DTT)or multilateral agreements with Kenya and provide for regulations to outline the detailed implementation of the proposed tax. This is because the non-resident entities in jurisdictions that have DTTs or multilateral agreements with Kenya that allow the claim of tax credits should be excluded from the ambit of the tax. This is the case in India and Nigeria.

Committee Observations

1116. **The Committee observed that the introduction of the SEPT is in line with the OECD principles on the taxation of digital companies. Additionally, the Committee recommends that the regulations provide for the relevant guidelines and the threshold as proposed by a majority of stakeholders.**

Clause 9 (12G – Minimum Top-Up Tax)

1117. **Introduction of minimum top-up tax**: Amend Clause 9 by providing detailed regulations and guidelines on the implementation of the minimum top-up tax because it will provide more certainty and ease of implementation.

Committee Observation

1118. **The committee observed that the relevant guidelines and rules will be published to ensure seamless implementation of the minimum top up tax.**

Clause 9 (12H – Motor Vehicle Tax)

1119. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Amend **Clause** 9 to apply the tax based on among others engine capacity, and weight, exempt certain motor vehicles from the tax such as motor vehicles with engine capacity of below 1,500 cc, hybrid and electric motor vehicles; and increase the duration given to insurers to remit the tax from the currently proposed five working days to the 20th day of the month following the issuance of an insurance sticker. This would ensure that Kenya treats the tax as a carbon tax aimed at disincentivizing consumer behaviour that adversely affects the environment. Exempting environmentally friendly vehicles will encourage the update of such vehicles and help the government attain its goals of **environmental conservation.**

Committee Observation

1120. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 23 (j) (b)

1121. **Withholding Tax on Interest from Infrastructure Bonds at 5% for residents and 15% for nonresidents:** Delete Clause 23 (j) (b) and retain the exemption from tax on the interest income gained from green bonds. This is because the government's attempt to increase its tax base by introducing taxation on green bonds may prove detrimental on such bonds and would make them less lucrative for investors in general and affect the financing of environmental related projects.

Committee Observation

1122. **The committee observed that there is need to encourage investments in long term bonds to finance government initiatives.**

Clause 30

1123. **Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:** Amend Clause 30 by **defining** the export confirmation documents because there needs to be clarity on what constitutes confirmation documents.

Committee Observation

1124. **The Committee noted that there is need for clarification on what constituted export confirmation documents and there recommends an amendment to cure the concern.**

Clause 33

1125. **The VAT registration threshold was revised from KES 5 million to KES 8 million:** Amend Clause 33 by deleting the KShs. 8 million threshold and substituting with KShs. 12 million threshold because Kenya's monthly inflation rate has varied between 6% and 9%.

Committee Observation

1126. **The Committee observed that the proposed VAT threshold is in line with the revenue targets and proper tax planning.**

Clause 34 (b) (i) – (C) , (D), (E), (F) and (G)

1127. **Proposal to subject 16% VAT on financial services:** Delete Clause 34 (b) (i) and the status of **the** services be retained as VAT exempt as the proposal would increase the cost of the financial services which cost would ordinarily be passed on to consumers.

Committee Observation

1128. **The Committee observed that in order to keep the costs of financial services affordable to many Kenyans, there is need to maintain the financial services such as foreign exchange transactions, issuance of securities and cheque handling and processing among others as exempt from VAT.**

Clause 34 (b) (vi)

1129. **Proposal to subject 16% VAT on taxable goods for direct and exclusive use for the construction of tourism facilities, and recreational parks of fifty acres or more: Delete** Clause 34 (b) (vi) because the exemptions had been introduced to **incentivize** the growth of the tourism sector. The sector has continued to grow every year with more tourists arriving in Kenya and the removal of the exemptions may discourage further investments in the tourism sector. In addition, players in the sector may pass on the additional VAT costs to consumers by increasing prices in the tourism sector thus negatively affecting Kenya's attractiveness as a leading tourist destination.

Committee Observation

1130. **The Committee noted that there is need to promote and encourage investments in tourism and recreational facilities to promote the tourism industry and engaging in recreational activities.**

Clause 34 (b) (i) – (N)

1131. **Proposal to subject 16% VAT on Plant, machinery, and equipment used in the construction of a plastics recycling plant from exemption to VAT Standard rate:** Delete Clause 34 (b) (i) – (N) on plant, machinery, and equipment used in the construction of a plastic recycling plant because the exemptions had been introduced to encourage investment in construction manufacturing and, plastics recycling. The removal of the exemptions may therefore discourage further investments in manufacturing, plastics recycling plant.

Committee Observation

1132. **The Committee noted that there is need to exempt from VAT certain locally manufactured products so as to promote local industries, especially the plastic recycling plants in keeping with the spirit of enhancing climate change mitigation measures.**

Clause 35 (h), (i) and (j)

1133. **Proposal to subject 16% VAT on electric buses and electric bicycles:** Delete Clause 35 (h), (i), and (j) because there has been an increased uptake of electric buses and electric bicycles in Kenya with numerous start-ups setting up in Kenya. The standard rating of the supplies of electric buses and vehicles could increase the costs of these e-mobility products, which would reduce the competition between these goods and those of fossil fuels, therefore slowing down the growth in the sector.

Committee Observation

1134. **The committee observed that imposing VAT on the e-mobility sector will adversely impede Kenya's quest to adoption of climate change mitigation practices. In this regard, the committee agreed to delete the proposal.**

Clause 37

1135. **Expansion of Excise Duty to Non-Resident Digital Service Providers:** Delete Clause 37 as there is a risk that the non-residents offering the above services may shy away from Kenya as a result of the additional tax registration and compliance burden. In addition, the additional excise duty cost would inevitably be passed on to Kenyan consumers by both resident and non-resident service providers thus making the services more costly.

Committee Observation

1136. **The committee observed that deleting this proposal will result in revenue losses. Furthermore there are taxpayers engaged in excisable services and are not captured within the tax bracket.**

Clause 42 (b) (ii) and (iii)

1137. **Proposal to increase excise duty on transfer money services from 15% to 20%:** Delete Clause 42 (b) (ii) and (iii) because the provision would make money transfer services **more** expensive and negatively affect financial inclusion which has improved over time with data showing that as of November 2023, 79% of Kenyan adults had bank accounts, up from just 42% in 2011.

Committee Observation

1138. **The Committee agreed with the Stakeholder with respect to excise duty on financial services. The Committee proposes to maintain the prevailing rate of excise duty on money transfer services by banks and financial institutions.**

Clause 44 (a)

1139. **Proposal to increase import declaration fee from 2.5% to 3%:** Delete Clause 44 (a) and retain the 2.5% rate of the Import Declaration Fee (IDF) because the proposal

would increase the cost of importation of goods into the country and will increase the uncertainty and instability brought about by the change in laws affecting imports.

Committee Observation

1140. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

1141. **Introduction of eco levy: Amend** Clause 45 to offer relief to manufacturers and importers who can **demonstrate** that they have in place proper waste disposal and recycling mechanisms because it would incentivize such persons and help the government attain its goals.

Committee Observation

1142. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 56

1143. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection: Delete** Clause 56 because if it is adopted, it will **exert** undue pressure on taxpayers, who must provide KRA with specified additional information under lodging a notice of objection.

Committee Observation

1144. **The committee agreed with the stakeholders, noting that the proposal to deem objections disallowed will limit a taxpayer's right to access justice even in instances where some of the objections raised are legitimate.**

85) FINANCIAL SECTOR DEEPENING (FSD) KENYA

Clause 34 (b) (i)

1145. **Proposal to subject 16% VAT on financial services:** Remove Clause 34 (b) (i) and retain the exemption on the financial services because the cost of transactions continues to constrain the usage of financial services and contribute to exclusion from formal finance.

Committee Observation

1146. **The Committee agreed with the stakeholders.**

Clause 23 (j)

1147. **Withholding Tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for non-residents:** Delete Clause 23 (j) to incentivize the growth of the nascent

green bond market. Alternatively, specific projects financed through Green Bonds can be designated for tax exemption (instead of the blanket exemption proposed).

Committee Observations

1148. **The Committee observed that the intention is to impose WHT on short-term bonds and to encourage investment in long-term securities.**

Clause 34 (a) (i) (N)

1149. **Proposal to subject 16% VAT on Plant, machinery, and equipment used in the construction of a plastics recycling plant from the exemption to VAT Standard rate:** Delete Clause 34 (a) (i) (N) on plant, machinery, and equipment used in the construction of a plastic recycling plant to encourage an efficient and functional waste management sector, a circular economy and resource-efficient economy.

Committee Observation

1150. **The Committee agreed with the stakeholder.**

Clause 47

1151. **Introduction of export and investment and promotion levy: Amend** Clause 47 by deleting the imposition of a levy on the customs value of electric motorcycles at the rate of 3% to incentivize the growth of the e-mobility sector and support the Government's **climate** change mitigation and adaptation agenda.

Committee Observation

1152. **The Committee noted that the export and investment promotion levy rate for electric motorcycles was adequate as proposed in the new Third Schedule.**

Clause 34(b) (ii)

1153. **Proposal to limit VAT exemption on insurance and reinsurance only**: Delete Clause 34(b) (ii) on insurance and reinsurance premiums because it will make private health insurance, which is already beyond the reach of many Kenyans, much more expensive and limit access, especially for women.

Committee Observation

1154. **The Committee noted that the proposal sought to limit VAT exemptions to insurance and reinsurance premium only. This will increase the tax base while at the same time making it affordable as compared to subjecting the supplies to standard VAT rate.**

86) KENYA ASSOCIATION MANUFACTURERS
Clause 2 (k)

1155. **Proposal to expand the definition of royalty to include software:** Delete Clause 2 (k) that seeks to introduce a new definition of royalty to include any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance, or support fees and includes the distribution of the software. Their inclusion would lead to

increased tax disputes between taxpayers and the Kenya Revenue Authority, as it conflicts with existing jurisprudence. Furthermore, it conflicts with other services subject to Withholding Tax under the Income Tax Act such as training, and software support services, which are already covered under management fees.

Committee Observation

1156. **The Committee agreed with the stakeholder by noting that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with international best practices.**

Clause 4

1157. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years: Delete Clause 4 because it affects the tax regulatory** environment in Kenya making it unpredictable having not been implemented for **more** than a year. In addition, it will affect companies that planned their borrowing based on the current 5-year limit in the Income Tax Act.

Committee Observation

1158. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 9 (12H – Motor Vehicle Tax)

1159. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the proposed Section 12H on Motor Vehicle Tax because it is not an income tax act according to Section 3(1) of the Income Tax Act and Article 209(a) and 260 of the Constitution.

Committee Observation

1160. **The Committee agreed with the stakeholder, noting that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

Clause 25 (b) (ii) (A)

1161. **Proposal to increase the tax payable by ship owners and air operators from 2.5% to 3 % of the gross amount received: Delete** Clause 25 (b) (ii) (A) proposing to increase to 3% from 2.5% gains and profits chargeable to a ship owner or air transport operator **because** the service providers will be forced to increase the cost of their services to cover the tax base.

Committee Observation

1162. **The Committee noted the stakeholder's concern but was of a different view since it expands the tax base and increases the revenue hence retained the provision.**

Clause 31 (a) (ii)

1163. **Proposal on apportionment of VAT on mixed supplies: Delete** Clause 31 (a) (ii) seeking to delete provisions to offset excess arising out of tax withheld by appointed tax withholding agents and the period of 24 months to claim the same. This is because VAT apportionment increases the cost of production. This will make exports **uncompetitive** and imports into the country cheaper.

Committee Observation

1164. **The committee was of the view that for proper tax planning there is need to reduce the period as proposed in the Bill.**

Clause 34 (a) (i)

1165. **Proposal to subject 16% VAT on Plant, machinery, and equipment used in the construction of a plastics recycling plant from the exemption to VAT Standard rate: Delete** Clause 34 (a) (i) seeking to delete from the exemption list under the VAT First Schedule **the** plant, machinery, and equipment used in the construction of a plastics recycling plant. This is because maintaining the VAT exemption for recyclers will align with the Africa Climate Summit, African Leaders Nairobi declaration on climate change, and call to action for climate-positive investments that catalyze growth and support environmental conservation as aspired to under the Sustainable Development Goal (SDG) No 12 'Ensure sustainable consumption and production patterns''.

Committee Observation

1166. **The Committee agreed with the stakeholder.**

Clause 34(b) (i) (C)

1167. **Proposal to subject 16% VAT on financial services such as foreign exchange transactions:** Delete **Clause** 34(b) (i) (C) seeking to remove financial services – particularly foreign exchange transactions and loans from the VAT exemption list because the imposition of this VAT on financial services will affect the manufacturing sector especially sectors that have products that are exempt and cannot offset any VAT that is imposed on inputs.

Committee Observation

1168. **The Committee agreed with the stakeholder.**

Clause 34 (U) and Clause 35 (c)

1169. **Proposal to move agricultural pest control products from zero-rated to exempt:** Delete **clauses** 34 (U) and 35 (c) to retain agricultural pest control products under the zero-rated schedule because Kenya relies on agriculture as its main economic activity generating a bulk of its revenues and jobs.

Committee Observation

1170. **The Committee agreed with the stakeholder and recommended that locally manufactured agricultural pest control products be zero-rated.**

Clause 35 (a)

1171. **Proposal to subject 16% VAT on ordinary bread: Delete** Clause 35(a) because Kenya has a vibrant **bread** manufacturing sector with over 200 bread manufacturers ranging from micro to large manufacturers employing an estimated 30,000 people directly and an additional 50,000 people indirectly. The introduction of 16% VAT on bread will increase the average price of a 400g loaf of bread and eventually a fall in demand.

Committee Observation

1172. **The Committee observed that bread is a basic commodity used in many households, and imposing VAT on it will increase the cost beyond the affordability of many Kenyans.**

Clause 35 (f)

1173. **Proposal to subject 16% VAT on supply of locally assembled and manufactured mobile phones**: Delete Clause 35(f) because the reversal of the VAT Zero Rating and **imposition** of 16% VAT will hurt investment in the local assembly, job creation, and digital inclusion.

Committee Observation

1174. **The Committee agreed with the stakeholders.**

Clause 38

1175. **Proposal to levy excise duty on alcoholic beverages based on alcohol content: Amend** Clause 38 and replace the proposed excise duty rate to "Kshs. 10.68 per centiliter of pure alcohol" because the proposed 80% increase in excise tax will make **legitimate** alcohol unaffordable thus fueling illicit alcohol trade due to manufacturers having to pass on such an increase. According to a 2023 Euro monitor industry research, 59% of alcohol consumed in Kenya is illicit which will simply explode further if the price of legitimate alcohol is increased.

Committee Observation

1176. **The Committee noted that the proposed amendment was to the incorrect clause in the Bill. Nevertheless, the Committee agreed with the stakeholder to reduce the rate proposed in clause 42(a)(i)(K) on spirits of undenatured ethyl alcohol to shs. 10 per centiliter of pure alcohol.**

Clause 39

1177. **Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services**: **Delete** Clause 39 seeking to repeal section 14 of the Excise Act providing for the offset of excise on raw **materials** used in the production of manufactured goods because the proposal will negatively affect exports in the country by making them uncompetitive.

Committee Observation

1178. **The Committee agreed with the stakeholder noting that the excise duty like VAT for Excisable manufacturers considers input and output tax. The proposal would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 41

1179. **Proposal on extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days: Amend** Clause 41 by substituting the words, 'five' working days with 'the twentieth day of the succeeding month because adopting the proposal will negatively impact on the cash flow, increase borrowing costs, and cause reconciliation and administration challenges.

Committee Observation

1180. **The committee noted that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers, in this regard the Committee recommends a change in the period to remit excise duty "by the fifth day of every month."**

Clause 42 (a) (i) (A)

1181. **Amendment to Excise Duty Calculation for Certain Motorcycles i.e. 10% or** Shs. **12,952.83 per unit whichever is higher: Amend** Clause 42 (a) (i) (A) by deleting and substituting as follows: "Motorcycles of tariff 8711 other than motorcycles ambulances, and all locally assembled motorcycles" to exempt all locally assembled motorcycles from CKD including electric motorcycles and motorcycle ambulances from payment of the proposed excise duty.

Committee Observation

1182. **The Committee noted the stakeholder's proposal had already been catered for in the proposed amendment in the Bill.**

Clause 42 (a) (i) (C)

1183. **Proposal to exclude clinkers from the excise duty and to apply only to imported cement and not to clinkers: Amend** Clause 42 (a) (i) (C) by deleting and substituting as follows: (C) in the description of "Imported cement", by inserting the words "excluding clinkers and white cement". This is because white cement is used as a raw material input in tile adhesives, grouting, and other cement-based products.

Committee Observation

1184. **The Committed the stakeholder's proposal; however, it couldn't accede to the proposal due to the need to collect more revenues.**

Clause 42 (a) (i) (P)

1185. **Proposal to impose excise duty on vegetable oil at the rate of 25%: Delete** Clause 42 (a) (i) (P) seeking to impose an excise duty of 25% on vegetable oil because vegetable oils are fundamental components in the diets of many Kenyans, being essential in the preparation of various food items and thus the drastic increase will make these essential food items unaffordable for a large segment of the population, exacerbating food insecurity.

Committee Observation

1186. **The Committee agreed with the stakeholder.**

Clause 42 (a) (i) (Q)

1187. **Replacement of Imported Emulsion-styrene Acrylic with Styrene-acrylonitrile (SAN) copolymer: Delete** the word excise on locally manufactured Styrene acrylonitrile (SAN) copolymers of HS Code 3903.20.00 in Clause 42 (a) (i) (Q) because the exclusion of the word 'imported' if not included in the description will subject excise on local styrene manufacturers and discourage local manufacturing as imports will be cheaper since most of the imports originate from COMESA which is duty-free.

Committee Observation

1188. **The Committee agreed with the stakeholders.**

Clause 44 (a)

1189. **Proposal to increase import declaration fee: Delete** Clause 44 (a) and retain the 2.5% rate of the Import **Declaration** Fee (IDF) because the proposal would increase the cost of importation of goods into the country and will increase the uncertainty and instability brought about by the change in laws affecting imports.

Committee Observation

1190. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

Introduction of Eco Levy:

1191. **Delete** Clause 45 on the **Eco** Levy because the proposal goes against the Government **approach** to waste management provided for under the National Sustainable Waste Management Policy and Act of 2022.

Committee Observation

1192. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently**

subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle," it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.

Clause 48

1193. **Proposed eco levy on batteries: Amend** clause 48 of the proposed eco levy on batteries or dry cells of Chapter 85 to be charged per unit. This will impact the Government's **agenda** to grow the automotive manufacturing parts sector as it will drive the cost up for motorcycles that use batteries.

Committee Observation

1194. **The Committee noted the stakeholders' concerns and recommended a reduction of the proposed eco levy rate for batteries from shs. 750 to shs. 150 per kg.**

Clause 52

1195. **A proposal that offers relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax: Amend** Clause 52 to have stricter limits for how the power to abandon tax will be used. This is because, without strict limits, this clause is open to abuse that will only cost the taxpayer more through corruption and misuse.

Committee Observation

1196. **The Committee noted the potential abuse of the provision as against the genuine circumstances where the provision would be useful. To this extent, the Committee proposes additional checks and balances on the power of the Commissioner. Further the Committee recommends that the provision be amended to require the Commissioner to publish in the Kenya *Gazette* abandoned tax and submit it in the National Assembly for approval.**

Clause 53(c)

1197. **Proposal to Remove KRA's Immediate Agency Notice Issuance Post-Court Judgement: Delete Clause** 53(c) because if the proposal is passed, would empower the Commissioner to disseminate agency notices, even in instances where a taxpayer has contested an unfavorable ruling from a tribunal or court.

Committee Observation

1198. **The Committee agreed with the stakeholder.**

Clause 56 (a)

1199. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection: Delete** Clause 56(a) and retain the current provision of 60 days because the current provision ensures there is alignment between the taxpayer and KRA upon filing an objection.

Committee Observation

1200. **The Committee agreed with the stakeholder and noted that there would be potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection. In this regard, the Committee recommends that the Commissioner communicate the objection decision.**

New Proposals

Third Schedule of the Income Tax Act

1201. **Amend** the Third Schedule on personal reliefs and tax to increase the minimum taxable income from KShs. 24,000/- to KShs 30,000/- and reduce the highest tax rate **from** 35% to 30%. This is because the purchasing power has reduced over the years due to high inflation and also would ensure that there is no talent flight in the country.

Committee Observation

1202. **The Committee was of the view that the removal of the withholding tax threshold on management or professional or training fees would expand the tax base and increase revenue.**

2nd Schedule of the VAT Act

1203. **Introduce** under the Second Schedule of the Value Added Tax, the Supply of denatured ethanol of **tariff** number 2207.20.00 used for cleaning cooking stoves manufacturers. This will enable the accelerated investment and growth of the local production industry by allowing producers to claim input VAT.

Committee Observation

1204. **The Committee did not accede to the proposal in order to expand the tax base and collect more revenues.**

Section 42A of the Tax Procedures Act

1205. **Amend** the Tax Procedures Act to include the appointment of the VAT withholding agent **because** the Withholding VAT has impacted on OMC cash flows hence increasing cost of borrowing to remain afloat.

Committee Observation

1206. **The Committee noted the proposal by the stakeholder but was of the view that it expands the subject matter of the Bill.**

Public Finance Management Act

1207. **Introduce** a new section 24A to the Public Finance Management Act to establish a VAT **Tax** Refund Fund as this would address the issue of sustainability by having the amounts of refund paid promptly by the Kenya Revenue Authority.

Committee Observation

1208. **The Committee noted the proposal by the stakeholders but was of the view that it expands the subject matter of the Bill.**

87) KENYA TEA GROWERS ASSOCIATION (KTGA)
Clause 9 (12H – Motor Vehicle Tax)

1209. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle: Delete** the proposed Section 12H on Motor Vehicle Tax because the business of the tea industry is conducted through transportation i.e., the transportation of green leaves to tea factories as well as the movement of manufactured tea to the point of exportation. If the tax is imposed, it would lead to an increase in the costs of transportation as the transporters are likely to pass the cost to their customers.

Committee Observation

1210. **The Committee agreed with the stakeholders.**

Clause 34(a) (i) (U) (150)

1211. **Proposal to move Tea packaging material from standard-rated to exempt:** Delete Clause 34(a) (i) (U) (150) on the exemption of tea packaging material because moving **the** item from standard-rated to zero-rated/ locally produced would imply that these firms will not be able to claim the VAT.

Committee Observation

1212. **The Committee noted the stakeholder's proposal but was of a different view. It recommends that imported tea packaging materials be exempted whereas locally manufactured tea packaging materials be zero-rated.**

Clause 34(a) (i) (U) (154 & 155)

1213. **Delete** Clause 34(a) (i) (U) (154 & 155) because the input VAT will be taken in as a cost thus increasing the cost of producing/supplying these products. Furthermore, consistent policy on agricultural inputs preferably to be zero-rated to promote **agricultural** production.

Committee Observation

1214. **The Committee noted the stakeholder's proposal but was of a different view. It recommends that imported inputs and raw materials supplied to manufacturers of agricultural pest control products and agricultural pest control products be exempted whereas those that are locally manufactured be zero-rated.**

Clause 45

1215. **Introduction of eco levy:** Delete Clause 45 on the Eco Levy because the EPR charges and Eco Levy will compound charges and increase the cost of procuring items for **business** operations and machinery for the day-to-day running of businesses.

Committee Observation

1216. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

Clause 34(b) (ii)

1217. **Proposal to limit VAT exemption on insurance and reinsurance**: Delete Clause 34(b) (ii) because the introduction of VAT on such insurance services will **increase** the costs of doing business. Since insurance organizations have minimal input VAT to deduct against the output VAT proposed, the insurance institutions will push this cost to their consumers, thus increasing the cost of doing business.

Committee Observation

1218. **The Committee noted that the proposal sought to limit VAT exemptions to insurance and reinsurance premiums only. This will increase the tax base while at the same time making it affordable as compared to subjecting the supplies to a standard VAT rate.**

Clause 42 (b)(i)(ii)(iii)

1219. **Proposal to increase excise duty on money transfer, telephone, and data services from 15% to 20%: Delete** Clause 42 (b)(i)(ii)(iii) because the increase in the excise duty rate on these services will increase the operational cost of doing business as the **telephone** service providers and money transfer agencies will pass this cost to the final consumer.

Committee Observation

1220. **The Committee agreed with the stakeholders.**

Clause 44 (a)

1221. **Proposal to increase import declaration fee from 2.5% to 3%:** Delete Clause 44(a) because the increase in IDF will increase the cost of imported items and thus increase the cost of business operational costs.

Committee Observation

1222. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

88) COUNTY ASSEMBLIES FORUM
Clause 8

1223. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit: Delete** Clause 8 because it may deter non-resident digital service providers from operating in Kenya, potentially stifling innovation and growth in the digital economy. The higher costs could be passed on to consumers, making digital services more expensive.

Committee Observation

1224. **The Committee notes that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9 (12H – Motor Vehicle Tax)

1225. **Introduction of motor vehicle tax at the rate of 2.5% of the vehicle: Delete** the proposed Section 12H on Motor Vehicle Tax because the tax disproportionately affects owners of lower-value vehicles due to the minimum tax amount, while owners of high-value vehicles benefit from the maximum cap. This creates an uneven tax burden that favors wealthier individuals, potentially exacerbating income inequality.

Committee Observation

The Committee agreed with the stakeholders.

Clause 44 (a)

1226. **Proposal to increase import declaration fee from 2.5% to 3%: Delete** Clause 44 (a) and retain the 2.5% rate of the Import Declaration Fee (IDF) because **the** frequent changes in the rate just after a year creates unpredictability which can undermine investor confidence and long-term business planning. A more stable and consistent tax policy framework would enhance economic stability and attract more sustained investments.

Committee Observation

1227. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

89) NATIONAL TAXPAYERS ASSOCIATION
Clause 42 (a) (i) (L)

1228. **Proposal to increase excised duty on cigarettes containing tobacco: Delete** Clause (a) (i) (L) and amend to read as follows: "Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs. 4,100 per mille". This will lead to uniformity in excise taxes on cigarettes and will reduce tobacco consumption **and** thus reduce health, social, and economic burden to the government and the citizens.

Committee Observation

1229. **The Committee observed that the cigarette descriptions as provided for in the Bill and in the Act were uniform and adequate.**

Clause 42 (a) (i) (O)

1230. **Proposal to increase excise duty on e-cigarettes: Amend** Clause 42 (a) (i) (O) to include e-**cigarettes** because the liquid nicotine is highly addictive and, therefore, needs to be taxed more to reduce its consumption.

Committee Observation

1231. **The Committee observed that electronic cigarettes were provided for in the description "Liquid nicotine for electronic cigarettes".**

Clause 48

1232. **Introduction of eco levy on electric cigarettes: Amend** Clause 48 on Eco Levy to include electronic cigarettes, other nicotine delivery devices, and cigarettes because these products are not biodegradable and thus pose a twin challenge to the environment and **health**.

Committee Observation

1233. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Further, excise duty is already imposed on electronic cigarettes.**

90) SHIPPERS COUNCIL OF EASTERN AFRICA
Clause 44 (a)

1234. **Proposal to increase import declaration fee from 2.5% to 3%: Delete** Clause 44 (a) by 3% rate of the Import Declaration Fee (IDF) because is going to increase the cost of production for manufacturers, producers, and agriculture, since the raw materials used for **production** are also imposed to the same charges and eventually increase the overall cost of doing business and cost of living.

Committee Observation

1235. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to**

at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.

Clause 42 (25% excise duty on vegetable oils)

1236. **Proposal to subject excise duty on vegetable oil at the rate of 25%: Delete** Clause 42 (25% excise duty on **vegetable** oils) and the status quo is maintained until there is an established capacity to produce locally which is currently less than 1%.

Committee Observation

1237. **The Committee agreed with the stakeholder.**

CIVIL SOCIETY PARLIAMENTARY NETWORK
Clause 9 (12H – Motor Vehicle Tax)

1238. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the motor vehicle: Delete** the **proposed** Section 12H on Motor Vehicle Tax because tax is unconstitutional due to the multiplicity of already existing motor vehicle taxes (already motor vehicle owners pay IDF, Custom duty, Excise Duty, VAT on purchase of a vehicle and thereafter Road Maintenance Development Levy at Kshs. 18/- per litre).

Committee Observation

1239. **The Committee agreed with the stakeholder.**

Clause 34(b) (i) (C)

1240. **Proposal to subject 16% VAT on foreign exchange: Delete** Clause 34(b) (i) (C) seeking to remove financial services – particularly foreign exchange transactions and loans from the VAT exemption list because the proposal brings about the issue of double taxation as the transactions carried out are from an income that has already been subjected to numerous taxes.

Committee Observation

1241. **The Committee agreed with the stakeholder.**

Clause 35 (a)

1242. **Proposal to subject 16% VAT on ordinary bread: Delete** Clause 35(a) and apply a zero rate VAT rate on ordinary bread because bread is a basic commodity and **should** therefore remain zero-rated.

Committee Observation

1243. **The Committee agreed with the stakeholder.**

Clause 42 (a) (i) (P)

1244. **Proposal to introduce excise duty on vegetable oil at the rate of 25%: Delete** Clause 42 (a) (i) (P) seeking to impose an excise duty of 25% on vegetable oil because the proposal will lead to a huge increase in cooking oil which is a basic commodity in **Kenyan** Households. It will also have a compounding effect on other essential commodities in Kenya. Kenyan citizens are already struggling with the high cost of living and the proposal will only exacerbate the situation.

Committee Observation

1245. **The Committee agreed with the stakeholder.**

Clause 63

1246. **Proposal to allow KRA access to personal data for tax purposes: Delete** Clause 63 that requires disclosure of personal data for assessment, enforcement, or collection of tax to ensure adherence with Constitutional provisions on fundamental rights of Kenyans to privacy as enshrined in article 31 of the Constitution.

Committee Observation

1247. **The Committee agreed with the stakeholder.**

Clause 44

1248. **Proposal to increase import declaration fee from 2.5% to 3%: Delete** Clause 44 (a) and retain the 2.5% rate of the Import Declaration Fee (IDF) because tax will affect the basic **commodities** that are normally imported. The amendment of the tax would also lead to an unpredictable working environment for businesses.

Committee Observation

1249. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

1250. **Introduction of eco levy on diapers: Delete** Clause 45 on the Eco Levy to protect Kenyans, especially on the prices of essential goods such as adult diapers.

Committee Observation

1251. **The Committee agreed with the stakeholder.**

91) BAYER
Clause 9 (12H – Motor Vehicle Tax)

1252. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle: Delete** the proposed Section 12H on Motor Vehicle Tax because will hurt the transport and **logistics** industry may opt to pass through. the additional cost to their customers thus increasing our cost of doing business. Additionally, the motor vehicle tax, unlike advance tax on commercial vehicles, cannot be offset against income tax payable.

Committee Observation

1253. **The Committee agreed with the stakeholder.**

Clause 34 (U) and Clause 35 (c)

1254. **Proposal to move agricultural pest control products from zero -rated to exempt: Delete** clauses 34 (U) and 35 (c) to retain agricultural pest control products under the zero-rated schedule because the reclassification is expected to increase the cost of production for the suppliers hence passing the cost to the farmers, **which** will ultimately lead to high food rice and also impact other value chain crops like cotton.

Committee Observation

1255. **The Committee agreed with the stakeholder and recommended that locally manufactured agricultural pest control products be zero-rated.**

Clause 44

1256. **Proposal to increase import declaration fee from 2.5% to 3%: Delete** Clause 44 (a) and retain the 2.5% rate of the Import Declaration Fee (IDF) because the proposal will result in increased costs of imports resulting in higher costs for businesses.

Committee Observation

1257. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

1258. **Introduction pf eco levy: Delete** Clause 45 on the Eco Levy because there already exists a levy under the Extended Producer Responsibility whose intention is to place **responsibility** on manufacturers or importers to curb environmental impacts.

Committee Observation

1259. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line**

with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.

92) AVOCADO EXPORTERS ASSOCIATION OF KENYA
Clause 30

1260. **Proposal on time of supply for exported goods shall be the time when the registered person has the required export confirmation documents:** Delete Clause 30 because **there** are usual delays in the eTIMS for the exporters to get the invoices **from** the farmers who are not eTIMS compliant and opposed to it due to lack of electricity, internet, smartphones or computers, due to age, and illiteracy.

Committee Observation

1261. **The Committee notes that there is need for clarification on what constitutes export confirmation documents and therefore recommends an amendment to cure the concern.**

93) KENYA TOBACCO CONTROL AND HEALTH PROMOTION ALLIANCE (KETCA)

Clause 42 (a) (i) (L) and (M)

1262. **Proposal to increase excise duty on cigarette containing tobacco: Amend** Clause 42 (a) (i) (L) and (M) to read as follows: "Cigarettes containing tobacco or tobacco substitutes **with** the corresponding rates of excise duty "shs. 4,100 per mille" This is to unify the taxes on cigarettes will reduce tobacco consumption and also reduce administrative costs.

Committee Observation

1263. **The Committee observed that the cigarette descriptions as provided for in the Bill and in the Act were uniform and adequate.**

Clause 42 (a) (i) (N)

1264. **Proposal to increase excise duty on nicotine products: Accept** Clause 42 (a) (i) (N) in its entirety **because** nicotine products and their substitutes are highly addictive and have been proven to have adverse health effects.

Committee Observation

1265. **The Committee agreed with the stakeholder.**

Clause 42 (a) (i) (J)

1266. **Proposal to levy excise duty on alcoholic beverages based on alcohol content: Delete** Clause 42 (a) (i) (J) in its entirety because reducing taxes on these alcoholic beverages will lead to more consumption and early initiation which will be **detrimental** to health.

Committee Observation

1267. **The Committee observed that it is an international best practice for excise duty to be based on the strength of the alcohol in the product. Further, this will minimize the increase in the consumption of illicit alcohol.**

Clause 48

1268. **Introduction of eco levy on electronic cigarettes: Amend** Clause 48 on Eco Levy to include electronic cigarettes, other nicotine delivery devices, and cigarettes in the schedule because these products are not biodegradable and thus pose a twin challenge to the environment and health.

Committee Observation

1269. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Further, excise duty is already imposed on electronic cigarettes.**

94) ATC KENYA OPERATIONS LIMITED
Clause 54 (a)

1270. **Proposal to subject zero-rated supplies and registered manufacturers, irrespective of their investment levels in the preceding three years, to withholding tax, thereby deleting the current provision that exempts those who have invested at least three billion shillings over three years:** Delete Clause 54 (a) and retain the proviso that provides for withholding VAT exemption upon meeting certain conditions with an amendment to allow all taxpayers who are in a regular VAT credit position to apply for withholding exemption. If passed, the amendment will ease the cashflow situation for ATC and free up cash for the company's reinvestment in the business.

Committee Observation

1271. **The Committee noted that the proviso refers to the preceding three years from 1st July, 2022 which date have lapsed, hence the proposed deletion.**

95) HHL CONSULTANCY
Clause 20

1272. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** Amend Clause 20 to include withholding tax on scrap metal at the rate of 3% of the gross amount of the transaction. This is to broaden the tax base and enhancing revenue collection considering withholding tax is an agency tax that has penal implications on the agent for failure to withhold thereby enhancing compliance.

Committee Observation

1273. **The Committee noted that the proposal was new and did not fall within the ambit of the clause.**

Clause 54

1274. **Proposal to subject zero-rated supplies and registered manufacturers, irrespective of their investment levels in the preceding three years, to withholding tax, thereby deleting the current provision that exempts those who have invested at least three billion shillings over three years:** Delete Clause 54 and retain the status quo because the imposition of the proposal would be detrimental for manufacturers as it will restrict their cashflow in credits which they could otherwise invest further in the country contributing to the economy.

Committee Observation

1275. **The committee noted that the proposed amendment is a clean-up since the date for which the exemption applied was 1st July 2022.**

96) ASSOCIATION OF KENYA INSURERS (AKI)
Clause 9 (12H – Motor Vehicle Tax)

1276. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the proposed **Section** 12H on Motor Vehicle Tax because the tax will reduce demand for comprehensive insurance as a market response to the increased costs of motor vehicle ownership. This will ultimately lead to financial constraints, cash flow problems pressure on the solvency of insurance companies, and eventually loss of jobs.

Committee Observation

1277. **The Committee agreed with the stakeholder.**

Clause 23 (b), (e) and (g)

1278. **Proposal to subject income tax on income from family trust: Delete** Clause 23 (b), (e), and (g) and retain them as they currently are in the First Schedule of the Income Tax Act because the proposal to tax the income of a trust undermines the primary **purpose** of creating trusts in Kenya which is protecting and preserving assets. The introduction of tax on trust will lead to the creation of offshore trusts which is not ideal as wealth should be retained in the country.

Committee Observation

1279. **The Committee agreed with the stakeholder by noting that registered trusts schemes serve the same purpose as pension schemes and should therefore not be discriminated against as they play a crucial role in providing stability and security to vulnerable beneficiaries across generations.**

1280. **Further, under clause 23 (g), the Committee noted that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition.**

Clause 34 (b) (ii)

1281. **Proposal to limit VAT exemption to insurance and reinsurance premiums: Delete** Clause **34** (b) (ii) and retain paragraph 2 on insurance and insurance premiums in the First Schedule of the VAT Act because the proposal would increase the cost of accessing insurance services due to the increased VAT passed on to the final consumer through an increase in premiums charged. Furthermore, imposing VAT on other insurance services such as commissions will increase the insurance premiums charged.

Committee Observation

1282. **The Committee noted that the proposal sought to limit VAT exemptions to insurance and reinsurance premium only. This will increase the tax base while at the same time making it affordable as compared to subjecting the supplies to standard VAT rate.**

Clause 51

1283. **Standardization of Requirements for Electronic Tax Invoices under Tax Procedures Act: Amend** Clause 51 by including e-TIMS exemptions in the Tax Procedures (Electronic Tax Invoice) Regulations, 2023. This is because the taxpayer would not have a tax invoice for the aforementioned expenses as they typically do **not** pass through invoicing. In addition, they are not mentioned as exempt from electronic tax invoice management system under Section 23A of the TPA.

