

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2016**

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**NAIROBI, 8th June, 2016**

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**THE FINANCE BILL, 2016****A Bill for****AN ACT of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I – PRELIMINARY**

**1.** This Act may be cited as the Finance Act, 2016, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

- (a) Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 19, 20, 21, 22, 25, 26, 27, 28, 29, 31, 33, 49 and 59, on the 9th June, 2016;
- (b) Sections 36(a) and 38, on the 19th January, 2016;
- (c) Sections 13, 17, 18, 23, 26, 30 and 34, on the 1st July, 2016;
- (d) All other sections on the 1st January, 2017

**PART II—INCOME TAX**

**2.** Section 2 of the Income Tax Act is amended in subsection (1) by inserting the following definition in proper alphabetical sequence—

Amendment of section 2 of Cap. 470.

“deemed interest” means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loan is provided free of interest.

**3.** Section 6A of the Income Tax Act is amended in subsection (1) by deleting the words “does not exceed” and inserting the words “is in excess of one hundred and forty-four thousand shillings but does not exceed”.

Amendment of section 6A of Cap. 470.

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| <p><b>4.</b> Section 12 of the Income Tax Act is amended –</p> <p>(a) by inserting the word “or” immediately before the expression “37”;</p> <p>(b) by deleting the expression “or 17A” and all the words appearing thereafter.</p>   | <p>Amendment of section 12 of Cap. 470.</p> |
| <p><b>5.</b> Section 16 of the Income Tax Act is amended in subsection (3) by deleting the definition of the expression “deemed interest”.</p>  | <p>Amendment of section 16 of Cap. 470.</p> |
| <p><b>6.</b> Section 35 of the Income Tax Act is amended-</p> <p>(a) in subsection (3) –</p> <p>(i) by inserting the words “subject to subsection (3A)” at the beginning thereof;</p> <p>(ii) by inserting the following new paragraph immediately after paragraph (i)—</p> <p>(j) rent, premium or similar consideration for the use or occupation of immovable property;</p> <p>(b) by inserting the following new subsection immediately after subsection (3)—</p> <p>(3A) Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.</p> <p>(c) by deleting subsection (6).</p> | <p>Amendment of section 35 of Cap. 470.</p> |
| <p><b>7.</b> The Income Tax Act is amended in section 37—</p> <p>(a) by deleting subsection (6);</p> <p>(b) by deleting subsection (7).</p>   | <p>Amendment of section 37 of Cap. 470.</p> |
| <p><b>8.</b> The Income Tax Act is amended by repealing section 51A.</p>  | <p>Repeal of section 51A of Cap. 470.</p>   |
| <p><b>9.</b> The Income Tax Act is amended by repealing section 72.</p>   | <p>Repeal of section 72 of Cap. 470.</p>    |
| <p><b>10.</b> The Income Tax Act is amended by repealing section 75A.</p>   | <p>Repeal of section 75A of Cap. 470.</p>   |
| <p><b>11.</b> The Income Tax Act is amended by repealing section 98.</p>  | <p>Repeal of section 98 of Cap. 470.</p>    |

**12.** The Income Tax Act is amended by repealing section 105.

Repeal of section 105 of Cap. 470.

**13.** The First Schedule to the Income Tax Act is amended in Part I by adding the following new paragraphs in proper numerical sequence—

Amendment of the First Schedule to Cap. 470.

53. Income from employment paid in the form of bonuses, overtime and retirement benefits:

Provided that this paragraph shall only apply to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band provided under Head B of the Third Schedule.

54. Interest income on bonds issued by the East African Development Bank.

**14.** The Third Schedule to the Income Tax Act is amended—

Amendment of the Third Schedule to Cap 470.

(a) in item 1 of Head A ( Resident Personal Relief), by deleting the expression “thirteen thousand nine hundred and forty-four” and substituting therefor the expression “fifteen thousand three hundred and sixty”;

(b) by deleting item 1 and 1A of Head B (Rates of Tax) and substituting therefor the following new items-

1. The individual rates of tax shall be—

	<i>Rate in each shilling</i>
On the first Shs.134,164	10%
On the next Shs.126,403	15%
On the next Shs.126,403	20%
On the next Shs.126,403	25%
On all income over Shs.513,373	30%

	<i>Rate in each shilling</i>
On the first Shs.134,164	10%
On the next Shs.126,403	15%
On the next Shs.126,403	20%
On the next Shs.126,403	25%
On all income over Shs.513,373	30%

(c) in paragraph (2), by inserting a new subparagraph immediately after subparagraph (h) as follows –

(i) in the case of a company that constructed at least one thousand residential units annually, twenty percent for that year of income, subject to approval by Cabinet Secretary responsible for housing.

(d) in paragraph 5, by deleting the expression “twelve percent” appearing in subparagraph (ja) and substituting therefor the expression “ten percent”.

