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ACTS, 2015

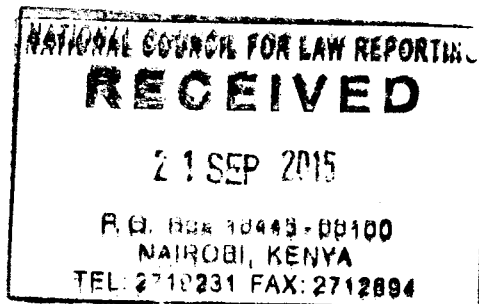
NAIROBI, 15th September, 2015

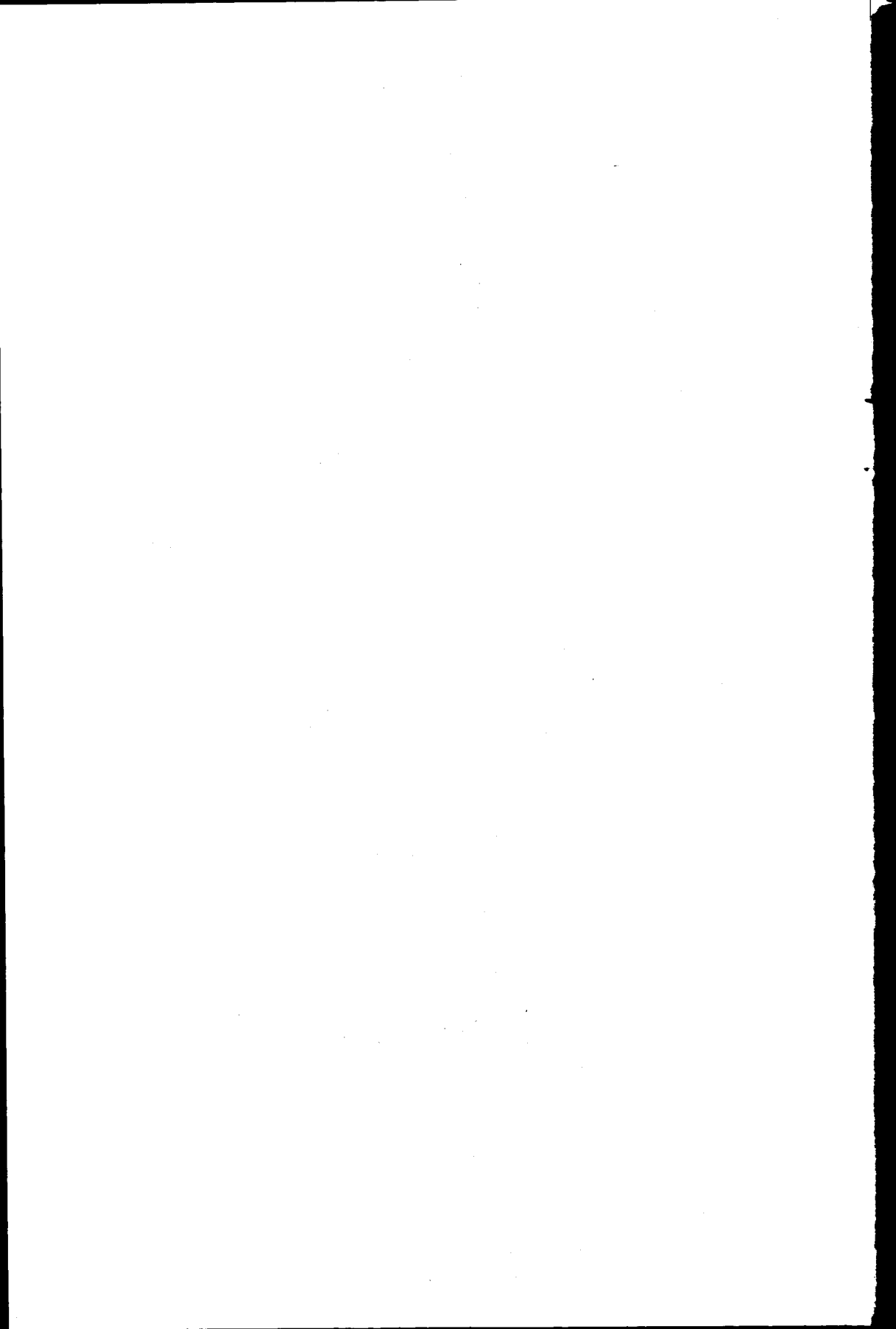
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THE FINANCE ACT