Committee Observation

1284. **The Committee noted that section 23A (5) provides that the Commissioner may, by notice in the Gazette, exempt a person from the requirements of the section. Therefore, the exemptions provided for in the regulations were therefore proper and adequate.**

97) LITTLE ANGELS NETWORK
Clause 10

1285. **Proposal expenses incurred on implements, utensils or other similar articles will be allowable for tax purposes: Amend** Clause 10 by introducing a new paragraph as follows: "Expenditure of a capital nature incurred in that year of income by an employer on setting up and running of a childcare facility as well as incidental **expenses** relating to the childcare facility". Currently, tax legislation does not explicitly allow employers to deduct expenses for operating childcare centers, despite increasing advocacy for employer-provided childcare. This lack of provision may lead to tax disputes, as employers need to prove childcare costs are solely for income generation. Allowing these deductions could encourage more employers to invest in childcare centers.

Committee Observation

1286. **The Committee noted that the proposal did not fall within the ambit of the proposed amendment.**

New Proposal

1287. **Amend Clause** 34 (b) paragraph 3 of the First Schedule of VAT Act to read as follows: "The Supply of education and childcare services". This is to include childcare services in the list of VAT-exempt supplies to encourage private investment.

Committee Observation

1288. **The Committee was guided by the policy of exempting supplies where there was value-add in the production process. Therefore, the Committee did not agree to exempt the supplies as proposed.**

98) SAVE FAMILY FOUNDATION, STUDENTS CAMPAIGN AGAINST DRUGS (SCAD) & INTERNATION INSTITUTE FOR LEGISLATIVE AFFAIRS
Clause 42 (a) (i) (J)

1289. **Proposal to levy excise duty on alcoholic beverages based on alcohol content:** Delete Clause 42 (a) (i) (J) and retain the existing rate of KSh. 142.44 per liter excise rate on beer because beer is likely to be cheap and easily accessible to vulnerable populations like children and the youth thus increasing its consumption. Furthermore, the revenue collection from the beer would decrease.

Committee Observation

1290. **The Committee noted that there needed to be a balance between imposition of excise duty on alcoholic beverages and the need to curb consumption of illicit alcohol. Therefore, it proposed the retention of the proposed rate in the Bill.**

Clause 42 (a) (i) (I)

1291. **Proposal to levy excise duty on wine based on alcohol content:** Accept Clause 42 (a) (i) (I) in its entirety because it would generate more taxes for the government and also **since** the prices would be high, the consumption would decrease and save the vulnerable groups from exposure to the wines.

Committee Observation

1292. **The Committee agreed with the stakeholder.**

Clause 42 (a) (i) (K)

1293. **Proposal to levy excise duty on spirits based on alcohol content:** Accept Clause 42 (a) (i) (K) in its **entirety** because it would generate more taxes for the government and also since the prices would be high, the consumption would decrease and save the vulnerable groups from exposure to the spirits.

Committee Observation

1294. **The Committee agreed with the stakeholder.**

99) BREAST CANCER KENYA
Clause 42(a)(i)(L) and (M)

1295. **Proposal to increase excise duty on cigarettes without filters and cigarettes containing tobacco:** Amend to 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 "KShs. 4,100 per mille". Uniformity in excise taxes for cigarettes should be clearly expressed as this will reduce tobacco consumption. At the same **time**, this will increase revenue collected from tobacco products, reduce administrative cost of tax collection in the tobacco industry and reduce health, social and economic burden to the government and the citizens due to reduced consumers of the tobacco products.

Committee Observation

1296. **The Committee observed that the cigarette descriptions as provided for in the Bill and in the Act were uniform and adequate.**

Clause 42(a)(i) (N)

1297. **Proposal to increase excise duty on products containing nicotine:** Adopt the **provision** because nicotine products and their substitutes are highly addictive and have been proven to have negative health effects, hence the need to be taxed more to reduce **affordability**. The youths and women have been the main target for consumption of these products by the tobacco industry, hence increasing the taxes will also reduce their affordability.

Committee Observation

1298. **The Committee agreed with the stakeholder.**

Clause 42(a)(i) (I)

1299. **Proposal to levy excise duty on wines based on alcohol content:** Adopt the **proposal** because the **proposal** leads to a decrease in taxes for wines with alcohol content of 10% and below e.g. for wines with 7% alcohol content, the taxes would reduce by 35.2% from the current levels. The Organization proposed tiered taxation where wines with 10% alcohol content and below can be charged at a rate that maintains the current taxation level e.g. KShs35 per centiliter of pure alcohol while maintaining the current taxes for beverages with 7% alcohol content.

Committee Observation

1300. **The Committee agreed with the stakeholder.**

Clause 42(a)(i) (J)

1301. **Proposal to levy excise duty on alcoholic beverages based on alcohol content:** The proposed rate will lead to a reduction in excise taxes for these alcoholic beverages **from** the current rates which will make these beverages more affordable. The

Organization proposed reviewing this rate to KShs.35 per centiliter of pure alcohol and to at least maintain the excise duty tax on beverages with at least 4% alcohol content.

Committee Observation

1302. **The Committee noted that there needed to be a balance between imposition of excise duty on alcoholic beverages and the need to curb consumption of illicit alcohol. Therefore, it proposed the retention of the proposed rate in the Bill.**

New Provision

1303. **Increase taxes** on electronic cigarettes and other nicotine delivery systems as well as on cartridges for use in electronic cigarettes as outlined in the Excise Duty Act to reduce **consumption** of e-cigarettes, especially among young people.

Committee Observation

1304. **The Committee noted that the excise duty imposed on cigarettes and its products were adequate.**

New Provision

1305. Increase by 20% the tax rates for all other tobacco products outlined in the Excise Duty Act Schedule, specifically cigars, cheroots, cigarillos; and other manufactured tobacco and tobacco substitutes to reduce and eliminate opportunities for substitution across different tobacco products based on differentiated **prices**.

Committee Observation

1306. **The Committee noted that the proposed increase in the excise duty for other tobacco products was extremely high and that the stakeholder had not provided evidence-based data for the increase.**

New Provision

1307. **Add** a new clause on sugar-sweetened beverages to provide for a 10% increase in the prevailing excise duty taxes. Sugar sweetened beverages are part of unhealthy diets driving the rise of obesity and non- communicable diseases. Increasing the excise taxes on these products will make them less affordable and discourage use.

Committee Observation

1308. **The Committee noted that the proposal did not fall within the ambit of the proposed amendment.**

New Provision

1309. **Electronic** cigarettes, other nicotine delivery devices and cigarettes to be included in this schedule of Eco Levy. These products are not biodegradable, so they pose a twin challenge to the environment and health. Disposable e-cigarettes and vaping pods, spent e-cigarette capsules, or replaceable pods, pose significant environmental

burden. Additionally, cigarette filters contain micro plastics, a leading form of plastic pollution worldwide.

Committee Observation

1310. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

100) THE MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
Clause 42

1311. **Proposal to impose excise duty on coal at the rate of 5% of KSh.27,000 per metric ton whichever is higher**: Remove the tax on coal because coal is an important source of energy for many of the country's large manufacturing firms. The imposition of **the** tax on coal will greatly undermine the country's regional competitiveness.

Committee Observation

1312. **The Committee noted the stakeholder's comments but noted that the proposed excise duty was intended to expand the tax base.**

101) EAZY TRACK LIMITED SUBMISSION ON FINANCE BILL 2024
NEW PROPOSALS

Value Added Tax, CAP 476

1313. Amend the CAP **to** include the following;

i) Deduction of a deemed input VAT on the resale of second-hand passenger motor vehicles, where the supplier charged no output VAT or;

ii) Exempt disposal of second-hand motor vehicles from VAT since there is no input VAT deducted on acquisition of the same. This will make Kenya an attractive investment hub.

Committee observation(s)

1314. **The Committee observed that the proposed amendment does not fall within the ambit of the proposed amendments in the Bill.**

102) THE ASSOCIATION OF STARTUP AND SMES ENABLERS OF KENYA. (ASSEK)
Clause 34(R)

1315. **New Definition of Original Equipment Manufacturer**: Delete the provision because the exemption is proposed to be limited in the local content to equipment and parts manufactured locally by manufacturers who hold the intellectual property of those components.

Committee observation

1316. **The Committee observed that the proposed definition sought to protect intellectual property rights of manufacturers of parts and subassemblies.**

Clause 42 (a) i) P

1317. **Introduction of Excise duty on Vegetable Oil and Coal**: Delete the provision since if the proposal is **allowed** to pass the increased prices of vegetable oils will be passed down to consumers.

Committee observation

1318. **The Committee agreed with the stakeholder to delete the proposal to impose excise duty on vegetable oil but recommends the retention of the proposal to impose excise duty on coal.**

Clause 35 (d)

1319. **Proposal to subject 16% VAT on transportation of sugarcane:** Delete the proposal since the amendment will revert the status of the said transport services to 16%, making the final price of sugar very expensive.

Committee observation

1320. **The Committee agreed with the stakeholder.**

Clause 63 section 51(2)

Disclosure of Personal Data

1321. **Delete the** proposal to amend the Data Protection Act. If allowed to pass, the proposed amendment will open taxpayers to possible exploitation by the tax enforcers.

Committee observation

1322. **The Committee agreed with the stakeholder.**

Clause 57 Section 59A

1323. **Proposal to integrate of the electronic tax system with the data management and reporting system:** Delete the provision since the requirement to integrate the taxpayer's system with the Commissioner's electronic invoicing system may present an administrative burden on taxpayers and incompatibility or breakdown issues.

Committee observation

1324. **The Committee notes that the proposal does not specify the class of companies and entities that will be subject to the provision and neither does it specify the timeline for which a taxpayer would be required to comply before the penalty applies. Therefore, the Committee proposes that the period after notice to be up to one year and that the provision will not apply to entities with a turnover of less than eight million shillings.**

Clause 42(a)

1325. **Amendment to Excise Duty Calculation for Certain Motorcycles i.e 10% or** Shs. **12,952.83 per unit whichever is higher:** Delete the provision and retain the goods at zero- **rating**. If the proposal is approved, it will lead to a slow uptake of electric motorcycles.

Committee observation(s)

1326. **The Committee observed that the proposal provided for 10% of the value of motorcycles of tariff 87.11.60.00 or shs. 12,952.83 per unit, whichever is higher. Therefore, the Committee recommends the deletion of the percentage in order to lower the excise duty rate.**

Clause 45

1327. **Iintroduction of Eco Levy on Manufactured and Imported Goods for Environmental Conservation:** Delete the provision. This amendment will negatively **impact** manufacturers, resulting in increased costs for items listed under the schedule.

Committee observations

1328. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle," it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

Clause 35(a)

1329. **Introduction of VAT on Ordinary bread**: Delete the provision because the price of bread will **significantly** increase if the proposal becomes law.
Committee observation(s)

1330. **The Committee agreed with the stakeholder.**

Clause 31(c)

1331. **Deduction of input Tax concerning taxable supplies made to an aid-funded project not allowed now:** Delete the proposal to amend the clause because the increase in **costs** for officially funded projects may necessitate seeking additional funding to meet project goals.
Committee observation(s)

1332. **The Committee was of a different view since the provision increases the tax base.**

Clause 60

1333. **Proposal on requirement of a KRA PIN for Registration for Employees Working Remotely outside Kenya for Kenyan Employers: Amend** the clause to consider the employee's **tax** residency through tax treaties to avoid double taxation.

Committee observation

1334. **The Committee noted that there is already a legal framework to safeguard against double taxation.**

Clause 8 section 12E-

1335. **Repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit: Amend** the clause to include a **provision** for the commissioner to issue guidelines on the SEP tax

Committee observation

1336. **The Committee noted that the proposed new section 12E(5) provides that the Cabinet Secretary may make Regulations for the better implementation of the section.**

Clause 25(iii) D

1337. **Removal of WHT threshold of KES 24,000 for payments such as management/professional fees made to residents:** Delete the provision as it will increase the compliance burden for taxpayers and those making numerous small payments **below** the current threshold.

Committee observation

1338. **The Committee noted that the proposal seeks to expand the tax base and that it will not increase the compliance burden to taxpayers.**

Clause 2 (k)

1339. **Expansion of Definition of Royalty to include Software:** Delete the provision because the **amendment** fails to address the various circumstances under which a software payment could be classified as a royalty or a business transaction, potentially leading to misinterpretation.

Committee observation

1340. **The Committee agreed with the stakeholder by noting that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with international best practices.**

Clause 7 Section 10

1341. **Withholding tax of 5% for residents and 20% for non-residents on Income from the digital marketplace**: Delete the provision as the introduction of withholding tax on payments for goods, property, or services raises concerns about potential issues with refund processing, particularly for low-margin goods and services.

Committee observation

1342. **The Committee was of a different view that the imposition of withholding tax did not pose challenges on refund processing. Instead, it would expand the tax base.**

Clause 2 (a)

1343. Amend to clarify whether such income is taxable in Kenya, considering international **principles** of taxation.

Committee observation(s)

1344. **The Committee noted that section 3(2) of the Income Tax Act clarifies what constitutes an income that is taxable under the Act. Therefore, there was no need to amend the provision to provide for this.**

Clause 2(l)

1345. **New definition of donations: If the proposed amendment is passed into law, the Income Tax (Charitable Donations) Regulations, 2007, should be amended to include specific forms of donations to ensure the correct tax treatment of the various forms of donations**.

Committee observation(s)

1346. **The Committee noted that the definition of donation as provided for in the Bill was adequate.**

Clause 23(b)

1347. **Registered trust schemes are now subject to tax at the rate of 30%:** Delete the provision as the amendment goes against international best practices.

Committee observation

1348. **The Committee agreed with the stakeholder.**

Clause 23(c)

1349. **Withholding Tax on Interest from Infrastructure Bonds at the rate of 5% for residents and 15% for non-residents:** Delete the provision because the amendment is likely to make infrastructure and social services bonds, notes, and securities less attractive to investors, potentially reducing participation.

Committee observation

1350. **The Committee was of a different view that the proposal wouldn't make infrastructure bonds less attractive. The proposals sought to expand the tax base and increase revenue.**

Clause 5

1351. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents: In** support of the proposal, the tax will be applied based on the actual payment received.
Committee observation

1352. **The Committee agreed with the stakeholder.**

Clause 6(b) (iii)-

1353. **Tax Exemption for Employee Gratuity Payments from KSh. 20,000 to KSh. 30,000:** In **support** of the proposal, it will address the long-standing issue of stagnant tax-free contribution limits, which have remained unchanged since 2005.

Committee observation

1354. **The Committee agreed with the stakeholder.**

Clause 9- 12H-

1355. **Introduction of the Motor Vehicle Tax at the rate of 2.5% of the value of the vehicle:** Delete the provision as it will lead to an escalation of prices, negatively impacting **business** operations and the overall cost of living.

Committee observation

1356. **The Committee agreed with the stakeholder.**

Clause 21-

1357. **Repeal of the penalty of 20% on underpayment of installment tax: In** support of the proposal, the deletion of the prescribed penalty of 20%, which is quite punitive, will be **welcomed** by taxpayers.
Committee observation

1358. **The Committee agreed with the stakeholder.**

Clause 33

1359. **The VAT registration threshold was revised from KES 5 million to KES 8 million:** This is a welcome move as it could reduce the number of businesses required to register for VAT but more could be done.
Committee observation

1360. **The Committee agreed with the stakeholder.**

Clause 34 (b)

1361. **The supply of services moving from exempt to Standard VAT rate (16%):** Delete the **clause** as it increases the costs of the relevant services.

Committee observation

1362. **The Committee agreed with the stakeholder.**

Clause 34(a) (N)-

1363. **Proposal to move Plant, machinery, and equipment used in the construction of a plastics recycling plant from an exemption to VAT Standard rate**: Delete the provision because removing exemptions may discourage further investments in manufacturing plastics, recycling, and construction.

Committee observation

1364. **The Committee agreed with the stakeholder.**

103) UNITED DISABLED PERSONS OF KENYA SUBMISSION ON FINANCE BILL 2024.
Clause 45-

1365. **Introduction of Eco levy:** Accept the clause with the following amendments; *the goods specified in the fourth schedule manufactured in Kenya or imported to Kenya should not* **include**; *i) diapers of chapter 96. And ii) batteries or dry cells of chapter 85.* A holistic approach is needed to ensure that tax policies do not adversely affect the most vulnerable members of society.

Committee Observation

1366. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

Clause 42 (a) (P)

1367. **Introduction on Excise duty on imported vegetable oil and Coal:** Delete the proposal in its entirety as it will strain Kenyan households.
Committee observation

1368. **The Committee agreed with the stakeholder to delete the proposal to impose excise duty on vegetable oil but recommends the retention of the proposal to impose excise duty on coal.**

Clause 42 (b)

1369. **Increase of Excise Duty of Financial Services from 15% to 20%:** Delete the provision and retain **the** current excise duty at 15%.

Committee observation

1370. **The Committee agreed with the stakeholder.**

104) INTERNATIONAL BUDGET PARTNERSHIP SUBMISSION ON FINANCE BILL 2024.
Clause 63-

1371. **Access of personal data by KRA:** Delete the clause since this would essentially provide KRA with permission to access and process personal data from data **contractors** like banks. This will be dicey from a data protection perspective.

Committee Observation

1372. **The Committee agreed with the stakeholder.**

Clause 34 a) i) N-

1373. **Proposal to move Plant, machinery, and equipment used in the construction of a plastics recycling plant from exempt to VAT Standard rate:** Delay the **provision** until the government outlines a specific policy direction on establishing plastics recycling plants. The Finance Act, 2019 exempted all services provided to plastic recycling plants and the supply of machinery and equipment from VAT, creating uncertainty regarding taxation in the country.

Committee Observation

1374. **The Committee agreed with the stakeholder.**

Clause 45-

1375. **Introduction of Eco Levy on Manufactured and Imported Goods for Environmental Conservation: Delete** the proposal because it is ambiguous. The country should provide guidelines on identifying and quantifying goods with negative **environmental** impacts. The provision will also lead to double taxation since Kenyans already pay carbon tax through excise duty on fuel.

Committee Observations

1376. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the**

manufacturer of offending items contributes to financing the safe disposal of the products.

Clause 34 (b) (i) (A), (B), (C)

1377. **Introduction of 16% VAT on financial services**: Delete the provision to remove the VAT exemption on financial services, as this move will negatively impact the cost of doing business.

Committee Observations

1378. **The Committee agreed with the stakeholder.**

Clause 35(a)

1379. **Introduction of VAT on ordinary bread: Delete** the proposal since the amendment will cause **an** increase in the cost of bread. This cost will be passed on to the consumers.

Committee Observation(s)

1380. **The Committee agreed with the stakeholder.**

Clause 42(b)(i)-

1381. **Amendment to Excise Duty on excise duty rate for telephone and internet data services: Delete** the provision due to its previous failure to increase tax revenue. The **Finance** Act of 2020 increased excise duty on airtime and data from 15% to 20%, but this resulted in decreased tax revenue due to reduced usage of the products.

Committee Observation

1382. **The Committee agreed with the stakeholder.**

Clause 44(a)

1383. **Increase Import Declaration Fee Rate from 2.5% to 3%:** Delete the proposal **since** the amendment will lead to increased cost of doing business and living in Kenya.

Committee observation

1384. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 10(a) (iii)-

1385. **Contributions made to the Social Health Insurance Fund, post-retirement medical fund, and the affordable housing levy are deductible for tax purposes: Delete** the provision to amend the clause and retain it as it is. The current provision will cushion income earners by increasing their take-home salary.

Committee Observation

1386. **The Committee noted that the proposed amendments sought to address the concerns of the stakeholder.**

Clause 23(d)-

1387. **Exemption of pension benefits in special circumstances: In** support of the proposal, it **will** reduce the tax on pension withdrawals under specific conditions to zero, essentially increasing the take-home income at the point of retirement.

Committee Observation

1388. **The Committee agreed with the stakeholder.**

Clause 34(a)(i) U-

1389. **Standard rate Supplies moved to Exempt: In** support of the proposal, since it will reduce the cost of producing mosquito repellents and hence lower their prices.

Committee observation

1390. **The Committee agreed with the stakeholder.**

Clause 9, 12H-

1391. **Introduction of Motor Vehicle Tax at the rate of 2.5%: Delete** the provision and provide a guideline with regards to what problem the clause is seeking to cure. With **regards** to **distribution**, clear guidelines should be provided on what will be the distribution of the tax burden.

Committee Observation

1392. **The Committee agreed with the stakeholder.**

Clause 35(b) (C)

1393. **Zero-rated supplies to standard rate VAT (16%):** Delete the proposal since the **amendment** will have negative impact on farmers and players in the agricultural industry.

Committee observation

1394. **The Committee agreed with the stakeholder.**

105) POLITICAL PARTIES LIAISON COMMITTEE SUBMISSION ON FINANCE BILL 2024

Clause 9- 12H-

1395. **Introduction of Motor Vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the provision because it is punitive to vehicle owners and discriminatory, favoring those with high-end vehicles. Additionally, the provision exempts ambulance owners despite their income-generating business activities.

Committee observation

1396. **The Committee agreed with the stakeholder.**

Clause 6 (a)(i)-

1397. **Tax-free perdiem limit increased from a fixed amount of KSh. 2,000 per day to a rate of 5% of gross salary:** Delete the provision since per diem is not an income but a facilitation to compensate on services away from the workstation.

Committee observation

1398. **The Committee agreed with the stakeholder.**

Clause 7(4)

1399. **Withholding tax on Income from the digital marketplace at the rate of 5% for residents and 20% for non-residents:** Delete the provision as it may cause digital marketplaces to become uncompetitive, with potential costs being passed on to **consumers**.
Committee observation

1400. **The Committee noted the stakeholder's concerns but was of the view that the proposed measures wouldn't make digital marketplaces uncompetitive and that they expanded the tax base.**

Clause 20 (a)(r)

1401. **Withholding tax for payment received after supplying goods to a public entity- 3% for residents and 5% for non-residents:** Delete the provision since the move will discourage individuals and companies from trading with the government considering that profit margins in most cases are minimal and may end up being consumed by this tax.
Committee observation

1402. **The Committee noted that the proposal sought to expand the tax base.**

Clause 25(a)(i)-

1403. **Repeal of the reliefs on the Contribution made to the NHIF, post-retirement medical fund:** Delete the provision since if allowed the amendment will be detrimental to contributors who saved money with the National Housing Development Fund.

Committee observation

1404. **The Committee noted that the affordable housing relief was being deleted in the Third Schedule since the Bill proposes to allow the deductibility of contributions by an employee to the Affordable Housing Act.**

Clause 23(b)

1405. **Income of registered trust scheme now proposed to be subject to tax: Delete** the provision because it will significantly impact pension returns and discourage the growth of **retirement** schemes.

Committee observation

1406. **The Committee agreed with the stakeholder.**

Clause 35 (a)

1407. **Proposal to subject 16% VAT on ordinary bread: Delete** the provisions since if adopted it **will** lead to increase in the retail price of the essential commodities.
Committee observation

1408. **The Committee agreed with the stakeholder.**

Clause 35(f)

1409. **Proposal to subject 16% VAT on Supply of locally assembled and manufactured mobile phones:** Delete the provision because the standardization will negatively impact the sector.

Committee observation

1410. **The Committee agreed with the stakeholder.**

Clause 37 (a)-

1411. **Expansion of Excise Duty to Non-Resident Digital Service Providers:** Deleting the provision for it will lead **to** an increase in the cost of doing business for non-residents supplying the services, hence exiting from the Kenyan market.

Committee observation

1412. **The Committee noted the stakeholder's concerns but was of the view that the proposal was a fair one and it sought to expand the tax base.**

Clause 42 (b)

1413. **Proposal to increase of Excise duty on financial services from 15% to 20%:** Delete the provision. The increase in the excise duty will result to increased costs for money transfer services. The result will be Kenyans going back to cash transactions.

Committee observation

1414. **The Committee agreed with the stakeholder.**

106) WE CARE SUBMISSIONS ON FINANCE BILL,2024
Clause 9 -12H-

1415. **Introduction of Motor vehicle tax at the rate of 2.5% of the value of the vehicle caped at (Min. KSh. 5,000- Max. KSh.100,000):** Delete the Clause since the proposal could have significant implications on taxpayers and the economy.

Committee observation

1416. **The Committee agreed with the stakeholder.**

1417. **Clause 15(b)- Increased pension relief, retirement, provident funds, and NSSF contribution from KSh. 240,000 to KSh. 360,000 annually.**

1418. **Increased pension relief, retirement, provident funds, and NSSF contribution from KSh. 240,000 to KSh. 360,000 annually: Amend** the clause to provide justifications for **increased** deductions in registered individual retirement funds is crucial for legislative transparency, policy alignment, and legal compliance.

Committee observation

The Committee noted that the provision did not require to provide justifications for increased deductions.

Clause 17

1419. **Repeal of the reliefs on contributions made on the NHIF and Affordable Housing Scheme: In** support of the proposal, this will ensure fairness, reduce market distortion, streamline administrative processes, and encourage market-driven solutions to housing affordability challenges.

Committee observation

1420. **The Committee agreed with the stakeholder.**

Clause 26

1421. **Definition of Company**: Amend the clause to align the definition with the one provided **for** in the **Companies** Act which provides that it's a requirement that an intended company be registered under the Act.

Committee observation

1422. **The Committee observed that the proposed amendment was adequate.**

Clause 34(b)(i) A

1423. **Proposal to subject 16% VAT on Issuing of credit cards:** Delete the clause in its entirety since the move will increase financial burdens on consumers on consumers.

Committee observation

1424. **The Committee agreed with the stakeholder.**

Clause 34(b)(i) B

1425. **Proposal to subject 16% VAT on telegraphic money transfer:** Delete the provision since this will **increase** the cost of remittances, disproportionately impacting low-income individuals.

Committee observation

1426. **The Committee agreed with the stakeholder.**

Clause 34(b)(i) C

1427. **Proposal to subject 16% VAT on foreign exchange transactions:** Delete the provision since the **imposition** on foreign exchange transactions may conflict with international treaties and agreements governing trade and financial transactions, causing legal ambiguities and conflicts.

Committee observation

1428. **The Committee agreed with the stakeholder.**

Clause 34(b)(i) (E)

1429. **Proposal to subject 16% VAT on issuance of securities, including bill exchange and promissory notes: Delete** the provision since it could lead to adverse impacts on economic stability.

Committee observation

1430. **The Committee agreed with the stakeholder.**

Clause 42(a) (p)

1431. **Introduction of Excise Duty Rates for Coal (5% or KSh.27,000 and Vegetable Oils (at the rate of 25%):** Delete the clause since it will lead to an increase in the cost of essential food products and potentially impact **low-income households.**

Committee observation

1432. **The Committee agreed with the stakeholder to delete the proposal to impose excise duty on vegetable oil but recommends the retention of the proposal to impose excise duty on coal.**

Clause 42(b)(i)

1433. **Increase in Excise Duty Rate on Telephone and Internet Data Service from 15% to 20%:** Delete the **provision** since the amendment will make telephone and Internet data unaffordable to most Kenyans.

Committee observation

1434. **The Committee agreed with the stakeholder.**

Clause 43(a)(iii)

1435. **Proposal to increase in Excise Duty Rate on Money Transfer Services Provided by Cellular Phone and Payment Service Providers from 15% to 20%:** Delete the clause since the increase in the fee for mobile money transfer services will impede financial inclusion efforts.

Committee observation

1436. **The Committee agreed with the stakeholder.**

Clause 44(a)

1437. **Proposal to increase in the rate of import declaration fee from 2.5% to 3%:** Delete **the** clause since it will hinder trade facilitation, reduce business competitiveness, and impact consumer prices.

Committee observation

1438. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would, therefore, help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45-

1439. **Introduction of eco levy**: Delete the clause and introduce it in the Finance Bill, 2025 **after** involving the **public** in developing an Eco levy Policy.

Committee observation

1440. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

Clause 63

1441. **Access of personal data by KRA:** Delete the clause in its entirety because if it passes as it is it will lead to **misuse** of power by tax enforcers to mistreat Kenyans.

Committee observation

1442. **The Committee agreed with the stakeholder.**

107) BAKER & MCKENZIE LLP

Clause 8(12E) (3)-

1443. **Proposal for repeal of digital service tax and replacement with significant economic presence tax at 30% on 20% deemed profit:** Amend the Significant Economic Presence Tax (SEPT) proposal by engaging stakeholders to appreciate the effects of the SEPT on the digital sector in Kenya. digital services suppliers frequently pass on the cost of a gross-based tax to customers through explicit or implicit charges. In those cases, a gross-based tax has the same economic impact as a tariff. Higher prices impact patterns of consumption and, as prices increase, there will be a decrease in consumption by Kenyan consumers. Given that this tax is imposed only on the digital sector, decreased economic activity will depress the development of the digital sector in Kenya.

1444. In addition, add a new Clause to SEPT to state that, the SEPT will automatically expire if and when the Multilateral Convention (MLC) for Pillar 1 comes into force. This **would** be interpreted by the international community as a statement of support by Kenya for the Inclusive Framework's mission to restore stability to the international tax framework. By including a sunset clause, Kenya would build goodwill with its important trading partners, including the United States.

1445. The SEPT's effective date be delayed until an appropriate time, approximately three (3) to six (6) months, after all implementing regulations have been issued. There should be a gap in time between the date that the implementing regulations are issued and the effective date of the SEPT to allow in-scope enterprises time to comply.

Committee's Observations

1446. **The Committee noted the stakeholder's concerns; however, it was of the view that the effective date should remain since the proposed tax could be implemented and that there are safeguards to make Regulations to enhance the implementation of the section.**

108) KORU RUM

New Proposals Relating to the Excise Duty Act

1447. Establishment of a separate legal framework for Micro-Craft Distillers (MCDs) allowing for **excise** duty licensing and operation separately from the big-scale distillers. This will promote **the** production of Micro and Small Industries (MSIs) within the alcohol sector to mitigate the proliferation of illicit brew. The proposed amendments include:

a) Exemption of MCDs from the installation of proposed flowmeters which cost KES 20 million in the region and are only suitable for the largest industry players; and
b) by MSIs to install CCTVs the regulations to ensure continuous monitoring.

Committee Observation

1448. **The Committee noted the stakeholder's concerns.**

109) UNIVERSITY OF NAIROBI AFRICAN WOMEN STUDIES RESEARCH CENTRE

Clause 9-12G-

1449. **Introduction of Minimum Tax:** Delete the new proposed Section 12G to introduce the minimum top-**up** tax as it poses several significant risks to Kenya's economic development and investment climate.

Committee observation

1450. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues.**

Clause 9-12H

1451. **Introduction of Motor Vehicle Tax at the rate of 2.5% of the value of the Vehicle:** Deletion of the new proposed Section 12H to introduce the motor vehicle tax as it would result in higher prices negatively impacting sectors that depend on **transportation** and reduced competition in the insurance industry.

Committee Observation

1452. **The Committee agreed with the stakeholder.**

Clause 25(b)(iii)(C) and (D)-

1453. **Removal of WHT threshold of KES 24,000:** Delete the provision because the proposed removal of the minimum threshold for withholding tax on residents for management, professional, or training fees could have unintended consequences that negatively impact businesses, particularly small-scale traders, and the local professional services industry.

Committee Observation

1454. **The Committee was of the view that removal of the withholding tax threshold on management or professional or training fee would expand the tax base and increase revenue.**

Clause 28

1455. **Proposal for definition of a tax invoice under Section 2 of the VAT Act:** Delete the provision **because** using electronic tax invoices in place of the usual tax invoices would result in increased operational costs for many women-owned SMEs thereby worsening gender disparities and hindering women's economic empowerment.

Committee Observation

1456. **The Committee was of the view that the clause provides for the definition of "tax invoice" and that the definition was important to provide clarity.**

Clause 34(a)(i)(U) –

1457. **Proposal to move all inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture from zero-rated supplies to exempt:** Retain the items listed under the new proposed Paragraph 154 of the First Schedule to the Value Added Tax Act as zero-rated products instead of making them exempt. This is because the proposed reclassification would result in increased production costs for farmers and in turn higher food prices thereby exacerbating food insecurity and reducing consumer purchasing power and economic activity.

Committee Observation

1458. **The Committee noted the stakeholder's concerns and recommends that inputs and raw materials supplied to manufacturers of agricultural pest control products be exempted for locally manufactured and be zero-rated if they are imported.**

Clause 34(b)(i)

1459. **Proposal to subject 16% VAT on financial services: Delete** the proposal to impose taxes on previously exempted financial services. While the proposal seeks to boost **tax** revenue, it would have lesser distortionary effects on the tax and disproportionately impact women and low-income households thus exacerbating financial inequalities. Increased costs for essential financial transactions will hinder economic participation and entrepreneurial activities.

Committee Observation

1460. **The Committee agreed with the stakeholder.**

Clause 35(a)

1461. **Proposal to subject 16% VAT on ordinary bread**: Delete the proposal to reclassify the supply of ordinary bread from zero-rated to standard-rated because it **would** contribute to food insecurity thus affecting nutrition for children and vulnerable populations. This could lead to negative health outcomes. The proposal could further lead to business closures in the local bakery industry and job losses.

Committee Observation

1462. **The Committee agreed with the stakeholder.**

Clause 42(a)(i)(H)-

1463. **Proposal to increase the excise duty rate for imported sugar confectionery from Shs. 42.91 per kg to Shs. 257.55 per kg:** Deletion of the provision as it would significantly raise the cost of sugar confectionary products making them less affordable for consumers. This might drive consumers to seek cheaper alternatives potentially increasing the consumption of unregulated or counterfeit products thus posing health risks.

Committee Observation

1464. **The Committee noted the stakeholder's concerns and recommends the reduction of the rate of excise duty for imported sugar confectionery.**

Clause 42(b)(i)

1465. **Proposal to increase excise duty rate on telephone and Internet data services from 15% to 20%: Amendment** of the excise duty imposed on telephone and internet data services from 20% to 8% to prevent reduced consumer spending and economic activity occasioned by increased costs due to higher excise rates.

Committee Observation

1466. **The Committee noted the stakeholder's concerns. However, it recommends the retention of the excise duty at fifteen percent.**

Clause 44(a)

1467. **Proposal to increase the Import Declaration Fee Rate from 2.5% to 3%: Delete this proposal, for it will increase the** import declaration fee to avoid placing an additional **financial** strain on households, particularly those with lower incomes.

Committee Observation

1468. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh.10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would, therefore, help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 47-

1469. **Introduction of export and investment promotion levy:** Remove the levy on articles of leather and footwear. This is because the levy would result in higher prices for leather goods and footwear thereby reducing consumer purchasing power and forcing **households** to allocate more of their budget to necessities thus negatively impacting economic growth.

Committee Observation

1470. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally. In this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector. Thus, the Committee proposes to have the Export and Investment Promotion Levy imposed on articles of leather and imported footwear.**

Clause 48-

1471. **Introduction of Eco levy on diapers: Delete** the provision that imposes an eco-levy on diapers would hinder women's economic participation by increasing absenteeism and reducing work hours to accommodate caregiving responsibilities, ultimately impacting their earning potential and financial independence.

Committee Observation

1472. **The Committee agreed with the stakeholder.**

Clause 51

1473. **Standardization of Requirements for Electronic Tax Invoices under Tax Procedures Act:** Delete this clause on the requirements of a valid electronic tax invoice. This is because the proposal would cause substantial compliance and **administrative** costs for businesses, especially small and medium enterprises that lack the necessary technological infrastructure thus undermining efforts to improve the economy and reduce tax evasion. Furthermore, the proposal would pose an administrative burden on the KRA to ensure compliance.

Committee Observation

1474. **The Committee noted the challenges in the implementation of the Electronic Tax invoice system, particularly with regard to small-scale farmers (subsistence farmers) and micro-enterprises. One of the biggest challenges is that the system has locked out these producers from supplying to formal businesses which is deleterious for the economy at large. To correct this the Committee proposes to exempt subsistence farmers and microenterprises whose gross turnover is below one million shillings. The Committee further recommends the issuance of guidelines by the revenue authority on the operationalization of this proposal.**

Clause 56(a)-

1475. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Delete this provision for it would amount to a violation **of** the right to procedural fairness, as every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Further, it infringes upon the right to a fair hearing guaranteed in Article 50 of the Constitution. Moreover, the amendment conflicts with the national values and principles of public

participation and inclusivity in governance and tax administration enshrined in Articles 10 and 118 of the Constitution.

Committee Observation

1476. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

Clause 57(5)

1477. **Proposal for Penalties on Non-Compliance with Integration of the Electronic Tax System and Data Management Reporting System**: Delete the provision as it could be counterproductive as it may discourage SMEs and MSMEs from adopting eTIMS **voluntarily** for fear of non-compliance. Instead of penalties, a more supportive approach such as providing incentives or technical assistance would be more effective in encouraging SMEs and MSMEs to integrate TIMS into their operations.

Committee Observation

1478. **The Committee noted that the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offence.**

Clause 63

1479. **Access of Personal Data by KRA:** Delete the clause because it contravenes Article 31 on the right to privacy and Article 47 on expeditious, efficient, lawful, reasonable, and **procedurally** fair administrative action of the Constitution and the International Covenant on Civil and Political Rights.

Committee Observation

1480. **The Committee agreed with the stakeholder.**

110) KENYA NETWORK OF CANCER ORGANIZATIONS

Clause 42(a)(i)(I)-

1481. **Proposal to levy Excise duty based on the content of Alcohol:** Amend the proposal **to** provide for tiered taxation where wines with 10% alcohol content and below are charged at a rate that maintains the current taxation level. For instance, Kshs. 35 per centiliter of pure alcohol to maintain the current taxes for beverages with 7% alcohol content. This shall prevent the ease of access to alcohol by youth and children.
Committee Observation

1482. **The Committee observed that it is an international best practice for excise duty to be based on the strength of the alcohol in the product. Further, this will minimize the increase in the consumption of illicit alcohol.**

Clause 42(a)(i)(J)-

1483. **Proposal to levy Excise duty based on the content of Alcohol:** Amend the proposal to provide Kshs. 35 per centiliter of pure alcohol to maintain the current taxes for beverages with at least 4% alcohol content. This shall prevent early initiation to consuming alcoholic beverages which is detrimental to good public health.