**15.** Paragraph 6 of the Eighth Schedule to the Income Tax Act is amended by deleting subparagraph (2)(h) and substituting therefor a new subparagraph as follows –

Amendment of the Eighth Schedule to Cap 470.

(h) by the transfer of assets –

- (i) between spouses;
- (ii) between former spouses as part of a divorce settlement or a *bona fide* separation agreement;
- (iii) to immediate family;
- (iv) to immediate family as part of a divorce or *bona fide* separation agreement; or
- (v) to a company where spouses or a spouse and immediate family hold 100% shareholding.

**16.** The Income Tax Act is amended by repealing the Thirteenth Schedule.

Repeal of the Thirteenth Schedule to Cap. 470.

**PART III –EXCISE DUTY**

**17.** Section 2 of the Excise Duty Act, 2015 is amended—

Amendment of section 2 of Act No. 23 of 2015.

- (a) in the definition of the word “export”, by inserting the expression “a special economic zone” immediately after the words “foreign country”;
- (b) in the definition of the word “import”, by inserting the expression “a special economic zone” immediately after the words “a foreign country”;
- (c) by inserting the following new definition in proper alphabetical sequence—

No. 16 of 2015

“special economic zone” shall have the meaning assigned to it under the Special Economic Zones Act, 2015;

**18.** Section 4 of the Excise Duty Act, 2015 is amended in subsection (2)(c) by inserting the words “or special economic zone” immediately after the words “export processing zone”.

Amendment of section 4 of No.23 of 2015.

**19.** Section 10 of the Excise Duty Act, 2015 is amended by deleting the expression “Part II” and substituting therefor the expression “Part I”.

Amendment of section 10 of No. 23 of 2015.

**20.** Section 15 of the Excise Duty Act, 2015 is amended in subsection (1)(b) by deleting the expression “27” and substituting therefor the expression “28”.

Amendment of section 15 of No. 23 of 2015.

**21.** The First Schedule to the Excise Duty Act, 2015 is amended in Part I —

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

- (a) by inserting the following immediately below tariff No. 2710.19.21 and the description thereof—

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate</i>
2710.19.22	Illuminating kerosene	KSh.7,205 per 1000 litres @ 20 degrees centigrade.

- (b) by inserting the following immediately below the item entitled “Food supplements” —

<i>Tariff Description</i>	<i>Rate</i>
Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307	10%

- (c) by inserting the expression “(excluding water of tariff No. 2201.90.00)” immediately after the word “Waters” appearing in the item entitled “Waters and other non-alcoholic beverages not including fruit or vegetable juices”;
- (d) by deleting the words “less than three years old from the date of first registration, Shs 150,000 per unit, over three years old from the day of first registration Shs. 200,000 per unit” appearing in the second column against the tariff description relating to motor vehicles and substituting therefor the expression “20%”.
- (e) by deleting the words “plastic shopping bags” appearing in the first column and substituting therefor the words “plastic sacks and bags of tariff nos. 3923.21.00 and 3923.29.00, except vacuum bags for food juices, tea and coffee”.

**22.** The Second Schedule to the Excise Duty Act, 2015 is amended by inserting the following new paragraph immediately after paragraph 8 –

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

9. Excisable goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid-Funded Project, to the extent provided for under the financing agreement.

#### **PART IV – VALUE ADDED TAX**

**23.** Section 2 of the Value Added Tax Act, 2013 is amended—

Amendment of section 2 of No. 33 of 2013.

- (a) in the definition of the word “export”, by inserting the words “a special economic zone enterprise” immediately after the words “a foreign country”;
- (b) in the definition of the word “importation” by inserting the words “a special economic zone enterprise” immediately after the words “a foreign country”;



- (c) by deleting the definition of the expression “non-resident person”;
- (d) in the definition of the expression “registered person”, by inserting the words “or a special economic zone” immediately after the words “export processing zone enterprise”
- (e) by deleting the definition of the expression “tax representative”;
- (f) by inserting the following definitions in proper alphabetical sequence—

“hotel” includes premises commonly referred to as “service flats”, “service apartments”, “beach cottages”, “holiday cottages”, “game lodges”, “safari camps”, “bandas” or holiday villas” and other premises or establishments used for similar purposes, but does not include –

- (i) premises on which the only supply is under a lease or licence of not less than one month, unless the agreement relating thereto provides that by prior arrangement the occupier may, without penalty, terminate the lease or licence on less than one month’s notice; or
- (ii) premises operated by an educational or training institution approved by the Cabinet Secretary for the time being responsible for education for the use of the staff and students of that institution; or
- (iii) premises operated by a medical institution approved by the Cabinet Secretary for the time being responsible for health, for the use of the staff and students of that institution;

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“special economic zones” shall have the meaning assigned to it under the Special Economic Zones Act, 2015.