No. 14 of 2015

Date of Assent: 11th September, 2015

Date of Commencement: See Section 1

AN ACT of Parliament to amend the law relating to various taxes and duties and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2015, 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 and 6, on the 12th June, 2015;
- (b) sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, on the 1st January, 2016; and
- (c) all other sections, on the 1st October, 2015.

PART II—VALUE ADDED TAX

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

Amendment of section 2 of No. 35 of 2013.

- (a) by inserting the following definition in proper alphabetical sequence—

“duty-free shop” means a bonded warehouse licensed by the Commissioner of Customs for the deposit of dutiable goods on which duty has not been paid and which have been entered for sale to passengers departing to places outside Kenya;

- (b) in the definition of the word “money”, by inserting the words “or electronic payment system” immediately after the words “credit card” appearing in paragraph (c);
- (c) by deleting the words “or a non-registered person” appearing in paragraph (a) of the definition of the words “supply of imported services”.

3. Section 17 of the Value Added Tax Act, 2013 is amended by deleting the proviso to subsection (5) and substituting therefor the following new proviso—

Amendment of section 17 of No. 35 of 2013.

Provided that any such excess shall be paid to the registered person by the Commissioner where—

- (a) the Commissioner is satisfied that such excess arises from making zero rated supplies; and
- (b) the registered person lodges the claim for the refund of the excess tax within twelve months from the date the tax becomes due and payable.

4. Section 25A of the Value Added Tax Act, 2013 is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of
section 25A of No.
35 of 2013.

(1) Government Ministries, Departments and Agencies or any other person appointed by the Commissioner shall, on purchasing taxable supplies, withhold six percent of the taxable value at the time of paying for the supplies and remit the same directly to the Commissioner:

Provided that the Commissioner may, at any time, revoke the appointment of a withholding VAT agent, if he or she deems it appropriate to do so.”

5. The First Schedule to the Value Added Tax Act 2013 is amended—

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

(a) in Section A of Part I—

(i) by deleting item 46 and tariff numbers “3002.20.00, 3002.30.00, 3003.39.00, 3003.40.00, 3003.90.10, 3003.90.90, 3004.10.00, 3004.20.00, 3004.32.00, 3004.39.00, 3004.40.00, 3004.50.00, 3004.90.00, 3004.90.10 and 3004.90.90” and the corresponding descriptions;

(ii) by inserting tariff numbers 8407.10.00 and 8409.10.00 in proper numerical sequence.

(b) by inserting the following items immediately after item 48—

49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801.

50. Goods of tariff No.4011.30.00.

51. Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury.

52. Plastic bag biogas digesters.

52A. Biogas.

52B. Leasing of biogas producing equipment.

53. Parts imported or purchased locally for the assembly of primary school laptop tablets, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology.

54. Goods imported or purchased locally for use by the local film producers and local filming agents, subject to approval by the Cabinet Secretary to the National Treasury.

55. Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial and recreational parks of one hundred acres or more approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for Industrialization.

56. Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization.

57. The supply of taxable goods to special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act.

(c) in Part II—

(i) by deleting the following paragraph—

“19. The supply of taxable services in respect of goods in transit”.

(ii) by inserting the following new paragraphs—

20. Taxable services for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary to the National Treasury.

21. Services imported or procured locally for use by the local film producers or local film agents certified by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury.

22. Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial and recreational parks of one hundred acres or more, approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for Industrialization.

23. Supply of sewerage services by the national government, a county government, any political subdivision thereof or a person approved by the Cabinet Secretary for the time being responsible for water development.

24. The supply of taxable services to special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act.

6. The Second Schedule to the Value Added Tax Act is amended—

Amendments to the
Second Schedule of
VAT Act, 2013.

(a) in Part A by inserting the following paragraphs immediately after paragraph (8)—

9. Goods purchased from duty free shops by passengers departing to places outside Kenya.

10. Supply of taxable services in respect of goods in transit.

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

(b) in Part B, by inserting the following subparagraphs at the end of the proviso to paragraph 6 (3) (c)—

(iii) where the returning resident has owned and used a left hand drive vehicle for at least twelve months the person may sell the vehicle and import a right hand drive vehicle of equivalent value, subject to the following conditions—

(A) the person shall provide proof of ownership and use of the previously owned left-hand-drive vehicle in the country of former residence for a period of at least one year prior to the return;

(B) the person shall provide proof of disposal of the previously owned left-hand-drive vehicle before changing residence; and

(C) where the left-hand-drive vehicle is sold and replaced under this subparagraph, the right-hand drive vehicle shall be similar to the previously owned left-hand-drive vehicle in make, engine rating and year of manufacture;

(iv) subparagraph (iii) shall only apply to residents returning from countries that operate Left Hand Drive motor vehicles.

(c) Inserting a new Part C immediately after paragraph 9, Part B—

Medicaments of the following HS Codes shall be zero rated—

3002.20.00 Vaccines for human medicine.

3002.30.00 Vaccines for veterinary medicine

3003.10.00

3303.20.00

- 3003.39.00 Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
- 3003.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.
- 3003.90.00
- 3003.90.10 Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
- 3003.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
- 3004.10.00 Medicaments containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives, put up in measured doses or in forms or packings for retail sale.
- 3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
- 3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.

- 3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.
- 3004.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 29.37 or antibiotics, put up in measured doses or in forms or packings for retail sale.
- 3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.
- 3004.90.00 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale
- 3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

PART III—INCOME TAX

7. Section 2 of the Income Tax Act is amended by adding the following provisos immediately after the following definitions—

- (a) “training fees”—

Provided that training fee shall not include fees paid for educational services provided by—

Amendment to
section 2 of Cap.
470.

- (a) a pre-primary, primary, or secondary school;
- (b) a technical college or university;
- (c) an institution established for the promotion of adult education, vocational training or technical education.

(b) "winnings"

Provided that this definition shall only apply in the case of winnings payable to punters (players) by bookmakers.

8. The Income Tax Act is amended by inserting the following new section immediately after section 6—

Insertion of new section 6A of Cap. 470.

Imposition of residential rental Income Tax.

6A. (1) Notwithstanding any other provision of this Act, a tax to be known as residential rental income tax shall be payable with effect from the 1st January, 2016 by any resident person from income which is accrued in or derived from Kenya for the use or occupation of residential property, and which does not exceed ten million shillings during any year of income

Provided that this section shall not apply where a person who would otherwise pay tax under this section, by notice in writing addressed to the Commissioner, elects not to be subject to residential rental income tax, in which case the other provisions of this Act shall apply to such a person.

(2) The Minister may, by notice in the Gazette, prescribe regulations for the better carrying out the provisions of this section.

9. Section 10 of the Income Tax Act is amended in subsection (1) by deleting paragraph (g) and substituting therefor the following new paragraph—

Amendment to section 10 of Cap.470.

"(g) winnings payable by bookmakers to punters (players) '.

10. Section 15 of the Income Tax Act is amended—

Amendment to
section 15 of Capt.
470.

