

THE FINANCE BILL, 2022

A Bill for

AN ACT of Parliament to amend the laws relating to various taxes and duties; and for matters incidental thereto

ENACTED by the Parliament of Kenya, as follows –

PART I –PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Finance Act, 2022 and shall come into operation or be deemed to have come into operation as follows –

- (a) sections 3, 6, 11, 15, 16, 21(b) and 31, on the 1st January, 2023; and
- (b) all other sections, on the 1st July, 2022.

PART II –INCOME TAX

Amendment of section 2 of Cap. 470.

2. Section 2 of the Income Tax Act is amended by inserting the following new definitions in proper alphabetical sequence –

“fair market value” means the comparable market price available in an open and unrestricted market between independent parties acting at arm's length and under no compulsion to transact, which is expressed in terms of money or money's worth;

“financial derivative” means a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date; and

“permanent home” means a place where an individual resides or which is available to that individual for residential purposes in Kenya, or where in the opinion of the Commissioner the individual’s personal or economic interests are closest.

Amendment of section 3 of Cap. 470.

3. Section 3 of the Income Tax Act is amended in subsection (2) by adding the following new paragraph immediately after paragraph (h) –

(i) gains from financial derivatives.

Amendment of section 4A of Cap. 470.

4. Section 4A of the Income Tax Act is amended in subsection (1) by deleting subparagraph (ii)(a) of the proviso and substituting therefor the following new subparagraph –

(a) where the foreign exchange loss is realized by a company whose gross interest paid or payable to related persons and third parties exceeds thirty per cent of the company’s earnings before interest, taxes, depreciation and amortization in any financial year.

Amendment of section 5 of Cap. 470.

5. Section 5 of the Income Tax Act is amended –

(a) in subsection (5), by deleting paragraph (a) of the proviso and substituting therefor the following new paragraph –

(a) in the case of an employee share ownership plan, the value of the benefit shall be the difference

between the offer price, per share, at the date the option is granted by the employer, and the market value, per share on the date when the employee exercises the option;

(b) in subsection (6), by deleting paragraph (a) and substituting therefor the following new paragraph –

(a) the benefits chargeable shall be deemed to have accrued on the date the employee exercises the option.

Amendment of section 9 of Cap. 470.

6. Section 9 of the Income Tax Act is amended by adding the following new subsections immediately after subsection (2) –

(3) Where a resident person enters into a financial derivatives contract with a non-resident person, any gain accruing to the non-resident person from that arrangement shall be subject to tax at the rate specified in the Third Schedule.

(4) The provisions of subsection (3) shall be carried out in accordance with Regulations made by the Cabinet Secretary.

Amendment of section 11 of Cap. 470.

7. Section 11 of the Income Tax Act is amended by deleting subsection (3A).

Amendment of section 12E of Cap. 470.

8. Section 12E of the Income Tax Act is amended by adding the following proviso to subsection (1) –

Provided that this section shall not apply to a non-resident person with a permanent establishment in Kenya.

Amendment of section 15 of Cap. 470.

9. Section 15 of the Income Tax Act is amended –

(a) in subsection (2) –

(i) by deleting the words “as defined in the Second Schedule” appearing in paragraph (l);

(ii) by deleting paragraph (w) and substituting therefor the following new paragraph –

(w) any donation in that year of income to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Cabinet Secretary responsible for matters relating to finance;

(iii) by deleting paragraph (y);

(b) by deleting the subsection (4A).

Amendment of section 16 of Cap. 470.

10. Section 16 of the Income Tax Act is amended in the proviso to subsection (2)(j) by adding the following new subparagraph immediately after subparagraph (iii)(B) –

No. 19 of 2006.

(C) microfinance institutions licensed under the Microfinance Act, 2006.

Repeal and replacement of section 18A of Cap. 470.

11. The Income Tax Act is amended by repealing section 18A and replacing it with the following new section –

Ascertainment of gains and profits of business in a preferential tax regime.

18A. (1) Where –

- (a) a resident person carries on business with a related resident person operating in a preferential tax regime; or
- (b) a resident person carries on business with –
 - (i) a non-resident person located in a preferential tax regime; or
 - (ii) an associated enterprise of a non-resident person located in a preferential tax regime; or
 - (iii) a permanent establishment of a non-resident person operating in Kenya

where the non-resident person is located in a preferential tax regime,

and the business produces no gains or produces less gains than those which would have been expected to accrue from that business if the business activity was not with a party in a preferential tax regime, the gains of that resident person from that business shall be deemed to be the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length, or if none of the parties were located in a preferential tax regime.

(2) For the purposes of this section, "preferential tax regime" means –

- (a) any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or
- (b) a foreign jurisdiction which –
 - (i) does not tax income;
 - (ii) taxes income at a rate that is less than twenty per cent;

- (iii) does not have a framework for the exchange of information;
- (iv) does not allow access to banking information; or
- (v) lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.

Repeal and substitution of section 18B of Cap. 470.

12. The Income Tax Act is amended by repealing section 18B of the Act and substituting therefor the following new section –

Application of sections 18C, 18D, 18E and 18F.

18B. The provisions of sections 18B, 18C, 18D, 18E, and 18F shall apply to returns for the year of income 2022 and subsequent years of income.

Insertion of new sections 18C, 18D, 18E and 18F in Cap. 470.