**24.** Section 13 of the Value Added Tax Act, is amended in subsection (7)-

Amendment of section 13 of No. 35 of 2013.

- (a) by adding the words “any service charge paid in lieu of tips” at the end thereof;
- (b) by adding the following proviso at the end thereof—

Provided that this subsection shall only apply in respect of service charge where –

- (a) the service charge is distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employee; and
- (b) the service charge does not exceed ten percent of the price of the service, excluding such service charge.

**25.** The Value Added Tax Act, 2013 is amended by repealing section 33.

Repeal of section 33 of No. 35 of 2013.

**26.** Section 36 of the Value Added Tax Act, 2013 is amended in subsection (10) by deleting the expression “subsection (1)” and substituting therefor the expression “subsection (9)”.

Amendment of section 36 of No. 35 of 2013.

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

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

(a) in Part I –

- (i) by inserting the tariff numbers 2302.10.00, 2302.30.00, 2306.10.00 and 2306.30.00 at the end of paragraph 43;
- (ii) by deleting the words “excluding motor vehicles” appearing in paragraph 51;
- (iii) by inserting the words “upon recommendation by the Kenya Film Commission” in paragraph 54 immediately after the word “agents”;
- (iv) by deleting the words “and recreational” appearing in paragraph 55;

- (v) by deleting paragraph 57 and substituting therefor the following new paragraph—

57. Equipment and machinery, including specialized motor vehicles, imported or purchased locally for official use by the Kenya Defence Forces, the National Police Service and military supplies.

- (vi) by inserting the following paragraphs immediately after paragraph 57 –

58. Direction-finding compasses, instruments and appliances for aircraft.

59. Liquefied petroleum gas.

60. Wheat seeds of tariff number 1001.11.00 and 1001.91.00.

61. Museum and natural history exhibits and specimens and scientific equipment for public museums.

62. Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.

63. Taxable goods for direct and exclusive use for the construction of recreational parks, upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

For the purposes of this paragraph, “recreational parks” means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills.

64. Taxable good for the direct and exclusive use for construction of specialized hospitals with accommodation facilities upon the recommendation by the Cabinet Secretary responsible for health who shall issue guidelines for the criteria to be used to determine eligibility for the exemption.

65. Garments and leather footwear, manufactured in an Export Processing Zone at the point of importation.

(b) in Part II—

(i) by deleting the word “certified” appearing in paragraph 21 immediately after the word “agent” and substituting therefor the words “upon recommendation”;

(ii) by deleting the words and recreational appearing in paragraph 22;

(iii) by deleting paragraph 24 and substituting therefor the following new paragraph—

24. Entry fees into the national parks.

(iv) by inserting the following new paragraphs immediately after paragraph 24—

25. The provision of services offered by tour operators on commission.

26. Taxable services for direct and exclusive use for the construction of recreational parks upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

27. Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption.

**28.** The Second Schedule to the Value Added Tax Act, 2013 is amended-

(a) in Part A, by inserting the following new paragraph immediately after paragraph 11 –

12. The supply of goods or taxable services to a special economic zone enterprise.

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

(b) in Part C -

(i) by inserting tariff number 3003.20.00; in proper numerical sequence;

(ii) by deleting tariff number 3303.20.00.

#### **PART V – TAX PROCEDURES ACT**

**29.** Section 3 of the Tax Procedures Act, 2015 is amended in the definition of the expression “tax return” by deleting the expression “13(1)” and substituting therefor the expression “9A”.

Amendment of section 3 of No. 29 of 2015

**30.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 15–

Insertion of section 15A in No. 29 of 2015.

Appointment of tax representative by non-resident person

**15A** (1) In a case where a non-resident person with no fixed place of business in Kenya is required to register under a tax law, the non-resident person shall appoint a tax representative in Kenya in writing.

(2) Where a person required to appoint a tax representative in accordance with sub section (1) fails to do so, the Commissioner may appoint a tax representative for that person, and the tax representative so appointed shall have the duties and obligations specified under section 15.

**31.** Section 17 of the Tax Procedure Act, 2015 is amended in subsection (3) by deleting the words “person that” and substituting therefor the words “person shall”.

Amendment of section 17 of No. 29 of 2015.

**32.** Section 19 of the Tax Procedures Act, 2015 is amended by inserting the following new subsection immediately after subsection (2) –

Amendment of section 19 of No. 29 of 2015.

(3) An applicant shall, in addition to the requirements set out in subsections (1) and (2), be required to be recommended for registration by the Tax Agents Committee.

**33.** Section 22 of the Tax Procedures Act, 2015 is amended in subsection (1) by deleting the word “meeting” appearing immediately after the words “the Commissioner in” and substituting therefor the word “writing”.

Amendment of section 22 of No. 29 of 2015.

**34.** The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 24—

Insertion of section 24A in No. 29 of 2015.

Duty to submit third party returns.