- (a) in subsection (4), by deleting the word “four” and substituting therefor the word “nine”;
- (b) in subsection (5), by deleting the words “five years” and substituting therefor the words “ten years”;
- (c) in subsection (5A) by—
 - (i) deleting paragraph (a) ; and
 - (ii) deleting the expression “(b) for any other case”.
- (d) in subsection (7) (a), by deleting the words “six sources” and substituting therefor the words “seven sources”.

11. Section 34 of the Income Tax Act is amended—

Amendment to
section 34 of
Cap.470.

- (a) in subsection (1)—
 - (i) deleting paragraph (i);
 - (ii) by inserting the following new paragraphs immediately after paragraph (j)—
 - “(k) tax upon gross rental receipts of a person chargeable to tax under section 6A shall be charged at the resident rate specified under the Third Schedule for that year of income.”
 - (l) the transfer of interest in a person shall be charged as per provisions of the Ninth Schedule.
 - (m) tax upon the gross winnings payable by bookmakers to punters (players) shall be charged at the resident rate for that year of income”;
- (b) in subsection (2)—
 - (i) by deleting paragraph (k);
 - (ii) by deleting paragraph (i) and substituting therefor the following paragraph—
 - (i) winnings payable by bookmakers to punters (players).

12. Section 35 of the Income Tax Act is amended—

- (a) in subsection (1), by deleting paragraph (j) and substituting therefor the following new paragraph—

(j) winnings payable by bookmakers to punters (players);

- (b) by inserting the following new subsection immediately after subsection (1)—

(1A) Subsection (1) shall not apply to payments made by filming agents and filming producers approved by the Kenya Film Commission to actors and crew members approved for purposes of paragraphs (g) and (h).

- (c) in subsection (3)—

(i) by deleting paragraph (j);

- (ii) by deleting paragraph (i) and substituting therefor the following new paragraph—

(i) winnings payable by bookmakers to punters (players).

13. The Income Tax Act is amended by inserting the following new section immediately after section 39A—

Insertion of section 39B in Cap. 470.

Set-off tax rebate for apprenticeships

39B. (1) Any employer who engages at least ten university graduates as apprentices for a period of six to twelve months during any year of income shall be eligible for tax rebate in the year subsequent to the year of such engagement.

(2) The Cabinet Secretary may by notice in the Gazette make regulations for the better carrying out of the provisions of this section.

14. Section 117 of the Income Tax Act, is amended by deleting the expression "Attorney-General" and substituting therefor the expression "Director of Public Prosecutions".

Amendment of section 117 of Cap. 470.

15. The Income Tax Act is amended by inserting the following new section after section 123B—

Amendment to
section 123 of
Cap.470.

Commissioner to
refrain from assessing
or recovering tax in
certain cases.

123C. (1) Subject to subsection (2) but notwithstanding any other provisions of this Act, the Commissioner shall, with effect from the 1st 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—
- (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 immovable property earned by a person, 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) 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 any matter relating to the tax, or
- (b) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Where a person has no documentation to support expenditure, such person shall be allowed a deduction of forty percent of the gross rent, premium or similar consideration for the use or occupation of immovable property.

16. The First Schedule of the Income Tax Act is amended—Amendment of the
First Schedule to
Cap. 470.**(a) in paragraph 36 by—**

- (i) deleting the expression “thirty thousand shillings” appearing in paragraph d (i) and substituting therefor the words “three million shillings”;
- (ii) deleting the expression “one hundred acres” appearing in sub-paragraph d (ii) and substituting therefor the expression “fifty acres”;
- (iii) inserting the following proviso immediately after paragraph (f)—

Provided that where there is a court case regarding such estate the period of transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.

- (b) in paragraph 46 by inserting the words “special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act” after the words “venture capital company”.

17. The Second Schedule to the Income Tax Act is amended—Amendment of the
Second Schedule to
Cap. 470.

- (a) in paragraph 1, by inserting the following proviso at the end of subparagraph (1) (dd)—

Provided that in the case of a building in use for the training of film producers, actors or crew, the rate of deduction shall be one hundred percent.