13. The Income Tax Act is amended by inserting the following new sections immediately after section 18B –

Notification to the Commissioner.

18C. (1) A multinational enterprise group or a constituent entity, other than an excluded multinational enterprise group, that is resident in Kenya, shall notify the Commissioner, not later than

the last day of the reporting financial year of that group –

- (a) whether or not it is the ultimate parent entity of the group;
- (b) in case it is not the ultimate parent entity of the group, whether or not it is a surrogate parent entity; or
- (c) in case paragraphs (a) and (b) do not apply, the identity of the constituent entity which is the ultimate parent entity or surrogate parent entity and the tax residence of that constituent entity.

(2) The notification referred to in subsection (1) shall be made to the Commissioner in such form as the Commissioner may specify.

Filing of country-by-country report, master file and local file.

18D. (1) An ultimate parent entity or a constituent entity of a multinational enterprise group with a gross turnover of ninety-five billion shillings (including extraordinary or investment income) that is resident in Kenya shall file a country-by-country report with the Commissioner of its financial activities in Kenya and for all other jurisdiction where the group has taxable presence.

(2) An ultimate parent entity shall file the country-by-country report referred to under subsection (1) not later

than twelve months after the last day of the reporting financial year of the group.

(3) In addition to the provisions in subsection (1), an ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file to the Commissioner in such manner as the Commissioner may specify.

(4) The master file and the local file shall be filed not later than six months after the last day of the reporting financial year of the multinational enterprise group.

(5) A country-by-country report filed under subsection (1) shall consist of

—

- (a) the information relating to the identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity;
- (b) the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and

tangible assets other than cash or cash equivalents with regard to each jurisdiction where the group has taxable presence; and

- (c) any other information as maybe required by the Commissioner

(6) A master file under subsection (3) shall contain –

- (a) a detailed overview of the group;
- (b) the group's growth engines;
- (c) a description of the supply chain of the key products and services;
- (d) the group's research and development policy;
- (e) a description of each constituent entity's contribution to value creation;
- (f) information about intangible assets and the group intercompany agreements associated with them;
- (g) information on any transfer of intangible assets within the group

during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;

- (h) information about financing activities of the group;
- (i) the consolidated financial statements of the group;
- (j) tax rulings, if any, made in respect of the group; and
- (k) any other information that the Commissioner may require.

(7) A local file under subsection (3) shall contain –

- (a) details and information on the resident constituent entity's activities within the multinational enterprise group;
- (b) management structure of the resident constituent entity;
- (c) business strategies including structuring,

description of the material-controlled transactions, the resident constituent entity's business and competitive environment;

- (d) the international transactions and amounts paid to the resident constituent entity or received by the entity; and
- (e) any other information that the Commissioner may require.

(8) Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity.

(9) A resident surrogate parent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if –

- (a) the ultimate parent entity is obligated to file a country-by-country report in its jurisdiction of tax residence;

- (b) the jurisdiction in which the ultimate parent entity is resident for tax purposes has an international agreement and a competent authority agreement in force; and
- (c) the Commissioner has not notified the resident constituent entity in Kenya of a systemic failure, if any.

(10) A resident constituent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if –

- (a) a non-resident surrogate parent entity files the country-by-country report on the group with the competent authority of the tax jurisdiction of the entity;
- (b) the jurisdiction in which the non-resident surrogate parent entity is resident requires the filing of country-by-country reports;
- (c) the competent authority of the jurisdiction in which the non-resident surrogate parent entity is resident and Kenya have a competent authority

agreement for the exchange of information;

- (d) the competent authority in the jurisdiction where the non-resident surrogate parent is resident has not notified Kenya of a systemic failure; or
- (e) the non-resident parent entity has notified the competent authority in the jurisdiction of its tax residence that the entity is the designated surrogate parent entity of the group.

No. 47 of 2015. (11) The Commissioner shall maintain the confidentiality of the information contained in a return submitted in accordance with section 6(1) and section 6A(2) of the Tax Procedures Act 2015.

Offences and penalties.

18E. A person who fails to comply with the provisions of sections 18C and 18D commits an offence and shall be subject to the penalties prescribed under the Tax Procedures Act, 2015.

Definitions.

18F. For the purposes of sections 18C, 18D and 18E –

“competent authority agreement” means an agreement between authorized representatives of jurisdictions which are parties to an international agreement that

requires the exchange of country-by-country reports;

“consolidated financial statements” means financial statements of a multinational enterprise group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single enterprise;

“constituent entity” means –

- (a) any separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or which would be so included if equity interests in such business unit of a multinational enterprise group were traded on a public securities exchange;
- (b) any such business unit that is excluded from the multinational enterprise group’s consolidated financial statements solely on size or materiality grounds;
- (c) any permanent establishment of any separate business unit of the multinational enterprise group included in paragraphs (a) or (b) provided

that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“a country-by-country report” means a report filed under section 18D(1) describing the financial activities of each constituent entity in all the jurisdictions where the group has taxable presence;

“excluded multinational enterprise group” means, with respect to any financial year of the group, a group having total consolidated group revenue of less than the amount specified in section 18D(1);

“group” means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange and includes a single enterprise with one or more foreign permanent establishments;

“international agreement” means a bilateral or multilateral tax agreement to which Kenya is a party which provides for the exchange of tax information between Kenya and other jurisdictions;

“local file” means a file under section 18D(7) containing material transactions of the local taxpayer;

“master file” means a file under section 18D(6) containing standardized information relevant for all multinational enterprise group members;

“multinational enterprise group” means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction;

“reporting financial year” means an annual accounting period with respect to which the ultimate parent entity of the multinational enterprise group prepares its financial statements;

“surrogate parent entity” means one constituent entity of the multinational enterprise group appointed by such group to file the country-by-country report in that constituent entity’s jurisdiction of tax residence, on behalf of the group;

“systemic failure” means failure to comply with the competent authority agreement for reasons other than those provided in the agreement;

“ultimate parent entity” means an entity that –

- (a) is resident in Kenya for tax purposes;
- (b) is not controlled by another entity; and
- (c) owns or controls a multinational enterprise group.