**24A.** A person shall, upon being required to do so by the Commissioner, furnish the Commissioner with returns showing such information, in such form and manner and within such time as the Commissioner may prescribe.

**35.** Section 33 of the Tax Procedures Act, 2015 is amended in subsection (3) by inserting the words “within 30 days of receiving the application for extension of time” immediately after the word “time”.

Amendment of section 33 of No. 29 of 2015

**36.** The Tax Procedures Act, 2015 is amended—

Insertion of section 37A in No. 29 of 2015

(a) by inserting the following new section immediately after section 37—

Commissioner to refrain from assessing in some cases

**37A. (1)** Subject to subsection (2) and notwithstanding any other provisions of this Act, the Commissioner shall, with effect from the 1<sup>st</sup> July, 2015, refrain from assessing or recovering—

(a) taxes, penalties or interest thereon in respect of any period before and during the 2013 year of income; or

(b) penalties or interest thereon in respect of the 2014 and 2015 years of income, where—

(i) the income is in respect of gains or profits for the use or occupation of property earned by an individual; and

(ii) the returns or amended returns

for the 2014 and 2015 years of income are submitted and the tax paid on or before the 30th June, 2016.

(2) Where a person has no documentation to support expenditure, such person shall be allowed a deduction of forty percent of the expenditure.

(3) This section shall not apply in respect of any tax where the person who should have paid the tax—

(a) has been assessed in respect of the tax; or

(b) is under audit or investigation in respect of undisclosed income for the years of income to which this section applies or any matter relating to such undisclosed income.

(b) by inserting the following new section immediately after section 37A—

Commissioner to refrain from assessing tax for income earned outside Kenya.

**37B.** Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31<sup>st</sup> December, 2016, and from following up on the sources of income under the amnesty where—

(a) that income has been declared for the year 2016 by a person earning taxable income outside Kenya; and

(b) the returns and accounts for the year 2016 are submitted on or before the 31<sup>st</sup> December, 2017:

Provided that this section shall not apply in respect of any tax where the person who should have paid the tax—

(i) has been assessed in respect of the tax or any matter relating to the tax; or

- (ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

**37.** Section 42 of the Tax Procedures Act, 2015 is amended in subsection (7) by inserting the words “within a period of thirty days” immediately after the words “the Commissioner shall”.

Amendment of section 42 of No. 29 of 2015.

**38.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 42 -

Insertion of new section 42A to No. 29 of 2015

Appointment of Value Added Tax withholding agent.

**42A (1)** The Commissioner may appoint a person to withhold six percent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner.

(2) The Commissioner may, at any time, revoke the appointment of a tax withholding agent made under subsection (1), if the Commissioner deems it appropriate to do so

(3) Subsection (1) shall not apply to taxable supplies for official aid-funded projects.

(4) For the avoidance of doubt, the withholding of tax under subsection (1) shall not relieve the supplier of taxable supplies of the obligation to account for tax in accordance with this Act and the regulations.

**39.** Section 47 of the Tax Procedures Act, 2015 is amended –

Amendment of section 47 of No. 29 of 2015.

(a) in subsection (1) –

- (i) by deleting the expression, “one year” and substituting therefor the expression “five years”.



(ii) by inserting the following new proviso -

No. 35  
of 2013.

Provided that for value added tax the period of refund shall be as provided for under the Value Added Tax Act, 2013.

(b) in subsection (3), by inserting the words “within ninety days of receiving the application for a refund” immediately after the word “application”.

#### **PART VI—MISCELLANEOUS PROVISIONS**

**40.** Section 29 of the Retirement Benefits Act, 1997 is amended—

Amendment of  
section 29 of No.  
3 of 1997.

(a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A certificate of registration issued to a manager, custodian or administrator shall be valid from the date of issue and shall, unless suspended or revoked, remain valid.

(b) by deleting subsection (3) and substituting therefor the following new subsection—

(3) A manager, custodian or administrator shall pay such annual fee as may be prescribed by the Authority.

(c) by deleting subsection (4) and substituting therefor the following new subsection—

(4) A manager, custodian or administrator shall submit current audited financial statements, a list of the directors and top management, any changes in clientele and such further information as the Authority may request by the 30<sup>th</sup> September of every year.

(d) by adding the following new subsection immediately after subsection (4)—

(5) A manager, custodian or administrator shall communicate to the Authority any changes in shareholding, directorship or top management within thirty days after the change has occurred.

**41.** The Second Schedule to the Kenya Revenue Authority Act is amended in paragraph 2(1) by deleting the words “excluding the *ex officio* members”.

Amendment of  
the Second  
Schedule to  
Cap.469.

**42.** Section 2 of the Capital Markets Act is amended by inserting the following new definition in its proper alphabetical sequence—

Amendment of section 2 of Cap. 485A.

“online forex broker” means a body corporate duly licensed by the Authority to engage in the business of online trading in foreign exchange as an agent of investors in return for a commission and on its own account.

