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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION 2018

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING

.....
REPORT ON THE TAX LAWS (AMENDMENT) BILL, 2018

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DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2018

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ABBREVIATIONS

BCLB	-	Betting Control and Licensing Board
CIF	-	Cost Insurance and Freight
E & P	-	Exploration and Production
IDF	-	Import Declaration Fee
KAM	-	Kenya Association of Manufacturers
KOGA	-	Kenya Oil and Gas Association
KPMG	-	Klynveld Peat Marwick Goerdeler
PSC	-	Product Sharing Contracts
PWC	-	Price Waterhouse Coopers
RDL	-	Railway Development Levy
SEZ	-	Special Economic Zones
VAT	-	Value Added Tax
WHT	-	Withholding Tax

1.0 CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Tax Laws (Amendment) Bill, 2018 which was read a first time on 18th April, 2018 and subsequently committed to the Departmental Committee on Finance and National Planning for consideration and facilitation of public participation pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 23rd April, 2018 pursuant to Article 118 of the Constitution. A total of thirteen (13) institutions and fifteen (15) individuals submitted memoranda for consideration by the Committee. The institutions were invited for a stakeholders' forum held at Boma Hotel between 22nd and 26th May, 2018 in which the Committee considered and made observations on sections of the Bill. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that **the Tax Laws (Amendment) Bill, 2018** seeks to make several amendments to the following tax-related statutes-

1. **The Income Tax Act (Cap. 470)**

The Bill seeks to amend the Income Tax Act to introduce a tax on winnings and to enhance the tax incentive on home ownership.

2. **The Stamp Duty Act (Cap. 480)**

The Bill seeks to amend the Stamp Duty Act to provide an incentive to first-time home owners.

3. **The Value Added Tax Act, 2013 (No. 35 of 2013)**

The Bill seeks to amend the Value Added Tax Act to move some items from zero rated to exempt in order to limit zero rating to exports.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Tax Laws (Amendments) Bill, 2018.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury and all the other stakeholders for their participation in scrutinizing the Bill.

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

SIGNED..........DATE.....*6/20/18*.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

2.0 EXECUTIVE SUMMARY

The Tax Laws (Amendment) Bill, 2018 was published on 10th April, 2018 and introduced in the National Assembly by the Leader of Majority on 18th April, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Tax Laws (Amendment) Bill, 2018 seeks to make several amendments to the following tax-related statutes: -

1. The Income Tax Act (Cap. 470)

The Bill seeks to amend the Income Tax Act to introduce a tax on winnings and to enhance the tax incentive on home ownership.

2. The Stamp Duty Act (Cap. 480)

The Bill seeks to amend the Stamp Duty Act to provide an incentive to first-time home owners.

3. The Value Added Tax Act, 2013 (No. 35 of 2013)

The Bill seeks to amend the Value Added Tax Act to move some items from zero rated to exempt in order to limit zero rating to exports.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Monday, 23rd April, 2018 pursuant to Article 118 of the Constitution. By the time the Committee was conducting a stakeholders' forum at the Boma Inn Hotel between 22nd and 26th May, 2018 thirty (30) stakeholders had submitted their memoranda for consideration by the Committee. The following entities appeared during the stakeholders' forum:-

1. Klynveld Peat Marwick Goerdeler (KPMG)
2. Kenya Oil and Gas Association (KOGA)
3. Association of Gaming Operators in Kenya
4. Price Waterhouse Coopers (PWC)
5. Kenya Wildlife Conservancies Association (KWCA)
6. Kenya Association of Manufacturers (KAM)
7. The Institute of Surveyors of Kenya
8. Agrochemicals Association of Kenya
9. Kipkenda and Co. Advocates
10. Betting Control and Licensing Board

11. Sports Bettors Association of Kenya
12. Federation of Kenya Pharmaceuticals Manufacturers
13. The Kenya Revenue Authority

The Committee also submitted the memoranda to the National Treasury for their input and views on the proposal as submitted by the stakeholders.

3.0 ESTABLISHMENT OF THE COMMITTEE

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

1. 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;
2. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
3. **To study and review all the legislation referred to it;**
4. 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;
5. 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;
6. 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);
7. To examine treaties, agreements and conventions;
8. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
9. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
10. To examine any questions raised by Members on a matter within its mandate.

4.0 MANDATE OF THE COMMITTEE

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

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

1. The National Treasury and Ministry of Planning
2. Ministry of Devolution
3. Commission on Revenue Allocation
4. Office of the Controller of Budget
5. Salaries and Remuneration Commission

4.1 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning comprises of the following Members:-

Chairperson	The Hon. Joseph K. Limo, MP
Vice Chairperson	The Hon. Isaac W. Ndirangu –
	The Hon. Jimmy O. Angwenyi, MP
	The Hon. Alfred W. Sambu, MP
	The Hon. Dr. Enoch Kibunguchy, MP
	The Hon. Shakeel Shabbir Ahmed, MP
	The Hon. Abdul Rahim Dawood, MP
	The Hon. Daniel E. Nanok, MP
	The Hon. Andrew A. Okuome, MP
	The Hon. David M. Mboni, MP
	The Hon. Francis K. Kimani, MP
	The Hon. Joseph M. Oyula, MP
	The Hon. Joshua C. Kandie, MP
	The Hon. Lydia H. Mizighi, MP
	The Hon. Mohamed A. Mohamed, MP

The Hon. Purity W. Ngirici, MP

The Hon. Samuel Atandi, MP

The Hon. Stanley M. Muthama, MP

4.2 COMMITTEE SECRETARIAT

1. Ms. Leah W. Mwaura - **First Clerk Assistant/Lead Clerk**
2. Ms. Laureen Wesonga - **Third Clerk Assistant**
3. Mr. Josephat Motonu - **Fiscal Analyst I**
4. Ms. Lynette Otieno - **Legal Counsel II**
5. Mr. Chelang'a Maiyo - **Research & Policy Analyst III**

5.0 CONSIDERATION OF THE TAX LAWS (AMENDMENT) BILL, 2018

5.1 BACKGROUND INFORMATION

The Tax laws (Amendment) Bill, 2018, was published on 10th April, 2018 and read a first time on 18th April, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

Pursuant to Article 118 of the Constitution, the Committee invited comments from the stakeholders. total of thirteen (13) institutions and fifteen (15) individuals responded by sending their memoranda to the Committee. The Committee also held a stakeholders' forum at Boma Hotel between 22nd and 26th April, 2018 to consider stakeholders' memoranda pursuant to Article 118 of the Constitution.

5.2 SUMMARY OF THE BILL

The Bill seeks to amend the Income Tax Act to introduce a tax on winnings and to enhance the tax incentive to home ownership. In addition, the Bill seeks to amend the Stamp Duty Act to provide an incentive to first time home owners. The Bill also seeks to amend the Value Added Tax Act, 2013 to move some categories of items listed in the Schedule to the Bill from zero rate VAT status to tax exempt in order to limit zero rating to exports. Further, the Bill seeks to focus expansion of the exemption bracket by capturing those supplies that are currently zero rated or standard rated.

5.3 PROPOSED AMENDMENTS IN THE BILL

5.3.1 INCOME TAX ACT

The proposed amendments to the Income Tax Act propose to introduce withholding tax on winnings from betting and gaming at a rate of twenty per cent for non-resident and resident persons. This measure reflects the Government's intention to benefit from the growing betting industry through additional tax collections. This measure was already in the Income Tax Act but was repealed due to implementation challenges and subsequent measures to tax the betting and gaming companies on their revenue. The move to reintroduce this withholding tax is aimed at shifting some of the burden from the betting and gaming companies to the punters.

The proposed amendments to section 22C(2) of the Income Tax Act further seeks to increase allowance for depositors of home ownership savings plans from Kshs. 48,000 to Kshs. 96,000 per annum. The

amendment is meant to facilitate potential first time home owners to save for purposes of purchasing or constructing homes.

The proposed amendments to the First schedule of the Income Tax Act seeks to exempt from capital gains tax and compensating tax licensed Special Economic Zone developers or operators. This proposal seeks to ensure that the impact of the granted tax incentives is not lost at the point of dividend distribution or sale of a stake to other potential investors.

5.3.2 STAMP DUTY ACT

The Bill further seeks to amend section 117(1) of the Stamp Duty Act, Cap. to exempt first time home owners under affordable housing schemes from payment of stamp duty. As part of the Big Four Agenda, the amendment is meant to provide an incentive to first time home owners as it will reduce the transactional costs incurred in the purchase of homes.

5.3.3 VALUE ADDED TAX ACT

The Bill also seeks to amend the Value Added Tax Act, 2013 to move a number of items currently listed as zero-rated for VAT purposes to the exemption Schedule. This is a move largely geared towards restricting zero rating of taxable supplies to exports. By default, it is expected that the number of VAT refund claims associated with zero rating will significantly drop. Some of the proposed amendments such as exemption of taxable supplies imported or purchased for exclusive use in the construction of a minimum of 5,000 housing units by a licensed Special Economic Zone entity is also aimed at supporting the housing pillar of the Big Four Agenda.

The proposals in this Bill comply with the provisions of the Constitution and Standing Orders. The amendments proposed will not only spur economic growth but also immensely improve the collection of revenue by the country. Further, the proposals will help in realization of key pillars of the Big Four Agenda such as access to affordable housing through reduction of transaction costs amongst other incentives.

6.0 SUBMISSION BY THE STAKEHOLDERS

Following the call for memoranda from the public on 23rd April 2018, the Committee received memoranda from thirty organizations. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:-

6.1 KENYA WILDLIFE CONSERVANCIES ASSOCIATION

The Association submitted the following to the Committee-

1. Propose VAT exemption on conservation fee levied on guests and tourist visiting wildlife conservancies. Under Section 24 of VAT Act, 2013, entry fee in national parks and reserves is VAT exempted. The differentiated treatment of wildlife conservancies from national parks and national reserves is an oversight considering conservancies are recognized as wildlife conservation areas under the Wildlife Conservation and Management Act, 2013.
2. Conservation fee is used by conservancies to support management of wildlife, employ conservancy rangers to support security for wildlife and guests and support social development including provision of water, health facilities, education and infrastructure development.
3. Section 5(2) of the VAT Act, 2013 provides that VAT tax payable shall be zero per cent if the supply is zero rated or in any other case, sixteen per cent (16%) of the taxable value of the taxable supply.
4. Conservation fee levied on guests and tourist visiting wildlife conservancies is subject to 16% VAT whereas fee in national parks and reserves tax exempted under section 24 of the VAT Act.
5. Conservation fee is used to support management of wildlife, employ conservancy rangers to support security for wildlife and guests and support social development.
6. Stamp duty on land leases registered for wildlife conservation should be tax exempt. The prohibitive cost of stamp duty on land registered for wildlife conservation is a major impediment to wildlife conservation in Kenya.
7. The potential income to government from charging stamp duty on conservation leases is far outweighed, by the multiple benefits provided by landowners conserving wildlife through income tax from wildlife tourism, provision of space for wildlife, creation of employment to local communities and development of local infrastructure including schools, dispensaries and provision of water.