(b) in paragraph 25—

- (i) deleting the expression “495 tons” wherever it appears and substituting therefor the expression “125 tons”;
- (ii) deleting the expression “forty per cent” and substituting therefor the expression “one hundred per cent”.

(c) in paragraph 7 (3) by—

- (i) deleting the expression “subparagraph (cc) or (d)” and substituting therefor the expression “subparagraph (a)”.
- (ii) deleting the expression “subparagraph (d) and substituting therefor the expression “subparagraph (cc) or (d).

18. Head B of the Third Schedule to the Income Tax Act is amended—

Amendment of the
Third Schedule to
Cap 470.

(a) in paragraph 2, by adding the following subparagraphs immediately after subparagraph 2 (f)—

- (g) (i) in the case of a company introducing its shares through listing or any securities exchange via introduction, twenty-five percent for the period of five years commencing immediately after the year of income following the date of such listing.
- (ii) A gain on transfer of securities traded on any securities exchange licensed by the Capital Markets Authority is not chargeable to tax under section 3 (2) (f).

(h) in the case of a special economic zone enterprise, developer and operator, ten percent for the first ten years from date of first operation and thereafter fifteen percent for another ten years.

(b) in paragraph 3—

(i) by deleting subparagraph (m) and substituting therefor the following new subparagraph (m)—

(m) in the case of winnings of bookmakers, the withholding tax rate shall be seven and a half percent of the gross profit.

(ii) by deleting subparagraph (n).

(iii) inserting the following new subparagraph after subparagraph (m)—

(n) in the case of a special economic zones enterprise, developer and operator in respect of payments other than dividends made to non-residents at the rate of ten percent.

(c) in paragraph 5 by—

(i) deleting the proviso at the end of paragraph (j) and substituting therefor the following new proviso—

Provided that—

(i) the tax so deducted shall be final; and

(ii) in the case of bookmakers, the withholding tax shall be seven and a half percent of the gross profit.

(ii) inserting the following new paragraph after paragraph (j)—

(ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, twelve percent of the gross amount payable

(iii) by deleting subparagraph (k).

(d) by inserting the following new paragraph immediately after paragraph (9)—

“(10) The rate of tax in respect of residential rental income shall be ten percent of the gross rental receipts of a taxable resident person under section 6A”.

19. The Eighth Schedule to the Income Tax Act is amended—

Amendment of the
Eighth Schedule of
Cap. 470.

(a) in paragraph 6—

(i) by inserting the words “or their immediate family” immediately after the words “or former spouses” appearing in subparagraph (2) (h);

(ii) by deleting subparagraph (2) (i);

- (iii) by inserting the following sub-paragraph immediately after sub-paragraph (2)—

(3) For the purposes of this paragraph, “immediate family” means children of the spouses or former spouses.

- (b) by inserting the following new paragraph immediately after paragraph 8—

Cap.485A

8A. Notwithstanding any other provision of this Act, the deduction of costs of property shall not apply in the case of securities listed on any securities exchange approved under the Capital Markets Act.

- (c) in paragraph 14—

- (i) by deleting the definition of “adjusted cost”
- (ii) by deleting the definition of “transfer value”

- (d) by deleting paragraph 15 and substituting therefor the following new paragraph—

15. The gain subject to tax under this Part is the gross consideration payable and shall be subject to the withholding tax rate under paragraph (3) and (5) of the Third Schedule.

- (e) by deleting paragraphs 16, 16A and 17;

- (f) by inserting the following proviso at the end of paragraph 18—

Provided that this paragraph shall also apply to shares transferred under Part I of this Schedule.

- (g) by inserting the following new paragraph immediately after paragraph 11—

11A. The due date for tax payable in respect of property transferred under this Part shall be on or before the date of application for transfer of the property is made at the relevant Lands Office.