Committee Observation

1484. **The Committee observed that it is an international best practice for excise duty to be based on the strength of the alcohol in the product. Further, this will minimize the increase in the consumption of illicit alcohol.**

Clause 42(a)(i)(K)

1485. **Proposal to levy Excise duty based on the content of Alcohol:** Amend the proposal to provide **Kshs**. 25 per centiliter of pure alcohol for beverages with alcoholic content up to 20% and Kshs. 16 per centiliter of pure alcohol for beverages with over 20% alcohol content. This will discourage consumption and contribute to good public health.

Committee Observation

1486. **The Committee observed that it is an international best practice for excise duty to be based on the strength of the alcohol in the product. Further, this will minimize the increase in the consumption of illicit alcohol. Therefore, the Committee recommends the reduction of the rate from shs. 16 to 10 per centilitre of pure alcohol.**

Clause 42(a)(i)(L) and (M)

1487. **Proposal to increase for excise duty without filters and with filters**: Substitute the current descriptions under (L) and (M) with the following:

> *"Cigarettes containing tobacco or tobacco substitutes with the corresponding rates* **of** *excise duty "shs. 4,100 per mille"*

Committee Observation

1488. **The Committee observed that the cigarette descriptions as provided for in the Bill and in the Act were uniform and adequate.**

Clause 48-

1489. **Introduction of Eco levy on electronic cigarettes:** Include "Electronic **cigarettes**, other nicotine delivery devices and cigarettes" in the new proposed Fourth Schedule as these products are made of microplastics which are not biodegradable and pose a twin challenge to the environment and health.

Committee Observation

1490. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. Further, excise duty is already imposed on electronic cigarettes.**

New Proposals Relating to the Excise Duty Act

1491. Introduction of excise duty at a rate of at least 20% on electronic cigarettes and their **delivery** systems and cartridges to reduce consumption among young people.

Committee Observation

1492. The **Committee noted that the excise duty imposed on cigarettes and its products were adequate.**

1493. Introduction of excise duty at a rate of 20% on other categories of tobacco products such as cigars, cheroots, and cigarillos among others to reduce and eliminate **opportunities** for substitution across different tobacco products based on differentiated prices.

Committee Observation

1494. **The Committee noted that the proposed increase in the excise duty for other tobacco products was extremely high and that the stakeholder had not provided evidence-based data for the increase.**

1495. **Introduction** of a 10% increase on the prevailing excise duty taxes on sugar-sweetened **beverages**. This will make these beverages less affordable and discourage consumption to reduce obesity and non-communicable diseases.

Committee Observation

1496. **The Committee noted that the proposal did not fall within the ambit of the proposed amendment.**

111) NAKURU FAMILY OF DROP-IN CENTER

Clause 42(a)(i) (J)

1497. **Proposal to levy Excise duty based on the content of Alcohol:** Amend the proposal to **provide** the tax rate for beer at Ksh. 33 per centiliter of alcohol to reduce consumption and increase revenue.

Committee Observation

1498. **The Committee observed that it is an international best practice for excise duty to be based on the strength of the alcohol in the product. Further, this will minimize the increase in the consumption of illicit alcohol. Therefore, the Committee recommends the retention of the proposal.**

112) EAST AFRICA LAW SOCIETY

Clause 34(b)(i)-

1499. **Proposal to subject 16% VAT on financial services:** Reconsider the proposed VAT on e-mobility sector goods to maintain incentives for green technologies, foster **sustainable** development, and fulfill Kenya's commitments under the EAC Treaty.

Committee Observation

1500. **The Committee agreed with the stakeholder and recommends deletion of the proposal.**

Clause 56(b)

1501. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Amend to give the taxpayer a 60-day timeline **within** which the taxpayer can substantially prepare its notice of objection to restoring balance and fairness in the objection process.

Committee Observation

1502. **The Committee noted the stakeholder's concerns but was of the view that the timelines provided were adequate for the taxpayer.**

Clause 63

1503. **Access of Personal Data by KRA**: Delete the clause in its entirety as it infringes on the data subject's right to privacy guaranteed in Article 31 of the Constitution.

Committee Observation

1504. **The Committee agreed with the stakeholder**

113) TRENDSETTERS

Clause 45(7B.) (1)-

1505. **Introduction of Eco levy** on rubber tire: Delete provision on Eco Levy of KES 1,000 for **each** rubber tire imported. Additional levy will increase landed cost and eventually overall cost of the product will increase. Due to the introduction of the levy, the landed cost difference will increase between the formal sector which imports the products and pays all required taxes vs informal sector where their cost remains.

1506. The **overall** running costs of running motor vehicle(s) will also increase, mainly for fleet owners, distributors, and transporters, increasing all commodities, including basic commodities like bread and milk.

Committee Observation

The Committee noted the stakeholder's concerns and recommended the exclusion of tires of motorcycles, bicycles, wheelchairs, and three-wheeled motorized vehicles (tuk tuks) from the eco levy.

1507. Tender prices for government and parastatal supplies have been fixed, and as per the terms and conditions of the tenders' prices, they cannot be changed, resulting in a loss of margin.

Committee's Observation

1508. **The Committee noted that the proposed rates in the Bill for the supply of goods to a public entity provide certainty and predictability.**

114) GREEN BONDS PROGRAMME
Clause 23 (c)

1509. **Implementation of a withholding tax on interest income from infrastructure investments, set at 5% for residents and 15% for non-residents:** Amend the clause that seeks deletion of the proviso that proposes to subject to tax interest income accruing from green bonds by introducing a tax exemption on thematic bonds such as social, sustainability, sustainability linked, blue bonds, and Green Real Estate Investment Trust (REIT).

1510. **The** introduction of WHT on Green, Social, Sustainability, and Sustainability-linked (GSSS) Bonds will only hamper the momentum of developing this market and further erode the gains made over the years. The bonds will be less attractive subsequently discouraging investment. This taxation will also set the country back in its private investment flows towards sustainable projects that are critical to ensuring the country's transition to a green and inclusive economy. Projects such as green buildings, climate-smart agriculture, affordable homes, waste management and bus rapid transit that have the potential to create numerous jobs, promote social well-being, and contribute to a healthier environment will be affected.

Committee Observation

The Committee noted the stakeholder's concerns; however, it was of a different view that the proposal would not make infrastructure bonds less attractive. Further, the proposal seeks to expand the tax base.

115) EVANGELICAL ALLIANCE OF KENYA
Clauses 3,9 (12H), 17, 57(b) &61

1511. Delete the above clauses because the government cannot tax Kenyans to posterity and lowering taxes will encourage economic activities and investment to **prevent** closure of small businesses.

Committee Observations

1512. **The Committee agreed with the stakeholder to—**

(a) **delete clause 9 (12H);**
(b) **amend clause 57(b) since the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offence;**
(c) **delete clause 61.**

1513. **However, the Committee was of the view that clauses 3 and 17 should be retained as proposed in the Bill.**

116) ECART SERVICES KENYA LIMITED
Clauses 3,7,20 & 25 (ii & iii)

1514. **Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace:** Amend the clauses by removing reference to "goods" and "property" and by also specifying that the qualifying payments are made to Kenyan resident persons. The proposals pose a competitive disadvantage to e-commerce platforms and distort market dynamics for goods and services distributed through digital marketplaces vis a vis brick-and-mortar retailers such as supermarkets. This is because the owners/operators of the digital marketplaces have an obligation to withhold taxes on goods and services, an obligation that physical retailers do not have. Due to the additional taxes on the goods sold through digital platforms, vendors are more likely to sell their goods in physical retail stores rather than distribute through digital platforms.

1515. Additionally, the digital marketplace leverages on cost savings from the elimination of the need to maintain physical spaces to discount their goods and services and **offset** the huge capital investments on technology. The proposal will effectively increase the prices of goods and services on the platform driving traffic away from the platforms. Vendors will likely gross up the price of goods and services to offset the cost of the proposed WHT and pass this cost on to the customers. This will make goods and services distributed through digital platforms more expensive and ultimately disincentivize the use of digital platforms compared to brick-and-mortar retailers. The significant increase in the price of goods and services distributed through digital marketplaces will lower the adoption of e-commerce in general.

1516. **The** proposed tax goes against Kenya's e-commerce ambitions as well as one of the strategic initiatives identified by the Kenya National E-Commerce Strategy which is to **review** and simplify tax framework for e-commerce firms. The tax is also not aligned to the international tax consensus that Kenya has committed to by exploiting the country's investment in this digital infrastructure which will lead to underutilization due to mass exits out of these digital platforms by entrepreneurs due to higher prices of goods and services.

1517. Consequently, the proposal has not excluded instances where owners/operators of a digital marketplace/platform could make/facilitate payments that have no link to Kenya. This means that the proposed provision also captures transactions that do not originate from or terminate in Kenya e.g. when a US-based e-commerce business makes a payment to a vendor in US for a purchase by a US resident person.

117) ELECTRIC MOBILITY ASSOCIATION OF KENYA
Clause 34 (a)(i)(U)152

1518. **Proposal to Change the Supply of Motorcycles (Tariff Heading 8711.60.00) from Zero-Rated to Exempt:** Delete the clause because manufacturers, assemblers, and sellers can no longer claim input VAT on the supply of electric motorcycles. To avoid incurring **this** cost, they would pass this cost on to the consumers thus making electric motorcycles more expensive. Local manufacturers, who pay input VAT on numerous components, would be particularly disadvantaged.

Committee Observations

1519. **The Committee noted the stakeholder's concerns and recommends that locally** manufactured **or assembled motorcycles be zero-rated whereas those that are imported be exempted from VAT.**

Clause 35 (g)

1520. **Proposal to Change the Supply of Motorcycles (Tariff Heading 87.02) from Zero-Rated to Standard Rate VAT (16%):** Delete the proposal because the zero-rating of the supply of electric motorcycles was introduced by the Finance Act 2023 as an incentive to ensure the growth of the e-mobility sector and encourage the adoption and use of EVs in the country. Withdrawing the incentive only a year later may be viewed as a premature move, considering that there was a 500% acceleration of the uptake of EVs in the one year the incentive has been in place, and the tax incentives drove significant investment.

1521. The proposal will discourage the growth of investors in Kenya, backtrack on steps taken by the Government to ensure the growth and adoption of EVs including the establishment of the e-mobility taskforce, and discourage investors, some of whom have already brought considerable foreign direct investment into the country in response to the incentives.

Committee Observation

1522. **The Committee noted the stakeholder's concerns and recommends that locally manufactured** or **assembled motorcycles be zero-rated whereas those that are imported be exempted from VAT.**

Clause 35 (j)-

1523. Proposal **to Move the Supply of Electric Buses (Tariff 87.02) from Zero-Rated to Standard Rate VAT**: Delete the clause since the clawback of this incentive would have detrimental effects on progress made to ensure climate conservation, reduced fuel expenditure, job growth, and economic growth, in which the e-mobility sector plays a crucial role.

Committee Observations

1524. **The Committee** noted **the stakeholder's concerns and recommends that locally manufactured or assembled electric buses be zero-rated whereas those that are imported be exempted from VAT.**

Clause 42 (a)(i)(A)-

1525. **Amendment to Excise Duty Calculation for Certain Motorcycles i.e 10% or** Shs. **12,952.83 per unit** whichever **is higher**: Amend the clause by specifically excluding electric motorcycles under tariff 87.11.60.00 from the First Schedule of the Excise Duty Act, and therefore the electric motorcycles should be non-excisable. This amendment will make electric motorcycles more expensive and will discourage the uptake in electric motorcycles, hence the need to incentivize and encourage the adoption of EVs rather than tax them.

Committee Observation

1526. **The Committee observed that the proposal provided for 10% of the value of motorcycles of tariff 87.11.60.00 or shs. 12,952.83 per unit, whichever is higher. Therefore, the** Committee **recommends the deletion of the percentage in order to lower the excise duty rate.**

Clause 43 (b)-

1527. **A new definition of original equipment manufacturer**: Delete the clause as the implication of the amendment proposed by the Bill will be that local manufacturers will have to demonstrate that 30% of the parts used in the EVs consist of parts designed and manufactured in Kenya by a manufacturer who owns intellectual property rights in the parts of sub-assemblies. This will be prejudicial to EV manufacturers as the country cannot allow 30% of EV components or parts to come from the Kenyan value chain. The amendment will be protectionist to the ICE market as it has developed over time and manufacturers would have the capacity to comply with this definition.
Committee Observation

1528. **The Committee observed that the proposed definition sought to protect the intellectual property** rights **of manufacturers of parts and subassemblies.**

Clause 9- (12H)-

1529. **Introduction of motor vehicle tax at the rate of 2.5% on the value of the vehicle:** Amend the clause to exempt EVs from motor vehicle tax, as has been provided for ambulances or motor vehicles owned by the national Government, county Government, Kenya Defence Forces, National Police Service, National Intelligence Service, or a person exempt from tax under the Privileges and Immunities Act. This is because the upfront cost of EVs is higher than that of internal combustion engine (ICE) vehicles (because the cost typically includes batteries), consumers are therefore likely to be disincentivized from purchasing newer models of EVs and would rather go for second-hand ICE motor vehicles which would attract lower motor vehicle tax, particularly given that EVs already face higher vehicle tax, due to the structure of the current retail selling price template used to calculate tax payable for vehicles.

Committee Observation

1530. **The** committee **noted**

i) **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

Clause 47

1531. **Introduction of Export and Investment Promotion Levy on motorcycles:** Under clause 47 delete motorcycles under tariff 87.11.60.00 from the Third Schedule to the Miscellaneous Fees and Levies Act, as the industry is still relevantly new and there is still a need for the importation of the electric motorcycles (fully built-up) as well as the parts used for assembly (completely knocked down), to enable the uptake to reach critical mass.

Committee Observation

1532. **The** Committee **noted the stakeholder's concerns. However, regarding the motorcycles, the committee proposed to have the levy imposed only on fully built imported motorcycles.**

Clause 48

1533. **Introduction of Eco Levy on batteries:** Delete item 46 under clause 48 because batteries used for EVs do not fall under heavy pollutants, EVs and their components are climate-friendly and new in the market, and EV batteries have not surpassed their useful life to the point of disposal.

1534. Amend the proposal to further actualize the extended producer responsibility rules provided in law (an extension of the polluter pay principle) by having producers/manufacturers set aside funds to ensure the management of hazardous waste. In addition, the rules could prescribe obligations to take back batteries once they have surpassed their useful life. This proposal is more favorable as it will not lead to an increase in the substantive cost of each EV as a result of the increase in battery costs.

Committee Observation

1535. **The Committee noted the stakeholder's concerns and recommends exclusion of tyres of motorcycles, bicycles, wheelchairs, and three-wheeled motorized vehicles (tuk tuks) from the eco levy.**

New Proposals

1536. **Insert** the following in the Second Schedule to the VAT Act under Zero-rated items and in the First Schedule of the Excise Duty Act. The items include CKDs, sub-assemblies, and components purchased by assemblers and manufacturers.

EV 3-Wheeler (Tuk Tuks)

Tariff Number: 8703.40.00, 8703.50.00, 8703.60.00, 8703.70.00, 8703.80.00

1537. Insert the following in the Second Schedule to the VAT Act under Zero-rated items and in the First Schedule of the Excise Duty Act (Exemption). The items include CKDs, sub-assemblies, and components purchased by assemblers and manufacturers.

EV 4-Wheeler (Passenger cars)

Tariff Number: 8703.40.00, 8703.50.00, 8703.60.00, 8703.70.00, 8703.80.00

1538. **Insert** the following in the First Schedule of the Excise Duty Act. (Exemption) The items include CKDs, sub-assemblies and components purchased by assemblers and manufacturers.

EV Buses

Tariff Number: 8702.40.11, 8702.40.21, 8702.40.91

1539. Insert the following in the Second Schedule to the VAT Act under Zero-rated items and in the First Schedule of the Excise Duty Act (Exemption). The items include CKDs, sub-assemblies, and components purchased by assemblers and manufacturers.

EV MHCVs &EV Trucks

Tariff 8701.22.10, 8701.23.10, 8701.24.10, 8701.24.90, 8704.41.10, 8704.41.10, 8704.41.10, 8704.41.10, 8704.42.10, 8704.43.10, 8704.51.10, 8704.52.10, 8704.60.10, 8704.60.90

1540. Insert the following in the Second Schedule to the VAT Act under Zero-rated items and in the First Schedule of the Excise Duty Act. (Exemption)

Conversion Parts
Motors (including motors fixed to Hub)
Tariff Number: 8501.31.00

Incentives on EV parts as well as spare parts will ensure their availability, as well as the safe and reliable operationalization and affordability of EVs, and will lower maintenance costs for users.

1541. Insert the following in the Second Schedule to the VAT Act under Zero-rated items and in the First Schedule of the Excise Duty Act (Exemption).

Conversion Parts
Batteries, Motor, Controllers, Charger, Speedometer
Tariff Numbers: 8506.50.00, 8501.32.00, 8504.40.00,9032.89.00 9104.00.00

1542. Insert the following in the Second Schedule to the VAT Act under Zero-rated items

Charging, Infrastructure; Charging Stations (plug in or battery)
Tariff Number: 8504.40.00, 8504.40.30, and 8504.40.95.

1543. The proposed incentive will make charging infrastructure and batteries and related services cheaper and readily available in more parts of the country.

1544. Insert the following in the Second Schedule to the VAT Act under Zero-rated items

Battery as a Service (Battery Charging, leasing and rentals)

1545. Insert the *E-Mobility KPLC Electricity Tariff* in the Second Schedule to the VAT Act under Zero-rated items

1546. Insert the following in the Second Schedule to the VAT Act under Zero rated items and in the First Schedule of the Excise Duty Act. (Exemption)

Lithium Ion Parts and Components including Cells, Battery Management System (BMS) and Telemetry Units for battery assembly
Tariff Numbers; 8506.50.00, 8506.50.10, 8506.50.30, and 8506.50.90

1547. Amend the Third Schedule to the Income Tax Act, under Head B, Paragraph 2, by including a *reduced corporation tax rate of 15%* specifically applicable to authorized manufacturers and local assemblers of EVs. The Local licensed electric vehicle manufacturers to be VAT Zero-rated and also exempted from Excise Duty. To incentivize local manufacturing, it is necessary to give tax rebates to the local manufacturers. The Finance Act 2023 incentives encouraged the establishment of some local assembly plants and manufacturing plants but could do more to

encourage local industry. A corporate tax rebate would attract more investments of this kind.

1548. Introduce a new section 28B of the Income Tax Act, which will provide the framework for a Special Operating Framework Agreement with the Government of Kenya for a significant local or international vehicle manufacturer that invests more than KES 5B in the local manufacturing of electric vehicles in Kenya. This is because the e-mobility sector in Kenya has the potential to develop to a large scale and attract more foreign direct investment. This can lead to the creation of a hub for African manufacture or assembly of EVs.

1549. Proposal to delete the following from the First Schedule of the Income Tax Act (Exemptions):-

Withholding tax on dividends to non-resident holding company – 15%
Withholding tax on royalties to non-resident holding company – 20%
Withholding tax on interest paid and on deemed interest on resident and non-resident loans
Withholding tax on interest paid and on deemed interest on resident and non-resident loans
Compensating tax

1550. Include the following from the First Schedule of the income Tax Act (Exemptions): -

- *Excise Duty on components imported by a qualifying entity – various rates*
- *Stamp Duty on acquisition of land – 4%*

1551. **Amend** the Second Schedule to the Value Added Tax Act to zero rate all goods and services purchased by a qualifying entity, and in respect of electric vehicles sold by a qualifying entity (for the first 5 years of their manufacture)

Committee Observation

1552. **The Committee noted the stakeholder's concerns and was guided by the policy of subjecting to tax goods and services where there is value add in the** production **process and to exempt certain inputs so as to promote local industries.**

118) VIFFA CONSULTANCY
Clause 3

1553. **Expanding the scope of the definition of digital marketplace**: Amend the clause because it offers several benefits to MSMEs like increased clarity, inclusivity, and encouragement of Digital Adoption.
Committee Observation

1554. **The** Committee **noted the stakeholder's concerns but was of a different view that the proposal was adequate.**

Clause 42 (a) (i) A

1555. **Amendment to Excise Duty Calculation for Certain Motorcycles i.e 10% or** Shs. **12,952.83 per unit whichever is higher:** Delete the introduction of VAT on electric bicycles increases the purchase cost for digital MSMEs relying on this form of transportation for last-mile deliveries. Electric bicycles are a cost-effective and environmentally friendly option, especially for small businesses in urban areas that require efficient mobility for deliveries and other operations. The added VAT will raise the overall expenses, making it less affordable for MSMEs to adopt or maintain green transportation solutions. It will hinder sustainability goals and also hurt innovation and modernization. In addition, the proposal will lead to increased operational costs, a disproportionate impact on small businesses as well a potential reduction in the adoption of electric bicycles.

Committee Observations

1556. **The Committee observed that the proposal provided for 10% of the value of motorcycles of tariff 87.11.60.00 or shs. 12,952.83 per unit, whichever is higher. Therefore, the** Committee **recommends the deletion of the percentage in order to lower the excise duty rate.**

Clause 42 (a) (i) (B) (F)

1557. **Exclusion of Eggs, Onions, Potatoes, and Potato Products Originating from the EAC from Paying Excise Duty:** Amend the clause because excluding certain goods from excise duty if they originate from the EAC Partner States and meet the EAC Rules of Origin, promotes intra-regional trade, lowers import costs, encourages local production and also simplifies compliance.

Committee Observations

1558. **The Committee noted the stakeholder's concerns and proposes to exempt from excise duty fertilized eggs from incubation. Further, in the spirit of keeping with the** predictability **of the tax system, the Committee proposes to maintain the current rates of excise duty on articles of plastics, onions and potatoes.**

Clause 9 (12H)

1559. **Introduction of Motor Vehicle Tax at the rate of 2.55 of th value of the Vehicle:** Delete the proposal because it will significantly increase the operational costs for digital MSMEs considering their heavy reliance on transportation for last-mile delivery. The additional cost imposed by the Motor Vehicle Tax will further strain their financial resources, potentially reducing their profitability and sustainability. It will also lead to reduced investment capacity, cashflow challenges, unequal tax burdens, impact on climate agenda as well as a questionable public service benefit.

Committee Observations

The Committee agreed with the stakeholder.

New Proposals

1560. Amend the Section 1(1) of the Second Schedule of the Income Tax Act to include digital marketplace platforms as eligible for investment allowance to read as follows: -

"Digital Marketplace Platform Development by an eligible start-up company: 50% in the first year of use".

1561. The amendment seeks to extend investment allowance benefits to the costs incurred in building digital marketplace platforms. Specifically, this amendment would classify the development of these platforms as qualifying capital expenditures. It will encourage digital innovation, economic growth, and employment and will also level the playing field between traditional and digital businesses, ensuring the tax system evolves in line with the changing nature of the economy.

Committee Observation

The Committee noted the stakeholder's proposal but was of a different view that this would lead to revenue loss.

119) ALCOHOL BEVERAGES ASSOCIATION OF KENYA (ABAK)

Clause 39

1562. **Proposal to eliminate the provision that grants relief on Excise Duty to** manufacturers **of excisable goods and providers of internet data services**:_Delete the provision because it leads to double taxation for local manufacturers. This clause goes against the National Tax Policy. Further, there will be high costs of production making locally produced alcoholic drinks less competitive both in the country and in exports thus leading to the collapse of local spirits production. The proposal does not support the Government Manufacturing agenda and it will encourage cross-border illicit trade

Committee's Observation

1563. **Excise duty, like VAT, for Excisable manufacturers considers input and output tax. Therefore, the Committee supports the proposal to delete the clause since it would mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 41

1564. **Extension of the deadline for payment of excise duty by manufacturers of alcoholic** beverages **from 24 hours to 5 working days:** Amend the provision from having the payment of excise tax to be after 5 working days to the 20th of every month as there are no support structures to ensure payments are done during weekends and public holidays. This proposal poses challenges like significant operational cash flow strain, higher borrowing costs for short-term loans, complicated reconciliation of excise duty accounts, and inability to recover excise duty on credit notes for breakages and other stock losses.

Committee's Observation

1565. **The committee noted that the requirement to remit excise tax within twenty-four hours has** led **to cash flow problems for compliant licensed manufacturers, in this regard the Committee recommends a change in the period to remit excise duty "by the 5th of every month."**

Clause 42

1566. **Excise duty based on excise duty being levied on Alcohol content not on ABV:** Amend the provision from Ksh16 per centiliter of pure alcohol to Ksh10.68 to create a stable and predictable tax system by progressively increasing the rate within the next four years. The Impact of the proposal could drive consumers towards cheaper, illicit alcohol options, distort the market, and deter future investments in the industry.

Committee's Observation

1567. **The Committee agreed with the stakeholder.**

120) EDIBLE OIL SUBSECTOR

Clause 42(a)(P)

1568. **Introduction of Excise duty on Edible Oil at the rate of 25%:** Delete provision on the proposed excise duties on Edible oils and margarine (HS Codes: 1511,1512,1515 and 1517). Edible oil constitutes a substantial cost in the preparation of foods and delicacies for the hotel and catering industries. This increase in cost will increase the cost of hospitality and have a significant impact on our tourism industry.

Committee's Observation

1569. **The Committee agreed with the stakeholders to the extent of deleting the excise duty tax on vegetable oil.**

New Provision

1570. Remove the 2% levy implemented through the Nut and Oil Crops Directive (NOCD) on all crude oils to promote local processing. We are now at a disadvantage vs our neighbors and are less efficient on all products that use edible oils as an input (including food and hygiene products) Removing the NOCD levy of 2% will have a net saving of 50 KES per 20L Jerrycan.

Committee's Observation

1571. **The** Committee **noted the stakeholder concerns. However, the proposal was not within the ambit of the amendment**.

New Provision

1572. Import Declaration Fee (IDF) and Railway Development Levy (RDL) levies to be maintained at 1.5% and 1.5% respectively for raw materials. Removal of RDL & IDF on Crude Palm Oil imports will lead to 72 KES saving per 20L Jerrican

Committee's Observation

1573. **The** Committee **noted that the reduction of the Import Declaration Fee in the Finance Act, 2023 occasioned a significant revenue loss of approximately Kshs. 10 billion hence hurting the implementation of the 2023/2024 Budget. The proposed increase of IDF at the rate of 3.5 % would help restore the performance of this tax head in line with the projected budget estimates for FY2024/25.**

1574. **Introduction of Motor Vehicle Tax at the rate of 2.5% of the value of the vehicle:** Amend the provision to exempt commercial and agricultural vehicles from the Motor Vehicle Tax and lower the proposed rate from 2.5% to 1%. Subjecting commercial and agricultural vehicles to the Motor Vehicle Tax will increase the operating costs of manufacturers and their suppliers who utilize vehicles for commercial (logistics) and agricultural (planting, harvesting, logistics) purposes. The cost of insurance currently averages at a rate of 5%. An increase of 50% (2.5%) additional cost is punitive on businesses and taxpayers.

Committee's Observation

1575. **The** Committee **agreed with the stakeholder and proposed deletion of the clause.**

Clause 34(a)(i)(N)

1576. **Proposal to Move Plant, Machinery, and Equipment Used in the Construction of a Plastics Recycling Plant from Exempt to VAT Standard Rate:** Delete the Clause because removal of tax incentives for recycling establishments would impede the sector's growth and development. Kenya's waste management strategy is fundamentally predicated on fostering a circular economy. The expansion of the recycling sector is crucial for facilitating the collection and transformation of waste materials into new products, thereby preventing environmental degradation. Maintaining the VAT exemption for recyclers will align with the Africa Climate Summit, African Leaders Nairobi declaration on climate change, and call to action for climate-positive investments that catalyze growth and support environmental conservation as aspired to under the Sustainable Development Goal (SDG) No 12.

Committee's Observation

1577. **The** Committee **agreed with the stakeholder.**

Clause 39

1578. **_Proposal to eliminate the provision that grants relief on Excise Duty to manufacturers of excisable goods and providers of internet data services:**_Amend the Clause to re-introduce Section 14 Excise Act and an amendment to include an offset of excise tax paid on packaging materials used for manufacture by addition of the following words, "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 and 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 good". Deletion of Section 14 from the Excise Tax Act will have considerable ramifications on the economy. The removal of section 14 of the Excise Act will subject manufacturers to

double taxation. The input excise will be included as part of the cost of the final product which will then be subject again to excise and VAT (on a base that includes excise tax).

Committee's Observation

1579. **The** Committee **agreed with the stakeholder.**

Clause 42(a)(i)(G)

1580. **Proposal to subject Excise Duty on Articles of Plastic of Tariff Heading 3923.30.00 and 3923.90.90:** Delete the proposal. Imposing excise duty on locally produced plastics, this will increase the cost of production and thus increase the costs of goods that require the use of plastic packaging. Coupled with other proposed levies on plastic packaging, this will result in multiple taxation on the same product, further increasing the costs to businesses and consumers.

Committee's Observation

1581. **The Committee considered the stakeholder's proposal and proposed to zero-rate locally manufactured plastic packaging material whereas imported plastic packaging material be exempted from excise duty.**

Clause 45

1582. **Introduction of Eco Levy**: Delete Paragraph 7B. The rates of the eco levy are significant and will increase manufacturers' operating costs, which will likely be passed on to consumers, increasing inflationary pressure. The adoption of the proposed eco levy will amplify inflationary pressures, diminish disposable income, and deter both foreign and domestic investment activities within Kenya.

Committee's Observation

1583. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products** into **Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 56(a)

1584. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection**: Retain the current provision in the Act. The invalidation of objections would prevent the ability of the taxpayer to Appeal to the Tax Appeals Tribunal and the High Court impeding the right of the taxpayer to justice.

Committee's Observation

1585. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the**

Committee proposes to require the commissioner to communicate the objection decision.

121) AMERICAN CHAMBER OF COMMERCE SUBMISSIONS ON FINANCE BILL 2024.

Clause 4

1586. **Proposal to reduce the period for claimable deferred realized foreign exchange** loss **from 5 years to 3 years:** Delete the clause since it will affect companies that planned their borrowing based on the current 5-year limit in the ITA. Companies will also have a much shorter time to claim the deferred tax losses leading to a potential increase in write offs which will impact businesses' financial performance.
Committee Observation

1587. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 9 -12H-

1588. **Introduction of Motor Vehicle at the rate of 2.5% of the value of the vehicle:** Amend the proposal to give guidelines on the categories of motor vehicles exempt from the motor vehicle tax, as well as a decrease in the rate from 2.5% to 1% per annum.
Committee Observation

1589. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition,** therefore **the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 25(b) K

1590. **Income to ship owners and air transport operators where there is no reciprocal arrangement or** treaty: Delete the clause because should this proposal pass, non-resident air transport operators or ship owners from countries without a reciprocal arrangement or treaty will be subjected to a higher tax rate, therefore disincentivizing such operators from trading with Kenya due to the increased cost of operation.
Committee Observation

1591. **The** Committee **observed that the proposed tax is under the simplified tax regime at a marginal rate of 3%, which is low and may not have deleterious effects on ship owners.**

Clauses 3, 7, and 20,25 seeking to amend Sections 10, 35, Third Schedule of the Income Tax Act-

1592. **Proposal to Introduce WHT of 5% for Residents and 20% for Non-Residents Making or Facilitating Payments Over a Digital Marketplace:** Delete the clauses since withholding Tax obligation should be done away with as the intended outcome is less likely to be achieved if the Kenyan users decide to operate offline e.g., on a cash basis in Uber's

case to avoid the WHT application which does not resolve the mischief the Bill intends to address. The introduction of withholding tax on the digital marketplace will pose a significant competitive disadvantage/ unfairness in regard goods and services.

Committee Observation

1593. **The Committee was of the view that the definition of a digital marketplace sufficiently** describes **what falls within the scope amenable to pay WHT.**

Clause 25(b)iii A

1594. **Withholding tax of Income earned on interest from infrastructure bond:** Amend the clause and revise the non-resident rate from the proposed 15% to 7.5% to promote foreign investment in these bonds. The higher tax could be a disincentive to investing in Kenyan bonds although the government could be seeking to claw back some benefit from the high interest rates on government bonds.
Committee Observation

1595. **The committee observed that there is need to encourage investments in long term bonds to** finance **government initiatives.**

Clause 25 (b) iii D

1596. **Proposal to remove the threshold of KSh.24,000 for payments such as** management/ **professional fees made to residents:** Delete the proposal since this might be administratively cumbersome to monitor when the threshold is met.
Committee Observation

1597. **The Committee observed that the threshold occasions revenue losses in instances** where **a tax payer splits payments in batches of amounts under the threshold to avoid paying tax.**

Clause 12

1598. **Introduction of Advancing Pricing Agreement:** This is a welcome provision however amend section 18G to prescribe the procedures to be followed by a taxpayer seeking to enter into an APA; and confirm whether an advance pricing agreement can be amended in the event of a significant change in the assumptions made.

Clause 8 -12E (1)

1599. **Repeal of digital service tax and replacement with significant economic presence tax at 30% on 20% deemed profit:** Amend the provision under the new Sec on 12E (3) to reduce the deemed taxable profit of a person liable to pay the tax from 20% to 10% of the gross turnover. This is because the proposed deemed taxable profit fails to consider the financial realities of businesses.
Committee Observation

1600. **The Committee agreed with the stakeholder but resolved that to allow for seamless** implementation **of the Agreements, the commissioner publishes regulations to address the operations of the Advance pricing agreements.**

Clause 31(c)

1601. **Taxpayers not allowed now to claim VAT refunds on supplies of officially aided funded projects :** Delete the proposed amendment due to the burden it places on businesses trading with government-approved aid projects. The Finance Act 2022 amended Section 17 (5), allowing registered manufacturers to apply for a refund of excess input VAT incurred while providing taxable supplies to official aid-funded projects. This proposal aims to reverse the 2022 amendment.
Committee Observation

1602. **The Committee observed that there is need to curb the losses in tax revenues occasioned by many tax refunds.**

Clause 34(a) N

1603. **Plant, machinery, and equipment used in the construction of a plastics recycling** plant **from Exempt to VAT Standard rate:** Delete the clause and introduce tax incentives for recyclers of plastics as provided under the Finance Act 2019. This includes exemption from VAT for all services offered to plastics recycling plants and the supply of machinery and equipment used in the construction of these plants.

Committee Observation

1604. **The Committee noted that there is need to exempt from VAT certain locally manufactured products so as to promote local industries, especially the plastic recycling plants in keeping with the spirit of enhancing climate change mitigation measures.**

Clause 34 (b)

1605. **Increases excise duty on various financial services:** Delete the proposal as its adoption is expected to increase the cost of various financial and insurance services, thereby limiting access and affordability for ordinary Kenyans.
Committee observation

1606. **The Committee agreed with the Stakeholder in respect to excise duty on financial** services **the Committee proposes to maintain the prevailing rate of excise duty on money transfers services by banks and financial institutions.**

Clause 39

1607. **Removing** the **relief on Excise Duty paid on excisable raw materials:** Delete the clause because deleting the section that allows manufacturers to offset the excise duty incurred on raw materials against the excise duty levied on final goods or services delivered to consumers, an escalation in consumer goods and services pricing is anticipated, inevitably fuelling inflation.

Committee Observation

1608. **The Committee observed that the excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42 (b)

1609. **Increase in Excise duty on money transfer services, telephone, and internet data services from 15% to 20%:** Delete the provision as the increased taxes will be passed on to local businesses and users, resulting in higher costs for telephone and internet data services.

Committee Observation

1610. **The Committee agreed with the Stakeholders with respect to excise duty on telephone and internet data. The Committee proposes to maintain the prevailing rate of excise duty on telephone and internet data to allow penetration and accessibility in the rural areas.**

Clause 42 (a) in part I P

1611. **Introduction of Excise on Vegetable Oil at the rate of 25%:** Amend the proposal to revise the excise duty rate on vegetable oils from 25% to 5%. The 25% rate on vegetable oils would significantly increase the cost of these products, potentially driving the general population to seek unhealthy and unsustainable alternatives.

Committee Observation

1612. **The Committee agreed with the Stakeholders on the need to exempt certain products, such as vegetable Oils, to curb increases in consumer prices.**

1613. **New proposal: Refunds of excise duty on bad debts:** Introduce a provision under Section 29(3) of the Excise Duty Act, 2015 to read as follows. *"Provided that in case of goods or services provided to individuals, the amount of excise duty relating to the goods or services whose payment has not been received upon expiry of 6 months after the provision of the goods or services may be offset against future excise duty payable in the subsequent tax period or refunded under this Section where the person elects for actual refund."*

Clause 44

1614. **Increase in rate of import Declaration fee from 2.5% to 3%:** Delete the proposed amendment and retain the rate at 2.5%. Increasing the rate will raise the cost of importing goods into the country, and the additional IDF cost is likely to be passed on to customers.

Committee Observation

1615. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24** budget. **The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Clause 45

1616. **Introduction of eco levy:** Amend the clause to exclude the eco-levy on items under tariff heading 8528.71.00 before the finance bill is enacted into law. This exclusion is necessary because the proposed eco-levy will adversely impact the local sale and manufacturing of technology products, such as decoders (set-top boxes) and other items used for data transmission, broadcasting, and information dissemination.

Committee Observation

1617. **The Committee observed that taking into account the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished** products **into Kenya. Therefore, the committee proposes that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility.**

Clause 47

1618. **Introduction of Third Schedule- Goods Subject to Export and Investment Promotion Levy:** Delete the clause in its entirety. Introducing an Export and Investment promo levy of 3% on the customs value of denatured ethyl alcohol, other spirits, and cooking stoves for liquid fuel will make these essential products unaffordable for consumers.

Committee Observation

1619. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the** local **manufacturing sector from unfair trade practices, increase the competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.**

Clause 53

1620. **One-year validity of recovery notices issued to persons owing money to taxpayers:** Delete the proposed amendments as they would be injurious to taxpayers. If passed into law, the Commissioner could issue agency notices to enforce existing decisions of the Tribunal/Courts, even when taxpayers are legally entitled to appeal against these decisions.

Committee Observation

1621. **The committee agreed with the stakeholder but proposed to amend to provide that the** appeal **be lodged within a month.**

Clause 63

1622. **Access of Personal Data by KRA: Delete the proposed amendment since the** proposed unlimited access to personal data without court orders or proper procedures is likely to infringe taxpayers' right to privacy and poses a risk of data misuse.