6.2 INSTITUTE OF SURVEYORS OF KENYA

The Institute of Surveyors of Kenya a professional organization is the professional organization in the country that brings together professionals in land and real estate sector. ISK submitted that: -

1. The amendment of the Stamp duty Act, Cap 480 which provides for the levying and management of stamp duties, is central to the property ownership in Kenya. The assessment for Stamp Duty is one of the stages a home owner has to go through before they can have title documents in his/her name.
2. However, the process of establishing the value of the property to be purchased restrained by capacity constraints. The process is carried out by the Chief Government Valuer and his team of 44 Valuers in the entire country. This provision has denied the public of services of over 600 Valuers in private practice who can ease the burden by carrying out some or most of these valuations.
3. The valuers in Government service are overwhelmed as they are also involved in among other duties compulsory acquisition, valuation extension of lease, valuation for dispute resolution, and preparation of the land value index among other statutory valuations.
4. The effect of the delay in valuation and subsequent registration of title includes, low attainment of revenue to the Government as stamp duty taxes are never collected in time. In addition the amounts declared by the would be purchasers are in most cases far below the open market thereby denying the government its rightful share of taxes.
5. Delays in the assessment for valuation has also resulted in property developers not offloading their properties in to the market at an appropriate speed. In most instances the valuation process takes approximately 4-8 whereas it should not take more than five days. This reduced period of finalizing transactions shall result in easement of liquidation of properties.
6. The pro-longed process results in lethargy which leads to increased corruption avenues.
7. The proposed amendment will ensure thatthe revenue and taxes collected government will increase in a large proportion from the Stamp Duty Taxes, enhance growth of the real estate sector, ease collection of the land value index and the process of issuance of title deeds shall be easier with no delays in the assessment of stamp duty
8. There is a standardization mechanism within the Valuers' Act that ensures professionalism in the process of valuation by licensed valuers.
9. The ISK propose an amendment to section 10A.(1) of the Stamp Duty Act as follows–

10A. (1) The Collector of stamp duty shall require the purchaser or transferee or his/her agent to submit a valuation report from the Chief Government Valuer or a Registered and Practicing Valuer ascertaining the current market value for any conveyance or transfer on sale of any

immovable property before registration of the relevant instrument for the determination of the stamp duty payable.

6.3 KENYA ASSOCIATION OF MANUFACTURERS, AGROCHEMICALS ASSOCIATION OF KENYA AND FEDERATION OF KENYA PHARMACEUTICAL MANUFACTURERS

1. Kenya Association of Manufacturers (KAM) is the umbrella body for manufacturing value add industries in Kenya. Established in 1959, the organization has over the years, prided itself as the premier business membership organization in policy analysis and advocacy, with a growing membership, now with over 1000 members in the value add industries.
2. The current Government has prioritized manufacturing as one of their big four agenda to be purposed within the five-year period. This is in line with the priorities the Country has set out in its development blue print document Vision 2030, to grow manufacturing sector to 15% of GDP.
3. The Bill will affect two sectors of the manufacturing sector under the Kenya Association of Manufacturers namely; The Pharmaceutical sector and the Agriculture sector (Agrochemical sub sector).
4. The Agrochemicals Association of Kenya is an umbrella organization of suppliers of pest control technologies for agricultural production. The association was formed with the main objective of product stewardship which includes training farmers in responsible use of the pest control technologies, protection of the environment, safety of users and protection of environment, crops, livestock and agriculture produce in addition to ensuring that all suppliers follow the code of conduct that helps exclude counterfeit products.
5. The key objective of players in the agricultural sector is for achievement of national food security. The agricultural sector is the main pillar of the Kenya's economy and estimates shows the sectors;
 - i) Contributes directly to 24% of the Gross Domestic Product (GDP);
 - ii) Indirectly 27% of GDP through linkages with sectors such as manufacturing and service sector;
 - iii) Approximately 45% of Government revenue is derived from agriculture;
 - iv) The sector contributes over 75% of industrial raw materials and more than 50% of the export earnings;
 - v) Employment accounts for 60 per cent of the total employment;

vi) Over 80% of the population, especially living in rural areas, derive their livelihoods mainly from agricultural related activities.

6. The current Government has prioritized Agriculture as one of its four pillars to deliver transformational development change for the period 2018 to 2022 under its “Big Four Agenda”. This comes as no surprise to the country since Agriculture is the leading sector supporting the Kenyan economy. The sector accounts for 75 percent of the country’s workforce and about 25 percent of the annual GDP. Agricultural raw materials and products such as tea, coffee and floriculture products are Kenya’s top export earners

7. The **Agrochemicals Association of Kenya** propose to maintain status quo on Zero rating of Agricultural pest control products as follows:

(i) Insert the following paragraph under Schedule 2 of the VAT Act, 2013 immediately after paragraph;

104 Agricultural pest control products.

8. Zero rating of inputs and raw materials has enabled local manufacturers to get upfront remission of VAT on main inputs and therefore save on financing and avoid tying funds in delayed VAT refund disbursements.

9. The proposed exemption can only apply on direct inputs such as packaging materials and ingredients where quantities can be forecasted to enable application for exemption. Direct inputs such as electricity, transport, administrative expenses, labor, etc cannot be accommodated under the exemption and therefore will still continue to incur VAT.

10. VAT exemption will deny the manufacturers of local inputs e.g cartons the opportunity for getting VAT refunded. The VAT inputs will therefore become a component of the cost of the local inputs. This will make the final product price even more expensive

11. Local manufacturing of such inputs will be discouraged because inputs that will come in tax free will be much cheaper. Consequently, food security will be threatened because most farmers will compromise on the usage of inputs.

12. Tax free importation of fully packaged pesticides will depress investments in local packaging industries which include carton, bottle, labels and cap manufacturers.
13. KRA to send to Treasury VAT net of refund to deal with issue of delays of issuance of refunds as result of zero rating.
14. The Association recommends that-
 - a) Zero rate all inputs and raw materials (either produced locally or imported) supplied to manufacturers of Agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for matters Agriculture. This will enable the manufacturers of pesticides to apply for upfront remission of VAT on direct inputs at point of purchase.

And

- b) Zero rate finished Agricultural pest control products to enable the manufacturers to claim any VAT incurred on indirect inputs like electricity, transport, labour etc that may not be quantified for remission.

Or

- c) Zero rate finished Agricultural pest control products.
15. Federation of Kenya Pharmaceutical Manufacturers submitted that The proposed tax amendments affecting the manufacturing sector is in contradiction with the Big Four Agenda, specifically the Pillar Country Strategy of H.E. Uhuru Kenyatta on the local manufacturing sector and the affordable healthcare.
16. Local Pharmaceutical Manufacturers play a critical role in contributing to the achievement of these two Pillars, namely affordable Universal Healthcare and Local Manufacturing, however the proposed amendments in the Bill will increase local manufactured medicine costs as follows;
 - i) These higher costs will be transferred to consumers and thus increasing healthcare costs. (Affecting the affordable Healthcare pillar)
 - ii) These higher costs will make local manufacturing less competitive against similar imports. (Affecting the local manufacturing pillar)

- iii) The promotion of local manufacturing of generic drugs has been the key driver for many countries around the world such as India and has successfully been used to reduce high healthcare costs and promote the home industry.
17. The promotion of local manufacturing of generic drugs has been the key driver for many countries around the world such as India and has successfully been used to reduce high healthcare costs and promote the home industry.
18. In Kenya, high healthcare costs are linked to poor healthcare coverage. Imported medicines still covers 70% (in value terms) of the market demands (around US\$ 1 billion/year), at much higher prices than local manufactured medicines of same quality. Drug costs in Kenya can make up an average of 45% of patients hospital bills, causing losses in both, the private and public health insurance sector. Insurance monthly topping are exhausted after the first 5 days of every month because of the high medicine costs, forcing even the 36% of health insured Kenyans to pay out of pocket to cover their monthly treatments.
19. The amendments proposed in the new Tax Bill 2018, moving the importation and local procured raw and packaging materials from “zero rate VAT” to “exempt VAT” for the pharmaceutical industry will increase local manufactured costs, making more convenient to import goods, as the manufacturing sector will be not be refunded of VAT costs of local inputs.
20. Local suppliers of raw materials and packaging materials will also not be able to claim back the VAT they have paid on their inputs and thus will increase their cost which in turn will be passed to the local pharmaceutical manufacturers (prices to local manufacturers will increase up to 16%). This will lead local manufacturers to:
- i) Import items instead of procuring them locally, affecting also the indirect sector.
 - ii) The higher production costs will directly be transferred to consumers, making local manufacturing disadvantageous and less competitive, on both, local market and exports.
 - iii) The difference between “Zero rate VAT” and “Exempt VAT” status is that where industries and/or commodities fall under “Zero rate VAT” status, Input VAT is claimable. However, where industries and / or commodities fall under “Exempt VAT” status, the manufacturers are not able to claim their Input VAT and as such the Input VAT becomes part of the manufacturing cost.
 - iv) They propose the Zero rating of the following inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as follows:

(i) Delete the following paragraph under Schedule 1 of the VAT Act, 2013 immediately after paragraph 93;

100 Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.

(ii) Insert the following paragraph under Schedule 2 of the VAT Act, 2013 immediately after paragraph;

100 Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.

They further propose to Zero rate inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as follows-

(i) Delete the following paragraph 103 under Schedule 1 and substitute it under Schedule 2 of the VAT Act, 2013;

107. Medicaments of specified tariffs numbers;

6.4 PRICE WATERHOUSE COOPERS

PWC submitted that:-

1. The proposed tax amendments affecting the manufacturing sector is in contradiction with the Big Four Agenda, specifically the Pillar Country Strategy of H.E. Uhuru Kenyatta on the local manufacturing sector and the affordable healthcare.
2. Local Pharmaceutical Manufacturers play a critical role in contributing to the achievement of these two Pillars, namely affordable Universal Healthcare and Local Manufacturing, however the proposed amendments in the Bill will increase local manufactured medicine costs.
3. The amendments will lead to adverse financial implications to the sector as the non-recoverable VAT would result in additional costs that would either be borne by pharmaceutical manufacturers or more likely passed on to consumers.
4. They propose that the status quo of VAT on zero rate on medicaments be maintained and inputs or raw materials supplied or the introduction of a new schedule to the Act with a concessionary VAT rate of not more than 6% VAT on medicaments and related raw materials /inputs for local manufacture.