**43.** Section 12 of the Capital Markets Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (j)—

Amendment of section 12 of Cap. 485A.

(jj) the operations and supervision of online forex trading activities and online forex brokers.

**44.** Section 23 of the Capital Markets Act is amended in subsection (1) by inserting the words “online forex broker” immediately after the words “authorized depository”.

Amendment of section 23 of Cap. 485A.

**45.** Section 31 of the Banking Act is amended—

Amendment of section 31 of the Cap. 488.

No. 14 of 2008.

- (a) in subsection (3)(b), by inserting the words “institutions licensed under the Sacco Societies Act, 2008, public utility companies and any other institution mandated to share credit information under any written law” immediately after the expression “Microfinance Act, 2006”;
- (b) in subsection (4), by inserting the words “and any other institution mandated to share credit information under any written law” immediately after the words “public utility companies”;
- (c) in subsection (5)—
  - (i) by inserting the words “or institutions licensed under the Sacco Societies Act, 2008, public utility companies and any institution mandated to share credit information under

- any written law” immediately after words “Microfinance Act” in the opening statement; and
- (ii) by inserting the following new paragraphs immediately after paragraph (d)—
    - (da) institutions licensed under the Sacco Societies Act, 2008;
    - (db) public utility companies;
    - (dc) any institution mandated to share credit information under any written law; and
  - (d) by inserting the following new subsection immediately after subsection (5)-
    - (6) Nothing in this Act shall prevent the cross-border sharing of credit information between—
      - (a) regulators or supervisory authorities and credit reference bureaus or entities performing similar roles;
      - (b) institutions and credit reference bureaus or entities performing similar roles;
      - (c) regulators or supervisory authorities and institutions;
      - (d) institutions:  
Provided that—
        - (i) there is a mutual legal framework for the sharing of credit information; and
        - (ii) the credit information is required for the discharge of a lawful duty or the

performance of a lawful purpose by the person requesting for the information.

**46.** Section 34 of the Banking Act is amended in subsection (2) by inserting the words “in consultation with the Cabinet Secretary” immediately after words “Central Bank may”.

Amendment of section 34 of Cap. 488.

**47.** Section 55 of the Banking Act is amended in subsection (2) by deleting—

Amendment of section 55 of Cap. 488.

- (a) the expression “five million Kenya shillings” and substituting therefor the expression “twenty million shillings”;
- (b) the expression “two hundred thousand shillings” and substituting therefor the expression “one million shillings”; and
- (c) the expression “twenty thousand shillings” and substituting therefor the expression “one hundred thousand shillings”.

**48.** The Second Schedule to the Banking Act is amended by deleting paragraph (d) and substituting therefor the following paragraph—

Amendment of the Second Schedule to Cap. 488.

- (d) a core capital of at least five billion Kenya shillings by the 31st December, 2019, in the case of a bank or a mortgage finance company:

Provided that the provisions of this paragraph shall apply in accordance with the following table –

<i>Compliance date:</i>	<i>Minimum core capital for banks and mortgage finance companies (Ksh. Million)</i>
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31st December 2017	2000
31st December 2018	3500
31st December 2019	5000

**49.** The Alcoholic Drinks Control Act, 2010, is amended by repealing section 68A.

Repeal of section 68A of No. 4 of 2010.

**50.** Section 7 of the Kenya Deposit Insurance Act, 2012 is amended—

Amendment to section 7 of No. 10 of 2012.

- (a) in subsection (1)—
  - (i) by inserting the following new paragraph immediately after paragraph (c)—
    - (cc) the Chief Executive Officer of the Kenya Bankers Association or his representative”;
  - (ii) by deleting paragraph (d) and substituting therefor the following new paragraph—
    - (d) subject to subsection (1A), five members appointed by the Cabinet Secretary by virtue of their knowledge and at least ten years’ professional experience in banking, finance, insurance, commerce, law, accountancy or economics; and
- (b) by inserting the following new subsection immediately after subsection (1)—
  - (1A) A person appointed under subsection (1)(d) shall not be—
    - (a) a public officer; or
    - (b) a person from a member institution licensed by the Central Bank of Kenya.

**51.** Section 43 of the Kenya Deposit Insurance Act, 2012 is amended in subsection (1) by inserting the words “in consultation with the Cabinet Secretary” immediately after the words “The Central Bank shall”.

Amendment of section 43 of No. 18 of 2012.

**52.** Section 193 of the Public Finance Management Act, 2012, is amended in subsection (4) by deleting the words “not more than three years” and substituting therefor the words “three years, renewable once for a further and final term of three years”.

Amendment of section 193 of No. 18 of 2012.

**53.** Section 7 of the Tax Appeals Tribunal Act, 2013, is amended by renumbering the existing provision as subsection (1) and adding the following new subsection—

Amendment of section 7 of No. 40 of 2013.