Amendment of section 31 of Cap. 470.

14. Section 31 of the Income Tax Act is amended in subsection (1)(a) by deleting the words “he has paid a premium for an insurance made by him on his life or the life of his wife or of his child” and substituting therefor the words “the individual has paid a premium for an insurance made by the individual on the individual’s life or the life of the individual's spouse or child”.

Amendment of section 34 of Cap. 470.

15. Section 34 of the Income Tax Act is amended –

- (a) in subsection (1), by deleting the expression “five per cent” appearing in paragraph (j) and substituting therefor the expression “fifteen per cent”;
- (b) in subsection (2), by adding the following new paragraph immediately after paragraph (p) –
 - (q) gains from financial derivatives.

Amendment of section 35 of Cap. 470.

16. Section 35 of the Income Tax Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (o) –

(p) gains from financial derivatives.

Amendment of section 37 of Cap. 470.

17. Section 37 of the Income Tax Act is amended by deleting subsection (3).

Amendment of section 39 of Cap. 470.

18. Section 39 of the Income Tax Act is amended –

- (a) in subsection (2), by deleting the expression “section 10(e)” and substituting therefor the expression “section 10(1)(e)”;
- (b) in subsection (3), by deleting the expression “section 10(e)” wherever it occurs and substituting therefor the expression “section 10(1)(e)”;
- (c) in subsection (4), by deleting the expression “section 10(e)” and substituting therefor the expression “section 10(1)(e)”.

Amendment of the First Schedule to Cap. 470.

19. The First Schedule to the Income Tax Act is amended –

- (a) by deleting the following paragraph –
 - 57. The income or principal sum of a registered family trust.
- (b) by deleting the following paragraph –
 - 58. Any capital gains relating to the transfer of title of immovable property to a family trust.

- (c) by adding the following new paragraph immediately after paragraph 60 –

61. Any capital gains relating to the transfer of title of immovable property to a family trust.

Amendment of
the Second
Schedule to Cap.
470.

20. The Second Schedule to the Income Tax Act is amended –

- (a) in the proviso to paragraph (1), by deleting the words “through the national grid” appearing in the definition of “manufacture”;
- (b) by inserting the following new paragraph immediately after paragraph (1A) –

(1B) The provisions of paragraph (1A)

–

- (a) shall only apply to items listed under paragraph 1(a)(I) and (ii) and paragraph 1(b)(a) of the Second Schedule; and
- (b) shall not apply to investments which, due to the nature of their business, have to be located in places which are outside Nairobi City county and Mombasa county.

Amendment of
the Third
Schedule to Cap.
470.

21. The Third Schedule to the Income Tax Act is amended in paragraph 3 of Head B –

- (a) by deleting the expression “one-point five percent” appearing in paragraph 12 and substituting therefor the expression “three percent; and
- (b) by adding the following new subparagraph immediately after subparagraph (q) –
 - (r) in the case of gains from financial derivatives, fifteen per cent of such gains.

PART II –VALUE ADDED TAX

Amendment of section 5 of No. 35 of 2013.

22. Section 5 of the Value Added Tax Act, 2013 is amended in subsection (9) by deleting the words “sell or provide services, goods or other property” and substituting therefor the words “sell goods or provide services”.

Amendment of section 10 of No. 35 of 2013.

23. Section 10 of the Value Added Tax Act, 2013 is amended by inserting the following new subsection immediately after subsection (1) –

(1A) The provisions of subsection (1) shall not apply to taxable supplies made under section 5(7).

Amendment of section 17 of No. 35 of 2013.

24. Section 17 of the Value Added Tax Act, 2013 is amended –

- (a) in subsection (1), by inserting the words “in a return for the period” immediately after the words “deducted by the registered person”;

(b) in subsection (3), by adding the following new paragraph immediately after paragraph (e) –

(f) any other documentation that the Commissioner may require for the purposes of validating the input tax.

Amendment of section 22 of No. 35 of 2013.

25. Section 22 of the Value Added Tax Act, 2013 is amended in subsection (4) by adding the following proviso –

Provided that –

No. 29 of 2015.

(i) the Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and

(ii) in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

Repeal of section 30 of No. 35 of 2013.

26. The Value Added Tax Act, 2013 is amended by repealing section 30.

Amendment of section 34 of No. 35 of 2013.

27. Section 34 of the Value Added Tax Act, 2013 is amended in subsection (1) by adding the following proviso –

Provided that this section shall not apply to persons supplying imported digital services over the internet or an electronic network or through a digital marketplace.

Amendment of First Schedule to No. 35 of 2013.