6.5 SPORTS BETTORS ASSOCIATION OF KENYA

The Sports Bettors Association of Kenya submitted that:-

1. They proposed that there should be a rationalization of the 20% withholding tax on the winnings.
2. The proposal of **twenty percent** should be deleted and replaced with **three percent**.
3. Taxation on winnings is unfair as it overlooks the fact that losses are also incurred in the process of betting.
4. Taxation should target earnings/income and not only winnings. What should be taxed is the difference between winnings and losses which is what can be rightly termed as income.
5. Individual bettors should divulge this information at the point of filling their income tax returns. This is the best practice adopted in more advanced jurisdictions like Las Vegas in the USA and which Kenya should consider borrowing.
6. Any winnings below Kshs. 100,000 should not be taxed.
7. The Betting industry is one of the biggest contributor to revenue collection by the government.

6.6 ASSOCIATION OF GAMING OPERATORS IN KENYA

The Association of Gaming Operators proposed the following amendments;

They propose the following definition of “winnings”-

“winning” Means the positive difference between payouts made and stakes placed in a given accounting period, for each player, payable to punters by bookmakers licensed under Cap 131 (Betting Lotteries and Gaming Act).

Provided that for purposes of withholding tax collection, under this Act, the requirements for provision of Personal Identification Numbers and issuance of Withholding Tax Certificates shall not apply.

Insertion of the following immediately after subparagraph (h) in the Third schedule Head B

Paragraph 3

(i) In respect of winnings, five per cent

Paragraph 5

(ii) In respect of winnings, five per cent

The amendment will clarify the WHT in respect of winnings earned from gaming to make it implementable and avoid occurrence of the collection challenges that existed. The amendments also ensure that Act complies with the constitutional principle that taxation should be fair on all Kenyans.

6.7 KENYA CHARITY SWEEPSTAKE

The Kenya Charity Sweepstake submitted that:-

The Kenya Charity Sweepstake is the oldest charitable organization in Kenya established in 1966. Unlike the pure profit driven commercial Betting and gaming firms proliferation in Kenya and driving revenues and growth in the market, their core segment, that is, Charities has come under tremendous pressure in the industry suppressing both our growth and ability to sustain their historical fundamental objective of giving to charity.

They proposed the following amendments-

- (a) Delete “turnover” and insert “net revenue” and justification is that all the others such as gaming (section 55A) and bookmakers are deducted on gaming revenues thus making Kenya Charity Sweepstake disadvantaged. Reference section 79(2) of 2016 Finance Act. Appendix 1 and 2.
- (b) Allow threshold on withholding tax to be Kshs. 10,000 and above. The justification is that their prizes start from Ksh 20 (Twenty Shillings). These small prizes are difficult to withhold as they are dispensed by thousands of their agents.

6.8 KENYA OIL AND GAS ASSOCIATION

They submitted that:-

Kenya Oil and Gas Association is an umbrella body of the upstream companies that hold a production sharing contract with the Kenya Government.

They proposed the following amendments:-

- (a) Zero rate both goods and services procured by IOCs and their sub-contractors on all exploration and development petroleum activities.
- (b) Alternatively expand the scope of the current exemption for goods to include services for all pre-production activities, noting exemption does not fully solve the issue

The failure to grant VAT remission on services will result in additional cost of 16% to the Oil and Gas projects.

They further proposed to Exempt IDF and RDL on goods imported by E&P companies for all petroleum operations thus affirming the Product Sharing Contracts (PSC) and East African Community Customs Management Act treatment exempting RDL and IDF for all imports is accepted and a mechanism to allow for this is put in place.

The cumulative additional cost on importation being 3.5% of the CIF value of goods and equipment imposes a significant and additional cost on the industry and diverts capital from core exploration and development activities and the disregard of the PSC reduces investor confidence and trust in agreements signed with the Government of Kenya.

They further proposed that funding for pre-development activities should be specifically exempted from deemed interest provisions. The justification is that WHT on deemed interest results in a reduction of capital available for investment by 20%.

6.9 KLYNVELD PEAT MARWICK GOERDELER (KPMG)

KPMG submitted that:-

The Bill proposes to increase the tax-deductible amount under the HOSP scheme from Kshs. 48,000 to Kshs. 96000.

The target for affordable housing schemes are low income persons who often struggle to meet their food, rent and commuting expenses. It will therefore be difficult for them to set aside some funds towards payments until they are allocated once they are allocated a house, the understanding is that they will be able to channel the amount they previously paid as rent to settle the mortgage obligation and will therefore not need the relief.

They propose an insertion of a new section 31A on affordable housing relief as follows-

31A.(1)A resident individual who proves to the satisfaction of the Commissioner that in a year of income:-

- (a) he is eligible for the affordable housing scheme;
- (b) he has applied and is on queue for allocation of a house; and
- (c) he is saving for the affordable housing under scheme approved by the Cabinet Secretary in charge of housing.

Shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief.

Provided that persons who have been allocated a house under the affordable housing scheme shall not be eligible for the relief.

Third Schedule Head A.

Introduce a new paragraph 3:

Affordable housing relief:

The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Ksh. 108,000 per annum.

Instead of introducing an exemption under the First Schedule, they proposed a change to the compensating tax enabling provision to exclude SEZ enterprises and companies taking advantage of investment deductions as follows-

Deletion of section 7A(5) and substitution with the following-

7A(5) If the amount of the dividend tax account would be decreased below zero in any instance as a result of the deduction required under subsection (4), the company shall pay compensating tax with respect to the accounting period in which the dividend causing the negative balance is paid in an amount sufficient to bring such a resulting negative balance up to zero.

Provided that this section shall not apply to entities licensed under the SEZ, Act or where the tax payer proves to the satisfaction of the Commissioner that the compensating tax arose from their utilization of investment deduction.

The changes will allow SEZ enterprises which are the engine of the SEZ to profitably operate and eliminate the need to create complex structures to reduce the compensating liability.

Also the changes will allow taxpayers to take advantage of investment deductions without being penalized through compensating tax.

The Bill proposes to exempt from Value Added Tax taxable supplies imported or purchased for direct and exclusive use in the construction of a minimum of five thousand housing units, by a licensed special economic zone operator, developer or enterprise upon recommendation by the Cabinet Secretary for the time being responsible for housing. There are two issues with the proposed provision as follows:

- a) Under the SEZ Act, the construction of housing is not one of the eligible activities which means that no one would be eligible for the exemption; ^[11]_{SEP}
- b) Further, globally the SEZs are operated as customs areas and to avoid loss of revenues housing is not encouraged within the customs area; ^[11]_{SEP}

- c) Most of the proposed affordable houses for instance under the Nairobi Regeneration project are outside SEZs and will therefore not benefit from the exemption.
- d) As an exemption, the proposal only favours persons who import supplies. Local manufacturers and distributors will not be eligible for input VAT deduction which means that their costs will be higher by 16% even before they consider their other costs. ^[1]_[SEP]

They proposed that the VAT Act, 2013 be amended by adding a new Paragraph 13 to Part A of the Second Schedule as follows:

Taxable supplies imported or purchased for direct and exclusive use in the construction of a minimum of five thousand housing units under the affordable housing scheme by a developer approved by the Cabinet Secretary for the time being responsible for housing.

The proposed amendments will: allow fair competition between local and ^[1]_[SEP]international suppliers making good the government's proposals to encourage local value addition and reduce the cost of the affordable housing units.

6.10 KIPKENDA AND CO. ADVOCATES

They submitted that:-

1. They proposed the inclusion of Limited Liability Partnerships as a form of a partnership as it enjoys both the benefits of a body corporate and a partnership hence a hybrid commercial entity under section 4.
2. The definition of commercial vehicle conflicts with that under Traffic act and this should be amended to harmonize the two definitions.
3. The amendment to introduce an exemption on payment stamp duty by first time home owners under section 117(1) is not clear as to who a first time home owner is. The Act should define who a first time home owner is and make a provision on what constitutes a first time home. This will serve as a loophole that may be employed to evade paying stamp duty as there is an issue determining who a first time home owner is.
4. They oppose exemption of liquefied petroleum gas. As this will have the effect of increasing the prices of the commodity beyond the reach of the ordinary Kenyan. Therefore, in order to encourage use of clean energy and conserve the environment LPG should remain a zero rated commodity instead focus should be on kerosene which not only has adverse impact on the environment but is also responsible for adulteration of fuel.

6.11 THE KENYA REVENUE AUTHORITY

The Kenya Revenue Authority submitted that:-

Tax on Winnings

s.2, s.10, s.22(c)(2), s.34(1), (2), s.35(1), (3)

- i) Support withholding tax of 20% on winnings so that winners share the sector taxation with betting, lotteries & gaming operators. Recently, there has been huge pay outs to winners which has eroded the tax base of the sector operators. The proposals are meant to reduce the tax burden for the sector operators and have part of it shouldered by winners.
- ii) Separately under Betting, Gaming & Lotteries Act, the tax rate has been revised from **35%** to **15%**, which is to be borne by winners given that the operators already pay **30%** corporate tax. This is proposed under the **Miscellaneous Amendment Bill, 2018** in order to reduce the sector players' tax burden.
- iii) Integration of the new BCLB system and the iTax system – Consultations are underway and a consultant system demonstration, to the stakeholders, has been scheduled for the 29th May 2018 at the BCLB Offices, 3rd Floor Kenya Charity Sweepstakes House from 10.00am. The System automation is hoped to ensure compliance with the law while simultaneously monitoring of the operators' online platforms
- iv) Proposal to review the 35% to a lower agreeable rate based on stakeholder participatory feedback.

Justification

1. In 2015, the winnings paid out were Kshs. **14,969,627,825.14** by bookmakers out of the **19,432,872,708.97** registered as turnover (Source: BCLB Data).
2. The resultant effect of the deletion of the provision of the 20% WHT on winnings was a significant rise in pay-outs on winnings by Betting, Lotteries and Gaming operators thus resulting to loss in revenues.
3. In 2016, the total sales by bookmakers were Kshs. **97,832,148,096.19** out of which **81,662,678,803.71** were paid out as winnings (Source: BCLB Data).
4. This alarming rise in pay outs demonstrates that from the money generated by this sector, a large amount of it is paid back to the players as winnings. In addition, BCLB and KRA have no mechanism of actually verifying that these amounts were actually paid out. There is therefore need to re-introduce WHT on winnings.

5. BCLB operations and data on BLG returns are currently manual. Hence, data shared with KRA for analysis is prone to human error or manipulation. Automation of the BCLB systems will also reduce administration and implementation challenges currently experienced in collection of the taxes.
6. There is a major reluctance by sector player to file BLG returns or make payments because repercussions/ sanctions are not punitive enough to deter late-filing.
7. There is need to enhance voluntary compliance. Even with the increased current BLG tax rate of 35%, revenue collection has been lagging behind. For example Last year Jan – April 2017 the sector players remitted a total of **682 Million** at tax rates of between 5%-15%. In 2018 total BLG taxes collected from Feb - March is **761 Million** at a tax rate of 35%. Last year, the largest market players (Betting companies) remitted taxes at the rate of 7.5%. The forecasted amount expected this year based on the 35% tax rate would be estimated at **2 Billion** from Jan to April 2018.
8. Low compliance is also attributed to pending court casing barring collection of taxes. This demonstrates that the compliance level with the current tax rate of 35% is low.
9. In addition, the rate of 35% has also led to closing down of companies in the Lottery sector e.g. Pambazuka, etc. A good tax system is predictive, stable and seeks to enable economic growth.