Committee Observation

1623. **The Committed noted that the proposal to allow the KRA access to personal data as** proposed **may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

New clause:

1624. **Zero-rate on supply of denatured ethanol:** Amend Part A of the Second Schedule of the VAT Act 2013 to provide for VAT zero-rating on the supply of denatured ethanol under tariff number 2207.20.00. The amendments to the VAT Act 2013 through the Statute Law (Miscellaneous Amendments) Act, 2024, which subjected the supply of denatured ethanol under tariff number 2207.20.00 to 16% VAT effective April 25, 2024, are detrimental to the growth of the Ethanol Cooking Fuel industry.

New clause:

1625. **Ambiguity of scope of excise duty on fees charged by digital lenders:** The current Excise Duty has two provisions that are potentially conflicting. These provisions are: -

- Part II, Paragraph 6 of the First Schedule of the Excise Duty Act, 2015 (EDA) provides for "excise duty on fees charged by digital lenders at a rate of twenty percent".
- Part II, Paragraph 4 of the First Schedule of the EDA provides for "excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value."

1626. To pre-empt the likely disputes with the KRA due to the ambiguity occasioned by the law, we recommend that Digital lenders licensed under the Central Bank of Kenya (Digital Credit Providers) Regulations 2022 shall be subject to excise duty under Part II, Paragraph 4 of the First Schedule of the Excise Duty Act.

Committee Observation

1627. **The committee observed that the two paragraphs (4 and 6) of the First Schedule do not** conflict **as submitted by the stakeholder. Paragraph 4 refers to the rate of excise charged by financial institutions, whereas paragraph 6 refers to excise duty payable by digital lenders.**

1628. **Time of supply for excisable supplies:** We recommend that Section 4 is amended by adding the following subsection immediately after subsection 1A: -

1B) About digital lenders licensed under the Central Bank of Kenya (Digital Credit Providers), Regulations 2022, me of supply shall be the date on which the fee is repaid par ally or in full."

1629. Section 6(3) of the EDA as read together with Sec 4(1) of the EDA means that digital lenders who collect excise duty at the of maturity of the loans remit excise duty that has not yet been collected from borrowers.

Committee Observation

1630. **The Committee noted that there is need for clarification on what constituted export** confirmation **documents and there recommends an amendment to cure the concern.**

122) EAST AFRICAN DEVICE ASSEMBLY LIMITED
Clause 35(f)

1631. Supply **of locally assembled and manufactured mobile phones moved from Zero-rated supplies to standard rate VAT (16%):** Delete the clause because the current proposal will curtail the county's transition to a digital economy. Bearing in mind that it will increase the price of smartphones, the proposal will accrue negative effects on the use of mobile and internet services.

Committee Observation

1632. **The Committee observed that in order to promote the growth of locally manufactured phones, there is a need to retain them as Zero Rated.**

Clause 45

1633. Introduction **of Eco Levy:** Amend the clause to exclude imports for the local assembly of phones and electronic devices, as well as locally assembled phones and electronic devices, from the introduction of the Eco Levy. This will increase the cost of local manufacturing, leading to higher prices for local products. Consequently, it may discourage Foreign Direct Investments, potentially resulting in increased net importation and job losses.

Committee Observation

1634. **The Committee observed that to address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee** proposes **to remove the imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

123) KIBATI NGINA, MPA.
Clause 9(12H) (1)

1635. Introduction **of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the clause, considering the high inflation rate that has already strained citizens financially, leaving many with less disposable income.
Committee Observation

1636. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed** Motor **Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 63

1637. **Access of personal data by KRA-** Delete the clause since it infringes on the core parameters of the Data Protection Act, 2019 this further undermines the integrity of the Act.

Committee Observation.

1638. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

124) KENYA PRIVATE SCHOOLS ASSOCIATION

Clause 9 (12H) (1)

1639. Introduction **of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Amend the clause to exclude school vehicles from the proposed 2.5% motor vehicle tax since this would result in double taxation because schools operate under commercial vehicles that are already subjected to advance tax under section 12A of the ITA. It will further discourage schools from taking comprehensive insurance.

Committee observation

1640. **The Committee observed that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition, therefore the Committee recommends the deletion of the proposed motor vehicle tax.**

Clause 35(13A)-

1641. **Moving bread from zero-rated to standard rate VAT (16%):** Delete the clause because maintaining it will make bread more costly as the charges will be transferred to the final consumers of bread.

Committee Observation

1642. **The Committee agreed with the Stakeholder and resolved to zero rate only the most critical** consumption **items in most households such as bread.**

New Clause

1643. **Amend** Excise Duty Act 2015 and Regulations 2020 to provide for an allowance for spirits processing and transit losses Delete Section 36 (2) and replaces it with: - *Where the Commissioner under paragraph (1) directs ascertainment by weighing, the volume shall be calculated— (a) by use of a mass flow meter at twenty degrees centigrade with an*

accuracy of +/-3% of the measured volume in litres. 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. Additionally, 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.

1644. Amend part A to the second Schedule of the VAT Act 2013 to provide for VAT zero-rating on the supply of denatured ethanol of tariff number 2207.20.00. The 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, which is detrimental to the growth of the Ethanol Cooking Fuel industry.

1645. Amend Part I of the Excise Duty Act to remove of SIM Cards from the list of excisable goods. 10% excise duty on the importation of cellular phones and Ksh 50 on Imported ready-to-use SIM cards were also introduced in 2022. Availability of affordable SIM cards.

Committee observation

The Committee noted the proposals but dropped them, considering that they were not subjected to public participation.

125) NYAWIRA KIRUBI SUBMISSIONS

Clause 35(d)

1646. **Proposal to move transportation of Sugar from Zero-Rated to Standard-Rated VAT:** Delete this clause, as it would increase transportation costs for local sugarcane farmers, significantly reducing their profits and making sugarcane production economically unfeasible. Instead, the focus should be on increasing taxes on imported sugar to promote local manufacturing.

Committee Observation

1647. **With regards to the Value Added Tax the Committee was guided by the policy to zero-rate sugarcane transportation to promote local manufacturing. Based on these criteria the Committee, accepted the proposal by the stakeholder to delete Clause 35 (d).**

Clause 42(b)(ii)

1648. **Proposal to increase excise on financial services:** Delete the clause because we are already facing excess taxation on financial services. Adding these taxes would only scare people from using these services rather than raising revenue. This relentless taxation of financial services will stifle economic activities and burden ordinary citizens.

Committee Observation

1649. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services.**

Clause 42(a)(P)

1650. **Introduction on Excise duty on vegetable oil at the rate of 25%:** Delete the clause because the public has constantly decried the unreasonable prices of cooking oil.

Increasing it further would only become more detrimental than of any importance to the public.

Committee Observation

1651. **The Committee accepted the proposal by the stakeholder to exempt excise duty on vegetable oils in order to curb the increase in consumer prices.**

Clause 45

1652. **Introduction of Eco Levy:** Delete this clause because implementing the Eco Levy would be counterproductive, discouraging the adoption of eco-friendly products. Such taxation would lead to higher product prices, increase inflation, and diminish purchasing power.

Committee Observation

1653. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products. To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 9(12H)

1654. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Value of the Vehicle:** Delete this proposal because taxing motor vehicles further burdens taxpayers who are already financially strained.

Committee Observation

1655. **The Committee noted**

I. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

II. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

III. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

IV. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal to delete.

Clause 42(b)(i)

1656. **Increase in excise duty on financial transactions:** Delete the clause because currently we pay 16%VAT on airtime and an additional 15% excise duty on airtime amounting to 31% taxes any further increase is unreasonable and disproportionately impacts the poor, while the wealthy continue to receive exemptions

Committee Observation

1657. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services.**

Clause 63

1658. **Proposal on Access to Personal Data by KRA:** Delete this clause because exempting KRA from the Data Protection Act would severely compromise individuals' privacy rights. Data protection officers should evaluate the proposal's impact and advise KRA accordingly. Passing this proposal would greatly increase vulnerability to unauthorized data usage.

Committee Observation

1659. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law. The Committee thus agreed with the proposal to delete.**

Clause 6(b)(ii)

1660. **Proposal to Exempt Reimbursement of Expenses Incurred in Asset Purchases in the Course of Official Duties by Public Offices:** Delete this clause as it lacks justification for the exemption. Employee benefits should be taxed fairly and without discrimination between the public and private sectors. Granting this exemption would unfairly advantage privileged individuals.

Committee Observation

1661. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation. The Committee therefore agreed to delete the proposal.**

Clause 23(b)

1662. **Income of the Registered Trust Scheme Proposed to be Subject to Tax:** Delete this clause because these exemptions result in substantial revenue losses, particularly benefiting the wealthy who should contribute their fair share of taxes instead of enjoying exemptions.

Committee Observation

1663. **The Committee noted that registered trusts schemes serve the same purpose as pension schemes and should therefore not be discriminated against as they play a crucial role in providing stability and security to vulnerable beneficiaries across generations. Based on the foregoing, the Committee resolved to retain trusts as exempt and therefore recommended deletion of the proposal.**

126) ICHIBAN SUBMISSIONS ON FINANCE BILL, 2024

Clause 7,20 and 25- withholding tax

1664. **Income from the Digital Marketplace Proposed to be Subject to Tax:** Delete these clauses because imposing withholding tax (WHT) on goods transacted in digital marketplaces disadvantages them compared to similar goods sold in physical stores. Additionally, goods traded outside digital platforms are not subject to WHT. This proposal is likely to result in increased prices as vendors pass on the WHT costs to buyers, potentially reducing digital commerce activities.

Committee observation

1665. **The Committee did not consider the proposal by the stakeholder because the clause is clear in that the platform owner who is a resident or a non-resident is responsible for collecting WHT and remitting it to the Commissioner to expand the taxbase.**

Clause 34(b)(iii)-

1666. **Proposal to subject Betting, gaming and lottery 16% VAT:** Delete this provision because imposing VAT on betting, gaming, and lottery services could drive these activities offshore, reducing tax revenues for the government.

Committee observation

1667. **The Committee noted that the industry is subjected to various other taxes and thus, imposing VAT them would result to flight of these industries to other countries leading to revenue losses. The Committee, therefore, agreed with the stakeholder.**

127) WESTMINISTER CONSULTING

Clause 20

1668. Expansion **of Withholding Tax (WHT) to Public Entity Goods Payments and** Digital **Marketplace Transactions: Adopt this provision to increase government revenue through the taxation of digital content creators via Withholding Tax (WHT). The proposed rates are 5% for residents and 20% for non-residents. It is also recommended to implement a**

reporting system akin to the US Form 1099-K, where digital platforms would annually report income statements to content creators surpassing a specified threshold. This reporting mechanism would ensure accurate income tracking and should include a reasonable threshold to avoid burdening minor earners while capturing significant income streams.

Committee Observation

1669. **The Committee accepted the proposal by the stakeholder as it would increase government revenue through the taxation of digital content creators via Withholding Tax (WHT).**

Clause 3

1670. **Expansion of Withholding Tax (WHT) to Public Entity Goods Payments and Digital Marketplace Transactions:** Adopt this provision to increase government revenue through the taxation of digital content creators via withholding Tax (WHT). The proposed rates are 5% for residents and 20% for non-residents. It is also recommended to implement a reporting system akin to the US Form 1099-K, where digital platforms would annually report income statements to content creators surpassing a specified threshold. This reporting mechanism would ensure accurate income tracking and should include a reasonable threshold to avoid burdening minor earners while capturing significant income streams.

Committee Observation

1671. **The Committee accepted the proposal by the stakeholder as it would increase government revenue through the taxation of digital content creators via Withholding Tax (WHT).**

Clause 8

1672. **Repeal of Digital Service Tax and Replacement with Significant Economic Presence Tax at the rate of 30% on 20% Deemed Profit:** Amend the provision to include non-resident persons providing digital services to an airline in which the Government of Kenya owns at least forty-five percent of its shares. This adjustment acknowledges the complexities involved in tracking and holding accountable numerous travel agents worldwide affiliated with the national carrier.

Committee Observation

1673. **The Committee did not consider the stakeholder's proposal to include non-resident digital services airlines. However, the Committee observed that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase in rate is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee thus reduced the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9(12G.)

1674. **Introduction of Minimum Top-Up Tax: Delete or amend the proposal due to the complexities in calculating** whether the tax applies and determining the owed amount. If

implemented, simplify the formula used for calculating the tax. The requirement to calculate the combined effective tax rate based on adjusted covered taxes and net income or loss, and then determining the excess profit, adds layers of complexity that may be challenging for both taxpayers and KRA to navigate. Another concern is that Multinational companies may view the Minimum Top-up Tax (MTT) as an additional tax burden, potentially discouraging investment and economic growth. This is bearing in mind that we already have comprehensive Transfer Pricing legislation and an effective transfer pricing unit in KRA.

Committee Observation

1675. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues. Therefore, the committee did not agree with the stakeholder's proposal.**

Clause 9(12H)

1676. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the provision because the proposal as it is, is not equitable as the low-value vehicles will pay proportionately high amounts compared to the high-value vehicles, due to the capping of the maximum amount payable to Ksh100,000.to consider adjusting the road maintenance levy from Ksh3 per liter to Ksh5 and/or increasing excise duty on fuel from Ksh18 to Ksh35, which will achieve the similar intended purpose of introducing the motor vehicle tax. Alternatively, move collection to road license to be based on the CC Rating of the vehicle administered by the NTSA.

1677. **Third-party motor vehicle policies do not require valuations, this provision** requires that valuation be done, which will be an additional cost for insurers. For this reason, many motorists may be tempted to operate without insurance if collection is pegged at the point of insurance.

Committee Observation

1678. **The Committee noted:**

i) **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal to delete.

Clause 33

1679. **The VAT registration threshold was revised from KES 5 million to KES 8 million:** Adopt this clause because the revision aligns with the evolving nature of services, particularly in fields like advanced medical technology where expert input is crucial. Services must be also considered for VAT exemptions to support their integral role alongside goods.

Committee Observation

1680. **The Committee noted that revising the threshold upward would encourage the small and medium businesses. Therefore, the Committee accepted the proposal.**

Clause 35(a)

1681. **Introduction 16% VAT on ordinary bread:** Delete the Clause for it will only translate to the additional cost of this commodity. This proposed amendment will violate the fundamental right to affordable food. Demand will fall drastically, taxes will eat into most of the gross margins of manufacturers with many forces to close down permanently, thereby putting at risk more than 100,000 jobs. We will end up losing more employment opportunities that could have been created by these manufacturing entities, some of which are also enhancing the skill set of our youth through their advanced technological production processes. Taxation needs to be just and equitable. As such we must adopt policies that will tax the economically able and not strain the economically challenged who are barely making ends meet. We cannot keep contributing to the unfair distribution of income.

Committee Observation

1682. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 42(P)

1683. **Introduction of excise duty of vegetable oil at the rate of 25% and Coal at the rate of 5% or Ksh.287,000 whichever is higher:** Delete the provision. It is evident the reliance placed by the cement manufacturers on coal. Coal is key component in the production process of clinker and any additional costs charged onto coal will translate to additional costs of the raw material making clinker production in Kenya unaffordable. This will eventually result in Kenya becoming a net importer of clinker for its cement manufacture

Committee Observation

1684. **The Committee accepted the proposal by the stakeholder to exempt excise duty on vegetable oils in order to curb the increase in consumer prices.**

Clause 51

1685. **Standardization of Requirements for Electronic Tax Invoices under Tax Procedures Act:** Amend to exempt the informal sector from the provisions of eTIMS. Alternatively, amend to introduce a final withholding tax under a simplified system to enable the Kenya Revenue Authority (KRA) to collect taxes effectively without solely relying on expanding

the tax base. The Electronic Tax Invoice Management System (eTIMS) aims to enhance VAT collection and broaden the tax base. It's crucial to ensure that expanding the tax base translates into increased tax revenues for tax authorities.

Committee Observation

1686. **The Committee agreed with the stakeholder having noted the challenges in the implementation of the Electronic Tax invoice system, particularly with regards to small scale farmers (subsistence farmers) and micro-enterprises. One of the biggest challenges was that the system had locked out these producers from supplying to formal businesses which is deleterious for the economy at large. To correct this, the Committee proposes to exempt subsistence farmers and microenterprises whose gross turnover is below one million shillings. The Committee further recommends the issuance of guidelines by the revenue authority on the operationalization of this proposal.**

Clause 52

1687. **A proposal that offers relief in cases where recovering unpaid taxes becomes uncertain or challenging. If the Commissioner deems it impractical to collect a tax:** Agree to the provision. This amendment represents a positive step forward, granting the Commissioner discretion to offer relief to taxpayers in exceptional circumstances where recovering unpaid taxes is impractical or inequitable. It signals a move towards a more compassionate and flexible approach to tax administration, potentially benefiting taxpayers facing genuine challenges. For instance, it could address issues faced by sugar companies and other cases where previous provisions were insufficient. This new section provides a mechanism to address exceptional circumstances effectively.

Committee Observation

1688. **The Committee agreed with the stakeholder having noted the potential abuse of the provision as against the genuine circumstances where the provision would be useful. To this extent, the Committee proposed additional checks and balances on the power of Commissioner. Further the committee recommended that the provision be amended to require the commissioner to publish in the Kenya *gazette* on tax abandonment and submit it in the National Assembly for approval.**

Clause 56

1689. **Proposal to Extend Time for KRA to Review Objections:** Amend the proposal to include that the Commissioner must provide an objection decision even if documents have been partially submitted, thereby preventing potential abuse of this provision. Additionally, grant taxpayers an additional statutory period of 45 days to lodge their objections for fairness. If the Commissioner fails to decide within the extended 90-day period, the taxpayer's objection should be deemed allowed.

1690. **Extending** the decision-making period in subsection (11) may improve the thoroughness of objection decisions through additional deliberation time. However, it also prolongs the resolution process, impacting taxpayers awaiting objection decisions. Importantly, there should be a concurrent extension of the timeframe for taxpayers to lodge their notice of objection to maintain fairness in the process.

Committee Observation

1691. **The Committee observed that there was potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposed to require the commissioner to communicate the objection decision. Therefore, the Committee did not accept the stakeholder's proposal.**

Clause 60

1692. **Requirement of a KRA PIN for Registration of Employees Working Remotely outside Kenya for Kenyan Employers:** Amend the clause to exempt Kenya Airways from this requirement to prevent undue taxation on their international employees. While expanding the PIN requirement aims to broaden the tax base and ensure compliance in remote employment setups, it presents unique challenges for institutions like Kenya Airways. As an airline with employees stationed abroad, requiring these employees to obtain a PIN could subject their income to local taxation.

Committee Observation

1693. **The Committee noted the concern by the stakeholder. However, it also noted need to expand the taxbase and thus, did not agree with the stakeholder.**

New provision

1694. **In** spirits of supporting our local manufacturers, they proposed for **consideration** for the increase on the applicable excise duty on imported printing ink other than inks for balls points that can be manufactured locally specifically, request for increment of excise duty on inks of H.S classifications 3215.19.00, 3215.11.00 and 3215.90.90.

Committee Observation

1695. **The Committee noted the proposals and agreed with the stakeholder noting that this was meant to protect the local industry which is the overaching principle under the imposition of execise duty**

128) KENYA TEA GROWERS ASSOCIATION SUBMISSION ON FINANCE BILL, 2024.
Clause 45

1696. **Introduction of the Eco Levy. Delete the clause since the Eco Levy will** have the effect of duplicating the already existing levies which in total are about 52% fees, charges and levies on tea production. This will disincentive local investment in value addition since packaging material for food commodities is a crucial input in the value addition of tea.
Committee observation

1697. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products. To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles (tuk tuks)**

Clause 9 12H

1698. **Introduction of motor vehicle tax. Delete the clause because the proposal** will compound costs already incurred by business in Extended Producer Responsibility charges for waste management; and advance tax on motor vehicles for commercial use respectively.

Committee Observation

The committee noted

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

Clause 12

1699. **Introduction of Advance Pricing Agreements (APA)** for the assessment of taxes due on international transactions (multinational enterprises**). This is a welcome move** for it will ease agreements on taxes and reduce the time previously taken in clarifying and resolving tax declarations for past transactions which took up substantial business tax and cost.

Committee Observations:

1700. **The Committee supports the proposal by the stakeholder since it will enhance revenue determination in entities that belong to Multinational Groups or trade with related persons. Further, to allow for seamless implementation of the Agreements, the Committee recommends enactment of the regulations to address circumstances where there is cancellation of the APAs by KRA to allow the taxpayer the right of appeal among other concerns.**

Clause 6 (b) (iii)

1701. **Review of the threshold of deductible employment benefits. This is a welcome move since it** will improve disposable incomes available to employees.

Committee Observations

1702. **The Committee accepted the proposal by the stakeholder to increase disposal income among the employees.**

129) ASSOCIATION OF SISTERHOODS OF KENYA (AOSK)

Clause42(b)(ii)

1703. **Increase in Excise Duty on Financial Services:** Delete this clause because **taxing** financial services would burden ordinary Kenyans with additional taxes, potentially reducing their quality of life in terms of education, housing, and other essentials. It is proposed that these services remain exempt to mitigate any adverse effects on the general population.

Committee Observation

1704. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services.**

Clause 30

1705. **Time of supply for exported goods:** Proposal to define the time of supply for **exported** goods by indicating that the Delete the Clause.

Committee Observation

1706. **The Committee noted that there was need for clarification on what constituted export confirmation documents and therefore agreed with the stakeholder and recommended an amendment to cure the concern.**

Clause 23(c)

1707. **Proposal to Introduce Withholding Tax on Interest from Infrastructure Bonds at the Rate of 5% for Residents and 15% for Non-Residents:** Delete this clause. The proposed withholding tax is punitive and risks discouraging both Kenyans and foreigners from investing in infrastructure bonds.

Committee Observation

1708. **The Committee supported the proposal in the Bill to encourage long-term investment and enable the government to earn revenue which is consistent with all other payments. Therefore, the Committee did not accept the proposal by the stakeholder to delete.**

Clause 35(a)

1709. **Introduction of 16% VAT on Ordinary Bread:** Delete this clause for taxing **ordinary** bread will increase its price, placing a burden on the poor who rely on bread as a staple in their basic diet.

Committee Observation

1710. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 5

1711. **Imposition of Withholding Tax on Payments Made for the Supply of Goods to a Public Entity at the Rate of 3% for Residents and 5% for Non-Residents, Read Together with Clauses 20 and 23:** Delete this clause. Charging withholding tax on goods supplied will have a negative cash flow impact, particularly for small traders.

Committee Observation

1712. **The Committee noted that the proposal is to align with the rate on turnover tax reviewed by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.**

]Clause 63

1713. **The proposal on access of personal data by KRA:** Delete this clause. Amending the Data Protection Act to exempt KRA from constraints on **access** to personal data would have significant adverse implications on the rights, freedoms, and privacy of Kenyans, and therefore should be rejected.

Committee Observation

1714. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law. The Committee thus agreed with the proposal to delete.**

Clause 9(12H.)

1715. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Value of the Vehicle:** Delete this clause, as it may discourage Kenyans from aspiring to own cars.

Committee Observation

1716. **The committee noted that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

i) **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

ii) **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iii) **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 23(e)

1717. **Proposal to Subject the Registered Family Trust to a Corporate Tax of 30%:** Delete this proposal to tax the income of registered family trusts, which were previously exempted. Taxing family trusts could discourage their establishment and is seen as imposing undue financial burden on families.

Committee Observation

1718. **The Committee noted that the proposal was a clean-up and therefore did not accept the proposal by the stakeholder to delete.**

Clause 57

1719. **Integration of the Electronic Tax System with the Data Management and Reporting System:** Amend the clause to set the penalty at a maximum of **Kshs** 20,000. It is important to note that paying the fine does not exempt the taxpayer from ultimately paying the tax owed. Therefore, penalties should be kept minimal and affordable for taxpayers.

Committee Observation

1720. **The Committee noted that the proposal did not specify the class of companies and entities that will be subject to the provision and neither does it specify the timeline for which a taxpayer would be required to comply before the penalty applies. Therefore, the Committee proposed that the period after notice be amended to be up to one year and that the provision to exclude entities with a turnover of less than eight million shillings.**

130) BOOK COLLECTOR

1721. Mr. Njoroge Waweru appeared before the Committee on 4th June 2024 and **submitted** as follows:

Clause 35(a)

1722. **Introduction of 16% VAT on ordinary bread:** The introduction of a 16% VAT on **ordinary** bread needs reconsideration. Ordinary bread is a staple for many citizens, and taxing it will increase its price, disproportionately impacting the poor, who may struggle to afford it. Alternatively, this tax could encourage Kenyans to opt for healthier dietary options.

Committee Observation

1723. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 42(a)(i)(P)

1724. **Introduction of the Excise duty on vegetable oil at the rate of 25%:** The introduction of a 25% excise duty on vegetable oil requires reconsideration. **Such** a tax will have severe consequences, potentially driving people to seek less healthy alternatives. On the other hand, this could create an opportunity for innovation, encouraging the development and growth of businesses producing healthier oils.

Committee Observation

1725. **The Committee accepted the proposal by the stakeholder to exempt excise duty on vegetable oils in order to curb the increase in consumer prices.**

131) ROWLAND

Clause 6(b)(ii)

1726. **Proposal to Exempt Reimbursement of Expenses Incurred in Asset Purchase During Official Duties by Public Officers:** Delete this clause because it would **allow** public officers to use taxpayer money to finance personal items such as shoes and watches without taxation on these reimbursements.]

Committee Observation

1727. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation. Thus, the Committee accepted the proposal by the stakeholder.**

Clause 9 and 25(15)

1728. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete the proposed new section 12H on Motor Vehicle Tax. Alternatively, **establish** a minimum vehicle valuation of 1.5 million to safeguard low-income earners. This approach aims to prevent further financial strain on Kenyans already grappling with high taxes.

Committee Observation

1729. **The committee noted that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition. The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive. The proposal will have adverse effects on insurance taking behavior of motor**

vehicle owners and further leading to negative effects on the insurance sector. The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.

Clause 20(a)

1730. **Imposition of Withholding Tax on Payments Made for the Supply of Goods to a Public Entity at the Rates of 3% for Residents and 5% for Non-Residents:** Delete the proposed paragraph (r) because it may incentivize suppliers to inflate prices when supplying goods to the government or other public entities. Removing this paragraph will also aid in mitigating corruption associated with this clause.

Committee Observation

1731. **The Committee noted that the proposal is to align with the rate on turnover tax reviewed by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.**

Clause 33.

1732. **The VAT registration threshold was revised from KES 5 million to KES 8 million:** Amend the clause to increase the VAT threshold to Ksh. 20,000,000 instead of the proposed 8,000,000, which is low given the current inflation rate. This adjustment will ensure that more businesses fall within the mandatory registration threshold.

Committee Observation

1733. **The Committee noted that revising the threshold upward would encourage the small and medium businesses. Therefore, the Committee did not accept the proposal to increase the threshold to twenty million for small businesses.**

Clause 48.

1734. **Introduction of Eco Levy:** Delete this clause because introducing a new tax **would** further burden the final consumer with additional costs rather than effectively increasing revenue collection. Instead, incentivize recycling industries and enhance sensitization efforts to promote recycling and environmental conservation.

Committee Observation

1735. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

1736. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles**

(tuk tuks) **and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholder to delete.**

Clause 52

1737. **Proposal for Relief in Cases of Uncertain or Challenging Tax Recovery:** Delete subsection 37E of the proposal or amend it to include specific criteria for the **Cabinet** Secretary and KRA to determine when a tax debt is deemed impractical to recover. Maintaining the clause without clear criteria could potentially lead to increased corrupt practices in the country.

Committee Observation

1738. **The Committee noted the potential abuse of the provision as against the genuine circumstances where the provision would be useful. To this extent, the Committee proposes additional checks and balances on the power of Commissioner. Further the committee recommended that the provision be amended to require the commissioner to publish in the Kenya *gazette* on tax abandonment and submit it in the National Assembly for approval. Therefore, the Committee did not accept the proposal by the stakeholder.**

Clause 56

1739. **Proposal to Extend KRA's Review Period for Objections from 60 to 90 Days:** Delete this clause because implementing it would place undue pressure on taxpayers, who may struggle to provide extensive documentation within the extended timeframe. This would be particularly inconvenient as many **taxpayers** do not keep all necessary documentation readily accessible.

Committee Observation

1740. **The Committee did not agree with the proposal to delete. However, it observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposed to require the commissioner to communicate the objection decision. Therefore, the Committee.**

Clause 63

1741. **Proposal for Access to Personal Data by KRA:** Delete this clause because it violates the right to privacy enshrined in the Constitution of 2010 and contravenes data protection principles. There are already regulations in **place** that can assist KRA in revenue collection without compromising privacy rights.

Committee observations

1742. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law. Therefore, the Committee accepted the proposal by the stakeholder.**

132) MAKUNO
Clause 8

1743. **Proposal to Repeal the Digital Service Tax and Replace it with Significant Economic Presence Tax at a Rate:** Delete this clause because replacing Section 12E with Significant Economic Presence Tax does not necessarily stimulate foreign direct investment in our country. There are concerns that it **might** merely serve as a means to generate more funds that could potentially fuel corruption.

Committee Observation

1744. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9(12G)

1745. **Introduction of Minimum Top-Up Tax:** Delete this clause because it is unreasonable to require taxpayers to combine the effective tax rate to 15%. This **could** lead to a continual increase in this rate in future proposals.

Committee Observation

1746. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues. The Committee therefore did not accept the proposal to delete by the stakeholder.**

Clause 9(12H)

1747. **Proposal to Introduce a Motor Vehicle Tax at a Rate of 2.5% of the Vehicle's Value:** Delete this clause because adding more taxes to the already numerous taxes involved in vehicle purchase and daily operations is unnecessary.

Committee Observation

1748. **The committee noted**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 44.

1749. **Proposal to Increase Import Declaration Fee from 2.5% to 3%:** Delete this clause because the proposed increase in the import declaration levy is unnecessary. Instead, the government should focus on promoting initiatives like tree planting for environmental conservation and greening.

Committee Observation

1750. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25. Further, the Committee recommends making amendments in respect of the RDL by increasing it 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.**

Clause 63

1751. **Proposal on Personal Data Access by KRA:** Delete this clause because it risks **intruding** upon privacy rights and violates established legal protections.

Committee Observation

1752. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law. The Committee therefore, accepted the proposal by the stakeholder to delete.**

133) DAVID

Clause 9(12H)

1753. **Proposal to Introduce a Motor Vehicle Tax at a rate of 2.5% of the Vehicle's Value:** Delete this clause because it will increase the cost of purchasing and **maintaining** vehicles, which could adversely affect ordinary citizens.

Committee Observation

1754. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 8

1755. **Proposal to Repeal the Digital Service Tax and Replace it with a Significant Economic Presence Tax at a Rate of 30% on 20% Deemed Profit:** Delete this clause because replacing Section 12E with the Significant Economic Presence Tax does not necessarily ensure an increase in foreign direct investment in our country.

Committee Observation

1756. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover. Therefore, the Committee did not accept the proposal by the stakeholder to delete.**

Clause 42(b)(i)

1757. **Proposal to Retain Current Excise Duty Rates on Telephone and Internet Data Services:** Increasing the excise duty rate on telephone and Internet data services will escalate communication costs, imposing higher expenses on Kenyans and potentially detrimental effects on the population. Therefore, it is advisable to delete the clause proposing this increase.

Committee Observation

1758. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services. The Committee therefore, accepted the proposal by the stakeholder to delete the clause.**

Clause 34 (b)

1759. **Proposal to Retain Zero-Rated VAT on Transportation of Sugarcane from Farms to Milling Factories:** The proposed change to standard-rated VAT (16%) on transportation of sugarcane will raise transportation costs, subsequently increasing local sugar prices for consumers. Hence, it is advisable to maintain the current zero-rated status and delete the clause proposing the change.

Committee Observation

1760. **With regards to the Value Added Tax the Committee was guided by the policy to zero-rate sugarcane transportation to promote local manufacturing. Based on this criteria the Committee, accepted the proposal by the stakeholder to delete Clause 35 (d).**

134) NICK

Clause 9(12H)

1761. **Introduction of Motor Vehicle Tax at a rate of 2.5% of the Vehicle's Value:** Delete the clause because this tax seems to disproportionately affect **individuals** with less expensive vehicles, especially with the maximum cap of Ksh. 100,000. It could incentivize Kenyans to opt for cheaper third-party insurance covers instead of comprehensive insurance.

Committee Observation

1762. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause(42)(b)(ii)

1763. **Introduction of 16% VAT on financial services:** Delete the clause because **implementing** the VAT on financial services will remove the aspect of financial inclusion

and will make more people go back to operating on a cash basis thus losing more revenue as opposed to more revenue collection as expected.

Committee Observation

1764. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services.**

Clause 42(b)(i)

1765. **Proposal to increase the Excise Duty Rate on Telephone and Internet Data Services from 15% to 20%:** Delete this clause because increasing the excise duty on data services could disproportionately impact young Kenyans who rely on the Internet for education, communication, and online business, which are essential for their livelihoods.

Committee Observation.

1766. **The Committee accepted the proposal by the stakeholder to exempt telephone and data services from excise duty to curb the increase in the cost of the telephone and internet data services.**

135) BRIAN

Clause 9(12H)

1767. **Introduction of Motor Vehicle tax at the Rate of 2.5% of the Vehicle's Value: Delete** this clause because it will impose undue financial strain on individuals who depend on vehicles for their livelihood, particularly during current economic challenges. Additionally, the proposed tax rate is considered inequitable.

Committee Observation

1768. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 56.

1769. **Proposal to Extend KRA's Review Period from 60 Days to 90 Days for Objections:** Delete this clause because extending the timeframe for KRA to decide on objections from 60 to 90 days could lead to delays and uncertainty for taxpayers.

Committee Observation

1770. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision. Therefore, the Committee did not agree with the stakeholder's proposal to delete.**

Clause 33

1771. **Proposal on Time of Supply for Exported Goods to be Determined by the Availability of Required Export Confirmation Documents:** Delete this clause because increasing the VAT threshold for entities engaged in taxable supplies from Ksh. 5 million to Ksh. 8 million may unintentionally exclude smaller enterprises from the formal tax framework.

Committee Observation

1772. **The Committee noted that revising the threshold upward would encourage the small and medium businesses. Therefore, the Committee did not accept the proposal to delete the clause.**

Clause 9(12G)

1773. **Introduction of Minimum Top-Up Tax:** Delete this provision because passing this measure in parliament could deter foreign investment and undermine **competitiveness**, particularly due to the potentially excessive nature of the minimum top-up tax.

Committee Observation

136) ANGLICAN CHURCH OF KENYA

Clause 63

1774. **Proposal on Access of Personal Data by KRA:** Delete clause 63 because it poses significant risks to civil liberties and privacy rights. Non-governmental, faith-**based**, and public benefit organizations could face increased government scrutiny and financial harm. Moreover, it infringes on the right to privacy. KRA should focus on developing and

implementing innovative tax enforcement strategies that respect constitutional rights and privacy.

Committee Observations

1775. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law. Therefore, the Committee agreed to with stakeholder's proposal to delete Clause**

Clause 64

1776. **Proposal to Empower the Public Sector Accounting Standards Board to Develop a Framework for Implementing Accrual Accounting in Government Entities:** Delete clause 64 because implementing accrual accounting could exacerbate existing challenges with pending bills and financial transparency. Maintaining the current cash accounting model will ensure that government and public entities complete their financial transactions within the fiscal year.

Committee Observations

1777. **The Committee noted the concern of the stakeholders, however, highlighted the existing pending bills are a result of the cash accounting model. Therefore, did not reconsider the stakeholder's proposal to delete the Clause.**

137) SOURCE AFRICA LNG

NEW PROPOSALS

1778. **To** insert a paragraph immediately after Paragraph 34 of Part II of the First Schedule **of** the VAT Act,2013 to provide as follows: -

> *Taxable services are supplied for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary in charge of the National Treasury on the recommendation of the Cabinet Secretary responsible for matters relating to housing.*

1779. **The** amendment will exempt taxable services supplied to approved **affordable** housing projects from VAT. Similarly, it will reduce the cost of construction and promote the development of affordable housing units, thereby supporting the government's objective of providing affordable housing to its citizens.

Committee observation(s)

1780. **The Committee noted the proposal by the stakeholders but did not consider the new proposal to the Bill for it was not subjected to public participation.**

138) KENYA WOMEN PARLIAMENTARY ASSOCIATION (KEWOPA)

Clause 9 (12H)

1781. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Delete the clause because it will cause undue burden to not only vehicle **owners** but also on Kenyan citizens. Moreover, the provision fails to define "issuance of an insurance cover" which then means that motor vehicle owners will have to pay the tax each time they renew their insurance if done multiple times within a year. This will mostly affect the Public Service Vehicle (PSV) sector which renews its third-party cover insurance monthly. Consequently, this is likely to cause an increase in transport costs and the public service vehicles will shift the additional costs to the ordinary citizen further creating an undue burden.

Committee Observations

1782. **The committee noted**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **Commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

Clause 35 (a)

1783. **Introduction of 16% VAT on Ordinary Bread:** Delete this clause that changes **the** VAT rate on zero-rated ordinary bread to the standard rate of 16%. This change would prevent producers from claiming any input tax incurred during production, leading to higher costs for households.

Committee Observations

1784. **With regards to the Value Added Tax, the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholders to delete the proposal.**

Clause 42 (a) (i) (P)

1785. **Introduction of Excise Duty on Vegetable Oil at the rate of 25%:** Delete the **introduction** of excise duty on vegetable oil, as it is likely to burden the final consumer. The proposed tax will lead to higher prices for cooking oil, a basic household ingredient, thereby increasing household food budgets and reducing disposable income.

Committee Observations

1786. **The Committee accepted the proposal by the stakeholders to exempt excise duty on vegetable oils to curb the increase in consumer prices.**

Clause 42 (b) (i) & (ii)

1787. **Increase of Excise Duty on Telephone and Internet Data Services from 15% to 20%:** Delete this clause because increasing the excise duty on telephone and Internet data services will negatively impact youths who earn their income through digital economy activities such as online jobs and digital content creation. Additionally, it will disadvantage low-income households by creating barriers to participating in the digital economy and increasing the cost of online education due to higher data charges.