- (2) The Secretary referred to under subsection (1) shall—
  - (a) be knowledgeable in procedures of a tribunal; and
  - (b) have a minimum of five years’ experience in finance, economics or legal practice.

**54.** Section 11 of the Tax Appeals Tribunal Act, 2013 is amended in subsection (1) by deleting the words “designated by the Cabinet Secretary” and substituting therefor the words “appointed by the Tribunal”.

Amendment of section 11 of No. 40 of 2013.

**55.** Section 13 of the Tax Appeals Tribunal Act is amended—

Amendment to section 13 of No. 40 of 2013

- (a) in subsection (2), by deleting the word “clerk” and substituting therefor the word “Tribunal”;
- (b) in subsection (3), by inserting the words “for filing the notice of appeal and” immediately after the words “extend the time”; and
- (c) in subsection (4), by deleting the words “giving notice of appeal” and substituting therefor the words “filing the notice of appeal or submitting the documents”.

**56.** Section 15 of the Tax Appeals Tribunal Act, 2013 is amended –

Amendment of section 15 of No. 40 of 2013.

- (a) in subsection (1), by deleting the word “clerk” and substituting therefor the word “Tribunal”; and
- (b) by inserting the following new subsections immediately after subsection (2)—

(3) The Commissioner shall serve the appellant with a copy of the statement of facts and other documents required under this section within two working days from the date of submission to the Tribunal.

(4) The Tribunal may, upon application in writing by the Commissioner, extend the time for submitting and serving the statement of facts and the documents referred to in this section, where it is proved to the satisfaction of the Tribunal, that the delay is not inordinate or other reasonable cause that may have prevented the Commissioner from submitting and serving the statement of facts and the documents within the specified period.

**57.** Section 25 of the Tax Appeals Tribunal Act, 2013 is amended in subsection (1) by inserting the words “or by an advocate” immediately after the words “tax agent”.

Amendment of section 25 of No. 40 of 2013

**58.** The Tax Appeals Tribunal Act, 2013 is amended by repealing section 43.

Repeal of section 43 of No. 40 of 2013.

**59.** Section 35 of the Special Economic Zones Act, 2015, is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 35 No. 16 of 2015.

(1) All licensed special economic zones enterprises, developers and operators shall be granted tax incentives as specified in the respective tax laws.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The Bill formulates the proposals announced in the Budget for 2016/2017 relating to liability to, and collection of taxes and for matters incidental thereto.

The Bill also seeks to amend the following laws—

#### **The Retirement Benefits Act (Cap. 197)**

The Bill seeks to amend the Retirement Benefits Act to provide for the perpetual licensing of managers, custodians or administrators in line with other financial sector regulators including the Central Bank of Kenya and the Capital Markets Authority.

#### **The Kenya Revenue Authority Act (Cap. 469)**

The Bill seeks to amend the Kenya Revenue Authority Act to give effect to the amendment made to the Kenya Revenue Authority Act under the Finance Act, 2014.

#### **The Capital Markets Act (Cap. 485A)**

The Bill seeks to amend the Capital Markets Act to facilitate the issuance of regulations to govern online foreign exchange trading which would strengthen governance of players and provide protection to consumers.

#### **The Banking Act (Cap. 488)**

The Bill seeks to amend the Banking Act to provide for the expansion of the framework for credit information sharing for the improvement of ease of doing business ranking while facilitating the reduction cost of credit in the economy. The Bill further seeks to amend the Act to involve the Cabinet Secretary in the management, control and conduct of the affairs and business of an institution and enhance penalties as a deterrent factor in relation to offences under the Act. The Bill also seeks to amend the Second Schedule to the Act to provide for a higher minimum core capital for banks and mortgage companies and for the dates of achieving the thresholds set out in the Schedule.

#### **The Alcoholic Drinks Control Act (No. 4 of 2010)**

The Bill seeks to amend the Alcoholic Drinks Control Act, 2010, to align it with section 7(2) of the Excise Duty Act, 2015.

#### **The Kenya Deposit Insurance Act (No. 18 of 2012)**

The Bill seeks to amend the Kenya Deposit Insurance Act, 2012, to avoid conflicts of interest among members of the Board of Directors of the



Kenya Deposit Insurance Corporation and, thereby, enhancing good governance in the Corporation. The Bill further seeks to amend the Act to provide for the involvement of the Cabinet Secretary in the appointment of the Corporation as a receiver.

**The Public Finance Management Act (No. 18 of 2012)**

The Bill seeks to amend the Public Finance Management Act, 2012, to provide for the possibility of a second term of three years for members of the Board in order to protect institutional memory and to ensure continuity in the affairs and business of the Board.