S.22(c)(2)

The proposal is meant to facilitate potential first time home owners to save for purposes of purchasing or constructing homes.

Justification

The increase of home ownership savings plan is to enhance the tax incentive to encourage more Kenyans to own homes. This is part of promoting the Big 4 Agenda

Exemption of licensed Special Economic Zone (SEZ) developers or operators from capital gains tax and compensating tax

First Schedule, Part 1

SEZs are taxable at corporate rate of **10%**. Where no tax is paid and dividends is paid to shareholders, compensating tax is payable. **The exemption will deny the exchequer the compensation tax hence should not be supported.**

The same for capital gains tax, extending exemption will erode the tax base and make other investors seek for similar status

S.117(1)

The proposal is meant to facilitate first time home owners to acquire property as part of the Big 4 Agenda.

Justification

The proposal is meant to provide an incentive to first time home owners under the affordable housing scheme. This will enable more citizens to own homes by reducing the cost of owning a home.

Section A, Part 1

- a) Proposal on zero rating
- i) Part A - paragraphs 7,8,14,15,16,17
- ii) Part B - paragraph 7
- iii) Part C - all items

Be deleted from the zero rated schedule and inserted in the Exempt schedule.

Justification

The principle of zero rating exports is based on the fact that VAT has a destination concept – VAT is paid where a good is destined and consumed. If it leaves Kenya as an export, it is zero rated and any VAT on it is refunded. But as soon as it arrives at its destination, VAT is imposed by the respective tax authorities. Such imports and local supplies are Vatable wherever consumed, but since exports are not consumed in the country of origin, they get zero rated status.

6.12 MR. CHARLES NJENGA NGARUIYA

Vide a written memoranda, he submitted as follows, that:-

s.177

While exempting first time home owners from stamp duty obligations is commendable and a step in the right direction, the process is fraught with bottlenecks that impede a more effective tax regime and home

ownership. The major choke point is with regards to section 10A of the stamp duty act subsection (1) which only mandates the chief Government Valuer to conduct stamp duty valuations.

A review of this to include private Registered and Practicing Valuers would ensure higher compliance with the Act and faster expedition of the transfer process for both first time home owners and investors in the Real Estate subsector.

6.13 MR. DAVID C. MWANGI, MR. DANIEL MUTHENGI MUNYALO, MR. JAMES OTUGA ABAWA, MS. YVONNE KARIUKI, MS. GRACE KATHINA WAMBUI, MR. ONYANGO MORGAN, MR. MAHAMUDI SALADI, MS. NIKITA OPENDA, MR. COLLINS SANG, MR. DAN NIXON OMBEU, MS. CHRISTINE MUMBI, MR. GULED FARAH, MR. JOSEPH KABIRU, MR. NEIL KANGETHE, MS. KIVUNAGA MAUREEN AND MR. DAVID MWANGI

The memoranda submitted by the above individuals were proposing an Amendment to section 10A(1) to ensure that the Collector of Stamp Duty shall work in unity with private valuers and real estate consultant on the basis of consultation and cooperation to make the process easier, effective and to enhance delivery of services.

“The Collector of Stamp Duty shall need a purchaser or his/her agent to submit a valuation report from the Chief Government Valuer or qualified consultant or practicing valuer, ascertaining the market value of any conveyance or transfer on sale of immovable property before registration of the relevant instruments in order to determine the stamp duty payable.”

Justification

1. The resultant effect would be an increase of opportunities in real estate investments.
2. The revenue and taxes collected government will increase in a large proportion from the Stamp Duty Taxes.
3. The process of issuance of title deeds shall be easier with no delays in the assessment of stamp Duty.

6.14 MR. EDWARD MWANGI MURITU

He proposed an amendment to section 10A (1) to allow for private valuers and trained valuers to carry out valuation and therefor reduce delays in the process of acquisition of property.

Justification

1. Low attainment of revenue to the Government as stamp duty taxes are never collected in time. In addition the amounts declared by the would be purchasers are in most cases far below the open market thereby denying the government its rightful share of taxes.
2. Delays in the assessment for valuation has also resulted in property developers not offloading their properties in to the market at an appropriate speed. In most instances the valuation process takes approximately 4-8 whereas it should not take more than five days. This reduced period of finalizing transactions shall result in easement of liquidation of properties.
3. The pro-longed process results in lethargy which leads to increased corruption avenues.

He proposed an amendment of section 10 to open stamp duty valuations to all registered and practicing valuers both in public and private sectors.

Opening the area of valuation to valuers in the private sector will enhance the quality of stamp duty valuations, improve the timelines of their delivery and thereby increase the number of land transactions.

6.15 KENYA ASSOCIATION OF PHARMACEUTICAL INDUSTRY

The Kenya Association of Pharmaceutical Industry submitted that:-

The amendments seeking to change the status of pharmaceutical products from a zero rated to exempt will adversely affect the cost of healthcare delivery in Kenya. In a tax exempt classification, the well intended effort will elicit negative consequences as the cost of essential pharmaceutical products will inadvertently go up. This upward price adjustment would be brought about by the consequential increase on the overall cost of doing business in the pharmaceutical industry.

Below is the snap shot of the implications of tax exemption on pharmaceutical products:-

1. Operating costs of the companies dealing in pharmaceutical products will go up at the VATABLE cost of service, consumables of computer and stationery, office administration, general stationery and other vatable office related expenses cannot be claimed as the input VAT.
2. The companies will pass on this cost to the consumers who in this case are patients and hence products will become more expensive to patients leading to an increase in the overall cost of healthcare.

3. The pharmaceuticals supply chain typically consists of almost 5 layers; importers-distributors/wholesalers-semi wholesalers/sub distributors-pharmacies/hospitals-consumer/patients. VAT exemption will lead to an increase in the cost of medicines by almost 40% to 60% or even more in some cases on compounded rate as each layer will review the prices pro-rata thus a compounded price increase.
4. Overall impact of tax exemption on medical products is increased cost of treatment due to the high cost of the medicines, surgical products, implants, machine and its consumables etc thus negatively impacting the goal of affordable healthcare agenda.

6.16 BETTING CONTROL AND LICENSING BOARD

BCLB noted that the Bill seek to introduce a twenty percent tax on winning to be paid by punters in Bookmaking. The object of tax in their view is to act as a deterrent to excessive play by making the punters not only share the tax burden but also feel the pinch of gambling.

Introduction of the winning tax will also lessen the tax burden on the operators and in so doing enabling the industry to survive and continue to contribute positively to the economy of the country through:-

- i Eradication of illegal gambling
- ii Revenue generation through, fees, tax and good cause proceeds
- iii Creation of employment
- iv Tourism stimulation and
- v General economic development of the country through Corporate Social Responsibility

Consequently, they had no objection to the same because of the following benefits:-

- i Additional tax/revenue to the exchequer through the Board and Kenya Revenue Authority
- ii Reduced tax burden to operators
- iii Acts as a deterrent to excessive gambling

RECOMMENDATIONS

- 1) The tax should be renamed “winning levy” not “withholding tax” for the following reasons:-
 - (a) Gambling should never be depicted as a source of income but a form of entertainment.
 - (b) To avoid complexities of collecting withholding tax where punters will be required to have pin numbers.

- 2) The winning levy should be applied on punters who win a minimum of Kshs. 1,000.
- 3) The winning levy should be less the initial stake.

6.17 THE KENYA PHARMACEUTICALS DISTRIBUTORS ASSOCIATION

The Kenya Pharmaceutical Distributors Association submitted their written memoranda and stated that:

1. Although just thirty six (36) molecules are mentioned in the Bill, the proposal to remove some medicaments from zero rate schedule to VAT exempt will impact heavily on the price to the patient of the more than 3500 core molecules used to deliver pharmaceutical care in Kenya and the more than 16,000 products available in the market. This is because a policy change cannot selectively be applied to just 36 molecules, it will likely impact on ALL imported medicines.
2. KPDA vehemently opposed the raft of measures proposed by the Federation of the Kenya Pharmaceutical Manufacturers on the following grounds: -
 - (i) There was no evidence to scientifically conclude that taxation of imports will have any significant impact on local manufacturing. Indeed, many other imports are taxed by Customs Services and yet they had not seen any significant change in local manufacturing activities vis a vis importation.
 - (ii) It is counterintuitive to punish millions of patients who are dependent on 16,000 different types of medicines by imposing on them the additional burden of taxes in order to secure the interests of just 34 manufacturers who desire the protection of 36 molecules.
 - (iii) It is not accurate to suggest that imposing taxes on patients will increase jobs in the pharmaceutical manufacturing sector. The cause and effect have not been properly rationalized. Local pharma is operating at 40% capacity and can increase volumes with minimal additional human resources. Additionally, pharmaceutical manufacturing accounts for the least number of jobs in the pharma industry with community pharmacy (distributors, wholesalers and retailers) being responsible for the bulk of jobs in the industry. There are just 34 licensed manufacturers and more than 10,000 licensed community pharmacy premises.
3. It is not really clear why it is necessary to increase the cost of healthcare in Kenya in order for the local industry to thrive. There are so many other more innovative methods of promoting local manufacturing than imposing taxes on imported medicines
- 4) Local manufacturers should engage in rudimentary research and development to produce and market products which are more acceptable to prescribers, pharmacists, technologists and

patients. Some local manufacturers have realized the importance of quality but most have not. If local manufacturers failed to address issues of quality, then there was no amount of taxation that would increase confidence in their products.

- 5) Local manufacturers should market their products to prescribers in order to build consumer confidence. Patients should be given an opportunity to choose locally manufactured products because of their quality and not because they have been coerced into taking them. Local manufacturers should strive to improve the quality of their products.
- 6) Local manufacturers should strive to manufacture newer generic, without necessarily looking at their market size in Kenya. They should also consider the export market in other countries.
- 7) Government should reconsider its position on incentives; Government needs to invest resources in the development of export oriented local pharmaceutical industry given its potential for earning foreign exchange.
- 8) Government procurement agencies should give preferential treatment or quotas to local manufacturers provided that local manufacturers in turn reciprocate by commitment to the National GMP Roadmap. The government should source the 36 molecules exclusively from local manufacturers.
- 9) Government should develop policies that encourage foreign investment in a local manufacturing hub for supply to the region.
- 10) Local manufacturers should partner with MNCs and produce their innovator branded products locally under license instead of “fighting” imports. This on the flipside means they must attain internationally accepted GMP standards.
- 11) Local manufacturers should partner with local distributors to lease their idle production capacity to them. Local distributors are currently outsourcing contract manufacturing services from abroad.
- 12) Government should look into ways of decreasing the cost of production. It is puzzling that a 500ml large volume parenteral that has been transported all the way from India, will still be 50% cheaper than that produced in Kenya.
- 13) Increasing cost of medicines for whatever reason seems counterintuitive considering the Big 4 Agenda of universal health coverage for all. Medicines account for the biggest spend in healthcare whilst pharmaceutical manufacturing contributes insignificantly to the nation’s GDP.
- 14) Government should zero rate all medicines to enable manufacturer to claim input VAT.