Committee Observations

1788. **The Committee accepted the proposal by the stakeholders to exempt telephone and internet data services from excise duty to curb the increase in the cost of data services.**

Clause 45 (7B)

1789. **Introduction of Eco Levy:** Amend the clause by revising the list of items **subject** to the eco levy, specifically reducing or removing the levy on essential goods such as diapers, which can be burdensome for households from poor backgrounds and persons with disabilities.

Committee Observations

1790. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

139) TAXWISE

Clause 2 (k)

1791. **Proposal to Expand the Definition of Royalty to Include Software:** Delete this clause as it contradicts international best practices, which state that software distributors only make payments to acquire copies of copyrighted **software** and do not exploit any copyright in the software. Therefore, these transactions should not be classified as royalties. Committee Observations

Committee observations

1792. **The committee noted the proposal of the stakeholders but did not agree to delete the proposal. However, the Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 4

1793. **Reduced Period for Claimable Deferred Realized Foreign Exchange Loss:** Delete this clause because it increases the cost of doing business and discourages foreign direct investment (FDI). Many companies have **investment** projects with varying risk profiles and operate in industries subject to fluctuations. Therefore, businesses should be allowed to claim their losses for an unlimited number of years, ensuring they are taxed based on average profitability over time. The government should focus on creating an environment that attracts foreign investors by implementing favorable policies.

Committee Observations

1794. **The Committee supports the proposal to retain the current period to allow businesses to recover foreign exchange losses over a longer period.**

Clause 9 (12G)

1795. **Introduction of Minimum Top-Up Tax:** Delete this clause because it could **negatively** impact companies operating in SEZ/EPZ areas, where they benefit from a reduced tax rate of 10% for the first 10 years. The country should conduct a detailed analysis of the number of companies in Kenya with revenues of 750 million Euros or more and the potential revenue loss if other countries implement 'GloBE' rules. If the potential revenue loss is not significant, Kenya should avoid implementing such rules.

Committee Observations

1796. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have a presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues. The Committee therefore did not accept the proposal to delete by the stakeholder.**

Clause 9 (12H)

1797. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete this tax proposal because it is neither an income tax nor a wealth tax. **Taxpayers** may choose not to value their cars and instead opt for third-party cover, leading to reduced profits in the insurance sector and potential job losses. Additionally, the proposed 50% penalty is excessively punitive and incompatible with the Tax Procedures Act.

Committee Observations

1798. **The committee noted**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

Clause 20

1799. **Proposal to Impose Withholding Tax on Payments Made for the Supply of Goods to a Public Entity at Rates of 3% for Residents and 5% for Non-Residents:** Amend the clause by removing the supply of goods to the public sector from the scope of withholding tax. This is because many traders dealing in the sale of goods operate with small profit margins due to high production costs, including raw material acquisition. Introducing withholding tax on these transactions would adversely affect their cash flow. Moreover, the withholding credits may end up as refundable credits, which adds to administrative costs for refunds, especially when the final net profit margins are as low as 1% of the gross turnover.

Committee Observations

The Committee noted that the proposal is to align with the rate on turnover tax reviewed by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.

Clause 34 (b) (i)

1800. **Introduction of 16% VAT on financial services:** Delete the proposal because introduction of VAT on financial services will lead to an increased cost to the final consumers of financial services given that these services are already subject to Excise Duty.

Committee Observations

1801. **The Committee accepted the proposal by the stakeholder to exempt financial services from VAT to curb the increase in the cost of financial services.**

Clause 35 (a)

1802. **Introduction of 16% VAT on ordinary bread:** Delete the clause because bread is a staple food in most homes for ordinary Kenyans and thus **increasing** the cost by applying VAT will impact Kenyans negatively as it will limit access to this product. It is therefore in the interest of the ordinary Kenyans to maintain the VAT status for bread as zero-rated.

Committee Observations

1803. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholders to delete the proposal.**

Clause 35 (h & j)

1804. **Introduction of VAT on Electric Bicycles:** Delete the clause and maintain the current zero-rated status of electric bicycles and buses as outlined in the VAT Act. **This** supports environmental sustainability by promoting the use of clean energy, which electric bicycles

and buses provide. Applying VAT to these items would increase costs for consumers, potentially leading them to seek alternative, less environmentally friendly solutions.

Committee Observations

1805. **With regards to the Value Added Tax, the Committee was guided by the policy to zero rate only the most to exempt certain inputs to promote local industries. Therefore, the Committee agreed with the stakeholders to delete the proposal.**

Clause 39

1806. **Proposal to Eliminate Relief on Excise Duty for Manufacturers of Excisable Goods and Providers of Internet Data Services:** Delete the proposal because it will raise production costs for manufacturers who will no longer be able to offset excise duty paid on raw materials. These increased costs will likely be transferred to consumers through higher prices for finished goods, potentially reducing consumption and negatively impacting the market. Furthermore, higher production costs may deter foreign investment, as the market becomes less attractive to international manufacturers seeking competitive conditions.

Committee Observations

1807. **The excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers. Therefore, the Committee considered the proposal to delete then Clause.**

Clause 41

1808. **Extension of the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24 hours to 5 working days:** Amend the clause by revising the payment deadline to the 20th of the following month after the excisable goods are removed from the factory. This adjustment aligns with the provisions of the Tax Procedures Act, which governs penalties and monthly interest charges for defaults, ensuring consistency and facilitating compliance. Aligning the payment timelines for excise duty with other taxes simplifies administrative processes for both manufacturers and tax **authorities**. It also prevents cash flow impacts on businesses by allowing manufacturers to pay excise duty after retailers and distributors settle payments. This promotes compliance and ensures a steady revenue flow for the government.

Committee Observations

1809. **The committee noted that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers, in this regard the Committee amended the period to remit excise duty by the 5th of every month.**

Clause 42 (a) (i) (H)

1810. **Proposal to Increase Excise Duty Rate for Imported Sugar Confectionery:** Delete this proposal because many local manufacturers use imported sugar **confectionery** in their production processes. An increase in excise duty on imported sugar confectionery will directly raise the cost of these goods. To mitigate these increased costs, businesses may

consider cutting operational expenses, potentially leading to workforce reductions that could negatively impact the economy.

Committee Observations

1811. **The committee noted the concern of increasing revenue, therefore did consider the proposal to delete proposal**

Clause 42 (a) (i)(P)

1812. **Introduction of Excise Duty on Vegetable Oil at the rate of 25%:** Delete the **clause** that imposes excise duty on vegetable oils because it will negatively impact the economy. Vegetable oils are essential for many households and industries, and this tax would increase their prices, thereby raising the cost of living for Kenyans and straining their financial resources. Moreover, industries relying on vegetable oils would face higher production costs, likely leading to increased prices for consumers.

Committee Observations

1813. **The Committee accepted the proposal by the stakeholder to exempt excise duty on vegetable oils in order to curb the increase in consumer prices.**

Clause 42 (b) (i)

1814. **Increase in Excise Duty on Telephone and Internet Data Services from 15% to 20%:** Delete the proposal because increasing the excise duty to 20% will raise the cost of telephone and Internet data services for consumers. The current rate supports broader digital inclusion by keeping these services accessible to a wider population. Digital inclusion is crucial for conducting business, **education**, healthcare, and accessing information, all of which are vital for socio-economic development.

Committee Observations

1815. **The Committee accepted the proposal by the stakeholders to exempt telephone and internet data services from excise duty to curb the increase in the cost of data services.**

Clause 42 (b) (ii)

1816. **Proposal to Increase Excise Duty on Money Transfer Services from 15% to 20%:** Delete the clause because an increased excise duty will directly **impact** consumers, with service providers likely passing on the additional costs to their customers. This could result in higher charges for money transfer services, especially in light of the concurrent proposal to subject financial services to a 16% VAT from their current exemption. Higher fees may discourage the use of money transfer services, potentially pushing individuals towards less secure and less convenient cash transactions.

Committee Observations

1817. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of financial services.**

Clause 44 (a)

1818. **Proposal to Increase Import Declaration Fee from 2.5% to 3%:** Delete the proposed change because it will increase costs for importers, potentially raising the overall prices of imported goods that may be passed on to Kenyan consumers. This increase could also deter foreign investors from importing their products, thereby hindering market innovation and potentially discouraging foreign direct investment (FDI), which is crucial for economic growth and job creation.

1819. **Furthermore**, frequent changes in laws, especially to provisions recently **implemented**, create uncertainty within the Kenyan tax regime and affect the ease of doing business in Kenya.

Committee Observations

1820. **The Committee noted the proposal by the stakeholder, however, the committee was concerned with the reduction of the rate of import declaration fee from 3.5% to 2.5% in the Finance Act, 2023 which occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25. Further, the Committee recommends making amendments in respect of the RDL by increasing it 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.**

Clause 48

1821. **Introduction of Eco Levy:** Delete the clause as this proposal will increase the cost of goods for Kenyan consumers, as manufacturers and importers are likely to pass down additional costs. Moreover, there is uncertainty about how funds collected from the eco levy will be deposited and managed by the Public Finance Management Act, 2012. **The** levy primarily targets technology products, and its introduction may raise the prices of these goods, potentially impacting the government's digital **transformation** agenda. With no existing implementation framework for the levy and the proposed effective date of 1st July 2024, this could impose significant implementation and compliance burdens on local manufacturers and increase the cost of living for consumers.

Committee Observations

1822. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products. To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tires of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles (tuk tuks), and reduce the rate of eco levy for certain finished goods.**

140) STRATHMORE UNIVERSITY

Clause 5

1823. **Proposal to Withhold Tax on Payments Made for the Supply of Goods to a Public Entity at the rate of 3% for Residents and 5% for Non-Residents:** Delete the proposal due to its discriminatory nature. While it aims to address payment delays for suppliers to the government, it unfairly advantages them over private sector suppliers, especially SMEs, who also face similar payment delays but are required to pay taxes on an accrual basis. Additionally, under E-Tims, their income is based on accrual, but they cannot accrue their expenses. Moreover, suppliers to the government often source goods and services from others in the chain. By imposing taxes only on the last supplier in this chain upon receiving payment, it places earlier suppliers at a disadvantage. This inequity could disrupt business relationships and hinder fair competition in the market.

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Committee Observations

1824. **The Committee noted that the proposal is to align with the rate on Turnover Tax which was reviewed by the Affordable Housing Levy. Therefore did not agree to delete the Clause.**

Clause 9 (12H)

1825. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Value of the Vehicle:** Delete the clause because it may discourage insurance uptake, particularly for matatus and buses, leading to potential risks for passengers. Furthermore, taxing vehicles as assets rather than income could distort equity, as those with higher-end vehicles may end up paying less tax relative to their income.

Committee Observations

1826. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 12 (18G)

1827. **Proposal to introduce advancing pricing agreement:** Delete the proposal until **the** KRA has sufficient capacity to deal with APAs because they set out how much a taxpayer

will charge related parties and once agreed upon, the KRA is bound by them and cannot audit that client's transfer pricing. Although such agreements can be good, they require a lot of resources from the revenue authority.

Committee Observations

1828. **The Committee noted the concern of the stakeholder but did not consider the deletion of the Clause since it would enhance revenue determination in entities that belong to Multinational Groups or trade with related persons. Further, to allow for seamless implementation of the Agreements, the Committee recommends enactment of the regulations to address circumstances where there is cancellation of the APAs by KRA to allow the taxpayer the right of appeal among other concerns.**

Clause 34 (b) (i)

1829. **Introduction of 16% VAT on Financial Services:** Delete the proposal because imposing VAT on financial transactions will raise the cost of accessing **financial** services. This could also potentially drive the demand for black-market forex services. Moreover, individuals holding bank accounts are already subject to income tax and excise duty on various financial services. Adding VAT on these services could be seen as punitive, potentially pushing towards cash transactions that facilitate tax evasion.

Committee Observations

1830. **The Committee accepted the proposal by the stakeholders to exempt financial services from 16% VAT to curb the increase in the cost of these services.**

Clause 42 (b) (i)

1831. **Delete** the proposal because Increased taxation on telephone and internet services is likely to have a negative impact on the access to these critical **services** and especially the youth who use these services for online business and information.

Committee Observations

1832. **The Committee accepted the proposal by the stakeholders to exempt telephone and internet data services from excise duty to curb the increase in the cost of data services.**

Clause 42 (b) (ii)

1833. **Proposal to Increase Excise Duty on Money Transfers from 15% to 20%:** Delete the proposal to increase Excise Duty on mobile money transfer services from 15% to 20% because it would make this essential service less affordable for the poorest in the country. Mobile money transfers play a critical role in providing access to financial services for a large unbanked population. Additionally, these transfers often serve as a social safety net for the elderly and economically disadvantaged.

1834. Most importantly, the money transferred through these services has typically already been subjected to income tax. Adding a tax burden **diminishes** the spending power of both the sender and the recipient, which could have broader economic implications.

Committee Observations

1835. **The Committee accepted the proposal by the stakeholders to exempt Money transfer services from VAT to curb the increase in the cost of these services.**

Clause 48

1836. **Introduction of Eco Levy:** Delete items 3 and 13 under clause 48 because **computers** are essential tools for youth, but their cost remains prohibitive for many. Levying these items could increase costs and reduce accessibility, contradicting Kenya's goals of digital transformation and fostering a Silicon Savannah. Increasing computer access could boost government revenue through increased youth earnings. **Delete** items 19 and 21 because raising costs could stifle sector growth and discourage new entrants. **Delete** item 45 under clause 48 because diapers, essential for childcare, elderly care, and healthcare, are already costly. An eco-levy would further increase prices, making them unaffordable for many Kenyans. Instead, incentivize eco-friendly substitutes or support families facing childcare expenses. **Delete** item 46 as it would increase costs for essential items like tires, delaying replacements and potentially impacting road safety. It may also affect the youth-heavy motor vehicle sector negatively, which employs thousands. **These** deletions and amendments aim to balance environmental goals with socio-economic considerations, promoting accessibility and economic growth.

Committee Observations

1837. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical**

141) INSTITUTE OF ENGINEERS OF KENYA

Clause 9 (12H)

1838. **Introduction of motor vehicle tax at the rate of 2.5%:** Delete the clause **entirely** because of the already existing motor vehicle insurance for vehicles, fuel levy through the petrol purchased daily, and in addition, a car has become a necessary means of transport from point A to B due to the poor public transport system in Kenya.

Committee Observations

1839. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 34 (b) (i) (A-E)

1840. **Proposal to impose 16% VAT on banking services:** Deleting the proposal to **subject** banking services to standard VAT is crucial. Currently, banking services already bear excise duty, and adding VAT would pass increased costs onto consumers. This would raise service fees and potentially hinder growth in the banking, manufacturing, insurance, and fintech sectors.

Committee Observations

1841. **The Committee accepted the proposal by the stakeholders to exempt banking services from VAT to curb the increase in the cost of banking services.**

Clause 35 (a)

1842. **Proposal to introduce 16% VAT on ordinary bread:** Delete the proposal on **the** removal of Zero rating on the supply of ordinary bread because it will impact the production costs and consequently the finished products will be expensive. This is because the suppliers will no longer be able to claim the input VAT on the supplies and such costs will be passed to the consumers

Committee Observations

1843. **With regards to the Value Added Tax, the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 42 (b) (i)

1844. **Proposal to increase excise duty on internet data services:** Removing the clause is essential to prevent a decline in digital service uptake. Given the critical role internet data and telephone services play in business operations, higher costs would adversely affect the business environment.

Committee Observations

1845. **The Committee accepted the proposal by the stakeholders to exempt internet data services from excise duty to curb the increase in the cost of data services.**

Clause 42 (b) (ii &iii)

1846. **Proposal to increase excise duty on money transfer services from 15% to 20%:** Removing the clause is necessary to prevent the increased cost of **money** transfer services, which would disproportionately affect small-scale businesses reliant on phone-based transfers, thus straining the business environment.

Committee Observations

142) GROUPE SPECIALE MOBILE ASSOCIATION (GSMA)

Clause 42 (b) (iii)

1847. **Proposal to increase excise duty on financial services:** Delete this clause to avoid a negative impact on the affordability of services in the country. **According** to the UNECA Tax Impact report, sector-specific taxes like this can increase the cost of broadband access and usage, reducing availability of digital devices and services and potentially lowering economic growth. Tanzania's experience with a similar tax increase on mobile financial services, which was subsequently abolished due to its adverse effects, serves as a cautionary example.

Committee Observations

1848. **The Committee accepted the proposal by the stakeholders to exempt financial services from excise duty to curb the increase in the cost of data services.**

Clause 48

1849. **Introduction of eco levy:** Delete items 12 to 18 on clause 48 because introducing the levy will increase the cost of devices, contrary to the government's digital transformation agenda. The final consumers will bear the **burden**, reducing affordability and limiting digital inclusion. In addition, the eco levy will be an additional tax on imported devices, which are already subjected to 25% import duties, 16% VAT, 10% excise duty plus Import declaration fees, and a Railway development levy of 2% and 1.5%, respectively. This will contribute to a further increase in device costs.

Committee Observations

1850. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical**

143) FEDERATION OF KENYA EMPLOYERS (FKE)

Clause 4

1851. **Proposal to reduce the period for claimable deferred realized foreign exchange loss from 5 years to 3 years:** It is advisable to delete this clause because shortening the period to three years could harm taxpayers who may not be able to claim their losses within this shorter timeframe.

Committee Observations

1852. **The Committee noted the proposal by the stakeholder, however, the Committee amended the Clause to retain the current period to allow businesses to recover foreign exchange losses over a longer period.**

Clause 6 (a) (i)

1853. **Proposes to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Amend the clause by including the provision below; -

'an amount not exceeding 5% of monthly gross earnings or first Kshs.2,000 per diem whichever is higher

1854. Per diem rule should apply to all employees including those working in **Government** and the rate of 5% per day to income is too low owing to the accommodation costs.

Committee Observations

1855. **The Committee observed that the current provision in the Act is sufficient.**

Clause 8 (12E) (1)

1856. **Proposal to repeal the digital service tax and replace it with a significant economic presence tax at the rate of 30% on 20% deemed profit:** It is recommended to delete this clause because introducing a SEP tax at an effective **rate** of 6% could disadvantage businesses operating locally compared to countries with lower DST or SEP rates. This could discourage multinational companies from expanding their digital services within the country, potentially stalling growth in the local digital economy and impacting job creation. Moreover, implementing this proposal may lead to international tax disputes or retaliation from countries with lower SEP rates.

Committee Observations

1857. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover**

Clause 9 (12H)

1858. **Introduction of motor vehicle tax at the rate of 2.5% of the vehicle's value:** The proposal should be reconsidered or deleted due to its potential to impose additional financial burden on vehicle owners, who already bear various taxes such as fuel taxes. This measure could be seen as double taxation and might particularly impact workers in the absence of an efficient public transport system. Moreover, this tax could disproportionately affect middle to low-income individuals, exacerbating economic inequality by shifting the tax burden to consumers and increasing the cost of vehicle ownership.

Committee Observations

1859. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 25 b iii A iv

1860. **Withholding Tax on Interest from Infrastructure Bonds at the rates proposed:** The **proposal** should be reconsidered or deleted because it may diminish the attractiveness of infrastructure bonds relative to other investment options. This could lead to decreased demand from both individual and institutional investors, potentially resulting in higher borrowing costs for the government on infrastructure projects. Such a scenario could strain public finances and slow down the pace of infrastructure development.

Committee Observation

1861. **The Committee supports the proposal in the Bill to encourage long-term investment and enable the government to earn revenue which is consistent with all other payments.**

Clause 34 (a) (i) (Ad)

1862. **Introduction of 16% VAT on unleavened bread:** Delete the proposal to introduce VAT on unleavened bread as it would impose a burden on consumers, particularly affecting those who rely on this staple food item.

Committee Observations

1863. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 34 (b) (i)

1864. **Introduction of 16% VAT on financial services:** Delete the proposal as it aims at increasing the tax revenue whose burden will ultimately be shifted to the consumer thus raising the cost of financial services. The increase in cost reduces the demand for financial services leading to a deadweight loss where **the** quantity of transactions decreases, and the market operates below its optimal efficiency eroding the gains achieved on financial inclusion.

Committee Observations

1865. **The Committee accepted the proposal by the stakeholders to exempt financial services from VAT to curb the increase in the cost of financial services.**

Clause 35 (a)

1866. **Proposal to introduce 16% VAT on ordinary bread:** Delete the proposal to introduce VAT on ordinary bread as it would impose a burden on consumers, particularly affecting the general populace who rely on this staple food item.

Committee Observations

1867. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 42 (a) (i) (P)

1868. **Introduction of excise duty on vegetable oil at the rate of 25%:** Delete the proposal to impose a 25% excise duty on vegetable oil, as it would likely result in higher prices for essential commodities, causing economic hardship for low-income households.

Committee Observations

1869. **The Committee accepted the proposal by the stakeholders to exempt excise duty on vegetable oils to curb the increase in consumer prices.**

Clause 45

1870. **Introduction of eco levy:** Delete the proposal because the imposition of eco levy will hurt the ordinary citizen because there already exists an avalanche of regulators within the Government and the SAGAs that have loaded **heavy** charges directly on the manufacturer. Additional charges will make the business non-competitive because of a sharp rise in costs of production and the untimely incident will be passed on to the consumer.

Committee Observations

1871. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical**

Clause 44 (a)

1872. **Proposal to increase import declaration fee from 2.5% to 3%:** Delete the proposal to raise the import declaration fee from 2.5% to 3% as it could strain customer relations, reduce competitiveness, and lead to adverse economic impacts.

Committee Observations

1873. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

Further, the Committee recommends making amendments in respect of the RDL by increasing it 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 of Kenya

Clause 45 (7B)

1874. **Introduction of eco levy:** Delete the proposal to impose an eco-levy **because** it will harm Kenyan consumers as the levy will result in producers passing on this cost to consumers hence straining household budgets. It will equally harm Kenyan exports because it will disadvantage the competitiveness of Kenyan exports, resulting in lost tax revenue, jobs, and hard currency.

Committee Observations

1875. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles (tuk tuks) and reduce the rate of eco levy for certain finished goods

144) LAWYERS HUB

Clause 2

1876. **Proposal to expand the definition of royalty to include software:** Amend the proposal regarding the definition of 'royalty' to specify that payments for software should only be classified as royalties subject to withholding tax if the payer **acquires** rights enabling them to commercially exploit the software. This adjustment aligns with international standards, particularly those outlined in the Organization for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital. According to these standards, payments made by software distributors typically involve acquiring copies of copyrighted software without engaging in its commercial exploitation.

1877. **Furthermore**, this amendment is consistent with the ruling of the High Court in the case of Seven Seas Technologies Limited v the Commissioner of Domestic **Taxes**. The court emphasized that for payments related to software to qualify as royalties for withholding tax purposes, the payers must possess rights allowing them to commercially exploit the software as defined under the Copyright Act.

Committee Observation

1878. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 8

1879. **Proposal repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit**: The proposal to repeal the digital service tax and replace it with a significant economic presence tax at a rate of 30% on a deemed profit of 20% is contentious due to its potential constitutional implications. It violates the principle of fair taxation as outlined in Article 201(b)(i) of the Constitution. Imposing such a tax without accounting for actual profits could disproportionately burden businesses with high turnover but low profit margins or those operating at a loss. This issue was underscored in the Constitutional Petition E005 & E001 (Consolidated) of 2021, raising concerns about fairness and the adverse effects of taxing non-resident entities based on gross turnover without considering legitimate business expenses.

1880. **Moreover**, the inclusion of the term 'deemed' in the proposed Section 12E(3), implying income assumed to be received, lacks clarity and certainty, which are essential principles in taxation. Effective tax laws should precisely target their intended subjects and avoid unfair assumptions based on turnover **figures** that do not reflect actual tax liabilities due to genuine business losses.

Committee Observation

1881. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9

1882. **Introduction of minimum top-up tax:** The proposal to introduce the minimum top-up tax should be reconsidered, especially in light of the simultaneous introduction of the significant economic presence tax. Rather than implementing both, it would be prudent to conduct a thorough comparison between the proposed OECD Pillar 2 and the United Nations Model Treaty on Automated Digital Services. This comparison should aim to determine which model would effectively generate more tax revenue from targeted non-residents while ensuring fairness and compliance with international tax standards. Such an approach will help optimize tax policy and minimize unintended consequences on businesses and economic growth.

Committee Observation

1883. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have a presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues. The Committee therefore did not accept the proposal to delete by the stakeholder.**

Clause 20

1884. **Imposition of withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-residents:** The imposition of withholding tax on payments for goods supplied to public entities should be reconsidered. Instead of the proposed rates of 3% for residents **and** 5% for non-residents, a maximum gross withholding tax rate of 3% or 4% could be more equitable and less likely to discourage non-resident service providers from participating in the market. Additionally, this approach could simplify compliance, addressing potential challenges associated with the effectiveness of KRA's monitoring and verification methods.

Committee Observation

1885. **The Committee noted that the proposal is to align with the rate on turnover tax reviewed by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.**

Clause 63

1886. **Proposal on data access by KRA:** Delete the provision because granting the KRA unfettered access could lead to arbitrary assessments and infringe on **privacy** rights. Moreover, including provisions that amend the Data Protection Act which primarily deals with privacy and data protection diverges from the primary purpose of the Finance Bill to strictly address financial matters such as taxation, government revenue and fiscal policy. This position has been reiterated by the High Court of Kenya where it emphasized the necessity for adherence to constitutional provisions and legislative focus importance of legislative clarity and appropriateness in ***Institute of Social Accountability & Another v National Assembly & 4 Others***.

1887. **Additionally**, while courts in the United Kingdom and India have found that ancillary issues may be included in the Finance Bill, they must be closely related **to** financial administration. Data protection laws have far-reaching implications across various sectors, not limited to financial matters and hence do not meet this criterion. Constitutional and procedural principles require that such crucial amendments be made through the appropriate legislative channels, ensuring adequate scrutiny and debate.

Committee Observation

1888. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

Clause 34(b)(i)

1889. **While** the proposal is intended to increase tax revenue, it would have significant negative implications for the digital economy including stifling innovation and discouraging international companies from participating in Kenya's digital marketplace. In its place, provide tax incentives or lower VAT rates for digital transactions to encourage using electronic payment methods. This will maintain the momentum of e-commerce growth while ensuring tax compliance. Furthermore, providing targeted tax reliefs or exemptions for SMEs operating in the digital economy will foster innovation and competitiveness leading to long-term economic benefits.

1890. **Notably**, many people are now opting to use cash, therefore, taxation on digital **money** use further encourages people to leave the digital economy thereby reducing tax revenue.

Committee Observation

1891. **The Committee accepted the proposal by the stakeholders to exempt financial services from VAT to curb the increase in the cost of financial services.**

Clause 42(a)(ii) and (b)

1892. **Proposal to increase financial services from 15% to 20%:** The proposal to increase excise duty from 15% and remove the ability for businesses to claim it back as an input cost is damaging and will result in reduced internet **accessibility**. This will counter efforts to enhance digital connectivity and economic transformation. Notably, in comparison to Tanzania and Uganda, Kenya has the highest excise duty.

1893. **Retain** the excise duty on internet data services at 15% or lower it to 5%. This is because the proposal will burden consumers, making online education and other internet-based activities less affordable for the average Kenyan and counteract the government's efforts to encourage digital participation.

Committee Observation

1894. **The Committee accepted the proposal by the stakeholders to exempt financial services from excise duty to curb the increase in the cost of financial services.**

Clause 45

1895. **Introduction of eco levy:** The proposed eco levy lacks specific allocation for benefits in the Finance Act. It does not indicate whether the collected funds will be used for environmental restoration nor detail the restorative measures the funds can support. Despite not being implemented, Kenya already **has** regulations on dealing with e-waste.

1896. **In addition**, the proposed eco levy on electronic devices would raise the cost of laptops and tablets. This will fuel the black market and widen the digital gap because it will reduce the ability to own digital devices. Consequently, this furthers marginalization, especially of women in Northern Kenya.

Committee Observation

1897. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on**

imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.

145) PETROLEUM OUTLETS ASSOCIATION OF KENYA

Clause 9(12H)

1898. **Proposal to Introduce Motor Vehicle Tax at 2.5% of Vehicle Value:** Delete the proposal and instead consider revising levies on petroleum products. Implementing this tax would negatively impact the transport and logistics industry, which might pass on the additional costs to customers. This could lead to **increased** living expenses through a multiplier effect, affecting not only insurance companies but also spare part dealers, car service providers, local assemblies, and, importantly, the local citizenry.

Committee's Observation

1899. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 42(b) (ii and iii)

1900. **Proposal to Increase Excise Duty on Banking Transaction Services from 15% to 20%: Delete** this clause, as the increased charges for banking transactions would negatively impact business profitability. This reduction in returns could decrease investment appetite, as returns may fall below expectations or projections. Additionally, it will raise the cost of doing business, particularly for the petroleum sector, which relies on mobile money and online banking apps to reduce fraud.

Committee's Observation

1901. **The Committee accepted the proposal by the stakeholders to exempt Banking services from excise duty to curb the increase in the cost of banking services.**

Clause 57(b)

1902. **Proposed Penalty for Non-Integration of the Electronic Tax System with the Data Management and Reporting System: We recommend deleting this clause.** The Ksh 2 million penalty for E-TIMS non-compliance would be devastating for most Small and Medium Enterprises.

Committee's Observation

1903. **The Committee noted that the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offense.**

New provision

1904. **Incentivize** Green Energy Investment: This will encourage the energy **transition**, promote the growth of clean energy infrastructure in the country, and improve the environment through the use of clean energy.

Committee Observation

146) NAKURU COUNTY CIVIL SOCIETY FORUM SUBMISSION ON FINANCE BILL,2024

Clause 25 (b) C

Clause 8, Section 12E

1905. **Proposal to Repeal the Digital Service Tax and Replace It with a Significant Economic Presence Tax at the Rate of 30% on 20% Deemed Profit:** Delete this proposal in its entirety. The burden of the Digital Marketplace tax will be transferred to content creators, service providers, and consumers of digital services. This will negatively impact businesses and employment, particularly for young people sharing content on digital platforms, as their earnings will be reduced to cover the increased tax.

Committee observation(s)

1906. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9, section 12H

1907. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Reject **this** proposal in its entirety. Most motor vehicle owners will opt for third-party insurance coverage to accommodate the new tax, which will hurt the insurance industry and potentially lead to significant job losses.

Committee observation(s)

1908. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 63

1909. **Proposal for KRA Access to Personal Data:** Delete this proposal entirely. It **undermines** the constitutionally protected right to privacy.

Committee observation(s)

1910. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data to administer a tax law.**

Clause 34(a)

1911. **Proposal to Subject Unleavened Bread and Gluten Bread to 16% VAT Instead of Zero-Rating them:** Reject this proposal and maintain bread as zero-rated. The increased cost of production and the resultant reduction in consumption will lead to the closure of bread-making businesses and result in mass layoffs.

Committee observation(s)

1912. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholders to delete the proposal.**

Clause 6

1913. **Proposal to amend the limit of non-taxable benefits granted concerning employment from KSh. 36,000 to KSh. 48,000:** Accept the proposals and use the absolute amount rather than the 5% of monthly income.

Committee observation(s)

1914. **The Committee supported the proposal and agreed to amend by further increasing it to sixty thousand Kenya Shillings (KSH. 60,000). This will be beneficial to the employees.**

Clause 42(a)(i) P

1915. **Introduction of Excise Duty of 25% on Vegetable Oil:** Reject this proposal **entirely**. It will increase the shelf price of vegetable oil and further exacerbate the already burdensome cost of living.

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Committee observation(s)

1916. **The Committee accepted the proposal by the stakeholders to exempt excise duty on vegetable oils to curb the increase in consumer prices.**

Clause 42(b) in part II

1917. **Increase in Excise Duty on Telephone and Data Services, Money Transfer, and Money Transfer Services from 15% to 20%:** Reject this proposal entirely. It will lead to financial exclusion and undermine the country's efforts to promote financial inclusion, including the digital jobs supported by the Government of Kenya through the Digital Superhighway Programme.

Committee observation(s)

1918. **The Committee accepted the proposal by the stakeholders to exempt telephone and data services and money transfer services from excise duty to curb the increase in the cost of financial services.**

Clause 45

1919. **Introduction of Eco-Levy:** Delete the proposal for it amounts to double taxation, **considering** that import duty and excise duty on some of these goods already account for their environmental impact.

Committee observation(s)

1920. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical**

Clause 47

1921. **Introduction of Export and Investment Promotion Levy**: Amend the proposal to **exclude** basic commodities, particularly those not readily available locally, such as clinker

and ceramic products. Such a levy could otherwise lead to increased costs in construction where these materials are essential.

1922. **Committee observation(s)**

1923. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.**

Further the EIPL is envisaged to have the following impacts in the manufacturing sector–

1. **Support local manufacturing which will lead to an increase in the contribution of manufacturing to GDP from 7% to 20% by 2027.**
2. **Enhance the playing field for local manufacturers who have struggled to compete with cheaper imports to reduce overreliance on imports of goods and services.**
3. **Generate revenue for the government to be used to support the development of the manufacturing sector by incentivizing investment by the local micro, small and medium enterprises (MSMEs) amongst others.**

On the strength of the foregoing, the Committee proposes to have the Export and investment Promotion Levy imposed on articles of leather, imported footwear, denatured ethyl alcohol, ceramic sinks, wash basins amongst other products. Additionally, the Committee supports the proposal by a number of stakeholders to remove imposition of the levy on kraft liner, uncoated kraft paper and billets amongst others. Regarding the motorcycles, the committee proposes to have the levy imposed only on fully built imported motorcycles.

147) WATER BOTTLERS ASSOCIATION OF KENYA SUBMISSION ON FINANCE BILL, 2024

Clause 42 (a) G

1924. **Introduction of Excise Duty on Plastic Articles of Tariff Heading 3923.30.00:** Explicitly state "IMPORTED" before the tariff description in the Finance Act 2024 to ensure the tax applies only to imported plastic articles. Communicate the intent and scope of the tax clearly to businesses, especially SMEs and MSMEs, to prevent confusion and ensure proper implementation.

Committee observations

The Committee noted the concern; however, the proposal was considered under the eco levy.

148) KENYA COMMUNITY DEVELOPMENT FOUNDATION SUBMISSION ON FINANCE BILL, 2024

New Proposals

1925. **Proposed amendment: Rule 4:** "... Under sections 13(1) and 26 and Paragraph 10, the income of a charitable organization that accrued in or was **derived** from Kenya shall be exempt from tax to the extent that the Commissioner is satisfied that the income of such a charitable organization is to be expended either in Kenya or in circumstances in which the expenditure of that income is for the purposes which result in the benefit of the

residents of Kenya..." "...provided that grants and gifts shall not form part of the taxable income of a charitable organization..."

1926. **Expand the definition of "charitable purpose**" Status: Rule 9 "...Per Paragraph 10, the income of a charitable organization which accrued in or was derived from Kenya shall only be exempt from tax if such a charitable **organization** is established solely for the following purposes — a) the relief of the poverty; or b) the relief of distress of the public; or c) the advancement of religion; or d) the advancement of education..." Recommendation: For an entity to be philanthropic, its charitable purpose ought to be for the public benefit. Generally speaking, this means that the charitable purpose of a charitable organization has to benefit the public as a whole or a sufficient section of the public (sometimes referred to as a charitable or public class).

Committee Observation

1927. **The Committee noted the concern however, the did not consider the proposal for it was not subjected to public participation.**

149) TESPOK SUBMISSION ON THE FINANCE BILL, 2024

Clause 42 (b)(i)

1928. **Proposal to increase excise duty on internet services from 15% to 20%:** Delete the amendment and retain excise duty on the internet at 15% or consider lowering the rate to enhance connectivity, and penetration of ICT services in remote areas. An increase of excise on the internet to 20% will increase the price of the internet and this will hinder internet connectivity and **digital** growth, which is a key pillar of the KE government.

Committee Observation(s)

1929. **The Committee accepted the proposal by the stakeholders to exempt internet services from excise duty to curb the increase in the cost of internet services.**

Clause 9 section 12H

1930. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete **this** proposal entirely.

Committee Observation(s)

1931. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 63

1932. Proposal **to Allow KRA to Access Personal Data:** Delete this proposal entirely due to the inherent risks of data abuse by those tasked with implementing the law.

Committee Observation(s)

1933. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.**

Clause 12 18G

1934. Introduction **of Advance Pricing Agreement**. Amend the clause to read as follows: - (4) Where the Commissioner determines that the person referred to in subsection (1) entered into the advance pricing agreement through **misrepresentation** of facts, the Commissioner shall issue a notice in writing to the person requiring the person to provide the correct facts and the Commissioner shall re-assess the price of the transaction and the tax payable on the transaction. The introduction of the Advance Pricing Agreement is a welcome proposal, however, the Commissioner arbitrarily determining misrepresentation of facts without providing the taxpayer an audience is contrary to fair administrative action and principles of natural justice.

Committee Observation(s)

1935. **The Committee supports the proposal as per Bill since it will enhance revenue determination in entities that belong to Multinational Groups or trade with related persons. Further, to allow for seamless implementation of the Agreements, the Committee recommends enactment of the regulations to address circumstances where there is cancellation of the APAs by KRA to allow the taxpayer the right of appeal among other concerns.**

Clause 63

1936. **Proposal to Allow KRA to Access Personal Data**: Delete this proposal entirely due to the inherent risks of data abuse by those tasked with implementing the law.

Committee Observation(s)

1937. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

Clause 48 paragraphs 12-18

1938. **Introduction of Eco-Levy on Certain Goods Such as Telephone Sets and Smartphones, Among Others, at the Rate of KES 0.225 per Unit**: Delete this proposal as it contradicts the government's digital transformation agenda. It would increase costs for consumers, reducing affordability and limiting digital inclusion.

Committee Observation(s)

1939. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical**

150) ANDERSON SUBMISSION ON FINANCE BILL 2024

Clause 2

1940. **Proposal to expand the definition of digital content monetization:** Amend the **clause** to state that digital content monetization includes money earned from creative works. Leaving the proposal as it is, is not proper as it makes it look like every creative works earns the creative money which is not the case. Not all creative works generate income.