28. The First Schedule to the Value Added Tax Act, 2013 is amended –

(a) in Section A of Part I –

(i) by deleting paragraph 63:

Provided that notwithstanding this subparagraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the supply of taxable goods and which is in force at such commencement shall continue to apply until the supply of the exempted taxable goods is made in full.

(ii) by deleting paragraph 108;

(iii) inserting the words “and pellets” immediately after the word “briquettes” appearing in paragraph 137; and

(iv) by adding the following new paragraphs immediately after paragraph 139 –

140. Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health.

141. Medical oxygen supplied to registered hospitals.
142. Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use.
143. Inputs and raw materials used in the manufacture of passenger motor vehicles.
144. Locally Manufactured passenger motor vehicles:

Provided that in this paragraph “locally manufactured passenger motor vehicle” shall mean a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

- (b) in Part II, by deleting paragraph 27:

Provided that notwithstanding this paragraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the

supply of taxable services and which is in force at such commencement shall continue to apply until the supply of the taxable services is made in full.

Amendment of the Second Schedule to No. 35 of 2013.

29. The Second Schedule to the Value Added Tax Act, 2013 is amended –

(a) in part A, by deleting the following paragraph –

20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour by more than ten per cent in weight:

Provided that this paragraph shall be in operation for a period of six months after assent.

(b) in Part B, by deleting paragraph 9.

PART III –TAX APPEALS TRIBUNAL

Repeal and replacement of section 32 of No. 40 of 2013.

30. The Tax Appeals Tribunal Act, 2013 is amended by repealing section 32 and replacing it with the following new section –

Appeals to the High Court against decisions of the Tribunal.

32. (1) A party dissatisfied with a decision of the Tribunal under section 29 may appeal to the High Court within thirty days after being notified of the decision or within such longer period as the High Court may allow.

(2) Before filing an appeal under subsection (1), the appellant shall deposit with the Commissioner fifty per

cent of the disputed tax in a special account at the Central Bank of Kenya.

(3) The provisions of subsection (2) shall not apply where the appeal has been filed by the Commissioner.

(4) The High Court shall hear appeals under this section in accordance with rules prescribed by the Chief Justice.

(5) Where all appeals have been exhausted and the court has ruled in favour of the aggrieved person, the Commissioner shall refund the monies deposited by that person under subsection (2) within thirty days after the determination of the court.

PART IV –EXCISE DUTY

Amendment of
section 10 of No.
23 of 2015

31. Section 10 of the Excise Duty Act, 2015 is amended by adding the following proviso to subsection (1) –

Provided that the Commissioner may, by notice in the *Gazette* and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year in respect of such products.

Amendment of
section 11 of No.
23 of 2015

32. Section 11 of the Excise Duty Act, 2015 is amended in paragraph (a) by deleting the words “other than to a purchaser”.

Amendment of section 36 of No. 23 of 2015.

33. Section 36 of the Excise Duty Act, 2015 is amended in subsection (4) by adding the following proviso –

Provided that –

No. 29 of 2015.

- (i) the Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and
- (ii) in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

Amendment of the First Schedule to No. 23 of 2015.

34. The First Schedule to the Excise Duty Act, 2015 is amended –

- (a) in paragraph 1 of Part I, by deleting the following descriptions and corresponding rates of duty appearing in the second table –
 - (i) electronic cigarettes;
 - (ii) cartridges for use in electronic cigarettes;
- (b) in the second table appearing in paragraph 1 of Part I –
 - (i) by deleting the expression “shush. 12.17 per litre” in respect of the tariff description “Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other

- sweetening matter” and substituting therefor the expression “shush. 13.30 per litre”;
- (ii) by deleting the expression “10%” in respect of the tariff description “Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307” and substituting therefor the expression “15%”;
- (iii) by deleting the expression “she. 6.03 per litre” in respect of the tariff description “Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices” and substituting therefor the expression “shush. 6.60 per litre”;
- (iv) by deleting the expression “shush. 121.85 per litre” in respect of the tariff description “Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%” and substituting therefor the expression “shs. 134 per litre”;
- (v) by deleting the expression. “shs. 121.85 per kg” in respect of the tariff description “powdered

- beer” and substituting therefor the expression “shs. 134 per kg”;
- (vi) by deleting the expression “shs. 208.20 per litre” in respect of the tariff description “Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits” and substituting therefor the expression “shs. 229 per litre”;
- (vii) by deleting the expression “shs. 278.70 per litre” in respect of the tariff description “Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%” and substituting therefor the expression “shs. 335.30 per litre”;
- (viii) by deleting the expression “Shs. 13,906.04 per kg” in respect of the tariff description “Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes” and substituting therefor the expression “Shs. 13,296.6 per kg”;
- (ix) by deleting the expression “shs. 3,447.61 per mille” in respect of the tariff description “Cigarette with filters (hinge lid and soft cap)” and substituting therefor

- the expression “Shs. 3,825.99 per mille”;
- (x) by deleting the expression “shs. 2,502.74 per mille” in respect of the tariff description “Cigarettes without filters (plain cigarettes)” and substituting therefor the expression “Shs. 2,752.97 per mille”;
 - (xi) by deleting the expression “Shs. 9,734.45 per kg” in respect of the tariff description “Other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences” and substituting therefor the expression “Shs. 10,707.88 per kg”;
 - (xii) by deleting the expression “Shs. 12,185.16 per unit” in respect of the tariff description “Motorcycles of tariff no. 8711 other than motorcycle ambulances and locally assembled motorcycles” and substituting therefor the expression “Shs. 13,403.64 per unit”;
 - (xiii) by deleting the expression “Shs. 36.74 per kg” in respect of the tariff description “Imported sugar confectionary of tariff heading