6.18 THE NATIONAL TREASURY

The National Treasury submitted their submission, giving their comments against the memoranda submitted by the stakeholders. National Treasury submitted that: -

1. Over the last five years, the Government has implemented various policies and structural reforms under the economic transformation agenda to foster a rapid social-economic transformation. The transformation agenda focused on five key pillars including;
 - i Creating a conducive business environment;
 - ii Investing in sectoral transformation;
 - iii Infrastructure expansion;
 - iv Investing in quality and accessible social services; and
 - v Consolidating gains made in devolution. Significant achievements have been realized on all the five pillars.
2. The maintenance of macroeconomic stability over the past five years has created a conducive environment for investment and business. As a result, the economy expanded at an average rate of 5.5% per year in the last 5 years outperforming the average growth rate of 4.5% in the 2008-2012 and 5.2% in the period 2003-2007. The value of goods and services produced therefore increased raising the per capita income from Kshs. 104,700 in 2013 to an estimated Kshs. 174,200 in 2017. In addition, the economy generated an average of 817 thousand new jobs per year in the period 2013-2017 up from 656.5 thousand jobs per year in the period 2008-2012.
3. Building on the progress made thus far and with the desire to decisively confront the three perennial challenges of unemployment, poverty and income inequality that this economy continues to face, the government has identified four key strategic areas of focus over the next five years that will accelerate broad based economic growth. This will help transform the lives of all Kenyans. The strategic areas under The Big Four Agenda include:-
 - i Supporting value addition and raising the manufacturing sector's share of GDP to 15% by 2022. This will accelerate economic growth, create jobs and reduce poverty;
 - ii Focusing on initiatives that guarantee food security and improve nutrition to all Kenyans by 2011 through expansion of food production and supply, reduction of food prices to ensure affordability and support value addition in the food processing value chain;
 - iii Providing Universal Health Coverage thereby guaranteeing quality and affordable healthcare to all Kenyans; and

- iv Providing at least 500,000 affordable new houses to Kenyans by 2022 hence improving living conditions for Kenyans.
- 4. Investment in the above four areas is expected to transform lives by creating the much needed jobs enabling Kenyans meet their basic needs, improve living conditions, lower cost of living and inequality.
- 5. The Bill seeks to provide an enabling environment for the attainment of The Big Four Agenda and to enable private sector to thrive. This is in line with the need for raising additional revenue to fund The Big Four Agenda.

7.0 COMMITTEE STAGE AMENDMENTS

Having considered the memoranda on each of the Clauses, the Committee wishes to propose the following amendments;

SCHEDULE

THAT the Schedule to the Bill be amended—

The Income Tax Act (Cap 470)

(a) in the proposed amendments to the Income Tax Act, Cap. 470 by—

(a) deleting the proposed amendments to section 2 and substituting therefor the following new amendment—

s.2 Delete the definition of “winnings” and substitute therefor the following new definition—

“winnings” means the positive difference between payouts made and stakes placed in a given month, for each player, payable to punters by bookmakers licensed under the Betting, Lotteries and Gaming Act.

Justification: The winnings should be defined as the difference between what the punters put at stake and the payouts. The punters make losses too before the winnings are realized hence taxing the entire amount won is presumptuous that there are no losses.

(b) inserting the following new row immediately after the proposed amendment to section 22C(2)—

New Insert the following new section immediately after section 30—

Affordable housing relief. **30A.**(1)A resident individual who satisfies the Commissioner that in a year of income that the person—

- (a) is eligible to make an application under an affordable housing scheme;
- (b) has applied and is awaiting the allocation of a house an affordable housing scheme; and
- (c) is saving for a purchase under an affordable housing scheme approved by the Cabinet Secretary in charge of housing

shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief.

(2)A person who has been allocated a house under the affordable housing scheme and has been subject to an affordable housing relief under subsection (1) shall not be re-eligible for a subsequent relief.

Justification: The Committee adopted the proposal by KPMG to allow for both the doubling of savings to the affordable housing scheme as well as Affordable Housing relief for those that may not afford to double their yearly contributions to Kshs. 96,000 translating to Kshs. 8,000 per month.

- (a) inserting the following new row immediately after the proposed amendment to section 35(3)—

s.132(1) Insert the following new subsection immediately after subsection (1)—

(1A) Notwithstanding subsection (1), for purpose of collection of withholding tax for winnings, a person shall not be required to have a personal identification number and Withholding Tax Certificate.

- (b) deleting the proposed amendments to Part I of the First Schedule;
- (c) inserting the following new amendment immediately before the proposed amendment to Paragraph 3 of Head B in the Third schedule—

Head A Insert the following new paragraph immediately after paragraph 2—

Affordable housing relief.

3. The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Ksh. 108,000 per annum.

Justification: This is meant to support the Affordable Housing relief and to put a maximum relief that one can be relieved

- (d) deleting the word “twenty” appearing in the proposed new subparagraph (i) in the proposed amendments to Paragraph 3 of Head B in the Third Schedule and substituting therefor the word “ten”; and
- (e) deleting the word “twenty” appearing in the proposed new subparagraph (i) in the proposed amendments to Paragraph 5 of Head B in the Third Schedule and substituting therefor the word “ten”.

Justification: To be able to increase the tax base to also include the winnings who form approximately 88% of all the revenue generated from these activities and because this is the first time taxation is being introduced, the Committee was of the view that 20% is too high and hence the adoption of 10 % for both residents and non-residents.

The Stamp Duty Act

(b) in the proposed amendments to the Stamp Duty Act, Cap 480 by inserting the following new item immediately before the proposed amendment to section 17—

s.10A.(1) Delete and substitute with the following new subsection—

10A. (1) The Collector of Stamp Duties shall refer to the Chief Government Valuer or a registered and practicing valuer any conveyance or transfer on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value of such property as at the date of the conveyance or transfer for purposes of ascertaining whether any additional stamp duty is payable.

Justification: To incorporate also the private practicing valuers as the Government employed valuers are too few to handle the amount of transactions expected to deliver the national priority on affordable housing.

The Value Added Tax Act, 2013

(c) in the proposed amendments to the Value Added Tax Act, 2013—

- (i) in Section A of Part I of the First Schedule by deleting the proposed new—
 - (i) paragraph 100;
 - (ii) paragraph 101;
 - (iii) paragraph 102;

- (iv) paragraph 103
- (v) paragraph 104 and
- (vi) paragraph 107.

(ii) in the Second Schedule by deleting the proposed amendments to—

- (a) paragraph 11;
- (b) paragraph 13;
- (c) paragraph 15;
- (d) paragraph 16;
- (e) Paragraph 17; and
- (f) Part C.

Justification: These are meant to be deleted since the Committee agreed on reinstatement to zero rating and not as proposed in the Bill to offer tax exemptions.

(d) by inserting the following new item in its proper alphabetical sequence—

The s.29A(1) Delete the expression "thirty-five" and substitute therefor the
 Betting word "fifteen".
 Lotteries
 and
 Gaming
 Act (Cap.
 131)

s.44A(1) Delete the expression "thirty-five" and substitute therefor the
 word "fifteen".

s.55A(1) Delete the expression "thirty-five" and substitute therefor the
 word "fifteen".

s.59B(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

Justification: Consequential Amendment. This is because the taxation on winnings has been introduced hence the need to also reduce the tax burden on gaming operators.



REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE OF THE REPORT ON THE TAX LAWS (AMENDMENT) BILL, 2018

DATE: 5TH JUNE, 2018

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. ALFRED W. SAMBU, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	



MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 5TH JUNE, 2018 IN THE COMMONWEALTH PARLIAMENTARY ASSOCIATION ROOM AT 12.00 NOON

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Purity W. Ngirici, MP
13. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. Lydia H. Mizighi, MP
5. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | – | Legal Counsel |
| 4. Mr. Josephat Motonu | – | Fiscal Analyst |
| 5. Mr. Chelang'a Maiyo | – | Research and Policy Analyst |
| 6. Mr. Collins Mahamba | – | Audio Officer |

Agenda

1. Prayers

2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to adopt the report on the Tax Laws (Amendment) Bill, 2018**
11. Adjournment

MIN.NO.177/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 12:15 p.m with prayer from the Chairperson. He then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.178/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.179/DC-F/2018: MEETING TO ADOPT THE REPORT ON THE TAX LAWS (AMENDMENT) BILL, 2018

The Chairperson requested the meeting to adopt the Committee's induction report before embarking on the day's agenda.

The meeting was taken through the report by the Committee Clerk then the report was adopted after being proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. Shakeel Shabbir, MP.

ADOPTION OF THE TAX LAWS (AMENDMENT) BILL, 2018 REPORT

The Legal Counsel took the Committee through their proposed amendments to the Bill. It was noted that the Committee had not made amendments to paragraph 102 and 103. The meeting deliberated and agreed that both paragraphs should be deleted.

The meeting was informed that sections of the Betting, Lotteries and Gaming Act touching on tax related matters had been inadvertently put in the Statute Laws (Miscellaneous Amendment) Bill (No. 2) of 2018. The Committee had therefore been tasked to consider the said amendments together with the other tax laws.

The Committee proposed the following amendments to the Betting, Lotteries and Gaming Act:-

(4) by inserting the following new item in its proper alphabetical sequence—

s.29A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.44A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.55A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.59B(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

The meeting adopted the report on Tax Laws (Amendment) Bill, 2018

MEMBERS' DELIBERATIONS

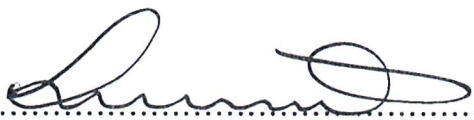
1. Members tasked the Secretariat to file the report on induction for reference purposes. They were further tasked to avail both the hard and soft copies of the report to the Members.
2. The Committee noted the need to engage the National Treasury on the IFMIS system since its efficiency/ integrity had been into question. The Members noted that it was important to carry out an investigation into the system to examine its effectiveness and determine on how to improve on it or do away with it.