Committee observations

1941. **The Committee noted that not all creative works earn an income and therefore there is a need to specify that only the creative works that generate income are subject to the tax.**

Clause 2 Section 2 (k) of the Income Tax Act

1942. **Proposal expand Definition of "Royalty" to include software:** Delete or amend the definition (b). This proposal goes against global best practices as outlined under the Organization for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital, which recognizes that software distributors make payments for copyrighted software but do not commercially exploit such software.

Committee observations

1943. **The Committee noted the stakeholder proposal, however, the Committee realized that the distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 4 Section 4A(1)(ii) of the Income Tax Act

1944. **Proposal to Reduce the Period for Claimable Deferred Realized Foreign Exchange Loss from 5 Years to 3 Years:** Retain the current provision at five years. The proposal to limit the period within which a person can defer and **claim** a foreign exchange loss to three years from the date of realization will negatively impact taxpayers unable to claim within this timeframe. This change follows the Finance Act 2023, which already capped

deferment and claims to five years, introducing annual legal changes that create uncertainty and hinder the ease of doing business in Kenya.

Committee observations

1945. **The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.**

Clause 6

1946. **Proposal to Exempt Reimbursement of Expenses Incurred in Asset Purchase During Official Duties by Public Officers:** Delete Clause 6 due to the high likelihood of abuse, as ownership considerations may not be adequately addressed. This could lead to public servants purchasing assets not essential to their duties, registering these assets under their names, and seeking reimbursement for expenses incurred.

Committee observations

1947. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it will be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 8-12 E

1948. **Repeal of Digital Service Tax and Replacement with Significant Economic Presence Tax at the Rate of 30% on 20% Deemed Profit**: Delete the clause because it significantly increases the tax burden for non-residents compared to the **current** DST, which applies at a rate of 1.5% of gross revenue.

Committee observations

1949. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9- 12G

1950. **Introduction of Minimum Top-Up Tax:** Delete this provision entirely, as the **introduction** of a minimum top-up tax at the rate of 15% could undermine the incentives provided to SEZs and EPZs, potentially discouraging investments.

Committee observations

1951. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have a presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax**

even though a constituent company located in Kenya could end up underpaying its share of revenues. The Committee therefore did not accept the proposal to delete by the stakeholder.

Clause 9- 12H

1952. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete this clause, as it would incentivize citizens to opt for third-party insurance rather than comprehensive vehicle coverage, leaving them **vulnerable** to property loss in accidents not covered by third-party insurance. Additionally, the proposal would increase administrative and compliance burdens on insurers, who would be required to collect and remit the motor vehicle tax within five working days of issuing vehicle insurance covers. This could potentially lead to unethical practices in the insurance industry, such as undervaluing vehicles to reduce tax burdens on vehicle owners.

Committee observations

The committee noted:

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 23 First Schedule of the Income Tax Act

1953. **Proposal to Tax Registered Trust Schemes:** Delete this provision, as the Bill proposes to tax the income or principal sum of registered family trusts. Currently, the registration of trusts is common and serves as a preferred method for estate and succession planning, often tied to existing exemptions. Moreover, under the current tax regime, trust income is taxed when distributed to beneficiaries.

Committee observations

1954. **The Committee noted that section 3(E)(e) of the Trustees (Perpetual Succession Act) provides that no better title is acquired by the transferor transfers .**

Clause 31

1955. **Deduction of Input Tax for Taxable Supplies Made to Aid-Funded Projects:** Retain **Section** 17(8) as currently stated in the Act. This change could discourage individuals from

conducting business with officially approved aid-funded projects overseen by the CS as outlined in the First Schedule.

Committee observations

The Committee noted the concern however, the Committee highlighted that the proposal is to enhance revenue collection.

Clause 34:

1956. **Introduction of 16% VAT on Financial Services:** Delete this provision, as it is likely to **increase** costs for consumers by passing on expenses, thereby raising the cost of accessing banking services.

Committee observations

1957. **The Committee accepted the proposal by the stakeholders to exempt financial services from VAT to curb the increase in the cost of financial services.**

Clause 44 Section 7 of the Miscellaneous Fees and Levies Act

1958. **Proposal to increase import declaration fee from 2.5% to 3%:** Retain the rate at 2.5% since 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 observations

1959. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25. Further, the Committee recommends making amendments in respect of the RDL by increasing it 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.**

Clause 57 Section 59 A of the Tax Procedure Act.

1960. **Proposal on Failure to Integrate the Electronic Tax System with the Data Management and Reporting System**: Amend the clause to set the threshold at Kes 500,000. Given that the majority of companies providing Vatable services are already compliant with ETIMS, the current provision lacks effectiveness and unfairly penalizes SMEs and small-scale businesses. Penalties should aim to promote compliance rather than impose undue and irrecoverable hardship on affected parties.

Committee observations

1961. **The Committee notes that the proposal does not specify the class of companies and entities that will be subject to the provision and neither does it specify the timeline for which a taxpayer would be required to comply before the penalty applies. Therefore, the Committee proposes that the period after notice to be up to one year and that the provision will not apply to entities with a turnover of less than eight million shillings.**

Clause 47

1962. **Introduction of Export and Investment Promotion Levy:** Reduce the levy rate from 10 **percent** to zero percent to safeguard local manufacturers of packaging materials and **boost their competitiveness.**

Committee observation(s)

1963. **The Committee observed that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally, in this respect the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase competitiveness of Kenya's Manufacturing sector and to foster a sustainable and inclusive export sector.**

Further the EIPL is envisaged to have the following impacts in the manufacturing sector–

1. **Support local manufacturing which will lead to an increase in the contribution of manufacturing to GDP from 7% to 20% by 2027.**
2. **Enhance the playing field for local manufacturers who have struggled to compete with cheaper imports to reduce overreliance on imports of goods and services.**
3. **Generate revenue for the government to be used to support the development of the manufacturing sector by incentivizing investment by the local micro, small and medium enterprises (MSMEs) amongst others.**

On the strength of the foregoing, the Committee proposes to have the Export and investment Promotion Levy imposed on articles of leather, imported footwear, denatured ethyl alcohol, ceramic sinks, wash basins amongst other products. Additionally, the Committee supports the proposal by a number of stakeholders to remove imposition of the levy on kraft liner, uncoated kraft paper and billets amongst others. Regarding the motorcycles, the committee proposes to have the levy imposed only on fully built imported motorcycles.

151) ASSOCIATION OF INSURANCE BROKERS OF KENYA

Clause 9 (12H)

1964. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value**: Delete clause 9 (12H) due to its potential multifaceted impact on the insurance sector, including higher insurance premiums and operational costs. **Additionally**, it could reduce the uptake of motor vehicle insurance, thereby decreasing overall premium income.

Committee Observations

1965. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

152) KENNEDY JUMA
Clause 34 (b) (c, e, f)

1966. **Introduction of 16% VAT on Financial Services:** Delete clauses 34(c), (e), and (f) as the transition from exempt to taxable status for financial services is likely to impose additional costs on consumers. These services are crucial for **businesses** and individuals, and imposing VAT could burden consumers, particularly in challenging economic conditions. Taxation of services like telegraphic money transfers may also discourage usage and hinder efforts toward financial inclusion.

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Committee Observations

1967. **The Committee accepted the proposal by the stakeholders to exempt financial services from VAT to curb the increase in the cost of financial services.**

153) MOTORIST ASSOCIATION OF KENYA
Clause 9 (12H)

1968. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete clause 9 (12H) because the proposal unfairly targets vehicle owners who **already** bear taxes such as the road maintenance levy. Introducing an additional tax on top of existing taxes amounts to double taxation and is burdensome. Treating car ownership as a luxury subject to sin taxes, akin to those on cigarettes and alcohol, is misguided in this context.
Committee Observations

1969. **The Committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

154) M-KOPA
Clause 35 (f)

1970. **Proposal to Subject Locally Assembled Phones to 16% VAT:** Delete clause 35(f) because imposing 16% VAT will severely impact local smartphone assembly. This will lead to financial implications for businesses, industries, and **customers**, as assemblers will likely pass on the additional costs to consumers, thereby increasing the cost per unit. These products were zero-rated just last year, and this proposal could undermine investor confidence in the predictability of Kenya's tax regime.

Committee Observations

1971. **The Committee accepted the proposal to delete the clause to curb prices increase in phone prices and encourage local assembly**

Clause 42 (a) (i) (A)

1972. **Amendment to Excise Duty Calculation for Certain Motorcycles (i.e., 10% or Shs. 12,952.83 per unit, whichever is higher):** Delete Clause 42(a)(i)(A) because this proposal would increase the cost of electric motorcycles, **discouraging** their uptake.

Committee Observations

1973. **The Committee accepted the proposal to delete the clause to curb prices increase in motorcycle and promote green energy prices and encourage local assembly**

Clause 48 (item 13)

1974. **Introduction of eco levy:** Delete clause 48(item 13) because it will increase the prices of these devices. Imposing an eco-levy will amount to double taxation since every manufacturer and importer bears extended producer responsibility obligations to reduce pollution and environmental impacts as per section 13 of the Sustainable Waste Management Act, 2022.

Committee Observations

1975. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

1976. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholder to delete.**

Clause 48 (item 46)

1977. **Introduction of Eco Levy:** Delete clause 48 (item 46) because it could lead to increased prices of EV motorbike batteries, which would negatively impact the emerging electric mobility industry that heavily relies on lithium-ion batteries.

Committee Observations

1978. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
1979. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)*, and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholder to delete.**

155) KENYA DEVELOPMENT CORPORATION

Clause 42 (a) (i) (K)

1980. **Proposal to Levy Excise Duty on Alcoholic Beverages Based on Alcohol Content:** Delete clause 42(a)(i)(K) because taxing spirits based on pure alcohol content could increase excise duty by 67%, potentially reducing spirits **revenue**. Additionally, this may make legitimate alcohol products unaffordable, thus fueling illicit alcohol trade as manufacturers pass costs onto consumers.

Committee Observations

1981. **The committee noted the proposal, however, the Committee proposed to reduce the rate of excise duty for imported sugar confectionery, and spirits of undenatured ethyl alcohol amongst others. Further in the spirit of keeping with the predictability of the tax system.**

Clause 44

1982. **Proposal to Increase Import Declaration Fee from 2.5% to 3%:** Delete clause 44 because raising the import declaration fee will adversely affect the costs of raw materials and intermediate products used in value-added manufacturing. This could reduce the competitiveness of local industries in both **domestic** and export markets due to higher costs of imported raw materials and machinery.

Committee Observations

1983. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The**

proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.

1984. **Further, the Committee recommends making amendments in respect of the RDL by increasing it 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.**

156) EAST AFRICAN GRAIN COUNCIL

Clause 9 (12H)

1985. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete **clause** 9 (12H) because the proposed tax will impact farm vehicles. Clarify whether farm tractors are also included in this proposal. Farmers already bear expenses for insurance and fuel levies. Additional taxes would raise production costs and food prices.

Committee Observations

1986. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 33

1987. **The VAT registration threshold was revised from KES 5 million to KES 8 million:** Delete **clause** 33 because the current threshold reduces administrative burdens for small businesses, including those working with smallholder farmers.

Committee Observations

1988. **The Committee noted that revising the threshold upward would encourage small and medium businesses. Therefore, the Committee accepted the proposal.**

Clause 34 (a) (i) (U 152,154)

1989. **Proposal to Move Bioethanol Vapor (BEV) Stoves and Supply of Motorcycles from Zero-Rated to Exempt Supplies:** Delete clause 34(a)(i)(U) paragraphs 152 and 154 because

this change will help reduce production costs for farmers and ensure food affordability, which is crucial for young farmers and transportation of farm produce.

Committee Observations

1990. **The committee accepted the proposal to delete the Clause to reduce the production cost of the Bioethanol.**

157) SKM AFRICA LLP CERTIFIED PUBLIC ACCOUNTANTS
Clause 25(b)(i)

1991. **Proposal on the preferential corporate tax rate of 15% for companies that construct 100 residential units per year in line with the principles of predictability and certainty as key tenets of taxation**: Delete the provision and retain the preferential corporate tax rate of 15% for companies that construct 100 residential units per year in line with the principles of predictability and certainty as key tenets of taxation. This is critical in earning the trust of investors. Investors who had already commenced construction and sale of residential units on the legitimate expectation that they would enjoy the reduced corporate income tax rate will incur losses since the determination of the selling price was premised on the availability of the reduced corporate income tax of 15%.

Committee Observation

1992. **The Committee noted that Affordable Housing as one of the critical pillars in the BETA Economic Model Agenda and therefore the retention of the 15% preferential tax rate would go a long way to address the housing shortfall in the country and supply the needed number of houses to fill this gap. Further, in keeping with the spirit of ensuring the predictability of the tax structure the Committee recommends the deletion of the proposal to remove the incentive.**

Clause 35

1993. **Proposal to Increase VAT on Betting, Gaming, and Lottery Services to 16%**: Delete the **proposal** and maintain VAT exemption for betting, gaming, and lottery services. Subjecting these services to VAT would allow betting companies to claim input VAT from various services such as marketing, advertising, technology, odds providers, cloud services, cybersecurity, and consultancy. This could lead to these companies consistently having VAT credits, which is not favorable for revenue mobilization by the KRA.

Committee Observation

1994. **The Committee accepted the proposal to exempt betting, gaming, and lottery services from VAT to allow a gradual increase in rate**

Clause 42(a)(i)(I), (J), (K) and (L)

Clause 42(b)(iv) and (v)

1995. **Proposal to Increase Excise Duty on Betting and Gaming Activities from 12.5% to 20%:** Amend the excise duty structure for betting and gaming activities by changing the rate from 12.5% on wagers and stakes to 5% on deposits (all sums deposited by a customer in their online wallet, inclusive of the stake) made daily by players. This adjustment aims to deter tax evasion and illegal gambling by unscrupulous operators seeking to maximize profits.

1996. Taxing withdrawals and deposits instead of winnings and stakes is expected to **enhance** revenue collection, broaden the tax base, ensure transparency, and effectively combat money laundering and terrorism financing.

Committee Observation

1997. **The Committee noted the proposal by the stakeholder, however, an amendment to the clause from proposed excise duty from 20% to 15% to allow a gradual increase in the rate**

Clause 45

1998. **Introduction of Eco Levy on Manufactured and Imported Goods for Environmental Conservation:** Reject the Proposal for the Introduction of Eco Levy on **Manufactured** and Imported Goods for Environmental Conservation due to its potential to impose punitive levies on businesses across various sectors without a clear framework for identifying goods that contribute significantly to environmental degradation or how levy rates are determined.

1999. **Additionally**, companies involved in manufacturing goods that pose environmental risks already contribute fees to support circular design initiatives led by the Kenya Extended Producer Responsibility Organization (KEPRO). KEPRO assists member organizations in implementing Extended Producer Responsibility schemes to enhance recycling capabilities, promote local value addition, and foster a cleaner environment while generating employment opportunities.

Committee Observation

2000. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

2001. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholder to delete**

New Proposals Relating to the Betting, Lotteries and Gaming Industry

2002. **Replace the** 20% withholding tax on winnings with a 5% withholding tax on withdrawals (the gross payout made which is the stake plus the winnings) remitted to players daily. This follows the court's definition and interpretation that winnings are the difference between the amount staked or waged by a **customer** and the gross payout made by a betting or gaming operator. Further, this proposal will streamline taxation of the betting and gaming sector and allow a transparent and fair compliance mechanism making tax revenues easy to verify and audit.

2003. Following several court decisions and according to the Finance Act, 2023, the Income Tax Act was amended to provide a clearer definition of 'winnings'. Because of this and to align it to the relevant statutes governing the taxation of betting and gaming activities, amend Section 2 of the Betting, **Lotteries** and Gaming Act, Cap 131 by 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."*

New Proposals Relating to the Excise Duty Act, Cap 472

2004. Reducing excise duty on beer manufactured by independent brewers will promote investment in the sector and increase revenue collection therefore amend the Act in Part III of the First Schedule of the Excise Duty Act by inserting the following definition:

> *"Small independent brewer means manufacturers of beer, cider, perry, mead, opaque beer, wine and mixtures of fermented beverages with non-alcoholic beverages manufactured whose annual production volume does not exceed 10,000 liters per month."*

Committee Observation

2005. **The Committee noted all-new proposals however, did not consider the proposal for they were not subjected to public participation.**

158) ELDORET BUSINESS ASSOCIATION

Clause 34(a)(b)

2006. Proposal **to Subject Ordinary Bread to 16% VAT:** Reject the proposal to standardize ordinary bread and sugarcane transportation because it would escalate costs for both consumers and producers. The sugar industry in Kenya is already under significant strain, and imposing additional costs would exacerbate the sector's challenges.

Committee Observation.

2007. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 45

2008. Introduction **of Eco Levy:** Delete the proposal to introduce an Eco Levy because it would unjustifiably raise the cost of essential products, such as diapers, which are crucial daily necessities for Kenyans. This raises ethical concerns about the affordability of basic goods.

Committee Observation.

2009. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2010. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholder to delete.**

Clause 42(b)(i-iv)

2011. Introduction **of 16% VAT on Banking, Data, and Internet Services:** This measure is not geared toward revenue generation but will rather escalate the prices of these essential services, burdening the final consumers, particularly low-income Kenyans already grappling with high costs associated with accessing these services.

Committee Observation

2012. **The Committee accepted the proposal by the stakeholders to exempt banking, data, and internet services from excise duty to curb the increase in the cost of data services.**

Clause 23 (b)

2013. **Proposal to Subject Tax to Registered Trust Schemes:** Rejecting the clause and **removing** income tax exemptions for associations and trusts would discourage amateur sporting associations at a time when the government is fostering professional sports through initiatives like Talanda Hela.

Committee Observation

2014. **The Committee noted that section 3(E)(e) of the Trustees (Perpetual Succession Act) provides that no better title is acquired by the transferor transfers .**

Clause 5

2015. **Proposal to Impose Withholding Tax on Payments for Supply of Goods to Public Entities:** Reject the clause because imposing this withholding tax will impose additional financial burdens on businesses contracting with public entities. Government entities have

a history of delayed remittance of withheld taxes, which will exacerbate suppliers' challenges by reducing their profits unexpectedly.

Committee Observation

2016. **The Committee noted that the proposal is to align with the rate on turnover tax reviewed by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.**

Clause 42(a)(P)

2017. Proposal **to Introduce Excise Duty on Vegetable Oil at the rate of 25%**: Reject the clause because imposing taxation on vegetable oil will further increase the cost of living, **which is already burdensome and barely affordable for some citizens.**

Committee Observation

2018. **The Committee accepted the proposal by the stakeholders to exempt excise** duty **on vegetable oils to curb the increase in consumer prices.**

Clause 42(b)(i)

2019. **Proposal to Increase Excise Duty on Internet and Data Services from 15% to 20%:** Amend the clause to reduce the excise duty on these Internet and data services to as low as 5%, or delete the entire clause to maintain the current status quo. The current costs are already higher than anticipated, so lowering them would be more beneficial than increasing them, which would burden taxpayers.

Committee Observation

2020. **The Committee accepted the proposal by the stakeholders to exempt telephone and internet data services from VAT to curb the increase in the cost of data services.**

Clause 9(12H)

2021. Introduction **of Motor Vehicle Tax at the Rate of 2.5% of the Value of the Vehicle:** Reject this clause because it will increase transportation costs, adversely affecting individuals who rely on vehicles for various activities. Capping the tax at Ksh. 100,000 would contradict the principles of equity and fairness that should guide tax administration.

Committee observations

2022. **The** Committee **noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **Commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

2023.

159) MARKETING SOCIETY OF KENYA

Clause 2 (k)

2024. **Proposal to Expand the Definition of Royalty to Include Software:** Delete the proposal to amend the definition of royalty because it would result in taxing software essential for daily operations, such as Microsoft Office and Adobe Suite, for which companies already pay licensing fees. This move would increase the cost of doing business, potentially hindering Kenyan companies from adopting new technologies and software due to financial constraints. This could ultimately reduce industry profitability, employment opportunities, and overall value creation.

Committee Observations

2025. **The Committee noted that distribution of software cannot be** considered **as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 8 (12E) (1)

2026. Proposal **to repeal of Digital Service Tax and Replacement with Significant Economic Presence Tax at the rate of 30% on 20% Deemed Profit:** Amend the proposal by exempting those already paying the 1.5% under the Digital Service Tax. The substantial increase to 30% on deemed profit could raise operational costs, likely passed on to consumers and businesses using these services. Such a high tax rate might deter new entrants and reduce foreign investment in Kenya's digital economy, potentially stalling innovation and sector growth.

Committee Observations

2027. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 56 (b)

2028. Proposal **to Extend KRA's Review Period for Tax Objections from 60 to 90 Days:** Delete the clause that extends the timeframe for issuing objection tax decisions. This change could significantly inconvenience the industry, especially considering KRA's tendency to issue arbitrary assessments that effectively halt ongoing tax refunds.

Committee Observations

2029. **The** Committee **observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

160) EVALENGICAL ALLIANCE OF KENYA

Clause 9 (12H)

2030. Introduction **of Motor Vehicle Tax at the Rate of 2.5% of the Value of the Vehicle:** Delete the proposal because the motor vehicle tax is perceived as a direct reduction in the wealth of Kenyans rather than a tax.

Committee Observations

2031. **The** committee **noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholders to delete

Clause 25 b iii A

2032. **Proposal to Withhold Tax on Interest from Infrastructure Bonds at the Rate of 5% for Residents and 15% for Non-Residents**: Delete the proposal because it is punitive and could discourage both Kenyans and foreigners from investing in infrastructure bonds.

Committee Observations

2033. **The Committee noted the stakeholder proposal however, the Committee noted that the proposal aims to encourage long-term investment and enable the** government **to earn revenue which is consistent with all other payments.**

Clause 25 b iii F

2034. Imposition **of Withholding Tax on Payments Made for the Supply of Goods to a Public Entity at the rate of 3% for Residents and 5% for Non-Residents:** Delete the clause because imposing withholding tax on goods supplied to public entities is illogical and impractical.

Committee Observations

2035. **The Committee noted that the proposal is to align with the rate on** turnover **tax reviewed by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.**

Clause 34 b i

2036. Proposal **to subject banking services to 16% VAT:** Reject the proposal as it would increase banking costs, potentially leading Kenyans to revert to storing cash under pillows.

Committee Observations

2037. **The Committee accepted the proposal by the stakeholders to exempt** banking **services from VAT to curb the increase in the cost of financial services.**

Clause 35 a

2038. Proposal **to subject ordinary bread to 16% VAT**: Delete the proposal that ordinary bread will cease being VAT zero-rated, implying that suppliers can no longer claim the input element. This will pass the cost to the end consumers.

Committee Observations

2039. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 44a

2040. **Proposal to increase the import declaration fee from 2.5% to 3%:** Reject this proposal as it would add to the challenges faced by businesses, including traders.

Committee Observations

2041. **The Committee noted that the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would therefore help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.**

2042. **Further, the Committee recommends making amendments in respect of the RDL by increasing it 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**

Clause 48

2043. **Introduction of eco levy:** Amend the clause by excluding item 45, which pertains to diapers. The eco levy proposal remains a beneficial tax measure.

Committee Observations

2044. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected**

to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products. 2045. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)*, and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholders to amend the proposal.**

Clause 57 (b)

2046. **Proposal on penalties resulting from failure to integrate the electronic tax system with the data management and reporting system:** Amend the clause by reducing penalties from Ksh 2 million to Ksh 200,000. This adjustment is **necessary** to prevent the closure of many small businesses. Moreover, paying the fine does not exempt taxpayers from their tax obligations, so the pressure on taxpayers should be minimized.

Committee Observations

2047. **The Committee noted that the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offence.**

Clause 63

2048. **Proposal to allow KRA access to personal data:** Delete the proposal because it will have severe adverse implications on the rights, freedoms, and **privacy** of Kenyans.

Committee Observations

2049. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

161) ASSOCIATION OF PENSION TRUSTEES AND ADMINISTRATORS OF KENYA

New Proposal

2050. Amend the Public Procurement and Assets Disposal Act (PPAD) Section 2. The **PPAD** Act 2015 conflicts with the Retirement Benefits Act (RBA) Act and is irreconcilable with the objects of pension schemes. Pension funds are not regarded as public funds and do not fall within the public procurement laws. Pension funds comprise private property of a member.

Committee's Observation

2051. **The Committee noted the concern; however, it was noted that the proposal did not go through public participation**

162) UBER

Clause 8 (12G)

2052. **Proposal to repeal digital service tax and replace it with a significant economic presence tax at the rate of 30% on 20% deemed profit:** Delete Clause 8(1) introducing the Significant Economic Presence Tax (SEPT). This proposal is similar to the current Digital Service Tax (DST) and lacks a clear **definition** of "significant economic presence." Aligning the taxation of the digital economy with OECD guidance without this definition will lead to inconsistent and unclear implementation and application of SEPT on non-residents.

Committee Observation

2053. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 8 (2)

2054. Introduction **of minimum top-up tax:** Amend Clause 8(2) to specify that Clause 9 on Minimum Top-Up Tax and Clause 10 shall not apply to income **chargeable** under Clause 8 on SEPT, which shall be treated as a final tax. This amendment is necessary to provide clarity on the applicability of SEPT about withholding tax, ensuring that SEPT takes precedence regarding the taxation of income arising from the provision of digital services.

Committee Observation

2055. **The Committee noted that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have a presence. Therefore, not having it in Kenya will jeopardize the** mechanism **for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues. The Committee therefore did not accept the proposal to delete by the stakeholder.**

163) LEXLINK CONSULTING

Clause 5

2056. **Proposal to impose withholding tax on payments made for the supply of goods to a public entity at the rate of 3% for residents and 5% for non-**residents: Delete Clause 5 because it discriminates against those supplying goods to public entities. Alternatively, amend the clause to include both public and private sector suppliers to ensure equitable treatment.

Committee Observation

2057. **The Committee noted that the proposal is to align with the rate on turnover tax** reviewed **by the Affordable Housing levy. Therefore, the Committee did not agree with the stakeholder's proposal.**

Clause 6 (a) (i)

2058. **Proposal to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers:** Delete Clause 6 (a) (i) because it violates Section 210 of the Constitution and is discriminatory, as it offers benefits solely to public officers. If amended, the same provision should be extended to include those in the private sector to ensure fairness.

Committee Observation

2059. **The Committee noted that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the** employer **for assets acquired. This is discriminatory as it only applies to a section of taxpayers hence leading to inequity in the tax system. Additionally, the Committee noted that even if the amendment was extended to all taxpayers, it would be highly abused as taxpayers would re-characterize their taxable income to such benefits to escape taxation.**

Clause 35 (d)

2060. **Delete** Clause 35 on transportation of sugarcane from firms to milling factories and retain it on zero rating because taxing this essential service is detrimental to farmers and their recovery from the impact of the floods recently experienced.

Committee Observation

2061. **The** Committee **accepted the proposal to zero rate transportation of Sugar to that might impact the final coat of sugar.**

Clause 42 (a) (i) (P)

2062. **Proposal to introduce excise duty on vegetable oil at the rate of 25%:** Delete Clause 42 (a) (i) (P) which seeks to impose an excise duty of 25% on vegetable oil. This increase will push the prices of this essential item out of reach for most Kenyans.

Committee Observation

2063. **The Committee accepted the proposal by the stakeholders to exempt** excise **duty on vegetable oils to curb the increase in consumer prices.**

Clause 42(b) (iii)

2064. **Proposal to increase excise duty on money transfers from 15% to 20%:** Delete Clause 42(b)(iii) proposing the 20% rate on mobile money transfers and instead retain the existing 15%, or consider lowering it to 10%.

Committee Observation

2065. **The Committee accepted the proposal by the stakeholders to exempt money transfers from excise duty to curb the increase in the cost of** financial **services.**

Clause 48

2066. **Introduction of eco levy on diapers:** Amend Clause 48 by removing item 45, which includes diapers under Chapter 96, because the additional eco levy would further escalate their already high cost, making them unaffordable for many Kenyans.

Committee Observation

2067. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2068. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to** remove **imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 48

2069. **Amend Clause 48 by removing the eco levy proposed on computers, video cameras, digital cameras, microphones, televisions, earphones, projectors, and smartphones.** These items are essential tools for education, work, and innovation, especially for the youth. Imposing a levy would hinder access to these technologies, contradicting Kenya's aspirations to promote digitalization and become a hub for technology innovation.

Committee Observation

2070. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2071. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 48

2072. **Introduction of eco levy on rubber tires:** Amend Clause 48 by removing the proposed eco levy on rubber tires (item 44 of Chapter 40) and batteries or dry cells (item 46 of Chapter 85). Implementing this levy would raise the cost of essential items like tires, potentially delaying replacements and compromising road safety. Furthermore, it could negatively affect the motor vehicle sector, which is a significant employer of youth in Kenya.

Committee Observation

2073. **The Committee noted that the purpose of the Eco Levy was to help** redress **environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

2074. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and** reduce **the rate of eco levy for certain finished goods.**

164) CPF – COUNTY PENSION FUND

Clause 9 (12H – Motor Vehicle Tax)

2075. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the proposed Section 12H on Motor Vehicle Tax, as taxation based on vehicle value can have adverse effects, particularly given the underdeveloped state of public transportation. This could hinder mobility, impacting the broader economy negatively.

Committee Observation

Clause 23 (b)

2076. **Proposal to subject tax on registered trust schemes:** Delete Clause 23 (b) and introduce transitional arrangements for existing schemes, while conducting a thorough review to balance revenue generation with the impact on investment vehicles. The proposal risks diminishing the attractiveness of trust schemes, which play crucial roles in asset protection, efficient wealth management, and financial stability, particularly for low-income households.

Committee Observation

2077. **The Committee noted that section 3(E)(e) of the Trustees (Perpetual** Succession **Act) provides that no better title is acquired by the transferor transfers .**

165) CREATIVE INDUSTRY

Clause 2 (k)

2078. **Proposal to expand the definition of royalty to include software:** Remove Clause 2(k) proposing a new royalty definition, as it conflicts with the current Organization for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital. The OECD Model Convention stipulates that in such transactions, distributors pay solely for the acquisition of software copies and not for the exploitation of any rights of software copyrights.

Committee Observation

2079. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to** delete **the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 8

2080. Proposal **to Replace Digital Service Tax with Significant Economic Presence Tax at 30% on Deemed Profit of 20%: Delete the proposal** and substitute it with a flat rate of 10% comprehensive tax on net profits rather than gross turnover. This adjustment aims to

prevent a sharp rise in the tax burden and avoid presenting Kenya as an unfriendly market, thereby supporting continued growth for Kenyan businesses engaging with global platforms.

Committee Observation

2081. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower** production **cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 23 (a)

2082. **Proposal to Impose Income Tax on Income Earned by Amateur Sporting Associations:** Remove Clause 23(a) from consideration, as its **implementation** could jeopardize the viability of many amateur sports clubs.

Committee Observation

2083. **The Committee noted that the proposal seeks to make "amateur sporting associations" amenable to pay tax, however, to support investments in this sector and incentivize nurturing of sporting talent the Committee recommends deletion of the proposal.**

Clause 42 (b)(i)

2084. **Proposal to Raise Excise Duty on Telephone and Internet Services from 15% to 20%:** Eliminate Clause 42(b)(i) proposing the increase to 20% excise duty on telephone and Internet services. This adjustment is necessary given that Kenya already experiences higher internet and data costs in the region, despite having superior technical infrastructure.

Committee Observation

2085. **The Committee accepted the proposal by the stakeholders to exempt telephone and internet services from excise duty to curb the increase in the cost of financial services.**

Clause 48

2086. **Introduction of Eco Levy on SD Cards, Microphones, and Other Equipment:** Remove Clause 48, which includes provisions on eco levies for video **cameras**, SD cards, CDs, microphones, sound recording equipment, projectors, monitors, TV broadcasting equipment, and radio broadcasting equipment. Implementing these measures could escalate production costs and harm businesses in the creative industry. Furthermore, it may deepen the digital divide for marginalized groups, such as those in Northern Kenya, who already face challenges accessing capital for purchasing such equipment.

Committee Observation

2087. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on**

imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle" it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.
2088. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tires of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)*, and reduce the rate of eco levy for certain finished goods.**

166) ALPHA TAX AND BUSINESS ADVISORY SERVICES

Clause 2 (k) (f)

2089. **Proposal to Expand the Definition of Royalty to Include Software:** Withdraw this **proposal** as it contradicts established international best practices regarding the taxation of software payments.

Committee Observations

2090. **The Committee noted that distribution of software cannot be considered as an activity that would generate a royalty, therefore the Committee proposed to delete the words in subclause (b) "and includes distribution of the software" in line with International Best Practices.**

Clause 9 (12H)

2091. **Proposal to Introduce Motor Vehicle Tax at 2.5% of Vehicle Value: Remove this proposal** due to existing customs duty and VAT levied on vehicle imports. Introducing **additional** motor vehicle tax would impose an unfair burden based solely on asset value rather than income or profits.

Committee Observations

2092. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 23 (e)

2093. **Proposal to Tax Registered Trust Schemes:** Withdraw this proposal as it undermines the principles of tax predictability and certainty. Implementation could **potentially** trigger capital flight, with individuals relocating assets to jurisdictions offering more favorable tax regimes. Additionally, it might reduce charitable contributions and community support

from family trusts toward social development initiatives. Moreover, the cost of succession planning could rise substantially, resulting in less efficient wealth management.

Committee Observations

2094. **The Committee noted that section 3(E)(e) of the Trustees (Perpetual Succession Act) provides that no better title is acquired by the transferor transfers .**

Clause 34 a) (i) (A) (Ac&Ad)

2095. **Proposal to Implement 16% VAT on Ordinary Bread:** Remove this clause from consideration due to the significant impact it would have on household budgets, particularly for lower and middle-income families. Adding VAT on essential food items like bread could exacerbate poverty levels and contribute to social unrest, as these necessities become less affordable for a larger segment of the population.

2096. **Moreover**, bread is a staple food crucial to the dietary needs of many Kenyans. **Imposing** 16% VAT on gluten-free bread, which is essential for individuals with celiac disease or gluten intolerance, would increase costs and pose challenges for adhering to medically necessary diets. This could result in adverse health outcomes and higher long-term healthcare expenses.

Committee Observations

2097. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 34 (b)(i)

2098. **Proposal to Implement 16% VAT on Financial Services:** Withdraw this proposal due to the potential consequences of increased costs being passed on to consumers. VAT on financial services, which is applied to transaction costs, would likely raise the costs of borrowing, foreign exchange transactions, and investing. This could disproportionately impact lower-income individuals and small businesses, hampering efforts to enhance financial inclusion and reducing participation in the formal financial system overall.

Committee Observations

2099. **The Committee accepted the proposal by the stakeholders to exempt financial services from VAT to curb the increase in the cost of financial services.**

Clause 35 (h)

2100. **Proposal to Impose 16% VAT on Electric Bicycles:** Delete the proposal to levy VAT on electric bicycles, as it could stifle growth in the e-mobility sector and discourage consumer adoption of these environmentally friendly vehicles.

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Committee Observations

2101. **The Committee accepted the proposal by the stakeholders to exempt electric bicycles from excise duty to curb the increase in the cost of bicycles.**

Clause 39

2102. **Proposal to Remove Relief on Excise Duty for Manufacturers of Excisable Goods and Internet Data Services Providers:** Withdraw the proposed clause, as it is **expected** to increase prices of consumer goods and services, potentially fueling inflation and placing additional financial strain on manufacturers. This proposal contradicts international best practices, where excise taxes are typically considered consumption taxes passed on to the final consumer. Moreover, eliminating relief could result in double taxation. Additionally, heightened production costs may diminish the competitiveness of Kenyan goods in global markets, reducing the nation's export potential.

Committee Observations

2103. **The excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.**

Clause 42(a)(i)(P)

2104. **Proposal on the introduction of excise duty on vegetable oil at the rate of 25%: Proposal** should be reconsidered due to its potential adverse effects. This clause risks exacerbating inflation by raising prices across a wide array of food products dependent on vegetable oils. Such an increase could significantly burden consumers, escalate the cost of living, and potentially impede economic growth.

2105. Moreover, the vegetable oil industry plays a crucial role for many farmers and **agricultural** producers who rely on it as a market for their crops, including sunflower, soybean, and palm. Implementing an excise duty that dampens demand for vegetable oils could adversely affect these farmers' incomes and lead to reduced agricultural production levels. Thus, it is imperative to assess alternative policies that mitigate economic risks while supporting agricultural livelihoods.

Committee Observations

2106. **The Committee accepted the proposal by the stakeholders to exempt excise duty on vegetable oils to curb the increase in consumer prices.**

Clause 42(b)(ii&iii)

2107. Proposal **to increase excise duty on banking, and money transfer from 15% to 20%:** The proposal should be reconsidered due to its potential negative impact. Banks, money transfer agencies, and cellular phone service providers are likely to transfer this additional tax burden to their customers, resulting in higher transaction fees for individuals and businesses. This will inevitably increase the cost of money transfers, particularly affecting low-income individuals who depend on affordable services for remittances and other transactions. Such a move could hinder efforts aimed at fostering financial inclusion, as higher fees might reduce accessibility to these essential services for vulnerable populations already facing financial challenges. Therefore, it is essential to explore alternative measures that support financial inclusion without placing undue financial strain on those who rely on these services the most.

Committee Observations

2108. **The Committee accepted the proposal by the stakeholders not to increase excise duty to curb the increase in the cost of financial services.**

Clause 45

2109. **Introduction of eco levy:** Delete the proposal because the levy imposed on certain **products** per unit or kg exceeds the value of the items or imposes a significant expense, rendering trade in those goods unfeasible from the beginning. The Bill is silent on how revenues raised from the levy will be used. A coherent framework is necessary to align the objectives of the levy and the revenues raised. Additionally, the levy will have a negative impact on the move towards a digital economy, by imposing high taxes on the data processing machines that are necessary for business.

Committee Observations

2110. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

2111. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 56

2112. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:** Modify the proposal by removing the clause that automatically rejects objections if taxpayers fail to provide all required information within 7 days of lodging a notice of objection. This clause undermines the rights of taxpayers to fair administrative action as per Article 47 and the right to a fair trial under Article 50 of the Constitution. It's essential to allow sufficient time for taxpayers to compile necessary evidence, potentially extending the review period from 60 days to 90 days. This adjustment ensures that objections are considered on their merits rather than being summarily dismissed due to procedural timelines.