17.04” and substituting therefor the expression “Shs. 40.37 per kg”;

- (xiv) by deleting the tariff description “White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00” and the corresponding rate of excise duty and substituting therefor the following new tariff description and corresponding rate of excise duty –

<i>Description</i>	<i>Tariff description</i>
White chocolate, chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00	Shs. 242.29 per kg

- (xv) by deleting the expression “10%” in respect of the tariff description “Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117” and substituting the expression “15%”;
- (xvi) by deleting the tariff description “Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) and the proviso thereto and substituting therefor the tariff

description “Glass bottles (excluding glass bottles for packaging of pharmaceutical products)”;

- (xvii) by deleting the tariff description “Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences” and the corresponding rate of excise duty and substituting therefor the following new tariff description and corresponding rate of excise duty –

<i>Description</i>	<i>Tariff description</i>
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary	Shs. 2,500

responsible for
matters relating to
health and other
manufactured
tobacco and
manufactured
tobacco substitutes
that have been
homogenized and
reconstituted
tobacco, tobacco
extracts and
essences

- (xviii) by inserting the expression “and 3923.90.90” immediately after the expression “3923.30.90” appearing in the tariff description “Articles of plastic of tariff heading 3923.30.00”;
- (xix) by inserting the expression “and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00” immediately after the expression “07.01” appearing in the tariff description “Imported potatoes, potato crisps and potato chips of tariff heading 07.01”.
- (c) by adding the following new items at the end of the second table appearing in paragraph 1 of Part I –

<i>Description</i>	<i>Rate of Excise Duty</i>
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Electronic cigarettes and other nicotine delivery devices	40%
Liquid nicotine for electronic cigarettes	shs. 70 per millilitre
Ice cream and other edible ice whether or not containing cocoa of tariff number 2105.00.00	15%

(d) in Part II –

- (i) by deleting the expression “seven-point five per cent” appearing in paragraph 4A and substituting therefor the expression “twenty per cent”;
- (ii) by deleting the expression “seven-point five per cent” appearing in paragraph 4B and substituting therefor the expression “twenty per cent”;
- (iii) by deleting the expression “seven-point five per cent” appearing in paragraph 4C and substituting therefor the expression “twenty per cent”;
- (iv) by deleting the expression “seven-point five per cent” appearing in paragraph 4D and substituting therefor the expression “twenty per cent”

- (v) by adding the following new paragraph immediately after paragraph 5 –

6. Excise duty on fees charged on advertisement by television stations, print media, billboards and FM radio stations on alcoholic beverages, betting, and gaming, lottery and prize competitions shall be at the rate of fifteen per cent.

Amendment of
the Second
Schedule to No.
23 of 2015.

35. The Second Schedule to the Excise Duty Act, 2015 is amended in Part A by adding the following new paragraphs immediately after paragraph 14 –

15. Fertilized eggs of tariff numbers 0407.11 and 0407.19 imported by hatcheries, upon recommendation by the Cabinet Secretary responsible for matters relating to livestock.

16. Neutral spirit imported or purchased locally by registered pharmaceutical manufacturers upon approval by the Commissioner.

17. Locally manufactured passenger motor vehicles:

Provided that in this paragraph, “locally manufactured passenger motor vehicle” means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value

comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

PART V –TAX PROCEDURES

Amendment of section 9 of No. 29 of 2015.

36. Section 9 of the Tax Procedures Act, 2015 is amended in paragraph (b)(iii) by inserting the words “whether the entity is carrying out business or not” immediately after the words “the trust”.

Amendment of section 31 of No. 29 of 2015.

37. Section 31 of the Tax Procedures Act, 2015 is amended by adding the following new subsection immediately after subsection (4) –

(5) In the case of value added tax, the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

Repeal and replacement of section 40 of No. 29 of 2015.

38. The Tax Procedures Act, 2015 is amended by repealing section 40 and replacing it with the following new section –

Security on property for unpaid tax.

40. (1) Where a taxpayer, being the owner of property in Kenya, fails to pay a tax by the due date, the Commissioner may notify the Registrar in writing that the property, to the extent of the taxpayer’s interest in the property, shall be the subject of a security for the unpaid tax specified in the notification:

Provided that the Commissioner shall, within seven days from the date of the notification to the Registrar, by notice in writing inform the taxpayer

and any other person who may have an interest in the property about the notification.

(2) Where the Registrar has been notified by the Commissioner under subsection (1), the Registrar shall, without levying or charging a fee, register the Commissioner's notification as if it were an instrument of restraint on the disposal, mortgage on, or charge, as the case may be, the property specified in the notification.

(3) A registration under subsection (2) shall, subject to any prior restraint on disposal, mortgage or charge, operate as a legal restraint on the disposal, mortgage, or charge on, the property to secure the amount of the unpaid tax, and any prior restraint shall supersede the Commissioner's notification.

(4) The Commissioner shall, upon the payment of the whole of the amount of unpaid tax secured under this section, direct the Registrar in writing to cancel the notification made under subsection (2), and the Registrar shall, without levying or charging a fee, record the cancellation of the notification and the notification shall cease to apply.