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

The Bill seeks to amend the Tax Appeals Tribunal Act, 2013, to provide for the qualifications of the Secretary to the Tribunal and the appointment of a clerk to the Tribunal. The Bill further seeks to amend the Act to provide for the procedure to be applied when extending the time within which a taxpayer may file a Notice of Appeal and the Commissioner when filing the Statement of Facts.

**Special Economic Zones Act (No. 16 of 2015)**

The Bill seeks to amend the Special Economic Zones Act, 2015, to provide that tax incentives in respect of special economic zones shall be provided for under the tax statutes.

**Statement of the delegation of legislative powers and the limitation of fundamental rights and freedoms.**

The Bill does not delegate any legislative power nor limit any fundamental right or freedom.

**Statement of how the Bill concerns county governments.**

The Bill does not concern county governments in terms of Article 109(4) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.**

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th June, 2016.

BENJAMIN LANGAT,  
*Chairperson,*  
*Committee on Finance, Planning and Trade.*

*Section 29 of Cap. 197 which it is intended to amend—*

29. (2) Subject to subsection (4), a certificate of registration issued to a manager, custodian or administrator shall be valid from the date of issue and shall, unless earlier revoked, expire on the thirty-first December next following the date of issue but shall thereafter, upon application in such manner and upon the payment of such fee as may be prescribed, be renewable annually.

(3) An application for the renewal of a certificate of registration under subsection (2) shall be made at least three months before the expiry of the certificate of registration.

(4) Notwithstanding the provisions of subsection (2), where an application for the renewal of a certificate of registration has been made, such certificate shall continue in force until the application for renewal is determined.

*Section 2 of Cap. 469 which it is intended to amend—*

2. (1) Subject to subparagraph (2), five members, excluding the *ex officio* members, shall constitute a quorum for the conduct of business at any meeting of the Board.

*Section 23 of Cap. 485A which it is intended to amend—*

23. (1) No person shall carry on business as a stockbroker, derivatives broker, REIT manager, trustee, dealer, investment adviser, fund manager, investment bank, central depository, authorised securities dealer, authorized depository, or hold himself out as carrying on such a business unless he holds a valid licence issued under this Act or under the authority of this Act.

*Section 23 of Cap. 488 which it is intended to amend—*

31. (3) Notwithstanding the provisions of this section—

- (b) the Deposit Protection Fund Board institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006) shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33 (4):

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement;

*Section 34 of Cap. 488 which it is intended to amend—*

34. (2) In any case to which this section applies, the Central Bank may—

- (a) enter into an agreement with the board of directors of an institution requiring the institution to rectify its deficiencies within three months:

Provided that in the case of reckless or fraudulent conduct, the Central Bank shall have discretion to enter an agreement based on its judgment as to the efficacy of such an approach;

- (b) appoint a competent person familiar with the business of the institution (in this Act referred to as a “Manager”) to assume the management, control and conduct of the affairs and business of an institution and to exercise all the powers of the institution to the exclusion of its board of directors including the use of its corporate seal;
- (c) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder, or to any deterioration in the financial stability of the institution, or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;
- (d) appoint a competent person familiar with the business of the institution to its board of directors to hold office as a director, who shall not be capable of being removed from office without the approval of the Central Bank;
- (e) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or any other person;
- (f) restrict the institution from engaging in new foreign exchange business;
- (g) prohibit the institution from engaging in new off-balance sheet transactions; and
- (h) prohibit the institution from engaging any new agents or direct the institution to terminate any agency arrangement.

*Section 5 of Act No. 2 of 2005 which it is intended to amend—*

5. (1) The Commission shall comprise the following members—

- (d) seven members, not being public officers, appointed by the Minister and approved by the relevant committee of Parliament, by virtue of their expertise in such matters as will ensure that the Commission achieves its objectives.

*Section 23 of Act No. 2 of 2005 which it is intended to amend—*

23. (1) For each privatization included in the privatization programme the Commission shall make a specific proposal for privatization.

(2) The Minister shall present a report on the privatization proposals approved by the Cabinet to the relevant committee of Parliament.

*Paragraph 2 of the First Schedule to Act No. 2 of 2005 which it is intended to amend—*

2. (3) The quorum for the conduct of business at a meeting of the Commission shall be eight members of the Commission.

*The definition of “Deputy Director” in section 2 of Act No. 9 of 2009 which it is proposed to delete—*

“Deputy Director” means the Deputy Director appointed under section 25;

*Section 25 of Act No. 9 of 2009 which it is intended to amend—*

25. (1) There shall be a Director and a Deputy Director of the Centre.

(2) The Director and the Deputy Director shall be fit, competent and proper persons, recommended by the Board and approved by the National Assembly for appointment to their respective positions.

(4) A person shall not be appointed as a Director or Deputy Director unless that person—

- (a) holds a degree in law, economics or finance from a recognized institution;
- (b) has at least seven years work experience in the relevant field; and
- (c) meets such other requirements that may be prescribed by the Board.