Committee Observations

2113. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to object, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

167) PRICEWATERHOUSE COOPERS LIMITED

Clause 6(a)(i)

2114. **Proposal to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings:** Revise the proposed amendment on the per diem exempt threshold to clarify that all substance allowances received by one **employee** that are more than five percent of an employee's monthly gross earnings per day will not be charged to PAYE where the employer has a policy for payment and accounting of such allowances. This will ensure that per diems over the tax-free threshold are only charged to tax if not accounted for.

Committee observation:

The Committee observed that the current provision in the Act is sufficient.

Clause 6(a)(ii)

2115. **Proposal to amend the limit of non-taxable benefits granted concerning employment from KSh. 36,000 to KSh. 48,000:** Revise the tax-exempt threshold for non-cash benefits not expressly provided for in the Income Tax Act from Kshs. 36,000 to Ksh. 48,000 would also apply to the reimbursements to public officers in respect of assets purchased whose value is within the threshold. This proposal was included in the Finance Bill, 2023 but was rejected by the Committee on the premise that it only catered for public officers and has still not been addressed in the instant proposal.

Committee Observation

2116. **The Committee supported the proposal and agreed to amend by further increasing it to sixty thousand Kenya Shillings (KSH. 60,000). This will be beneficial to the employees.**

Clause 8

2117. Proposal **to repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:** Revise the proposal to repeal the digital service tax and replace it with a significant economic presence tax (SEPT) set at a rate of 30% on 10% of gross turnover as deemed taxable profit. Additionally, introduce a threshold of Ksh. 8,000,000 below which non-residents would be exempt from SEPT. It's crucial to address the absence of an income threshold for digital marketplace platforms subject to SEPT, as this omission runs counter to the government's aim of nurturing Kenya's digital economy, which is pivotal for economic growth. Failing to rectify this could potentially diminish Kenya's competitiveness in the digital marketplace sector.

Committee Observation

2118. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 34(b)(i)

2119. **Proposal to subject financial services to 16% VAT:** Delete the proposal to impose 16% **VAT** on financial services and maintain the current exemption of banking services from VAT. Applying VAT to financial services would raise their costs, potentially restricting access and affordability for ordinary Kenyans. Moreover, this proposal contradicts international

best practices and fundamental VAT principles, which typically apply to goods and services rather than the supply of money itself. Implementing such a tax could undermine efforts toward achieving financial inclusion in Kenya.

Committee Observation

2120. **The Committee accepted the proposal by the stakeholders to exempt financial services from VAT to curb the increase in the cost of financial services.**

Clause 39

2121. **Proposal to remove the provision granting relief on Excise Duty for manufacturers of excisable goods and providers of internet data services**: Retain the current Section 14 of the Excise Duty Act concerning relief for raw materials. This **proposal** threatens to hinder local manufacturing, which contradicts both the National Tax Policy and the BETA, designed to foster local manufacturing.

Committee Observation

Clause 42(b)

2122. **Proposal to increase excise duty on money transfers from 15% to 20%:** Reject the proposal and maintain the current excise duty rate of fifteen percent (15%) on fees charged for money transfer services by banks, money transfer agencies, and other financial service providers. This adjustment risks raising the cost of money transfer services, potentially reducing affordability and accessibility for middle- and low-income individuals and the unbanked population. Such an outcome would run counter to the government's goals of promoting financial inclusion and maintaining the predictability of the tax regime.

Committee Observation

The excise duty like VAT for Excisable manufacturers considers input and output tax therefore the Committee supports the proposal to delete the clause since it will mean that excisable manufacturers would not be allowed to deduct Excise duty. This would increase the cost of production unnecessarily and increase the prices of the products to consumers.

Clause 45

2123. **Introduction of an eco-levy:** Decrease the eco levy rate per unit as outlined in the revised Fourth Schedule of the Miscellaneous Fees and Levies Act. The implementation of the eco levy is expected to raise the prices of domestically **manufactured** goods, potentially pushing consumers towards importing more affordable alternatives. This could deter foreign direct investment and diminish the local market for domestic device manufacturers, thereby exposing the local market to vulnerabilities.

Committee observation

2124. **The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2125. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.**

Clause 56(a)

2126. **Proposal to extend the review period for objections by KRA from 60 days to 90 days:** Delete the proposal and maintain Section 51(4A) of the Tax Procedures Act, which allows taxpayers to request additional time to submit new documents. The proposal risks limiting taxpayers' ability to prove their tax liability and could unjustly enforce payments based on technical grounds of late document **submission**.

Committee Observation

2127. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to object, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

Clause 63

2128. **Proposal to grant KRA access to personal data:** Reject the proposal due to **concerns** about potential misuse. The collection, use, storage, and disposal of personal data for tax purposes may not fall under the purview of the Data Protection Act, raising significant privacy issues.

Committee Observation

2129. **The Committee noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data to administer a tax law.**

New Proposals Relating to the Income Tax Act

2130. **Amend** Section 35(5) of the Act to allow for withholding tax to be paid on or before the 20th day of the following month in which the deduction was made. This is because the requirement to remit the tax within five days places a **strenuous** compliance burden on the taxpayer and risks eroding the government's efforts to collect additional revenue and adversely affect the efficiency, productivity and ease of doing business.

2131. **Amend** Section 35(1) and (3) of the Act by introducing the term upon cash payment. The requirement to withhold tax at the point of accrual is likely to occasion cash flow issues for the taxpayers as was interpreted by the Court of Appeal's interpretation in ***Kenya Revenue Authority and Republic (ex parte: Fintel Limited)*** where it was held that a taxpayer is required to withhold tax on eligible amounts at the point of recording an accrual in the books of account, whether or not actual payment has been made. This translates to an assumption that taxpayers already have the cash to pay the suppliers by taking a mere accrual in their books yet it is not the true financial reality as businesses are forced to pay taxes well in advance using the cash meant for business operation.

New Proposals Relating to the Tax Procedures Act

2132. **Include** a section that expressly allows the taxpayer to adduce additional **documentation** at the Tax Appeals Tribunal to ensure that justice is served to the taxpayer.

2133. **Restore** the power of the Commissioner to waive penalties and interests to enhance tax compliance. There are mechanisms for ensuring accountability of waived taxes in the Constitution under Article 210(2) as read in Section 82 of the Public Finance Management Act.

Committee Observation

2134. **The Committee noted the proposal by the stakeholders, however, the Committee did not consider a proposal for they didn't go through public participation**

3.2.1 PUBLIC FORUM AT KENYA INTERNATIONAL CONFERENCE CENTRE

2135. In addition to stakeholders' engagements, the Committee also placed an advertisement in the print media on 15th May 2024, inviting the public to appear before the Committee at KICC Amphitheatre on 10th June 2024. This proactive approach ensured that a wide range of opinions and insights could be gathered, reflecting the diverse perspectives of the affected parties. The Committee received views from 200 individuals and organizations. The following citizens and some stakeholders appeared before the Committee to provide their views on the Bill:

168) WORLD BREWING ALLIANCE

Clause 42(a) (i) (L, J&K)

Proposal to levy excise duty based on alcohol content:

2136. Adopt the proposal. It is international best practice for excise duty to be based **on** the strength of the alcohol in the product. This will rectify the imbalance by significantly increasing the excise on spirits, reducing the excise on beer, and marginally increasing the excise on wines. Further, this will take comprehensive steps to minimize the risk of illicit alcohol including enforcement against illicit alcohol, engendering collaboration amongst enforcement agencies, and fostering cross-border cooperation.

Committee's Observation

2137. **The Committee accepted the proposal for beer and wines, but the amendment to reduce the excise duty on spirits to KSh. 10 per centiliter**

169) NJANE & ASSOCIATES

Clause 56

Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection:

2138. **Amend** the period of filing of tax objection from seven days to thirty days in line with the proposal to give KRA 90 days to respond from the current sixty days. **This** will allow the taxpayer an opportunity to retrieve old records and consult a lawyer or tax experts.

Committee Observation

2139. **The Committee observed that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to object, in this regard the Committee proposes to require the commissioner to communicate the objection decision.**

Clause 8

Proposal to repeal of digital service tax and replacement with significant economic presence tax at the rate of 30% on 20% deemed profit:

2140. **Amend** the proposed significance economic presence tax rate from 20% to 10% as a one-off tax and do away with the reserve 16% VAT. This will **increase** tax collection and remove the reserve VAT borne by Kenyan customers.

Committee Observation

2141. **The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. The Committee did not accept the proposal by the stakeholder to delete. Nevertheless, the committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.**

Clause 9

Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:

2142. Reduce the proposed motor vehicle tax rate from 2.5% to 1.5% of the value of the car and provide for insurance companies to submit payment by every 20th day of the month. This will allow the companies adequate time to reconcile their accounts in consideration of the different renewal dates.

Committee Observation

The committee noted:

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

New Proposals Relating to the Income Tax Act

2143. Amend Section 10 to provide for the management or professional tax rate to 5% of gross turnover deductible while computing yearly taxable profit. This is in a bid to **align** with the management fees of other professionals.

Committee Observation

2144. **The Committee noted the new proposal, however did not consider the proposal for the proposal didn't go through public participation**

170) MR. WAINANA GICHERE FROM BUNGE LA WANANCHI

Clause 9

2145. **Introduction of motor vehicle tax at the rate of 2.5% of the value of vehicle:** Amend the proposal to peg the motor vehicle tax on the engine cc instead of its value. This will be in line with the tax emissions of the vehicle.

Committee Observation

2146. **The committee noted that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

i. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
ii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iii. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee did not accept the proposal by the stakeholder to peg the motor vehicle tax on the engine cc of its value.

Clause 42(b)(i)

2147. Proposal **to increase excise duty on telephone and internet data services:** Delete the proposal to introduce excise duty on telephone and internet data services as it shall discourage the purchase of mobile phones and reduce accessibility to digital services. Moreover, the proposal will hamper **education** as it shall impede access to online information.

Committee Observation

2148. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services. The Committee therefore, accepted the proposal by the stakeholder to delete the clause.**

Clause 42(b)(iv)

2149. Proposal **to increase excise duty on betting activities:** Increase the excise duty rate **on** betting activities to 35% to curb betting and its negative effects on students.

Committee Observation

2150. **The Committee noted that the industry is subjected to various other taxes and thus, imposing extra Excise duty on them would result to flight of these industries to other countries leading to revenue losses. The Committee, therefore, agreed with the stakeholder. The Committee therefore, accepted the proposal by the stakeholder to amend the rate of excise duty to 15%.**

New Proposal Relating to the Traffic Act

2151. Amend the definition of 'motorcycle' in Section 2 of the Act to exclude three-wheeled moto vehicles in line with the proposals in the Bill.

Committee Observation

2152. **The Committee noted the proposals but however, dropped the proposals considering that they were not subjected to public participation.**

171) STALLION MANUFACTURERS LIMITED.
Clause 48 fourth schedule 47

2153. Introduction **of eco levy on Plastic packaging materials of chapter 39.** Amend to exclude the plastics, packing articles of plastic, and delineate those **articles** of plastics that have a negative environmental impact from those that do not.

Committee observation

2154. **Eco Levy - The Committee noted that the purpose of the Eco Levy was to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2155. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. Therefore, the Committee accepted the proposal by the stakeholder to separate the imported from locally manufactured.**

172) KENYA CONFERENCE OF CATHOLIC BISHOPS.

Clause 35(a)

2156. Proposal **to impose 16% VAT on ordinary bread:** Delete the clause because it will adversely affect the poor.

Committee observation

2157. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 9 section 12H

2158. Introduction **of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the Clause since the provision will increase operational costs for small and Micro Enterprises.

Committee observation

2159. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 42 (ii)(b)

2160. Proposal **to increase excise duty on money transfer services from 15% to 20%:** Delete the proposal since this increase in excise duty will **disproportionately** affect lower-income customers, pushing them towards cash transactions.

Committee observation

2161. **With regards to excise duty in services the Committee was guided by the need to keep the consumer prices for certain services low and to ensure stability in terms of the**

rate of excise duty. Based on these criteria the committee proposes to maintain the prevailing rate of excise duty on telephone and internet data services, money transfers services by banks and financial institutions, and money transfer services by cellular phone service providers. In regard to the gambling sector the committee proposes to raise the rate of excise of duty marginally so as to discourage this practice and raise additional revenue. Therefore, the committee accepted the proposal by the stakeholder to delete.

Clause 45

2162. Introduction **of eco levy**. Delete the proposal because it is punitive and will most likely impoverish the majority of Kenyans.

Committee observation

2163. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2164. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. However, the committee did not accept the proposal by the stakeholder to delete the clause entire.**

173) KENYA RENEWABLE ENERGY ASSOCIATION (KEREA)

Clause 34 (a) (i) (U)

2165. **Proposal to move Bioethanol vapor (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel) from zero-rated to exempt:** Delete clause 34 (a) (i) (U) on the introduction of VAT on Bioethanol stoves because it will lead to an increase in end-user prices of ethanol affecting the low-income individuals who are ethanol users slowing down the uptake of Bioethanol stoves.

Committee Observation

2166. **The Committee noted that the increase in the VAT duty on BEV stoves would have a final price increase impact on the consumer. Therefore, the Committee accepted the proposal by the stakeholder to delete the clause amend to charge VAT duty on imported BEV Stoves while zero-rating the locally manufactured BEV Stoves.**

Clause 35 (i)

2167. **Proposal to subject 16% VAT on the supply of solar and lithium-ion batteries:** Delete clause 35 (i) on the introduction of VAT on solar and lithium-ion batteries

because this will disincentivize the industry which has largely invested in local ethanol production.

Committee Observation

2168. **The Committee noted that the increase in the VAT duty on supply of solar and lithium-ion batteries would have a final price increase impact on the consumer. Therefore, the Committee accepted the proposal by the stakeholder to delete the clause amend to charge VAT duty on imported supply of solar and lithium-ion batteries while zero-rating the locally manufactured supply of solar and lithium-ion batteries.**

Clause 47

2169. **Introduction of export and promotion levy:** Delete clause 47 on the introduction of an export and investment levy at 3% of the customs value of **denatured** ethanol for cooking and bioethanol stoves for cooking.

Committee Observation

2170. **The Committee observed that the export and investment promotion levy had dropped and thus charging the 3% of the customs value of denatured ethanol for cooking and bioethanol stoves for cooking would generate more revenues. The Committee therefore rejected the proposal by the stakeholder to delete the clause.**

Clause 48 (item 46)

2171. Introduction **of eco levy on batteries:** Delete clause 48 (item 46) on the introduction of the eco levy on batteries because this will have an impact on the adoption as batteries are used for energy storage. Instead, there is a need to promote the Extended Producer Responsibility (EPR) regulations under NEMA/Ministry of Environment. Also, will significantly increase the end-user prices depending on the size of the battery.

Committee Observations

The Committee observed that the export and investment promotion levy had dropped and thus charging the amended rate of KSh. 150 per kg on batteries or dry cells would generate more revenues. The Committee therefore rejected the proposal by the stakeholder to delete the clause.

174) BRIAN OKEJA

Clause 35 (a)

2172. **Introduction of 16% VAT on ordinary bread:** Delete clause 35 (a) on the introduction of VAT on ordinary bread because bread is a common food used by low-income youth across the country due to its affordability, making the commodity beyond reach for ordinary youths, especially those in universities.

Committee Observation

2173. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 42 (a) (i) (P)

2174. Introduction **of excise duty on vegetable oil at the rate of 25%:** Delete clause 42 (a) (i) (P) because introducing excise duty on vegetable oil will impact most youths who use the oil to make foods as a way of earning a living.

Committee Observation

2175. **The Committee accepted the proposal by the stakeholder to delete the excise duty on vegetable oils in order to curb the increase in consumer prices.**

Clause 42 (b) (i):

2176. **Proposal to increase excise duty on telephone and internet data services from 15% to 20%:** Delete clause 42 (b) (i) on the increase of excise duty on telephone **and** internet data charges because most youths use digital platforms to earn money, and the increase will make it unbearable for the already strained youths to continue their businesses. Additionally, many students rely on internet services for their research work, assignments, and classes, and this increase will make it difficult for them to perform these essential tasks.

Committee Observation

2177. **The Committee accepted the proposal by the stakeholder to exempt telephone and data services from excise duty to curb the increase in the cost of the telephone and internet data services.**

Clause 42 (b) (ii)

2178. **Proposal to increase excise duty on money transfers from 15% to 20%:** Delete clause 42 (b) (ii) that seeks to increase excise duties on money transfers because it will erode the positive and progressive gains that financial institutions have made, pushing youths to seek alternatives such as loan sharks.

Committee Observation

2179. **The Committee accepted the proposal by the stakeholder to money transfers from excise duty to curb the increase in the cost of the money transfers services.**

Clause 48 (item 45)

2180. **Introduction of eco levy:** Delete clause 48 (item 45) because imposing an eco-levy on diapers will make the products expensive and inaccessible to ordinary citizens.

Committee Observation

2181. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**
2182. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy**

on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. The committee accepted the proposal by the stakeholder to delete the diapers of chapter 96.

175) ASSOCIATION FOR THE PHYSICALLY DISABLED OF KENYA

New Proposal

2183. **Amend** the second schedule of the Value Added Tax to include All inputs and raw materials whether produced locally or imported for the production of **wheelchairs**, special seating and tricycles, and assistive devices such as hand splints, crutches, calipers, surgical boots, polio boots, artificial limbs, etc used by persons with disabilities.

2184. **Amend** the second schedule of the Value Added Tax to include plant, **machinery**, and equipment used for the production of wheelchairs and assistive devices/technologies

2185. **Committee observation**

2186. **The Committee noted the proposals but however, dropped the proposals considering that they were not subjected to public participation.**

176) NATIONAL COUNCIL OF CHURCHES OF KENYA

Clause 2 (k)

2187. Proposal **to expand the definition of royalty to include software:** Delete **Clause** 2 (k) seeking to introduce a new definition of royalty to include any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance, or support fees and includes the distribution of the software. This is because the proposal goes against the best practices espoused by the OECD Model Tax Convention on Income and on Capital.

Committee Observation

2188. **The Committee noted that there was need to expand the revenue base and providing clear definitions of the word royalty would remove ambiguity. The Committee therefore, did not accept the proposal by the stakeholder to delete the proposal.**

Clause 9 (12H – Motor Vehicle Tax)

2189. **Introduction of motor vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the proposed Section 12H on Motor Vehicle Tax because it is **double** taxation, it will hinder the penetration of insurance since acquisition will be expensive and also increase the transport cost of both goods and people.

Committee Observation

2190. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**

ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**

iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**

iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 34 (a)

2191. **Introduction of 16% VAT on ordinary bread:** Delete Clause 34 (a) because bread is a staple food in the country, especially for low-income earners and taxing bread will raise the cost of living with devastating impact on the economic welfare of the citizens.

Committee Observation

2192. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 34 (b) (i) – (N)

2193. **Proposal to move Plant, machinery, and equipment used in the construction of a plastics recycling plant from exempt to standard-rated VAT**: Delete Clause 34 (b) (i) – (N) on plant, machinery and equipment used in the **construction** of a plastic recycling plant because removal of VAT exemption will hinder new entrants.

Committee Observation

2194. **The Committee noted that removal of the exempt from the plant, machinery and equipment used in the construction of a plastics recycling plant would hinder new entrants. The committee therefore agreed with the stakeholder on deleting the proposal.**

Clause 34 (b) (i) (G)

2195. **Proposal to subject 16% VAT on financial services:** Delete Clause 34 (b) (i) (G) because the increase in the cost of financial services on account of the **proposed** taxation will reverse the affordable and accessible financial services.

Committee Observation

2196. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services. The Committee therefore, accepted the proposal by the stakeholder to delete the clause.**

Clause 45

2197. **Introduction of eco levy:** Delete Clause 45 in its entirety because the eco levy indiscriminately targets all products thereby targeting the goods that do not **have** negative impact on the environment. Additionally, it will be double taxation since Carbon Tax is paid through excise duty on fuel.

Committee Observation

2198. **The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.**

2199. **To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods. The committee, however, did not accept the proposal by the stakeholder to delete the clause entirely.**

Clause 63

2200. **Proposal to allow KRA access to personal data for tax purposes:** Delete Clause 63 because the Constitution of Kenya Article 24 guarantees the right to **privacy** and also the provision would be prone to abuse and unequal treatment of tax payers.

Committee Observation

2201. **The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law. The Committee therefore accepted the proposal by the stakeholder to delete the proposal.**

177) MINISTRY OF ROADS AND TRANSPORT

Clause 35(h)

2202. **Proposal to subject 16% VAT on electric bicycles:** Amend the proposal to provide for electric bicycles (both complete knockdown and fully built units) to be **exempt** from VAT to incentivize large-scale manufacturers to undertake the manufacture and assembly of electric vehicles in Kenya.

Committee Observation

2203. **The Committee observed that there was need to incentivize large-scale manufacturers to undertake the manufacture and assembly of electric bicycles in Kenya and encourage clean energy. The Committee thus accepted the proposal by the stakeholder to delete the clause.**

Clause 35(i)

2204. **Proposal to subject 16% VAT on lithium-ion batteries:** Amend the proposal to exempt lithium-ion batteries for use in, both complete knockdown and the fully **built** unit, electric vehicles from VAT. This will incentivize the operationalization of electric vehicles in Kenya.

Committee Observation

2205. **The Committee noted that the increase in the VAT duty on supply of solar and lithium-ion batteries would have a final price increase impact on the consumer. Therefore, the Committee accepted the proposal by the stakeholder to delete the clause amend to charge VAT duty on imported supply of solar and lithium-ion batteries while zero-rating the locally manufactured supply of solar and lithium-ion batteries.**

New Proposals Relating to the Maintenance of Kenya Rural Roads Authority (KeRRA) Orphan Roads

2206. **Increase** the fuel levy charge from Ksh. 18 to Ksh. 25 per litre to bridge the wide financing gap in maintenance needs and maintenance resources. **In** an aim **to** prioritize rural paved roads for maintenance, amend Section 6(2)(d)(ii) of the Kenya Roads Board Act, Cap 408A as follows:

> *"10% of the allocated funds is allocated in respect of the rural roads for the maintenance or development of rural link roads to be administered by the Kenya Rural Roads Authority."*

Committee Observation

2207. **The Committee noted the need for financing the budget and therefore accepted the amendment by the Ministry of Roads and Transport on increasing the fuel levy charge.**

178) MOST. REV. ANTHONY MUHERIA

2208. **Proposal to Subject 16% VAT on Ordinary Bread:** Delete the proposed clause **as** it will negatively impact the underprivileged, especially those struggling to afford one meal a day. on moral grounds, this tax is difficult to justify given the current high cost of living.

Committee Observation

2209. **With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households. Therefore, the Committee agreed with the stakeholder's to delete the proposal.**

Clause 42(a)(i)(P)

2210. **Introduction of excise duty on vegetable oil at the rate of 25%:** Delete the provision because vegetable oil is a necessity that is hardly affordable by most households.

Committee Observation

2211. **The Committee accepted the proposal by the stakeholder to exempt excise duty on vegetable oils in order to curb the increase in consumer prices.**

Clause 9(12H.)

2212. **Introduction of Motor Vehicle Tax at the Rate of 2.5% of the Vehicle's Value:** Delete the proposal for the government has not provided any sound legal or economic justification for this imposition. tax is not income. vehicle owners already face multiple taxes from the moment of purchase (import duty, excise duty, VAT, and other import levies) to the ongoing costs of running the vehicle, including fuel taxes, repairs, and maintenance. While perhaps 10% of the population with motor policies may absorb the additional insurance costs, the majority are likely to stop insuring their vehicles and use them at their own risk, leading to a potential collapse of the insurance sector.

Committee Observation

2213. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee did not accept the proposal by the stakeholder to reduce the rate from 2.5% to 1.5%.

Clause 34 (b) (i)

2214. **Proposal to subject 16% VAT on financial services:** Delete the provision. VAT on Financial instruments and transactions will render most of these products **unviable** and reverse the gains made in the mobilization and intermediation of savings and financial sector deepening. Traders and the quasi-formal sector are likely to resort to cash

transactions to lower costs thereby eroding the significant financial intermediation gains realized to date.

Committee's observation

2215. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services. The Committee therefore, accepted the proposal by the stakeholder to delete the clause.**

179) TRANSPORT INDUSTRIES

Clause 9(12H)-

2216. **Motor Vehicle Tax at The Rate of 2.5% on the Value of Motor Vehicle:** Delete the provision introducing a new Section 12H in the Income Tax Act, which **imposes** a 2.5% tax on the value of motor vehicles. They stated that this proposal would adversely affect the transport industry, which they represent in advocating for a conducive business environment.

2217. Further, they pointed out that motor vehicles are classified as commercial vehicles in the transport industry and are not exempt from the proposals in the Finance Bill 2024. These commercial vehicles are already subject to **numerous** taxes and levies at the time of their acquisition or before their operation, including import duty at 25%, excise duty at 20%, Value Added Tax at 16%, Railways Development Levy at 1.5%, Import Declaration Fund at 2.25%, and a road fuel levy of 5.75 per litre. They emphasized that these taxes significantly burden their members and impact the viability of their businesses.

Committee Observation

2218. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

180) CENTRE FOR INTERNATIONAL PRIVATE ENTERPRISE

Clause 9(12H)-

2219. **Motor Vehicle Tax at The Rate of 2.5% on the Value of Motor Vehicle:** They noted that while the motor vehicle tax aims to generate revenue for the government and improve compliance with tax regulations, it also imposes **additional** financial burdens on vehicle

owners, business operators, and administrative responsibilities on insurers. The effectiveness of the tax in achieving its intended effectiveness will depend on its implementation and enforcement. Therefore, based on the above they noted that the clause be replaced with any other that is not punitive.

2220. They noted that while the motor vehicle tax aims to generate revenue for the government and improve compliance with tax regulations, it also **imposes** additional financial burdens on vehicle owners and business operators and adds administrative responsibilities on insurers. They stated that the effectiveness of the tax in achieving its intended goals will depend on its implementation and enforcement. Therefore, they suggested that the clause be replaced with one that is less punitive.

Committee Observation

2221. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 33-

2222. **The VAT Registration Threshold from KSh. 5 Million to Ksh. 8 Million**: They noted **that** the VAT threshold increment from KSh. 5 million to KSh. 8 million amending Section 34 of the VAT could be a primary determinant of non-compliance, as the threshold has remained unchanged for several years despite rising inflation rates, which have fluctuated between 6% to 9% monthly. They mentioned that increasing the threshold would positively reduce the number of businesses obligated to register, thus providing relief for small businesses. However, they argued that the proposed increase to KSh. 8 million is insufficient to provide the expected relief. Therefore, they emphasized the need to raise the threshold by factors considering inflation and higher forex rates and to put incentives in place that promote compliance among businesses.

Committee Observation

2223. **The Committee noted that revising the threshold upward would encourage the small and medium businesses. Therefore, the Committee did not accept the proposal to leave open the threshold.**

Deletion of Paragraph 63 from Second Schedule Part I of the VAT

2224. **Proposal to subject 16% VAT on Plant, machinery, and equipment used in the construction of a plastics recycling plant from exemption to VAT Standard rate**: They noted that the proposed bill intends to remove certain VAT **exemptions**, including those for capital goods, which the Cabinet Secretary may determine necessary to stimulate investment in the manufacturing sector, provided in shillings. They also mentioned that expenses for plants, machinery, and equipment used in constructing plastic recycling plants would no longer be exempt. Similarly, taxable goods exclusively used in constructing and equipping specialized hospitals with a minimum bed capacity of fifty would not be exempt unless approved by the Cabinet Secretary based on recommendations from the health sector's Secretary.

2225. Further, they highlighted that eliminating exemptions for plant, machinery, and equipment used in constructing plastic recycling plants would increase the cost burden on industries involved in waste management and recycling. They noted that this could slow down efforts to promote environmental sustainability and circular economy initiatives. Furthermore, they pointed out that **businesses** involved in manufacturing, construction, and healthcare might face increased administrative burdens and compliance challenges as they adjust to the removal of VAT exemptions. They cautioned that this could lead to higher operating costs and potentially impact their competitiveness in the market.

Clause 42 (B) Part- Iii-(I-Iv)-

2226. Proposal **to increase in Excise Duty Rate on Financial Services from 15% To 20%:** They noted that financial services providers and cellular phone service **providers** are likely to face increased operational costs due to the higher excise duty rates. They mentioned that these companies may need to adjust their business models or pass on some of these costs to consumers through higher service fees. They also pointed out that increased fees for money transfer services could pose a barrier to financial inclusion efforts, especially for small and medium-sized businesses, particularly those in rural areas.

2227. **Therefore**, they emphasized the need to engage with banks, financial services providers, telecom companies, consumer groups, and other stakeholders to gather feedback and suggestions.

Committee Observation

2228. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services. The Committee therefore, accepted the proposal by the stakeholder to delete the clause.**

Clause 44-

2229. **Import Declaration Fee Rate from 2.5% to 3%:** Delete the proposal of the Bill that increases Import declaration from 2.5% to 3%. Based on the increase in import declaration fees, they highlighted that import-dependent businesses will need to reassess their import strategies and budget allocations to **accommodate** the higher IDF rate. This may lead to adjustments in operational expenses and investment decisions. The higher IDF rate might negatively affect the country's trade competitiveness by domestically produced alternatives. This could impact on trade volumes and balance of payments.

Committee Observation

2230. **The Committee noted that the revenues from IDF had dropped and thus in a bid to expand the revenues, the Committee did not accept the proposal by the stakeholder.**

181) KENYA BANKERS ASSOCIATION

Clause 9-12H-

2231. Introduction **of Motor Vehicle tax at the rate of 2.5% of the value of the vehicle:** Delete the proposal in the Finance Bill for Motor vehicle tax will reduce demand for comprehensive insurance policies by causing a major shift towards third-party motor insurance as policyholders try to offset the additional costs associated with motor vehicle tax.

2232. Motor vehicle **tax** is also discriminative and regressive given that it is capped at KES 100,000. Owners of vehicles whose value exceeds KES 4,000,000 will be cushioned from paying the tax based on the value of their motor vehicles.

Committee observation

2233. **The committee noted:**

i. **that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.**
ii. **The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.**
iii. **The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.**
iv. **The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.**

From the foregoing, the Committee accepted the proposal by the stakeholder to delete.

Clause 23(j)-

2234. **Withholding Tax on Interest income earned from Infrastructure Bonds at 5% for residents and 15% for non-residents:** Delete this provision proposing taxing interest income from bonds, notes, or other similar securities used. Infrastructure and green bonds typically see a lot of market interest because their returns are tax-exempt. The introduction of WHT on the infrastructure and green bonds will make the bonds less attractive, discouraging investment.

2235. This taxation will also reduce the environmental initiatives associated with the bonds such as green buildings and housing projects, bus rapid transit, and waste management which are expected to generate new jobs and a **healthier** environment.

Committee Observation

Clause 56-

2236. **Proposal to give KRA more time by increasing the number of days from 60 days to 90 days to review the objection: Retain the current provision in the TPA Act** Section 51 (11) for this will ensure that the commissioner issues an objection decision within 60 days of receiving a valid notice of objection. Delay of objection decisions impacts underlying business profits given that Banks must take provisions of anticipated cash outflow and ensure the business is prepared for the assessment.

Committee Observation

Clause 57-

2237. **Penalty on failure to integration of the electronic tax system with the data management and reporting system:** Amend the Clause to provide a clear timeline for taxpayers to integrate the electronic tax system. Further, the proposed indefinite penalty of KES 2 million per month is punitive and likely to cause a significant cashflow impact to businesses where the Commissioner deems them incompliant with the requirements of Section 59A of the TPA. To alleviate any instance of dispute about the penalties, it is pertinent that a clear timeline within which a taxpayer should integrate the electronic tax system is provided.

Committee Observation

2238. **The Committee noted that the penalty proposed is too punitive and therefore recommends reducing the penalty to be commensurate to the offence.**

Clause 34(B) Part Ii-

2239. **Proposal to subject 16% VAT on financial services:** Amend the proposed provision to retain the exemptions of the financial services from VAT. The **imposition** of VAT on financial services could act as a barrier to financial inclusion by making basic financial services more expensive and less accessible to most of Kenya's population. This could undermine efforts to bring more people into the formal financial system, essential for economic growth and poverty reduction.

Committee Observations

2240. **The Committee accepted the proposal by the stakeholder to exempt financial services from excise duty to curb the increase in the cost of the financial services. The Committee therefore, accepted the proposal by the stakeholder to delete the clause.**

Clause 34(b)(ii)-

2241. **Proposal to limit the VAT exemption only to insurance and reinsurance premiums:** Delete the proposal of the Bill that limits VAT exemption only to insurance and reinsurance premiums. The introduction of VAT on other insurance services will see an increase in the cost of accessing insurance services due to the increased VAT passed on to the final consumer through an increase in premiums charged. The increase in cost will negatively affect the ability of Kenyan citizens to access insurance services. The proposed

introduction of VAT in the insurance sector will negatively impact the bancassurance business of financial institutions and curtail access to essential services such as life and health insurance.

2242. Kenya's insurance penetration rate is among the lowest in Africa and has remained below the global average for some time. The introduction of VAT on insurance services such as commission will likely reduce the insurance **penetration** rate due to increased prices.

Committee Observations

2243. **The Committee noted that inclusion of insurance and insurance premiums would generate more revenue. Therefore, the committee did not accept the proposal by the stakeholder.**

182) WORLD BREWING ALLIANCE

Clause 42 (i)-(k)-.

2244. **Proposal to levy excise duty on Alcoholic beverages based on the content of the Alcohol**: They supported this provision as a bold step towards aligning with **global** best practices, by imposing higher excise duties on beverages with higher concentrations of pure alcohol.

Committee observation

2245. **The committee notes that Alcoholic drinks should be taxed based on the alcoholic content which has the benefit of supporting the proposal in the Bill which seeks to charge excise duty based on the alcohol content and not Alcohol Based Volume. The Committee draws examples from the stakeholder. Global best practice in alcohol taxation levies excise on a progressive basis based on the strength of pure alcohol in the beverage, levying higher rates of excise on higher alcohol concentrations. The underpinning logic of this system is the taxation of the specific element in alcoholic beverages (i.e. alcohol/ethanol) that policy seeks to regulate. The taxation of alcohol content thus incentivizes producers to manufacture products with lower alcohol content and nudges consumers towards lower alcohol consumption.**

183) MINISTRY OF DEFENCE

Clause 43 (a)

New Proposal

2246. **Amend** the proposal to include 'the Defence Forces Welfare Services' after **Kenya** Defence Forces for it to read as follows: -

> *(11) All goods including materials supplies, equipment, machinery, and motor vehicles for official use by the Kenya Defence Forces, the Defence Forces Welfare Services, and the National Police Service.*

Committee Observations

2247. **The Committee observed that the Kenya Defence Forces has played a critical role in ensuring the security of the country and therefore accepted the proposal by the Ministry of Defence to exempt excisable goods by the Defence Forces Welfare Services.**

Clause 34 (a) (i) (D)
New Proposal

2248. **Amend** the proposal to include the words 'the Defence Forces Welfare Services' in paragraph 57, to read as follows: -

> *(57) 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.*

Committee Observation

2249. **The Committee observed that the Kenya Defence Forces has played a critical role in ensuring the security of the country and therefore accepted the proposal by the Ministry of Defence to exempt supplies by the Defence Forces Welfare Services.**

Clause 46 (a) (i)
New proposal

2250. **Amend** the **proposal** to include the words 'the Defence Forces Welfare Services' **in** paragraph ix, to read as follows: -

> (ix)*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.*

Committee Observations

2251. **The Committee observed that the Kenya Defence Forces has played a critical role in ensuring the security of the country and therefore accepted the proposal by the Ministry of Defence to exempt goods by the Defence Forces Welfare Services from the Import Declaration Fee.**

Clause 46 (b) (i)
New Proposal

2252. **Amend** the proposal to include the words 'the Defence Forces Welfare Services' in paragraph xxv, to read **as** follows: -

> (ix)*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.*

Committee Observation

2253. **The Committee observed that the Kenya Defence Forces has played a critical role in ensuring the security of the country and therefore accepted the proposal by the Ministry of Defence to exempt goods by the Defence Forces Welfare Services from the Railway Development Fund.**

NEW PROPOSAL

2254. A proposal to amend the Second Schedule of the Excise Duty Act on the **Exempt Excisable** Goods. **Amend** paragraph 12 to change the name from Kenya Defence Forces Canteen Organization to 'the Defence Forces Welfare' to read as follows: -

(12) Alcoholic or non-alcoholic beverages supplied to the Defence Forces Welfare Services

Committee Observation

2255. **The Committee accepted the proposal by the KDF to change the name of their** organization **from Kenya Defence Forces Canteen Organization to 'the Defence Forces Welfare'**

A proposal to amend Section A of the First Schedule of the Value Added Tax.

2256. **Amend** paragraph 101 to include the Defence Forces Welfare Services which are for the official use by the Kenya Defence Forces. The paragraph to read as follows: -

(101) Alcoholic or non-alcoholic beverages supplied to the Defence Forces Welfare Services.

Committee Observation

2257. **The Committee accepted the proposal by the KDF to amend First Schedule of the** VAT **Act Paragraph (101) to read as follows: Alcoholic or non-alcoholic beverages supplied to the Defence Forces Welfare Services**

3.3 **EMAIL SUBMISSIONS**

2229. The Committee also received various emails from different Kenyans, providing additional perspectives and feedback on the Bill. These emails contributed to the comprehensive gathering of opinions and insights, ensuring a thorough consideration of public sentiment.