20. The Income Tax Act is amended in the Ninth Schedule—

Amendment of the
Ninth Schedule of
Cap. 470.

- (a) by inserting the following new definitions in paragraph (1) proper alphabetical sequence—

“petroleum information” means information relating to petroleum operations;

“petroleum operations” means authorized operations undertaken under a petroleum agreement;

- (b) by deleting subparagraph 6 (3) and substituting therefor the following new subparagraph—

(3) An amount accumulated in or withdrawn from a rehabilitation fund to meet expenditure incurred under an approved plan and interest income and investment income in respect of a rehabilitation fund shall be exempt from tax.

- (c) by deleting the word “twenty” in subparagraph (2) (b) of paragraph 15 and substituting therefor the word expression “5.625”;

- (d) by deleting the expression “management or professional fees” appearing on paragraph 16 (d) and substituting therefor the expression “management, training or professional fees”.

21. The First Schedule to the Kenya Revenue Authority Act is amended in Part II by inserting a new item 13 immediately after items 12 as follows—

Amendment to the
First Schedule of
Cap.469

13. The National Social Security Fund Act, 2013.

PART IV—MISCELLANEOUS

22. The Stamp Duty Act is amended by inserting the following new section immediately after section 96—

Insertion of a new
section 96A in Cap
480.

Exemption of stamp duty
on the transfers relating
to real estate investment
trust.

96A. (1) This section applies only to real estate investment trusts authorized under the Capital Markets Act, in respect of which it is shown to the collector—

- (a) that the effect thereof is to convey or transfer a beneficial interest in property from one trustee to another trustee or to an additional trustee; or

(b) that the effect thereof is to convey or transfer a beneficial interest in property from a person or persons for the transfer of units in the real estate investment trust.

(2) No Stamp duty shall be chargeable on an instrument relating to the matters referred to in subsection (1).

(3) An instrument to which this section applies shall be deemed to be duly stamped where it has, in accordance with the provisions of section 17, stamped with the particular stamp denoting that it is not chargeable with any duty.

(4) The exemption for instruments to which paragraph (1) (b) applies shall only have effect in respect of instruments executed before the 31st December, 2022.

(5) For the purposes of this section—

“additional trustee” means a new trustee appointed to an existing real estate investment trust.

“trustee” means a person appointed under a trust deed as a trustee of a real estate investment trust or otherwise so appointed by the court or pursuant to regulations made under the Capital Markets Act.

Cap.485A

23. Section 2 of the Insurance Act is amended by inserting the following new definition in proper sequence—

Amendment of
section 2 of Cap.
487.

“capital adequacy ratio” means a measure of the available capital in relation to the required capital.

24. Section 23 of the Insurance Act is amended—

Amendment of
section 23 of Cap.
487.

(a) in subsection (2) by deleting the word ‘Minister’ and substituting therefor the word ‘Authority’;

(b) in subsection (3) deleting the words “or under section 28”;

(c) by inserting the following new subsection immediately after subsection (3)—

(3A) If the Authority considers it appropriate, having regard to the nature, scale and complexity of the insurance business carried on or proposed to be carried on by an insurer, and to the insurer's risk profile, the Authority may issue—

- (a) a directive requiring the insurer to increase its paid-up capital to an amount higher than the minimum specified in the Regulations; or
- (b) a directive increasing the minimum capital adequacy requirement applicable to an insurer to a higher sum than that specified in the Regulations.

25. Section 28 of the Insurance Act is amended by deleting the word “Minister” appearing in subsection (2) and substituting therefor the word “Authority”.

Amendment of
section 28 of Cap.
487.

26. Section 30 of the Insurance Act is amended by inserting the following new item immediately after item (k)—

Amendment of
section 30 of Cap.
487.

- (l) an investment plan for the following period of not less than three years.

27. The Insurance Act is amended by repealing section 41 and replacing it with the following new section—

Repeal and
replacement of
section 41 of Cap.
487.