(5) Where the taxpayer fails to pay the tax liability described in the notification under subsection (1) within

two months after receipt of the notification, the Commissioner or authorised officer may, at the cost of the taxpayer, dispose of the property that is the subject of the restraint on disposal, mortgage or charge, by public auction or private treaty, or as provided for under the relevant Act for the recovery of the tax.

(6) Subject to section 34, where the property is subject to a prior restraint, that prior restraint shall have priority if the property is disposed of under subsection (5).

(7) For the purpose of this section –

“property” means land or building, aircraft, ship, motor vehicle, or any other property which the Commissioner may deem sufficient to serve as security for unpaid taxes;

“Registrar” includes –

- (a) the Land Registrar defined in section 3 of this Act;
- (b) the Registrar of Ships appointed under section 14 of the Kenya Maritime Authority Act, 2006;
- (c) the Director-General of the Kenya Civil Aviation Authority appointed under

No.5 of 2006.

No. 21 of 2013. section 19 of the Civil Aviation Act, 2013;

No. 33 of 2012. (d) the Director-General of the National Transport and Safety Authority appointed under section 15 of the National Transport and Safety Authority Act, 2012; or

(e) any other person who the Commissioner is satisfied has authority to hold property sufficient to serve as security for unpaid taxes;

No. 5 of 2006. “relevant Act” includes the Kenya Maritime Authority Act, 2006,
No. 4 of 2009. Merchant Shipping Act, 2009, Civil
No. 3 of 2012. Aviation Act, 2013, Land Registration
No. 6 of 2012. Act, 2012, Land Act 2012, National
No. 33 of 2012. Transport and Safety Act, 2012, or any
No. 21 of 2013. other Act that provides for the registration of property.

Repeal and replacement of section 47 of No. 29 of 2015.

39. The Tax Procedures Act, 2015, is amended by repealing section 47 and replacing it with the following new section –

Offset or refund of overpaid tax.

47. (1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form –

(a) to offset the overpaid tax against the taxpayer's future tax liabilities; or

- (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid:

(2) The Commissioner shall ascertain and determine an application under subsection (1) within ninety days and where the Commissioner ascertains that there was an overpayment of tax –

- (a) in the case of an application under subsection (1)(a), apply the overpaid tax to such future tax liability; and
- (b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of two years from the date of the application.

(3) The Commissioner may, for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit.

(4) Where the application is for a refund of tax under subsection (1)(b), the Commissioner shall apply the overpayment in the following order –

- (a) in payment of any other tax owing by the taxpayer under the specific tax law;

- (b) in payment of a tax owing by the taxpayer under any other tax law; and
- (c) any remainder shall be refunded to the taxpayer.

(5) Where the Commissioner fails to refund the overpaid tax within the period specified in subsection (2)(b), the amount due shall attract interest of one per cent for each month or part thereof during which the amount remains unpaid.

(6) Where the Commissioner notifies a taxpayer that an application under subsection (1)(a) has been ascertained and applies the overpaid tax liability to offset an outstanding tax in accordance with subsection (2)(a), interest or penalties shall not accrue on the amount applied to offsetting the outstanding tax liability from the date of the notification.

(7) Where the Commissioner has applied the overpaid tax to offset an outstanding tax liability under subsection (2)(a), any outstanding tax after such application shall accrue interest and penalties in accordance with this Act.

(8) Notwithstanding any other provision of this section, where a person overpays an instalment tax due under

Cap. 470. section 12 of the Income Tax Act, the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability.

(9) Where, after the application of the overpaid tax under subsection (8), the Commissioner later determines that there was no overpayment of instalment tax, the amount of the tax that was used to offset the taxpayer's future instalment tax liabilities under subsection (8) shall be treated as a tax due to the Commissioner in the subsequent tax period.

(10) The amount due under subsection (9) shall be due from the date that the Commissioner applied that amount to offset an instalment tax liability.

(11) The Commissioner shall notify the taxpayer in writing of the amount due under subsection (9) and specify in the notification –

- (a) the interest on the amount due; and
- (b) any penalties due in respect of the amount due.

(13) A person aggrieved by a decision of the Commissioner under this section may appeal to the Tribunal within thirty days after being notified of the decision.

Insertion of new sections 47A and 47B in No. 29 of 2015.

40. The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 47 –

Refund of tax paid in error.

47A. (1) Where tax has been paid in error, the Commissioner shall, except as otherwise provided in this Act or the relevant tax law, refund such tax.

(2) In processing a refund under subsection (1), the provisions of section 47(1), (2), (3), (4) and (5) shall apply, with the necessary modifications.

(3) For the purposes of this section, “tax paid in error” means any tax paid which the Commissioner is satisfied ought not to have been paid.

Refund of tax paid on exempted or zero-rated supply.

47B. The Commissioner may, upon approval by the Cabinet Secretary, refund a tax paid in error in any case where the supply is exempt or zero-rated under the Act but such exemption or the zero rating was not processed within the specified period due to circumstances beyond the control of the taxpayer.

Amendment of section 51 of No. 29 of 2015.