2230. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders objecting to the introduction of Motor vehicle tax. 1. Robert rmwanga2002@yahoo.co.uk

2. Benson Bnsnmwmb76@gmail.com

3. Abado abadojack@gmail.com

4. Ricky rickynyairo@gmail.com

5. Angwenyi atosinger@gmail.com

6. Mike Mikemurimi88@gmail.com

7. Felix netiafelix@gmail.com

8. Dan dokwanyo@gmail.com

9. Shikali shikalim@yahoo.com

10. Boniface bwanyoike@gmail.com

11. Mark Marknjoroge03@gmail.com

12. Mungai info@mungaikihanya.com

13. Francis angalwa1@gmail.com

14. Maina njonjomaina@gmail.com

15. Kinara rasugukinara@gmail.com

16. raja docraja25@gmail.com

17. waithaka mainatw@gmail.com

18. winstone winstoneooko1@gmail.com

19. Milcah Ochiengmilcah1@gmail.com

20. John kjmuiruri@gmail.com

21. Graca gracaokinyi@gmail.com

22. angalwa1@gmail.com

23. Mogere mogerekephar@gmail.com

24. Rehema calebrehema21@gmail.com.

25. Lucy lucykaranja@gmail.com

26. Samuel lebo.sammy@gmail.com

27. winstone winstoneooko1@gmail.com

28. . kiarie gidy40@gmail.com.

29. kimuka kimuka462@gmail.com

30. Daniel mdnzau@gmail.com

31. Bar timothybarchok@gmail.com

32. Cedrik cedokubo9@gmail.com

33. Grace gracewkiragu@gmail.com

34. muchemisg@gmail.com

35. Kiongozi atonynangoye72@gmail.com

36. John jonkanyi@gmail.com

37. Duncan engkibunyi@gmail.com

38. Judith jkerubo11@gmail.com

39. Marcus marcuswambura@gmail.com

40. Cheptoocheptoobore@gmail.com

41. Damarisramadismula@gmail.com

42. Salimamsalima771@gmail.com

43. 09joists_phaeton@icloud.com

44. Winstonwinstoncheruiyot21@gmail.com

45. Timothytimothykinoti@gmail.com

46. Dianadiana@cohesu.org

47. Isabelisabeladongo513@gmail.com

48. Kevinkevmanig@yahoo.com

49. Jackjayruma@yahoo.com

50. Dennisdennis.nyamweya.dn@gmail.com

51. Jamesmwendamug@gmail.com

52. Kahembokahembo.odera@gmail.com

53. Peterpgichuri50@gmail.com

54. Kennedyngugikk@gmail.com

Commitee Observation

The committee noted

i) that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.

ii) The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.

iii) The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.

iv) The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

2231. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the repeal of the affordable housing relief and the post-medical retirement relief fund

. 1. Kennedyngugikk@gmail.com

Committee Recommendation

The Committee noted the concern of the stakeholder, the committee further recommended the repeal of affordable housing relief since it undermines revenue collection as is imposes a charge on the exchequer

2232. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders supporting the introduction of the motor vehicle tax on the account that it will help the government increase its revenues.

1. malti7@gmail.com

Committee Recommendation

The committee noted

i) that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.

ii) The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.

iii) The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.

iv) The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

2233. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the 16% VAT on bread.

1. Jhn_ngng@yahoo.com

2. raja docraja25@gmail.com

3. Milcah Ochiengmilcah1@gmail.com

4. John kjmuiruri@gmail.com

5. Graca gracaokinyi@gmail.com

6. Francis angalwa1@gmail.com

7. Mogere mogerekephar@gmail.com

8. Rehema calebrehema21@gmail.com.

9. Lucy lucykaranja@gmail.com

10. Samuel lebo.sammy@gmail.com

11. Cedrik cedokubo9@gmail.com

12. Kibe kibealecks@gmail.com

13. FA faithadush@gmail.com

14. Paul paul.wangai@vivoenergy.com

15. Cheptoocheptoobore@gmail.com

16. JanekJsunga1@niu.edu

17. 09joists_phaeton@icloud.com

18. Isabel isabeladongo513@gmail.com

19. Dennisdennis.nyamweya.dn@gmail.com

20. Kahembokahembo.odera@gmail.com

21. Peterpgichuri50@gmail.com

22. Kennedyngugikk@gmail.com

Committee Recomentation

With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households such as bread thus in agreement with the stakeholder.

2234. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the 16% VAT on Banking Services

1. Charles charlesopil@gmail.com

2. waithaka mainatw@gmail.com

3. winstone winstoneooko1@gmail.com

4. John kjmuiruri@gmail.com

5. Graca gracaokinyi@gmail.com

6. Lucy lucykaranja@gmail.com

7. Samuel lebo.sammy@gmail.com

8. winstone winstoneooko1@gmail.com

9. kiarie gidy40@gmail.com.

10. kimuka kimuka462@gmail.com

11. Daniel mdnzau@gmail.com

12. Samantha samanthanyobia@gmail.com.

13. Bar timothybarchok@gmail.com

14. Cedrik cedokubo9@gmail.com

15. Grace gracewkiragu@gmail.com

16. muchemisg@gmail.com

17. Kahembokahembo.odera@gmail.com

18. Peterpgichuri50@gmail.com

Committee Observation

With regards to the VAT on services the Committee was guided by the need to keep the consumer prices for certain services low and to ensure stability in prices. Based on these criteria the committee remove VAT on telephone and internet data services, money transfers services by banks and financial institutions, and money transfer services by cellular phone service providers

2235. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing amendment to the Data Protection Act. (Cap 411C)

1. marieonyango@gmail.com

2. John kjmuiruri@gmail.com

3. sheshe muriithisheshe1@gmail.com

4. kiarie gidy40@gmail.com.

5. kimuka kimuka462@gmail.com

6. Daniel mdnzau@gmail.com

7. Samantha samanthanyobia@gmail.com.

8. Tee teewambugu@gmail.com

9. Samantha samanthanyobia@gmail.com

10. Paul paul.wangai@vivoenergy.com

11. Isabelisabeladongo513@gmail.com

12. Wilfredwilfredthewriter16@gmail.com

13. Brianbriannjori6@gmail.com

14. Peterpgichuri50@gmail.com

15. Kennedyngugikk@gmail.com

Committee Observation

The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data for the purposes of administering a tax law.

2236. The Departmental Committee on Finance and National Planning Committee acknowledges receipt of general submissions from the following stakeholders pertaining to their rejection of the Bill in its entirety.

1. Monica Monichanjogu65@gmail.com

2. Luii Babygirlbash.254@gmail.com

3. Joy joymtange@gmail.com

4. Feliz felixndolo4@gmail.com

5. Janet Jmugo6@gmail.com

6. Chelzz keychelzz@gmail.com

7. Titus ktitusmunyao@gmail.com

8. Shaun shaunmbukusi@gmail.com

9. Nandi gettynandi@gmail.com

10. Paul mungapaula@gmail.com.

11. Pauline Remypaul37@gmail.com

12. Abdirahman Maalim27@gmail.com

13. Mishyc Mishyckaryth6@gmail.com

14. Wangui koimwaura@gmail.com

15. Fredrick barufredrick@gmail.com

16. Wairimu wairimumburuj@gmail.com

17. W wwgithinji@gmail.com

18. Faith faithmoraa002@gmail.com

19. Daniel Katiadan2017@gmail.com

20. Linda lindasonimm5@gmail.com

21. Rose rturungu@gmail.com

22. Amos a.ombui2022@gmail.com

23. Valerie kinuthia.v.m@gmail.com

24. Samuel muchemisg@gmail.com

25. Rodrick rodrickgagnon@gmail.com

26. Mwangi mwangiikabue@gmail.com

27. Eric ngigeericimani4@gmail.com

28. Rosalind rosalindwairagu6@gmail.com

29. Benjamin bndegwa@gmail.com

30. Mugendimukamimugendi5@mail.com

31. Mwendamwendaeric348@gmail.com

32. Alimalimu27@gmail.com

33. Isaacisaacmucheru764@gmail.com

34. Peterkinnzomomunywoki@gmail.com

35. Mumbieffiemburu@gmail.com

36. Muthomikdenis2005@gmail.com

37. Nowanwano2986@gmail.com

38. Yvonneyvonneodera44@gmail.com

39. Evaevamwng@gmail.com

40. Lucylucymarira58@gmail.com

41. Sambarakaarunga@gmail.com

42. Kevingkkarobia@gmail.com

43. Danieldanielkimeli1@gmail.com

Committee Recommendation

The committee noted the stakeholders' views on rejection of the bill in its eternity. However, the Committee recommended that the views cannot be rejected but would have proposed amendments instead since the bill is meant to raise revenue to fund the government operations

2237. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the 16% VAT on infrastructure Bonds

1. Lucy lucykaranja@gmail.com

2. sheshe muriithisheshe1@gmail.com

3. muchemisg@gmail.com

Committee Observations

The Committe noted the stakeholders' concerns, however the committee was of the view that tax on short term bonds was meant to encourage long term investment thus could not be rejected

2238. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the amendment of The Affordable Housing Act (No. 4 of 2024)

1. Lucy lucykaranja@gmail.com

2. Samuel lebo.sammy@gmail.com

3. sheshe muriithisheshe1@gmail.com

4. kiarie gidy40@gmail.com.

5. kimuka kimuka462@gmail.com

6. Daniel mdnzau@gmail.com

7. Samantha samanthanyobia@gmail.com.

8. Tee teewambugu@gmail.com

9. Marcus marcuswambura@gmail.com

10. Francisfrancisgitonga2002@gmail.com

11. Kimothokimotho.gideon@gmail.com

12. Josephine jossiembugua56@gmail.com

13. Peterpgichuri50@gmail.com

Committee Observation

The Committee noted the stakeholders' concens. However, the Committee resolved that this contributions are geared towards supporting cheaper houses. The committee therefore rejected the stakeholders' proposal to delete this clause

2239. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders supporting the Bill.

1. Joel Joelkipruto360@gmail.com

2. otienokevin96@gmail.com

Committee Observation

The Committee noted the stakeholders' proposal. However, the commitee agreed to pass te bill with Amendmends

2240. The Departmental Committee on Finance and National Planning Committee acknowledges s ubmissions from the following stakeholders rejecting imposing excise duty on fees charged for money transfer services.

1. Kibe kibealecks@gmail.com

2. 09joists_phaeton@icloud.com

3. Collins njehyacollins@gmail.com

4. James ngatia08@gmailo.com

5. Peterpgichuri50@gmail.com

6. Kennedyngugikk@gmail.com

Committee Recomendation

With regards to excise duty in services the Committee was guided by the need to keep the consumer prices for certain services low and to ensure stability in terms of the rate of excise duty. Based on these criteria the committee proposes to maintain the prevailing rate of excise duty on telephone and internet data services, money transfers services by banks and financial institutions, and money transfer services by cellular phone service providers. In regard to the gambling sector the committee proposes to raise the rate of excise of duty marginally so as to discourage this practice and raise additional revenue.

2241. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the Eco levy

1. Preeyeshmihir@texplast.co.ke

2. Preeyeshreshma@kenyasweets.com

3. Peterpgichuri50@gmail.com

4. Kennedyngugikk@gmail.com

Committee Recomendation

The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.

To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles (tuk tuks) and reduce the rate of eco levy for certain finished goods.

2242. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders on the introduction of the Significance Economic Presence Tax

1. Peterpgichuri50@gmail.com

Committee Recomendations

The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed reducing the rate of deemed income from 20% to 10% of gross turnover.

2243. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders objecting to the proposed increase in excise duty telephone and internet data services.

1. Damarisramadismula@gmail.com

2. Peterpgichuri50@gmail.com

Committee Recomendation

The Committee noted that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with

physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the committee proposed reducing the rate of deemed income from 20% to 10% of gross turnover.

2244. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction VAT on the First Schedule of the VAT, on construction on tourism facilities (hospital beds)

1. Jackjayruma@yahoo.com

2245. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders objecting to the introduction of Motor vehicle tax.

1. Naftali Oswago; naftali.oswago@navigators.org

2. Chiram; chiiram@gmail.com

3. Sammy Mwangi; sammies2003@gmail.com

4. Kioi Ndung'u; ikioi.ndungu@gmail.com

5. Kevin Chweya Matagaro; kmatagaro@gmail.com

6. Beverly Wakiaga; bevwakiaga@gmail.com

7. Michael Kamau; mikekamau74@gmail.com

8. Dr. Catherine Muendo; carthynm@gmail.com

9. Sheila; starsewe@gmail.com

10. Concerned Citizenjacintasally@gmail.com

11. Concerned Citizen rettinhand@gmail.com

12. Kipkemoi Collins; kkipkemoicollins@gmail.com

13. Jamaa Wa Mtaasaculsirhc@gmail.com

14. Sam; gatambiasam@gmail.com

15. Otieno Jabura; otienojabura@gmail.com

16. Henryhenryngangam@gmail.com

17. Jensen; yensenokonda17@gmail.com

18. Concerned Citizen; ssng36h@gmail.com

19. Cherles; charleswa65@gmail.com

20. Linah; lina.km@gmail.com

21. Joseph; jndihiu@yahoo.com

Committee Recomendation

The committee noted

i) that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas that the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.

ii) The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.

iii) The proposal will have adverse effects on insurance taking behavior of motor vehicle owners and further leading to negative effects on the insurance sector.

iv) The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.

From the foregoing, the committee recommends the deletion of the proposed motor vehicle tax.

Clause 10

2246. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the repeal of the affordable housing relief and the post-medical retirement relief fund.

1. Otieno Jabura; otienojabura@gmail.com

2. Emmanuel Osinde; nejosinde@yahoo.com

3. Jacinta; jacintasally@gmail.com

Committee Observation

The Committee noted the stakeholders' concens. However, the Committee resolved that this contributions are geared towards supporting cheaper houses and encourage savings. The committee therefore rejected the stakeholders' proposal to delete this clause

2247. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the 16% VAT on bread.

1. Naftali Oswago; naftali.oswago@navigatiors.com

2. Beverly Wakiaga; bevwakiaga@gmail.com

3. Michael Kamau; mikekamau74@gmail.com

4. Catherine Muendo; carthnm@gmail.com

5. Junior; junioribrahim35@gmail.com

6. Collins Kipkemoi; kkipkemoicollins@gmail.com

7. Otieno Jabura; otienojabura@gmail.com

8. Henry; henryangan@gmail.com

9. Jensen; yesenokonda17@gmail.com

10. Martin; mwachania@gmail.com

11. Sheila; ochandasheilla@gmail.com

12. Charles Waswa; charleswa65@gmail.com

13. Linah; Lina.km@gmail.com

14. Joseph; Jndihiu@yahoo.com

15. Emmanuel Osinde; Nejosinde@gmail.com

Committee Recomendation

With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households such as bread thus in agreement with the stakeholders

2248. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the 16% VAT on Banking Services

1. Chiram; chiiram@gmail.com

2. Samwel Mwangi; sammies2003@gmail.com

3. Beverly Wakiaga; bevwakiaga@gmail.com

4. Linah; Lina.km@gmail.com

5. Joseph; jndihiu@yahoo.com

Committee Recommendation

With regards to VAT financial services the Committee was guided by the need to keep the consumer prices for certain services low and to ensure stability in terms of the rate VAT. Based on these criteria the committee proposes to maintain the prevailing VAT on telephone and internet data services, money transfers services by banks and financial institutions, and money transfer services by cellular phone service providers.

2249. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing amendment to the Data Protection Act. (Cap 411C)

1. Beverly Wakiaga; bevwakiaga@gmail.com

2. Michael Kamau; mikekamau@gmail.com

3. Catherine Muendo; carthynm@gmail.com

4. Sheilastarsewes@gmail.com

5. Concerned Citizen; jacintasally@gmail.com

6. Sam; atambiasam@gmail.com

7. Linah; lina.km@gmail.com

8. Concerned Citizen; ssng36h@gmail.com

Committee Recommendation

The Committed noted that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorized officer with a warrant to have full access to any data for the purposes of administering a tax law.

2250. The Departmental Committee on Finance and National Planning Committee acknowledges receipt of general submissions from the following stakeholders pertaining to their rejection of the Bill in its entirety.

1. Otieno Jabura; otienojabura@gmail.com

2. Justice Mulama; justicemulama@gmail.com

3. Milka Akinyi; milkaakinyi3@gmail.com

4. Naftali Oswago; naftali.oswago@navigators.org

5. Samwel Mwangi; sammies2003@gmail.com

6. Michael Kamau; mikekamau74@gmail.com

7. Catherine Muendo; carthynm@gmail.com

8. Concerned Citizenjacintasally@gmail.com

9. Linahlina.km@gmail.com

Committee Recommendation

The committee noted the stakeholders' views on rejection of the bill in its eternity. However, the Committee recommended that the views cannot be rejected but would have proposed amendments instead since the bill is meant to raise revenue to fund the government operations

2251. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the introduction of the Eco levy

1. Naftali Oswago; naftali.oswago@gmail.com

2. Sammy Mwangi; Sammies2003@gmail.com

3. Beverly Wakiaga; bevwakiaga@gmail.com

4. Catherine Muendo; carthynm@gmail.com

5. Concerned Citizenjacintasally@gmail.com

6. Henry; henrynangam@gmail.com

Committee Recomendation

The Committee noted that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied on imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of "polluter pays principle" it is critical ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.

To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove imposition of the levy on diapers, tyres of motorcycles, bicycles, wheelchairs three wheeled motorized vehicles (tuk tuks) and reduce the rate of eco levy for certain finished goods.

2252. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders objecting to the proposed increase in excise duty telephone and internet data services.

1. Linah; lina.km@gmail.com

2. Chiram; chiiram@gmail.com

3. Samwel Mwangi; sammies2003@gmail.com

4. Michael Kamau; mikekamau74@gmail.com

5. Catherine Muendo; carthynm@gmail.com

Committee Recommendation

With regards to excise duty in services the Committee was guided by the need to keep the consumer prices for certain services low and to ensure stability in terms of the rate of excise duty. Based on these criteria the committee proposes to maintain the prevailing rate of excise duty on telephone and internet data services, money transfers services by banks and financial institutions, and money transfer services by cellular phone service providers. In regard to the gambling sector the committee proposes to raise the rate of excise of duty marginally so as to discourage this practice and raise additional revenue.

2253. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders objecting to the proposed VAT on edible oil.

1. Naftali OswagoNaftali.oswago@navigators.org

2. Samwel Mwangi; sammies2003@gmail.com

3. Catherine Muendo; carthynm@gmail.com

4. Otieno Jabura; otienojabura@gmail.com

5. Jesen; yensenokonda17@gmail.com

6. Martin; mwachania@gmail.com

7. Abigael Gatheru; gatheruabigael@gmail.com

8. Emmanuel Otieno; nejosinde@gmail.com

Committee Observation

With regards to the Value Added Tax the Committee was guided by the policy to zero rate only the most critical consumption items in most households

2254. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the tax exemptions to amateur sporting associations

1. Joseph; jndihiu@yahoo.com

Committee Observation

The Committee noted the stakeholders' concern and furtther resolved to remove the tax on this associations to support this clubs

2255. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the imposition of import levy on raw materials

1. Charles; charleswa65@gmail.com

2. Concerned citizen; rettinhand@gmail.com

Committee Observation

The Committee noted the stakeholders' concern and further recomendend to levy import duty only on imported finished goods.

2256. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders opposing the imposition of 2million fine on tax non-compliant

1. Michael Kamau; mikekamau74@gmail.com

2. Collins; kkipkemoicollins@gmail.com

Committee Recommendation

The committee noted the stakeholders concern and agreed to remove the 2 million fines because it is too high for small businesses and low-income individuals a month

2257. The Departmental Committee on Finance and National Planning Committee acknowledges submissions from the following stakeholders supporting the exclusion of eggs originating from EAC from excise duty

1. Irvines' Kenya

2. Simbisa Brands Kenya Limited

3. De Heus Kenya.

Committee Recommendation

The committee noted the stakeholders' concern. However. The committee resolved that the only eggs that would not be subjected to excise are the once imported with licensed incubators for incubation

CHAPTER FOUR

1.0 COMMITTEE OBSERVATIONS

2257.During the consideration of the public and other stakeholder's submissions, the Committee made the following observation

Clause 1(a)

The Committee observed that to enhance revenue collections, the commencement date in clause 42(a)(i)(I),(J), and (K) needs to be revised from 1 September 2024 to 1 August 2024.

Clause 1(b)

The Committee notes the need to harmonize the commencement provision for Clauses 19 and 25(b)(v) relating to CGT.

Clause 2(a) - creative works

The Committee notes that not all creative works generate income, and therefore, it is necessary to specify that only those that generate income are subject to the tax.

Clause 2(k)

The Committee observes that the distribution of software cannot be considered as an activity that would generate a royalty. Therefore, the Committee proposed to delete the words in subclause (b) "and include distribution of the software" in line with International Best Practices.

Clause 2(l)

The Committee observes that grants are not necessarily taxable and therefore, expanding the definition of donations to include grants will not be prejudicial.

Clause 3 (ba)

The Committee agrees with the proposal by some stakeholders to expand the definition of "digital marketplace" to broaden the definition of on the item 'professional services' to include consulting services.

Clause 4

The Committee supports the proposal to retain the current period to allow business to recover foreign exchange losses over a longer period.

Clause 6 (a) (i)

The Committee observes that the current provision in the Act is sufficient.

Clause 6 (a) (ii)

The Committee, while supporting the proposal, agrees to amend it further by increasing the rate to sixty thousand Kenya Shillings (KSH. 60,000). This will be beneficial to the employees.

Clause 6 (b) (i)

The Committee observes that the benefit conferred is an enhancement from the current forty-eight thousand shillings to sixty thousand shillings, and therefore, it is sufficient and beneficial to the employees.

Clause 6 (b) (ii)

The Committee notes that the amendment seeks to exclude public officers from taxation of their employment benefits in the form of reimbursements by the employer for assets acquired. This is discriminatory as it only applies to a section of taxpayers, leading to inequity in the tax system. Additionally, the Committee notes that even if the amendment was to be extended to all taxpayers, there would be a potential likelihood of abuse as taxpayers would recharacterize their taxable income to such benefits to escape taxation.

Clause 8(12E)

The Committee notes that the profit margin for digital services providers is usually higher because such providers do not incur large expenses compared to companies with physical presence. Therefore, the purpose of the increase is to align the deemed profit with what would have been the profit if the companies were not enjoying the lower production cost. Nevertheless, the Committee proposed to reduce the rate of deemed income from 20% to 10% of gross turnover.

Clause 9 (12G)

The Committee notes that a top-up tax is a global tax that has been adopted in over 60 countries for which some of the key multinational companies have presence. Therefore, not having it in Kenya will jeopardize the mechanism for application of the tax even though a constituent company located in Kenya could end up underpaying its share of revenues.

Clause 9(12G) (5)

The Committee notes the need to amend the definition of "adjusted covered taxes" to replace the reference to "constituent entity" with "covered person" to correct a drafting error.

Clause 9(12H)

In relation to the Motor vehicles tax, as provided in Clause 9(12H), the Committee notes the following:-

i) that section 3(2) of the Income Tax Act defines what constitutes an income upon which tax is chargeable under the Act, whereas the proposed Motor Vehicle Tax is levied on an asset and not income within the definition.
ii) The proposal to Cap the levy at one hundred thousand shillings makes the tax discriminatory and non-progressive.
iii) The proposal will have adverse effects on the insurance-taking behavior of motor vehicle owners and further lead to negative effects on the insurance sector.
iv) The commercial vehicles are subject to advance tax and therefore imposing this tax will amount to double taxation.

From the foregoing, the Committee recommends the deletion of the proposed Motor vehicle tax.

Clause 10(iii)(ae)

The Committee notes that Bill proposes to limit the deductibility of an employee's contributions to a post-retirement medical fund to ten thousand shillings. However, the Committee recommends increasing the limit to fifteen thousand shillings to encourage a saving culture for a post-retirement medical scheme.

Clause 12

The Committee supports the proposal for an advance pricing agreement since it will enhance revenue determination in entities that belong to Multinational Groups or trade with related persons. Further, to allow for seamless implementation of the Agreements, the Committee recommends enactment of the regulations to address circumstances where KRA cancels the APAs to allow the taxpayer the right of appeal, among other concerns.

Clause 19

The Committee notes the need to clarify that "person" does not include a partnership as this was inadvertently left out while proposing to delete section 34.

Clause 22

The Committee notes and supports the proposed deletion and recommends a consequential amendment to clause 46 to remove similar exemptions for Import Declaration Fee(IDF) and Railway Development levy (RDL)

Clause 23(a)
The Committee notes that the proposal seeks to make "amateur sporting associations" taxable, however to support investments in this sector and to further incentivize nurturing of sporting talent the Committee recommends deletion of the proposal.

CLAUSE 23

The Committee notes the proposal to amend clause 23 of the Bill to exempt Interest income earned from the Road Maintenance Levy Fund from WHT. This is to ensure that the intrest earned by the funds held in current accounts in commercial banks prior to disbursement to roadworks are safeguarded in order to enhance reosurces available to roadworks

Clause 23(b)

The Committee notes that registered trust schemes serve the same purpose as pension schemes and should, therefore, not be discriminated against. Trust plays a pivotal role in providing stability and security to vulnerable beneficiaries across generations. In this regard, the Committee resolved to retain trusts as exempt and, therefore, recommends deletion of the proposal.

Clause 23(c) -

The Committee supports the proposal in the Bill that intends introduce WHT on interest from bonds, note or security whose maturity is less than three (3) years. The Committee observes that this is meant to encourage long-term investment and enable the government to earn revenue which is consistent with all other payments.

Clause 23(e)

The Committee notes that the principal income of a family trusts typically consists of the assets including 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 including subsequent distribution of the same to beneficiaries and therefore recommends deletion of the proposal to tax income or principal sum of a registered family trust.

Clause 23g

The Committee notes that section 3E (3) of the Trustees (Perpetual Succession) Act (Cap. 164) provides that no better title to the trust property is acquired by the settlor or transferor immediately before the transfer of the disposition. Therefore the Committee recommended the deletion of the clause

Clause 25 (b)(i)

The Committee notes that Affordable Housing is one of the critical pillars in the BETA Economic Model Agenda, and therefore, the retention of the 15% preferential tax rate would go a long way to address the housing shortfall in the country and supply the needed number of houses to fill this gap. Further, in keeping with the spirit of ensuring the predictability of the tax structure the Committee recommends the deletion of the proposal that sought to remove the incentive.

Clause 25 (iii)(B)(Aa)

The Committee notes that the paragraph erroneously made reference to item (i) which has been deleted in paragraph (Aa) and therefore made an amendment to make reference to the correct item (ii)

Clause 25(v) (15)

The Committee notes that the proposal seeks to provide for a rate of tax at 2.5 percent on the value of a Motor Vehicle. Noting the recommendation in Clause 9(12H) the Committee further recommends the deletion of the rate

Clause 26(b)

The Committee notes that paragraph (b) erroneously makes reference to paragraph (3) instead of paragraph 1(3) and therefore made an amendment to make reference to the correct paragraph.

Clause 30

The Committee notes that there is a need for clarification on what constitutes export confirmation documents and recommends an amendment to cure the concern.

Clause 34

The Committee observes that, Kenya Defense Forces proposed an ammedment to exempt the goods destined to the the Defence Forces Welfare Services from the VAT. This is to align the exemption previously enjoyed by former DEFCO and AFCO which is now reffered as Defence Forces Welfare Services

Clause 34(a)(i)(A)(Aa)

The Committee notes that most airline operators offer maintenance and repair operations to several international and domestic airlines in Kenya. In addition the Committee observes 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 34(a)(i)(A)(Ab)

The Committee observes that keeping the cost of spare parts low is important to support the nascent space industry in Kenya. Thus, the Committee proposes deleting this proposal to tax spacecraft and suborbital spacecraft lounge.

Clause 34(a)(i)(A)(Ac)

The Committee observes that bread is a basic commodity used in many households and imposing VAT on it would increase its cost beyond the affordability of many Kenyans. Therefore, the Committee recommends the deletion of the clause.

Clause 34(a)(i)(A)(Ad)

With regard to the provision of Value Added Tax (VAT), the Committee was guided by the following policies

I. To zero rate only the most critical consumption items in most households
II. To exempt agricultural inputs and inputs for the manufacture of medical needs
III. To protect the financial sector by limiting value-added tax on services
IV. Subject to tax goods and services where value is added in the Production process.
V. To exempt certain inputs so as to promote local industries

Based on the above criteria the Committee proposes to zero rate ordinary bread, unleavened bread, gluten bread, inputs and raw materials supplied to manufacturers of agricultural and pest control products, agricultural pest control products, transportation of sugarcane from farms to milling factories, supply of locally assembled and manufacture of mobile phones among others.

The Committee further proposes exempting several products from VAT, including the issuing of credit and debit cards, foreign exchange transactions, sanitary towels and diapers and services of local film agents.

Clause 35

The Committee observes that, Tax expenditures continues to pose a serious challenge to the sustainable tax revenue initiative, for instance in FY 2022/23 the total tax expenditures amounted to Ksh 245 billion. To address this matter the Committee is recommending cleaning up of Second Schedule of VAT Act by moving items currently in Second Schedule to First Schedule or to standard rate VAT.

Clause 39

The Committee notes that, the Excise duty like VAT for Excisable manufacturers considers input and output tax and therefore deleting section 14 of the Excise duty would mean that excisable manufacturers would not be allowed to deduct Excise duty hence it would increase the cost of production unnecessarily and increase the prices of the products to consumers. In this regard, the Committee supports the proposal to delete the clause.

Clause 41

The Committee notes that the requirement to remit excise tax within twenty-four hours has led to cash flow problems for compliant licensed manufacturers. In this regard, the Committee recommends changing the period to remit excise duty to "by the 5th of every month."

Clause 42(a)(1)

With regard to excise duty on goods, the Committee is be guided by the following policy criteria

1. To exempt from excise duty certain locally manufactured products so as to promote local industries.
2. To exempt certain products so as to curb increases in consumer prices
3. To improve the ease of administration of excise duty

Based on these criteria, the Committee proposes to exempt fertilized eggs from incubation amongst others from exicise duty. In addition, the Committee proposes to reduce the rate of excise duty for imported sugar confectionery and spirits of undenatured ethyl alcohol, amongst others. Further, in keeping with the predictability of the tax system, the Committee proposes to maintain the current rates of excise duty on motorcycles, articles of plastics, onions, and potatoes, amongst others.

With regards to excise duty in services, the Committee was guided by the need to keep the consumer prices for certain services low and to ensure stability in terms of the rate of excise duty. Based on these criteria, the Committee proposes to maintain the prevailing rate of excise duty on telephone and internet data services, money transfer services by banks and financial institutions and money transfer services by cellular phone service

providers. In relation to the gambling sector, the Committee proposes to raise the rate of excise duty marginally so as to discourage this practice and raise additional revenue.

Clause 43

The Committee observes that, Kenya Defense Forces proposed an ammedment to exempt the goods destined to the the Defence Forces Welfare Services from the Excise Tax. This is to align the exemption previously enjoyed by former DEFCO and AFCO which is now reffered as Defence Forces Welfare Services

Clause 44

The Committee notes that, the reduction of the rate of import declaration fee from 3.5% to 2.5% in Finance Act, 2023 occasioned a significant revenue loss amounting to at least KSh. 10 billion, hence hurting the implementation of the FY2023/24 budget. The proposed increase of IDF to 3.5% would, therefore, help to restore the performance of this tax head in line with projected budget estimates for FY2024/25.

Further, the Committee recommends making amendments in respect of the RDL by increasing it 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.

Clauses 45 and 48 -Eco Levy

The Committee notes that the purpose of the Eco Levy is to help redress environmental damage and pollution caused by the import of certain finished products into Kenya. In this regard, the Committee observed that the levy should only be applied to imported finished products to protect local manufacturers who are currently subjected to the Extended Producer Responsibility. The Committee observed that in line with International Best practices of the "polluter pays principle," it is critical to ensure that the manufacturer of offending items contributes to financing the safe disposal of the products.

To address the concerns of a significant majority of stakeholders and to contain the prices of certain critical goods, the Committee proposes to remove the imposition of the levy on diapers, motorcycle tyres, bicycles, wheelchairs, and three-wheeled motorized vehicles *(tuk tuks)* and reduce the rate of eco levy for certain finished goods.

Clauses 46 –Miscellaneous Fee and Levies

The Committee notes that Kenya Defense Forces proposed an amendment to exempt the goods destined for the Defence Forces Welfare Services from the IDF and RDL. This is to align the exemption previously enjoyed by former DEFCO and AFCO which is now reffered as Defence Forces Welfare Services

Clause 47 – Export Investment Promotion Levy

The Committee observes that there is a consistent trend of a decline in exports from the Country and a significant rise in imports even for goods manufactured locally. In this respect, the objective of the Export Investment Promotion Levy is to protect the local manufacturing sector from unfair trade practices, increase the competitiveness of Kenya's Manufacturing sector, and foster a sustainable and inclusive export sector.

Further, the EIPL is envisaged to have the following impacts in the manufacturing sector–

1. Support local manufacturing, which will increase the contribution of manufacturing to GDP from 7% to 20% by 2027.
2. Enhance the playing field for local manufacturers who have struggled to compete with cheaper imports to reduce overreliance on imports of goods and services.
3. Generate revenue for the government to be used to support the development of the manufacturing sector by incentivizing investment by the local micro, small and medium enterprises (MSMEs) amongst others.

On the strength of the foregoing, the Committee proposes to have the Export and Investment Promotion Levy imposed on articles of leather, imported footwear, denatured ethyl alcohol, ceramic sinks, and wash basins, amongst other products. Additionally, the Committee supports the proposal by a number of stakeholders to remove the imposition of the levy on kraft liner and uncoated kraft paper. Regarding the motorcycles, the Committee proposes to have the levy imposed only on fully built imported motorcycles.

Clause 51

The Committee notes the challenges in the implementation of the Electronic Tax Invoice System (eTIMS), particularly with regards to small-scale farmers (subsistence farmers) and micro-enterprises. One of the biggest challenges is that the system has locked out these producers from supplying to formal businesses which is deleterious for the economy at large. To correct this the Committee proposes to exempt subsistence farmers and microenterprises whose gross turnover is below one million shillings. The Committee further recommends the issuance of guidelines by the Kenya Revenue Authority (KRA) on the operationalization of this proposal.

Clause 52

The Committee notes the potential abuse of this proposed provision as against the genuine circumstances where the provision would be useful. To this extent, the Committee proposes additional checks and balances on the power of the Commissioner. Further, the Committee recommends that the provision be amended to require the Commissioner to publish in the Kenya Gazette on tax abandonment and submit it to the National Assembly for approval.

Clause 53

The Committee notes that to cure ambiguity about the validity of agency notices, provision must be made for the lifting of agency notices where taxes have been paid in full in execution of a court order.

Clause 56 (a)

The Committee observes that there is potential abuse and unfairness of the provision to the taxpayer who has taken the time to lodge an objection, in this regard the Committee proposes to require the commissioner to communicate the objection decision.

Clause 57

The Committee notes that the proposal does not specify the class of companies and entities that will be subject to the provision and neither does it specify the timeline for

which a taxpayer would be required to comply before the penalty applies. Therefore, the Committee proposes that the period after notice to be up to one year and that the provision will not apply to entities with a turnover of less than eight million shillings.

Clause 57(5)

The Committee notes that the proposed penalty is too punitive and recommends reducing it to be commensurate with the offence.

Clause 61

The Committee noted that the current provision in the Affordable Housing Act was limiting the right to property under the Constitution and therefore supports the amendment

Clause 63

The Committee notes that the proposal to allow the KRA access to personal data as proposed may not meet the threshold under articles 31(c) and (d) of the Constitution of Kenya. Additionally, the Committee observed that Section 51 of the Data Protection Act outlines the circumstances under which exemptions might apply. Further, Section 60 of the TPA empowers the commissioner or an authorised officer with a warrant to have full access to any data for the purposes of administering a tax law.

New Clause 66 -Road Maintenance Levy

The Committee notes that, the Road Maintenance Levy is charged on all petroleum fuels imported to Kenya for home use. The Committee further notes that the current levy amounts to Ksh. 18 per litre of all petroleum fuels, with an anti-adulteration levy of the same amount charged on Kerosene. The levy is deposited into the Road Maintenance Levy Fund for annual repair and maintenance of roads under the administration by the Kenya Roads Board. The KRA collected Ksh. 84.143 billion in 2022/23, but the performance of the levy in 2023/24 has been negatively affected by the demand effects of the high fuel prices and the exchange rate depreciation.

The fall in the collections under the road maintenance levy has continued to affect the repair and maintenance of highways, urban, and rural roads. Recent *el nino* linked heavy rains and flooding has further worsened the extent of road destruction in the country.

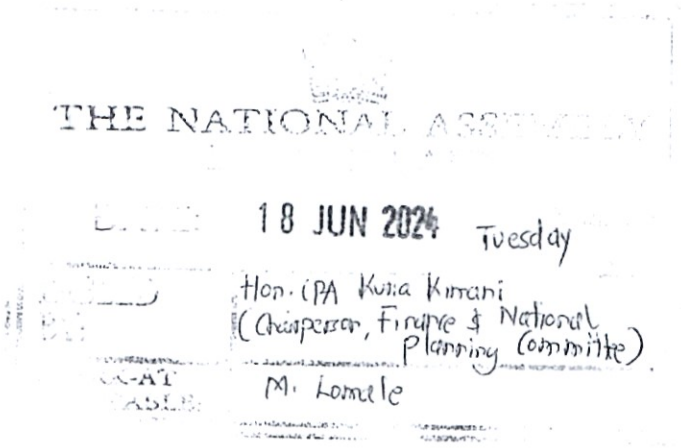
Additionally, the Committee observes that the Levy has not been varied since 2017 despite the increase in petroleum fuel prices per liter in Kenya over the years and increased cost of road repair and maintenance.

jjTo help raise sufficient funds to maintain and repair roads across the country the Committee recommends an increase of the Levy pursuant to Section 3 of the Road Maintenance Levy Fund Act from Kshs 18 to Kshs 25 per litre all petroleum fuels. The Committee further recommends that the expected increase in local Appropriations-In-Aid (AIA) to the State Department for Roads may be accompanied by a reduction in net GOK (exchequer) allocation to the State Department.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

2258. The Committee having reviewed the Finance Bill *(National Assembly Bill No. 30 of 2024)* recommends that the House approves the Bill with amendments as contained the schedule of ammemdent

Hon. CPA Kuria Kimani, MP
Chairperson, Departmental Committee on Finance & National Planning

DATE: 18/06/2024