MIN.NO.180/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.45pm. The next meeting will be held on 7th June, 2018 at 10.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 5/6/2018



**MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING RETREAT HELD ON WEDNESDAY, 30TH
MAY, 2018 AT LAKE BOGORIA SPA RESORT AT 3.30PM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. David M. Mboni, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Mohamed A. Mohamed, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Lydia H. Mizighi, MP
6. Hon. Purity W. Ngirici, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | – | Legal Counsel |
| 4. Mr. Chelang'a Maiyo | – | Research and Policy Analyst |
| 5. Ms. Brigid Sielei | – | Public Relations Officer |
| 6. Mr. Collins Mahamba | – | Audio Officer |
| 7. Mr. John Njoro | – | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | – | Office Assistant |

MIN.NO.13/DC-F/2018: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 3:30 p.m with prayer from Hon. David Mboni, MP. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.14/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.15/DC-F/2018: MEETING TO DELIBERATE ON THE COMMITTEE STAGE AMENDMENTS TO THE TAX LAWS (AMENDMENT) BILL, 2018

The Committee made the following amendments:-

The Stamp Duty Act

(a) the proposed amendments to the Stamp Duty Act, Cap 480 by inserting the following new item immediately before the proposed amendment to section 17—

s.10(1) Delete and substitute with following new subsection-

10A. (1) The Collector of Stamp Duties shall refer to the Chief Government Valuer or a registered and practicing valuer any conveyance or transfer on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value of such property as at the date of the conveyance or transfer for purposes of ascertaining whether any additional stamp duty is payable.

The Value Added Tax Act, 2013

(b) the proposed amendments to the Value Added Tax Act, 2013-

- (i) in the proposed amendment to Section A of Part I of the First Schedule by deleting the proposed new paragraphs 100,101,104 and 107; and
- (ii) in the proposed amendments to the Second Schedule by deleting the proposed amendments to-
 - (a) paragraph 11;
 - (b) paragraph 16; and
 - (c) Part C.

MIN.NO.16/DC-F/2018: ANY OTHER BUSINESS

The Chairperson informed the meeting that they would meet the following day to go through the Committee's amendments to the County Governments Retirement Scheme Bill, 2018 and the Tax Laws (Amendment) Bill, 2018 and to deliberate on the way forward.

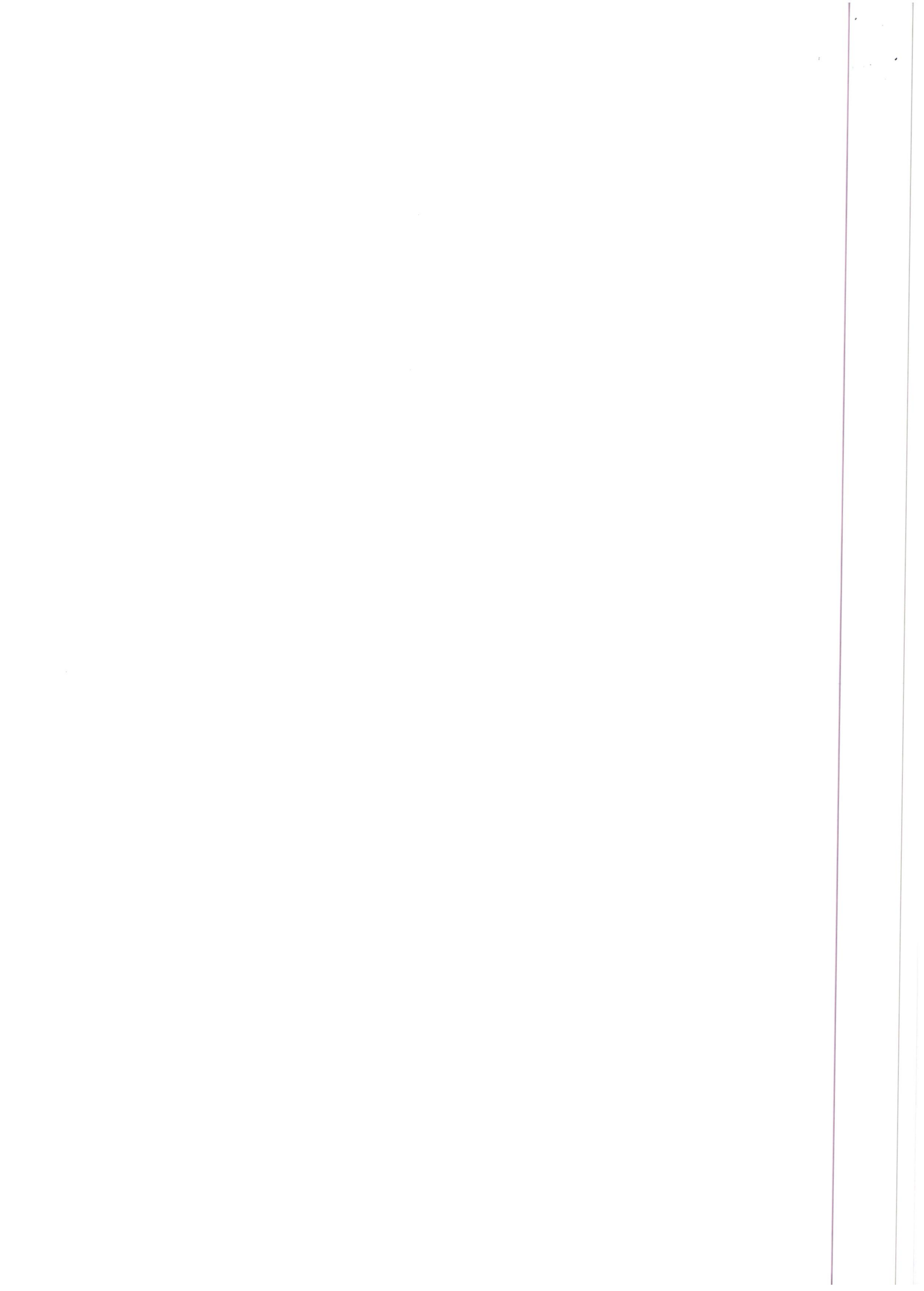
MIN.NO.17/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 5.20pm. The next meeting will be held on 31st May at 10.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 5/6/2018



MINUTES OF THE 3RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING RETREAT HELD ON WEDNESDAY, 30TH MAY, 2018 AT LAKE BOGORIA SPA RESORT AT 9.00AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. David M. Mboni, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Mohamed A. Mohamed, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Lydia H. Mizighi, MP
6. Hon. Purity W. Ngirici, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | – | Legal Counsel |
| 4. Mr. Chelang'a Maiyo | – | Research and Policy Analyst |
| 5. Ms. Brigid Sielei | – | Public Relations Officer |
| 6. Mr. Collins Mahamba | – | Audio Officer |
| 7. Mr. John Njoro | – | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | – | Office Assistant |

MIN.NO.9/DC-F/2018: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:20 a.m with prayer from Hon. Andrew Okuome, MP. The Chairperson then welcomed the meeting to deliberate on the day’s agenda.

MIN.NO.10/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.11/DC-F/2018: MEETING TO DELIBERATE ON THE COMMITTEE STAGE AMENDMENTS TO THE TAX LAWS (AMENDMENT) BILL, 2018

The Committee agreed on the following amendments: -

SCHEDULE

THAT the Schedule to the Bill be amended in—

The Income Tax Act (Cap 470)

(a) the proposed amendments to the Income Tax Act, Cap. 470 by-

(i) deleting the proposed amendments to section 2 and substituting therefor the following new amendment—

s.2 Delete the definition of “winnings” and substitute therefor the following new definition—

“winnings” means the positive difference between payouts made and stakes place in a given month, for each player, payable to punters by bookmakers licensed under the Betting, Lotteries and Gaming Act.

(ii) deleting the proposed amendments to Part I of the First Schedule;

(iii) deleting the word “twenty” appearing in the proposed new subparagraph (i) in the proposed amendments to Paragraph 3 of Head B in the Third schedule and substituting therefor the word “ten”; and


(iv) deleting the word “twenty” appearing in the proposed new subparagraph (i) in the proposed amendments to Paragraph 5 of Head B in the Third schedule and substituting therefor the word “ten”.

MIN.NO.12/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 2.17pm. The next meeting will be held at 3.30pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE..... *5/6/2018*



MINUTES OF THE 4TH SITTING OF THE STAKEHOLDER CONSULTATIVE WORKSHOP OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 24TH MAY, 2018 AT BOMA HOTEL AT 3.00 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Purity W. Ngirici, MP
13. Hon. Samuel Atandi, MP
14. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Joshua C. Kandie, MP
4. Hon. Lydia H. Mizighi, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | – | Legal Counsel |
| 4. Mr. Chelang'a Maiyo | – | Research and Policy Analyst |
| 5. Mr. Collins Mahamba | – | Audio Officer |
| 6. Mr. John Njoro | – | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | – | Office Assistant |

KPMG, KENYA

1. Mr. Robert Waruiru – Director, Tax Services

2. Mr. W. Alambo – Manager, Tax
3. Mr. P. Kinuthia – Partner

KIPKENDA AND CO. ADVOCATES

1. Mr. Ian K. Tum – Legal Assistant

MIN.NO.28/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 3:35 p.m with prayer from the Chairperson. The Chairperson then called for introduction of those present before welcoming the meeting to deliberate on the day's agenda.

MIN.NO.29/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.30/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH KPMG, KENYA

They submitted that:-

They submitted that while some of the proposed amendments such as the exemption of first time buyers under the affordable housing scheme from stamp duty are welcome and will have an impact on the cost of housing, a number of other proposals are unlikely to have the intended impact and in some cases will make it difficult for the government to achieve its Big 4 Agenda.

They proposed the following amendments:-

An insertion of a new section 31A on affordable housing relief as follows-

31A (1) A resident individual who proves to the satisfaction of the Commissioner that in a year of income-

- (a) he is eligible for the affordable housing scheme;
- (b) he has applied and is on queue for allocation of a house; and
- (c) he is saving for the affordable housing under scheme approved by the Cabinet Secretary in charge of housing.

Shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief. Provided that persons who have been allocated a house under the affordable housing scheme shall not be eligible for the relief.

THIRD SCHEDULE HEAD A.

Introduce a new paragraph 3:

Affordable housing relief:

The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Kshs. 108,000 per annum.

Justification

The target for affordable housing schemes are low income persons who often struggle to meet their food, rent and commuting expenses. It will therefore be difficult for them to set aside some funds towards payments until they are allocated a house. Once they are allocated a house, the understanding is that they will be able to channel the amount they previously paid as rent to settle the mortgage obligation and will therefore not need the relief.

FIRST SCHEDULE PART 1

Instead of introducing an exemption under the First Schedule, we propose a change to the compensating tax enabling provision to exclude SEZ enterprises and companies taking advantage of investment deductions as follows-

Deletion of section 7A(5) and substitution with the following

If the amount of the dividend tax account would be decreased below zero in any instance as a result of the deduction required under subsection (4), the company shall pay compensating tax with respect to the accounting period in which the dividend causing the negative balance is paid in an amount sufficient to bring such a resulting negative balance up to zero.

Provided that this section shall not apply to entities licensed under the SEZ, Act or where the tax payer proves to the satisfaction of the Commissioner that the compensating tax arose from their utilization of investment deduction.