41. Section 51 of the Tax Procedures Act, 2015 is amended –

- (a) in subsection (4), by deleting the word “immediately” and substituting therefor the words “within a period of fourteen days”;

- (b) by deleting the introductory words of subsection (7) and substituting therefor the words “The Commissioner shall consider and may allow an application under subsection (6) if”;
- (c) by inserting the following new subsection immediately after subsection (7) –

(7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application.

- (d) by deleting subsection (11) and substituting therefor the following new subsections –

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection.

(12) A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.

Amendment of the
First Schedule to
No. 29 of 2015.

42. The First Schedule to the Tax Procedures Act, 2015 is amended by adding the following paragraph immediately after paragraph (14) –

(15) Registration of a trust.

PART VI – MISCELLANEOUS FEES AND LEVIES

Amendment of section 9 of No. 29 of 2016.

43. Section 9B of the Miscellaneous Fees and Levies Act, 2016 is amended in paragraph (b) by inserting the words “and levies” immediately after the word “fees”.

Amendment of the First Schedule to No. 29 of 2016.

44. The First Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended –

(a) in Part I –

(i) by inserting the following new description and corresponding rate of export levy in the table in proper numerical order –

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export levy rate</i>
2601	Iron ores and concentrates, including roasted iron pyrites	USD 175 per tonne

(ii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4101.20.00 and substituting therefor the expression “50% or USD 0.32”;

(iii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4102.21.00 and substituting therefor the expression “50% or USD 0.32”;

(iv) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4102.29.00 and substituting

- therefor the expression “50% or USD 0.32”;
- (v) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4103.20.00 and substituting therefor the expression “50% or USD 0.32”;
 - (vi) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4103.30.00 and substituting therefor the expression “50% or USD 0.32”;
 - (vii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4103.90.00 and substituting therefor the expression “50% or USD 0.32”;
 - (viii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4104.19.00 and substituting therefor the expression “50% or USD 0.32”;
 - (ix) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.60.00 and substituting therefor the expression “50% or USD 0.32”;
 - (x) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4101.40.00 and substituting therefor the expression “50% or USD 0.32”;

- (xi) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4101.50.00 and substituting therefor the expression “50% or USD 0.32”;
- (xii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4101.90.00 and substituting therefor the expression “50% or USD 0.32”;
- (xiii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4102.10.00 and substituting therefor the expression “50% or USD 0.32”;
- (xiv) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.10.00 and substituting therefor the expression “50% or USD 0.32”;
- (xv) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.80.00 and substituting therefor the expression “50% or USD 0.32”;
- (xvi) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.90.00 and substituting therefor the expression “50% or USD 0.32”;
- (xvii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.11.00 and substituting

therefor the expression “50% or USD 0.32”;

(xviii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.19.00 and substituting therefor the expression “50% or USD 0.32”;

(xix) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.20.00 and substituting therefor the expression “50% or USD 0.32”;

(xx) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.30.00 and substituting therefor the expression “50% or USD 0.32”;

(b) in paragraph (1) of Part III, by deleting the words “the beginning of every financial year in accordance with this paragraph” and substituting therefor the words “at a date not later than the 1st October of every financial year in accordance with the formula specified in paragraph (2)”.

Amendment of
the Second
Schedule to No.
29 of 2016.

45. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended –

(a) in Part A, by inserting the following new item immediately after item (xxv) –

(xxva) inputs and raw materials imported by manufacturers of pharmaceutical products on

the recommendation of the Cabinet Secretary responsible for matters relating to health.

- (b) in Part B, by inserting the following new item immediately after item (viii) –

(viiiia) inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to health.

PART VII –MISCELLANEOUS

Amend of section 133 of Cap. 80.

46. Section 133 of the Evidence Act is amended –

- (a) in subsection (1), by deleting the words “to income tax, customs or excise” and substituting therefor the words “the laws specified in the First Schedule to the Kenya Revenue Authority Act, 1995”;

No. 2 of 1995.

- (b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) For the purposes of this section, “revenue officer” means any officer employed in or about the business of any public office for the collection of public revenue.

Amendment of section 2 of Cap. 485A.

47. Section 2 of the Capital Markets Act is amended in the definition of “investment advisor” by deleting paragraph (3).

Amendment of
section 29 of Cap.
485A.

48. Section 29 of the Capital Markets Act is amended in subsection (1) –

- (a) by deleting the words “a company incorporated under the Companies Act with such minimum share capital” appearing in paragraph (a) and substituting therefor the words “such legal entity as may be prescribed in the Regulations”;
- (b) by deleting the words “director and at least one employee who is the chief executive of the applicant company, have” appearing in paragraph (c) and substituting therefor the words “the director, chief executive officer or such other person who directs, conducts, manages or supervises the business of the applicant has”.

Amendment of
section 10 of Cap.
487.

49. Section 10 of the Insurance Act is amended –

- (a) in subsection (4), by deleting the expression “section 21” and substituting therefor the expression “section 21A”;
- (b) in subsection (8), by deleting the expression “section 21” and substituting therefor the expression “section 21A”.

Amendment of
Section 33 of No.
40 of 2011.

50. Section 33 of the Unclaimed Financial Assets Act, 2011 is amended by deleting subsection (6) and substituting therefor the following new subsection –

- (6) The penalties payable under subsections (1), (4) and (5) of this section shall –

- (a) be recoverable as civil debts summarily; and
- (b) in total, not exceed the value of the assets found to be reportable and deliverable.

Insertion of a new sections in No. 40 of 2011.