Margin of solvency.

41. (1) An insurer carrying on insurance business in Kenya shall at all times keep total admitted assets of not less than its total admitted liabilities and the capital adequacy ratio as may be determined by the Authority.

(2) For purposes of subsection (1), the Authority may prescribe the method of determining admitted assets and admitted liabilities.

(3) An insurer carrying on both long term and general insurance business shall at all times maintain separate margins of solvency.

(4) An insurer failing to comply with the requirements of this section shall be deemed to be unable to pay its debts within the meaning of section 123.

28. Section 47 of the Insurance Act is amended by deleting the word "Minister" wherever it appears and substituting therefor with the word "Cabinet Secretary".

Amendment to section 47 of Cap. 487.

29. The Insurance Act is amended by repealing section 48 and replacing it with the following new section—

Repeal and replacement of section 48 in Cap.487.

Investments of the Assets of Insurer.

48. Subject to the provision of section 41 and 50 and to any provisions in the instruments constituting the insurer or in the articles of association or other rules of the insurer which impose restrictions upon the manner in which the assets of the insurer may be invested, the assets of an insurer shall, with sufficient regard to considerations of security, liquidity and income, be invested in accordance with the provisions of such investment guidelines as may be issued by the Authority.

30. The Insurance Act is amended by repealing section 50 and replacing it with the following new section—

Repeal and replacement of section 50 of Cap. 487.

Insurer to submit investment policy.

50 (1) Every insurer shall invest its assets in accordance with the investment guidelines issued under section 48.

(2) Every insurer shall submit to the Authority an investment policy in such manner, form and for period not less than three years or such longer period as the Authority may determine from time to time.

31. Section 151 of the Insurance Act is amended—

Amendment of section 151 of Cap. 487.

(a) by deleting subsection (1) (b);

(b) by inserting the following new subsection immediately after subsection (1)—

(1A) Notwithstanding the provisions of subsection (1), a registered agent shall seek to be appointed by an insurer before transacting business on their behalf.

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

(2) No person shall make a statement in an application, account, written information or document submitted under this section that is false or misleading.

32. The Insurance Act is amended by deleting the Second Schedule and substituting therefor the following new Schedule—

Amendment of the
Second Schedule of
Cap. 487.

MINIMUM CAPITAL REQUIREMENTS

1. Subject to paragraph (3), no person shall be registered as an insurer unless the persons paid-up capital is—

(a) in the case of general Insurance business, the higher of—

- (i) six hundred million shillings;
- (ii) risk based capital determined from time to time; or
- (iii) 20% of the net earned premiums of the preceeding financial year;

(b) in case of long term insurance business, the higher of—

- (i) four hundred million shillings; or
- (ii) risk based capital determined by the Authority from time to time; or
- (iii) 5% of the liabilities of the life business for the financial year.

(c) in case of reinsurance business (general business), the higher of—

- (i) one billion shillings; or
- (ii) risk based capital determined by the Authority from time to time; or
- (iii) 20% of the net earned premiums of the preceeding financial year;

(d) in case of reinsurance business (long term business), the higher of—

- (i) five hundred million shillings; or
- (ii) risk based capital determined by the Authority from time to time; or
- (iii) 5% of the liabilities of the life business for the financial year.

2. The minimum capital requirement specified in paragraph (a), (b), (c) and (d) shall consist—

- (a) government bonds and Treasury Bills;
- (b) deposits and cash with a minimum of 10% in any one bank or group of banks; and
- (c) cash and cash equivalent in the case of a new company.

3. An insurer registered before the commencement of this Schedule shall comply with the foregoing requirement by the 30th June, 2018.

33. Section 2 of the Banking Act is amended by deleting the definition of the expression “significant shareholder” and substituting therefor the following new definition—

Amendment of
section 2 of Cap.
488.

“significant shareholder” means a person, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to, five per cent or more of the share capital of an institution or a corporate entity seeking to become an institution”.