Justification

The changes will allow SEZ enterprises which are the engine of the SEZ to profitably operate and eliminate the need to create complex structures to reduce the compensating liability.

Also the changes will allow taxpayers to take advantage of investment deductions without being penalized through compensating tax.

PART 1, SECTION A, FIRST SCHEDULE

They propose that the VAT Act, 2013 be amended by adding a new paragraph 13 to Part A of the Second Schedule as follows:-

Taxable supplies imported or purchased for direct and exclusive use in the construction of a minimum of three thousand housing units under the affordable housing scheme by a developer approved by the Cabinet Secretary for the time being responsible for housing.

Justification

The proposed amendments will:-

1. Allow fair competition between local and international suppliers making good the government's proposals to encourage local value addition.
2. Reduce the cost of the affordable housing unit.
3. In addition, reducing the number of units required makes it easier for more developers to take up the incentive as there will be lower capital outlay required.

MIN.NO.31/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH KIPKENDA AND CO. ADVOCATES

They submitted that:-

1. There should be inclusion of Limited Liability Partnerships as a form of a partnership as it enjoys both the benefits of a body corporate and a partnership hence a hybrid commercial entity under section 4.
2. The definition of commercial vehicle conflicts with that under Traffic act and this should be amended to harmonize the two definitions.
3. The amendment to introduce an exemption on payment stamp duty by first time home owners under section 117(1) is not clear as to who a first time home owner is. The Act should define who a first time home owner is and make a provision on what constitutes a first time home. This will serve as a loophole that may be employed to evade paying stamp duty as there is an issue determining who a first time home owner is.
4. They oppose exemption of liquefied petroleum gas. As this will have the effect of increasing the prices of the commodity beyond the reach of the ordinary Kenyan. Therefore, in order to encourage use of clean energy and conserve the environment LPG should remain a zero rated commodity instead focus should be on kerosene which not only has adverse impact on the environment but is also responsible for adulteration of fuel.

MIN.NO.32/DC-F/2018: ADJOURNMENT

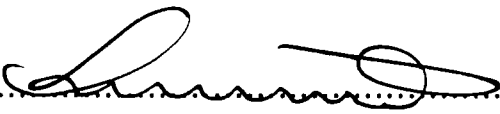
1. The Chairperson informed the meeting that the Principal Secretary, the National Treasury had informed him that he will be attending a Cabinet meeting the following day and thus will not be able to attend the meeting with the Committee. National Treasury would avail their written comments on the County Governments Retirement Scheme Bill, 2018 and the Tax Laws (amendment) Bill, 2018.
2. Members were reminded about the Committee's planned retreat to Bogoria from 28th May to 1st June, 2018. The Chairperson requested the Members to avail themselves to be able to conclude on the Bills under consideration.

MIN.NO.33/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 5.05pm. The next meeting will be held on 25th May, 2018 at 9.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE. 5/6/2018

MINUTES OF THE 3RD SITTING OF THE STAKEHOLDER CONSULTATIVE WORKSHOP OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 24TH MAY, 2018 AT BOMA HOTEL AT 9.00AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Purity W. Ngirici, MP
13. Hon. Samuel Atandi, MP
14. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Joshua C. Kandie, MP
4. Hon. Lydia H. Mizighi, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | – | Legal Counsel |
| 4. Mr. Chelang'a Maiyo | – | Research and Policy Analyst |
| 5. Mr. Collins Mahamba | – | Audio Officer |
| 6. Mr. John Njoro | – | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | – | Office Assistant |

KENYA WILDLIFE ASSOCIATION CONSERVANCIES ASSOCIATION

1. Mr. Dickson Kaelo – Chief Executive Officer

2. Ms. Gladys Warigia – Policy Co-ordinator

INSTITUTION OF SURVEYORS OF KENYA

1. Mr. Abraham Samoei – Chairman
2. Mr. Moses Kiambuthi – Chief Executive Officer
3. Mr. Robert Koech – Policy Officer
4. Dr. H.K. Mugha – Member
5. Mr. C. Waiganjo – Member
6. Mr. J. Kihoro – Member
7. Mr. B. Gachoka – Member
8. Mr. J. Ngugi – Member
9. Mr. E. Mwangi – Member

AGROCHEMICALS ASSOCIATION OF KENYA

1. Ms. Evelyn Lusenaka – Chief Executive Officer
2. Mr. Manoj Shah – Member
3. Mr. Junghae Waluae – Member
4. Mr. H.M. Macter – Member
5. Viktar Proshchanka – Member, GM Norbrook Ltd

FEDERATION OF KENYA PHARMACEUTICAL MANUFACTURERS

1. Mr. Rohin Vora – Chairman
2. Ms. Loise Wanja – Executive Officer
3. A. Pandya – Manager

KENYA ASSOCIATION OF MANUFACTURERS

1. Ms. Phylis Wakiaga – Chief Executive Officer
2. Ms. M. Bomett – Manager
3. Mr. G. Mbogo

PRICE WATERHOUSE COOPERS LIMITED

SPORTS BETTORS ASSOCIATION OF KENYA

1. Mr. Bonface Mbaluka – Secretary
2. Mr. Martin Mbui – Member

SPORTS BETTORS ASSOCIATION OF KENYA

1. Mr. S. Okoth – Director
2. Mr. Paul Mulei – Finance Manager
3. Mr. Robert Macharia – Executive Member
4. Mr. Peter K. Njoroge – Executive Member
5. Ms. Caroline Muikia – Accountant

KENYA OIL AND GAS ASSOCIATION

- | | | |
|-----------------------|---|---------------------|
| 1. Mr. Brian Muriuki | – | Chairman |
| 2. Ms. Rehema Mohamed | – | Head of Secretariat |
| 3. Mr. Julius Mulati | – | Senior Accountant |
| 4. Ms. Rebecca Barasa | – | Tax Advisor |
| 5. Mr. Gabriel Okoyo | – | Tax Advisor |

MIN.NO.19/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:30 a.m with prayer from the Hon. Joseph Oyula, MP. The Chairperson then called for introduction of those present before welcoming the meeting to deliberate on the day's agenda.

MIN.NO.20/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.21/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH THE KENYA WILDLIFE CONSERVANCIES ASSOCIATION

The Association submitted the following to the Committee-

1. Proposed VAT exemption on conservation fee levied on guests and tourist visiting wildlife conservancies. Under Section 24 of VAT Act, 2013, entry fee in national parks and reserves is VAT exempted. The differentiated treatment of wildlife conservancies from national parks and national reserves is an oversight considering conservancies are recognized as wildlife conservation areas under the Wildlife Conservation and Management Act, 2013.
2. Conservation fee is used by conservancies to support management of wildlife, employ conservancy rangers to support security for wildlife and guests and support social development including provision of water, health facilities, education and infrastructure development.
3. Section 5(2) of the VAT Act, 2013 provides that VAT tax payable shall be zero per cent if the supply is zero rated or in any other case, sixteen per cent (16%) of the taxable value of the taxable supply.
4. Conservation fee levied on guests and tourist visiting wildlife conservancies is subject to 16% VAT whereas fee in national parks and reserves tax exempted under section 24 of the VAT Act.
5. Conservation fee is used to support management of wildlife, employ conservancy rangers to support security for wildlife and guests and support social development.

6. Stamp duty on land leases registered for wildlife conservation should be tax exempt. The prohibitive cost of stamp duty on land registered for wildlife conservation is a major impediment to wildlife conservation in Kenya.
7. The potential income to government from charging stamp duty on conservation leases is far outweighed, by the multiple benefits provided by landowners conserving wildlife through income tax from wildlife tourism, provision of space for wildlife, creation of employment to local communities and development of local infrastructure including schools, dispensaries and provision of water.

MIN.NO.22/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH THE INSTITUTE OF SURVEYORS OF KENYA

They submitted that:-

- (a) The ISK is the professional organization in the country that brings together professionals in land and real estate sector.
- (b) The amendment of the Stamp duty Act, Cap 480 which provides for the levying and management of stamp duties, is central to the property ownership in Kenya. The assessment for Stamp Duty is one of the stages a home owner has to go through before they can have title documents in his/her name.
- (c) However, the process of establishing the value of the property to be purchased restrained by capacity constraints. The process is carried out by the Chief Government Valuer and his team of 44 Valuers in the entire country. This provision has denied the public of services of over 600 Valuers in private practice who can ease the burden by carrying out some or most of these valuations.
- (d) The valuers in Government service are overwhelmed as they are also involved in among other duties compulsory acquisition, valuation extension of lease, valuation for dispute resolution, and preparation of the land value index among other statutory valuations.
- (e) The effect of the delay in valuation and subsequent registration of title includes, low attainment of revenue to the Government as stamp duty taxes are never collected in time. In addition, the amounts declared by the would be purchasers are in most cases far below the open market thereby denying the government its rightful share of taxes.
- (f) Delays in the assessment for valuation has also resulted in property developers not offloading their properties in to the market at an appropriate speed. In most instances the valuation process takes approximately 4-8 whereas it should not take more than five days. This reduced period of finalizing transactions shall result in easement of liquidation of properties.
- (g) The pro-longed process results in lethargy which leads to increased corruption avenues.
- (h) The proposed amendment will ensure that the revenue and taxes collected government will increase in a large proportion from the Stamp Duty Taxes, enhance growth of the real estate sector, ease collection of the land value index and the process of issuance of title deeds shall be easier with no delays in the assessment of stamp duty
- (i) There is a standardization mechanism within the Vaulers Act that ensures professionalism in the process of valuation by licensed valuers.

The ISK proposed an amendment to section 10A.(1) of the Stamp Duty Act as follows–

10A. (1) The Collector of stamp duty shall require the purchaser or transferee or his/her agent to submit a valuation report from the Chief Government Valuer or a Registered and Practicing Valuer ascertaining the current market value for any conveyance or transfer on sale of any immovable property before registration of the relevant instrument for the determination of the stamp duty payable.

MIN.NO.23/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH THE AGROCHEMICALS ASSOCIATION OF KENYA, FEDERATION OF KENYA PHARMACEUTICAL MANUFACTURERS, KENYA ASSOCIATION OF MANUFACTURERS

They submitted that:-

The current Government has prioritized manufacturing as one of their big four agenda to be purposed within the five-year period. This is in line with the priorities the Country has set out in its development blue print document Vision 2030, to grow manufacturing sector to 15% of GDP.

The Bill will affect two sectors of the manufacturing sector under the Kenya Association of Manufacturers namely; The Pharmaceutical sector and the Agriculture sector (Agrochemical sub sector).

The key objective of players in the agricultural sector is for achievement of national food security. The agricultural sector is the main pillar of the Kenya's economy and estimates shows the sectors;

- i Contributes directly to 24% of the Gross Domestic Product (GDP);
- ii Indirectly 27% of GDP through linkages with sectors such as manufacturing and service sector;
- iii Approximately 45% of Government revenue is derived from agriculture;
- iv The sector contributes over 75% of industrial raw materials and more than 50% of the export earnings;
- v Employment accounts for 60 per cent of the total employment;
- vi Over 80% of the population, especially living in rural areas, derive their livelihoods mainly from agricultural related activities.