51. The Unclaimed Financial Assets Act, 2011 is amended by inserting the following new sections immediately after section 33 –

Waiver of penalties, fines and audit fees.

33A. The Authority may, with the approval of the Cabinet Secretary waive payment of any of the penalties and fines under section 33, whether in part or in full, where –

- (a) the waiver is intended to facilitate the holder of the asset to disclose and deliver the undeclared asset to the Authority;
- (b) in the opinion of the Authority, there is justifiable reasons to do so; or
- (c) it is in the public interest to do so.

Voluntary Unclaimed Financial Assets Disclosure Programme.

33B. (1) There is established a programme to be known as the Voluntary Unclaimed Financial Assets Disclosure Programme which shall be for a period of twelve months from the date of the commencement of this section.

(2) The object and purpose of the programme established by subsection (1) shall be to grant relief of the penalties and interest in unclaimed assets where the holder discloses, reports or delivers the assets to the Authority in accordance with this section.

(3) A holder of unclaimed assets may disclose, report and deliver the assets to the Authority for the purpose of being granted relief on penalties and interest on such assets.

(4) This section shall apply to assets held up to the thirtieth day of June 2022.

(5) A holder who discloses, reports and delivers the unclaimed financial assets within twelve months from the date of commencement of this section shall not be liable to the penalties or interest payable under sections 33(1), (4) and (5).

Amendment of
section 21 of No.
23 of 2013.

52. Section 21 of the Statutory Instruments Act, 2013 is amended by inserting the following new subsection immediately after subsection (3) –

Cap. 470.
Cap. 480.
No. 35 of 2013.
No. 40 of 2013.
No. 23 of 2015.
No. 29 of 2015.

(4) This section shall not apply to statutory instruments issued under the Income Tax Act, Stamp Duty Act, Value Added Tax Act, 2013, Tax Appeals Tribunal Act, 2013, Excise Duty Act 2015, and Tax Procedures Act, 2015.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2022/2023 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws –

The Evidence Act (Cap. 80)

The Bill proposes to amend section 133 of the Evidence Act to accommodate all officers involved in administering tax laws as set out in the First Schedule of the Kenya Revenue Act.

The Capital Markets Act (Cap. 485A)

The Bill seeks to amend the Capital Markets Act to address the shortage of investment advisory services being experienced across the country, due to the restrictive nature of the Act, by expanding the spectrum of persons who may act as investment advisors in offering the much-needed investment advisory services.

The Insurance Act (Cap. 487)

The Bill proposes to amend section 10(4) and (8) of the Insurance Act to align the section with section 21A of the Act.

The Unclaimed Financial Assets Act (No. 40 of 2011)

The Bill seeks to amend the Unclaimed Assets Act, 2011, to introduce capping penalties and interest to the value of asset found to be reportable and deliverable. This is meant to address the cases where the asset may increase beyond the value of the asset thus discouraging compliance to avoid penalties.

The Statutory Instruments Act (No. 23 of 2013)

The Bill proposes to amend the Statutory Instruments Act, 2013, to provide for the exemption of statutory instruments legislated under various tax laws from automatic expiry as provided in section 21 of the Act.

Dated the 13th January, 2022.

GLADYS WANGA,
*Chairperson, Departmental Committee
on Finance and National Planning.*

Section 133 of Cap. 80 which it is proposed to amend –

133. Privilege relating to information of commission of offences

(1) No judge, magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the law relating to the public revenue or to income tax, customs or excise.

(2) For the purposes of this section, “revenue officer” means any officer employed in or about the business of any branch of the public revenue, including any branch of the income tax, customs or excise departments.

Section 2 of Cap 485A which it is proposed to amend –

“investment adviser” means any person (other than a bona fide officer, director, trustee, member of an advisory board or employee of a company as such) who, for remuneration –

- (1) carries on the business of advising others concerning securities; or
- (2) as part of a regular business, issues or promulgates analyses or reports concerning securities; or
- (3) pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise), the management of a portfolio of securities for the purpose of investment, where the total portfolio does not exceed the amount prescribed by the Authority from time to time; or
- (4)...

Section 29 of Cap 485A which it is proposed to amend –

29. Licensing requirements

(1) Before granting any licence or approval, the Authority in respect of a business that requires to be licensed or approved shall satisfy itself –

(a) that the applicant is a company incorporated under the Companies Act (Cap. 486), with such minimum share capital as the Authority may prescribe or is duly constituted as a collective investment scheme;

(b) deleted by Act No. 35 of 2012, s. 7;

(c) that at least one director and at least one employee who is the chief executive of the applicant company, have satisfied such minimum qualification requirements as may be prescribed;

Section 10 of Cap 487 which it is proposed to amend –

10. Particular powers of Commissioner with regard to long term insurance business

(4) An insurer who, upon an investigation ordered under subsection (3)(a) is found to have disposed of any assets from a closed fund contrary to the provisions of section 21, or to have misappropriated such assets, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or, where the insurer is a natural person to imprisonment for a term not exceeding five years, or to both.

(8) In this section the expression “closed fund” means a closed fund within the meaning of section 21.

Section 33 of No.40 of 2011 which it is proposed to amend –

33. Failure to pay or deliver assets and penalties

(6) A penalty payable under subsections (1), (4) and (5) of this section shall be recoverable as civil debt summarily.