(5) The persons appointed as the Director and the Deputy shall hold office—

- (a) for a term of four years and three years, respectively, subject to renewal for one further term of four years and three years, respectively; and
- (b) on such terms and conditions as may be determined by the Board and set out in the instrument of appointment which shall include specific and measurable performance targets.

*Section 26 of Act No. 9 of 2009 which it is intended to amend—*

26. (1) The Director or the Deputy Director may resign by a written resignation addressed to the Minister.

*Section 27 of Act No. 9 of 2009 which it is intended to amend—*

27. (1) The Minister may, in consultation with the Board, remove the Director or Deputy Director from office on the grounds of gross misconduct, mental or physical incapacity or failure to satisfy the terms and conditions of service set forth in section 25(5)(b), or—

- (a) where there is proof of a financial conflict of interest with any reporting institution;
- (b) if he is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; or
- (c) if he has been convicted of an offence for which one may be sentenced to imprisonment for a term exceeding six months.

(2) The Minister may, in consultation with the Board, suspend the Director or Deputy Director from office pending determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist.

*Section 30 of Act No. 9 of 2009 which is intended to amend—*

30. The Deputy Director may act for the Director and shall exercise all the powers and perform all the functions conferred on the Director under this Act whenever the Director is temporarily absent, and shall perform such other functions as the Director may, from time to time, assign to him.

*Section 32 of Act No. 9 of 2009 which it is intended to amend—*

32. The Director, the Deputy Director and staff of the Centre shall—
- (a) before they begin to perform any duties under this Act, take and subscribe before a Magistrate or Commissioner for Oaths the oath of confidentiality prescribed in the Third Schedule;
  - (b) maintain, during and after their employment, the confidentiality of any matter which they came across during their tenure of office.

*Section 68A of Act No. 4 of 2010 which it is proposed to delete—*

68A. Tax policies

(1) The Cabinet Secretary responsible for finance shall implement tax policies and where appropriate grant remission of duty under the relevant law on alcoholic drinks that are locally manufactured so as to promote compliance of those drinks with the objectives of this Act.

(2) Notwithstanding the provision of any other law, the Cabinet Secretary responsible for finance shall grant remission of excise duty at

ninety per centum with respect to beer made from sorghum, millet or cassava grown in Kenya, if that licensed manufacturer —

- (a) manufactures beer that has at least seventy-five per centum content of sorghum, millet or cassava, excluding sugar; and
- (b) packs the beer in a pasteurised container of at least thirty litres or such other container and quantity as the Cabinet Secretary may approve.

*Section 7 of Act No. 10 of 2012 which it is intended to amend—*

7. (1) The Corporation shall be administered by a Board of Directors which shall consist of—

- (a) a non-executive chairperson appointed by the President on the recommendation of the Minister from amongst the members appointed under paragraph (d):

Provided that the chairperson appointed under this paragraph shall not be from the member institutions of the Corporation

*Section 43 of Act No. 18 of 2012 which it is intended to amend—*

43. (1) The Central Bank shall, whenever the circumstances require, appoint the Corporation to be the sole and exclusive receiver of any institution.

*Section 11 of Act No. 40 of 2013 which it is intended to amend—*

11. (1) There shall be a clerk of each panel designated by the Cabinet Secretary, and who shall be the secretary to the panel.

*Section 13 of Act No. 40 of 2013 which it is intended to amend—*

13. (2) The appellant shall, within fourteen days from the date of filing the notice of appeal, submit enough copies, as may be advised by the Clerk, of—

- (a) a memorandum of appeal;
- (b) statements of facts; and
- (c) the tax decision.

(3) The Tribunal may, upon application in writing, extend the time for submitting the documents referred to in subsection (2).

(4) An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from giving notice of appeal within the specified period.

*Section 15 of Act No. 40 of 2013 which it is intended to amend—*

15. (1) The Commissioner shall, within thirty days after being served with a copy of an appeal to the Tribunal, submit to the Tribunal enough copies as may be advised by the Clerk, of—

- (a) a statement of facts including the reasons for the tax decision; and
- (b) any other document which may be necessary for review of the decision by the Tribunal.

*Section 25 of Act No. 40 of 2013 which it is intended to amend—*

25. (1) For the hearing of proceedings before the Tribunal, the appellant may appear in person or be represented by a tax agent.

*Section 43 of Act No. 40 of 2013 which it is proposed to delete—*

43. The Value Added Act (Cap. 476) is amended by repealing section 32.

*Section 35 of Act No. 16 of 2015 which it is intended to amend—*

35. (1) All licensed special economic zone enterprises, developers and operators shall be granted exemption from all taxes and duties payable under the Excise Duty Act (Cap. 472), the Income Tax Act (Cap 470), East African Community Customs Management Act (No. 1 of 2005) and the Value Added Tax Act (Cap. 476), on all special economic zone transactions.