1. The **Agrochemicals Association of Kenya** proposed to maintain status quo on Zero rating of Agricultural pest control products as follows:

- (i) Insert the following paragraph under Schedule 2 of the VAT Act, 2013 immediately after paragraph;

104 Agricultural pest control products.

Justification

Zero rating of inputs and raw materials has enabled local manufacturers to get upfront remission of VAT on main inputs and therefore save on financing and avoid tying funds in delayed VAT refund disbursements.

2. The proposed exemption can only apply on direct inputs such as packaging materials and ingredients where quantities can be forecasted to enable application for exemption. Direct inputs such as electricity, transport, administrative expenses, labor, etc cannot be accommodated under the exemption and therefore will still continue to incur VAT.
3. VAT exemption will deny the manufacturers of local inputs e.g cartons the opportunity for getting VAT refunded. The VAT inputs will therefore become a component of the cost of the local inputs. This will make the final product price even more expensive.
4. Local manufacturing of such inputs will be discouraged because inputs that will come in tax free will be much cheaper. Consequently, food security will be threatened because most farmers will compromise on the usage of inputs.
5. Tax free importation of fully packaged pesticides will depress investments in local packaging industries which include carton, bottle, labels and cap manufacturers.
6. KRA should send to Treasury VAT net of refund to deal with issue of delays of issuance of refunds as result of zero rating.

The Association recommended that:-

- a) Zero rate all inputs and raw materials (either produced locally or imported) supplied to manufacturers of Agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for matters Agriculture. This will enable the manufacturers of pesticides to apply for upfront remission of VAT on direct inputs at point of purchase.

And

- b) Zero rate finished Agricultural pest control products to enable the manufacturers to claim any VAT incurred on indirect inputs like electricity, transport, labour etc that may not be quantified for remission.

or

- c) Zero rate finished Agricultural pest control products.

Federation of Kenya Pharmaceutical Manufacturers submitted that the proposed tax amendments affecting the manufacturing sector is in contradiction with the Big Four Agenda, specifically the Pillar Country Strategy of H.E. Uhuru Kenyatta on the local manufacturing sector and the affordable healthcare.

Local Pharmaceutical Manufacturers play a critical role in contributing to the achievement of these two Pillars, namely affordable Universal Healthcare and Local Manufacturing, however the proposed amendments in the Bill will increase local manufactured medicine costs as follows;

- i) These higher costs will be transferred to consumers and thus increasing healthcare costs. (Affecting the affordable Healthcare pillar).
- ii) These higher costs will make local manufacturing less competitive against similar imports. (Affecting the local manufacturing pillar).

- iii) The promotion of local manufacturing of generic drugs has been the key driver for many countries around the world such as India and has successfully been used to reduce high healthcare costs and promote the home industry.

The promotion of local manufacturing of generic drugs has been the key driver for many countries around the world such as India and has successfully been used to reduce high healthcare costs and promote the home industry.

In Kenya, high healthcare costs are linked to poor healthcare coverage. Imported medicines still covers 70% (in value terms) of the market demands (around US\$ 1 billion/year), at much higher prices than local manufactured medicines of same quality. Drug costs in Kenya can make up an average of 45% of patients hospital bills, causing losses in both, the private and public health insurance sector. Insurance monthly topping are exhausted after the first 5 days of every month because of the high medicine costs, forcing even the 36% of health insured Kenyans to pay out of pocket to cover their monthly treatments.

The amendments proposed in the new Tax Bill 2018, moving the importation and local procured raw and packaging materials from “zero rate VAT” to “exempt VAT” for the pharmaceutical industry will increase local manufactured costs, making more convenient to import goods, as the manufacturing sector will be not be refunded of VAT costs of local inputs.

Local suppliers of raw materials and packaging materials will also not be able to claim back the VAT they have paid on their inputs and thus will increase their cost which in turn will be passed to the local pharmaceutical manufacturers (prices to local manufacturers will increase up to 16%). This will lead local manufacturers to:

- i) Import items instead of procuring them locally, affecting also the indirect sector.
- ii) The higher production costs will directly be transferred to consumers, making local manufacturing disadvantageous and less competitive, on both, local market and exports.
- iii) The difference between “Zero rate VAT” and “Exempt VAT” status is that where industries and / or commodities fall under “Zero rate VAT” status, Input VAT is claimable. However, where industries and / or commodities fall under “Exempt VAT” status, the manufacturers are not able to claim their Input VAT and as such the Input VAT becomes part of the manufacturing cost.

They propose the following the Zero rating of inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as follows:

(i) Delete the following paragraph under Schedule 1 of the VAT Act, 2013 immediately after paragraph 93;

100Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as

approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.

(ii) Insert the following paragraph under Schedule 2 of the VAT Act, 2013 immediately after paragraph;

100 Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.

They further propose to Zero rate inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as follows-

(i) Delete the following paragraph 103 under Schedule 1 and substitute it under Schedule 2 of the VAT Act, 2013;

107. Medicaments of specified tariffs numbers;

MIN.NO.24/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH THE PRICE WATERHOUSE COOPERS LIMITED

They submitted that:-

1. The proposed tax amendments affecting the manufacturing sector is in contradiction with the Big Four Agenda, specifically the Pillar Country Strategy of H.E. Uhuru Kenyatta on the local manufacturing sector and the affordable healthcare.
2. Local Pharmaceutical Manufacturers play a critical role in contributing to the achievement of these two Pillars, namely affordable Universal Healthcare and Local Manufacturing, however the proposed amendments in the Bill will increase local manufactured medicine costs.
3. The amendments will lead to adverse financial implications to the sector as the non-recoverable VAT would result in additional costs that would either be borne by pharmaceutical manufacturers or more likely passed on to consumers.
4. They proposed that the status quo of VAT on zero rate on medicaments be maintained and inputs or raw materials supplied or the introduction of a new schedule to the Act with a concessionary VAT rate of not more than 6% VAT on medicaments and related raw materials /inputs for local manufacture.

MIN.NO.25/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH THE SPORTS BETTORS ASSOCIATION OF KENYA, ASSOCIATION OF GAMING OPERATORS IN KENYA AND KENYA CHARITY SWEEPSTAKE

Sports Bettors Association of Kenya

They submitted that:-

1. There should be a rationalization of the 20% withholding tax on the winnings.

2. The proposal of **twenty percent** should be deleted and replaced with **three percent**.
3. Taxation on winnings is unfair as it overlooks the fact that losses are also incurred in the process of betting.
4. Taxation should target earnings/income and not only winnings. What should be taxed is the difference between winnings and losses which is what can be rightly termed as income.
5. Individual bettors should divulge this information at the point of filling their income tax returns.
6. This is the best practice adopted in more advanced jurisdictions like Las Vegas in the USA and which we should consider borrowing.
7. Any winnings below Kshs. 100,000 should not be taxed.
8. The Betting industry is one of the biggest contributors to revenue collection by the government.

Association of Gaming Operators in Kenya

They proposed the following definition of “winnings”-

“winning” Means the positive difference between payouts made and stakes placed in a given accounting period, for each player, payable to punters by bookmakers licensed under Cap 131 (Betting Lotteries and Gaming Act)

Provided that for purposes of withholding tax collection, under this Act, the requirements for provision of Personal Identification Numbers and issuance of Withholding Tax Certificates shall not apply.

Insertion of the following immediately after subparagraph (h) in the Third schedule Head B

Paragraph 3

(i) In respect of winnings, five per cent

Paragraph 5

(ii) In respect of winnings, five per cent

Justification

The amendment will clarify the WHT in respect of winnings earned from gaming to make it implementable and avoid occurrence of the collection challenges that existed. The amendments also ensure that Act complies with the constitutional principle that taxation should be fair on all Kenyans.

Kenya Charity Sweepstake

They informed the meeting that the Kenya Charity Sweepstake is the oldest charitable organization in Kenya established in 1966. Unlike the pure profit driven commercial Betting and gaming firms proliferation in Kenya and driving revenues and growth in the market, their core segment, that is, Charities has come under tremendous pressure in the industry suppressing both their growth and ability to sustain their historical fundamental objective of giving to charity.

They proposed the following amendments-

- (a) Delete “turnover” and insert “net revenue” and justification is that all the others such as gaming (section 55A) and bookmakers are deducted on gaming revenues thus making Kenya Charity Sweepstake disadvantaged. Reference section 79(2) of 2016 Finance Act. Appendix 1 and 2.
- (b) Allow threshold on withholding tax to be Kshs. 10,000 and above. The justification is that their prizes start from Ksh 20 (Twenty Shillings). These small prizes are difficult to withhold as they are dispensed by thousands of their agents.

MIN.NO.26/DC-F/2018: MEETING TO DELIBERATE ON THE TAX LAWS (AMENDMENT) BILL, 2018 WITH THE KENYA OIL AND GAS ASSOCIATION

They submitted that:-

Value Added Tax (VAT)

- (i) Zero rate both goods and services procured by IOCs and their sub-contractors on all exploration and development petroleum activities.
- (ii) Alternatively expand the scope of the current exemption for goods to include services for all pre-production activities, noting exemption does not fully solve the issue

Justification

The failure to grant VAT remission on services will result in additional cost of 16% to the O&G projects.

Import Declaration Fee, Railway Development Levy

Exempt IDF and RDL on goods imported by E&P companies for all petroleum operations thus affirming the Product Sharing Contracts(PSC) and East African Community Customs Management Act treatment exempting RDL and IDF for all imports is accepted and a mechanism to allow for this is put in place

Justification

1. The cumulative additional cost on importation being 3.5% of the CIF value of goods and equipment imposes a significant and additional cost on the industry and diverts capital from core exploration and development activities.
2. The disregard of the PSCs reduces investor confidence and trust in agreements signed with the Government of Kenya.

Withholding Tax

1. Funding for pre-development activities should be specifically exempted from deemed interest provisions.
2. Exempt reimbursement, mobilisation and demobilisation charges from WHT as these are not provision of services.
3. Clearly state the definition of NRI in the legislation and/or provide clarification to exempt Farm-out transactions from WHT.

Justification

1. WHT on deemed interest results in a reduction of capital available for investment by 20%.
2. WHT on reimbursements, mobilization increases the project costs by 20%
3. Current legislation wording discourages Farm-down transactions which is a critical source of funding in the O & G industry and an enabler to financing exploration and development activities.

MEMBERS' DELIBERATION

1. The Institute of Surveyors of Kenya should come up with a standardization mechanism of ensuring valuation is harmonized and instances of varying valuations for the same property are limited.
2. The Committee noted that it was important to look for ways of stopping the illegal casino machines that had been set up in many parts of the country.

MIN.NO.27/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 2.15pm. The next meeting will be held at 3.30pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 8/6/2018