34. Section 5 of the Banking Act is amended by deleting subsections (3), (4), (5), (6), (7), (8), (9), (10) and (11) and substituting therefor the following—

Amendment of
section 5 of Cap.
488.

(3) A licence issued under this section shall remain valid unless revoked under section 6:

Provided that a licence which was in force on the date of commencement of this subsection shall be deemed to be a licence to which this subsection applies.

(4) An institution shall pay annual fees in such amount and in such manner as the Central Bank may prescribe.

(5) An institution that fails to pay the annual fees by the end of the financial year shall pay double the annual fee, if payment is made within ninety days after the end of the financial year.

(6) An institution which fails to pay the annual fees within ninety days after the end of the financial year referred to in subsection (5) shall have its licence revoked under section 6.

(7) Any fee or other amount payable under this section shall be paid into the Central Bank.

35. Section 9A of the Banking Act is amended—

Amendment to
section 9A of Cap.
488.

(a) by inserting the following new subsections immediately after subsection (3)—

(3A) Notwithstanding any other provision in this section, the Central Bank may vet any shareholder who is not a significant shareholder if—

- (a) the Central Bank has reason to believe or reasonably suspect that such shareholder has reduced its direct or indirect shareholding in an institution or in a corporate entity to below 5 % in order to avoid vetting; or
- (b) the shareholder exercises or has the capacity to exercise direct or indirect control of the institution or corporate entity through his or its associates.

(3B) For the purposes of subsection (3A) (b) “control” means—

- (a) the ability to influence the management of an institution, a corporate shareholder of an institution or a corporate entity seeking to become an institution; or
- (b) the ability to influence, directly or indirectly, the decisions of the shareholders of an institution, a corporate shareholder of an institution or a corporate entity seeking to become an institution.

(3C) Any non-significant shareholder proposed to be vetted under this section shall be vetted in accordance with the criteria set out in Part B of the First Schedule and the vetting requirements for significant shareholders set out in the Prudential Guidelines.

(3D) A non-significant shareholder, upon being determined by the Central Bank as not fulfilling the fit and proper criteria as set out in Part B of the First Schedule shall be subject to the limitation set out in subsection (4) (a) of this section and may in addition be directed by the Central bank to cease any form of association or relationship with a particular person or institution.

(b) in subsection 4 (b) by deleting the words “five percent or less” and substituting therefor the words “below five percent”.

(c) deleting subsection (6).

36. Section 13 of the Banking Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of
section 13 of Cap.
488.

(1A) For the purposes of subsection (1), reference to “person” shall include a reference to that person’s associates.

37. Section 34 of the Banking Act is amended—

Amendment of
section 34 of Cap.
488.

(a) in subsection (2) (b) by deleting all the words appearing immediately before the word “control” and substituting therefor the words “appoint Kenya Deposit Insurance Corporation to assume the management”.

(b) by deleting subsection (3A) and (3B).

38. Section 34A of the Banking Act is amended by inserting the following new subsection immediately after subsection (5)—

Amendment
of section 34A of
Cap. 488

(6) The Central Bank shall upon approval of a voluntary liquidation, appoint the Kenya Deposit Insurance Corporation to undertake the approved voluntary liquidation.

39. The Banking Act is amended by repealing section 35A.

Repeal of section 35A of Cap. 488.

40. The Banking Act is amended by repealing section 36A.

Repeal of section 36A of Cap. 488.

41. The Banking Act is amended by repealing section 36B.

Repeal of section 36B of Cap. 488.

42. The Banking Act is amended by repealing section 36C.

Repeal of section 36C of Cap. 488.

43. The Banking Act is amended by repealing section 39A.

Repeal of section 39A of Cap. 488.

44. Section 11 of the Central Bank Act is amended in subsection (1) (a) by inserting the words "appointed by the President" immediately after the word "Chairperson".

Amendment of section 11 of Cap. 491.

45. Section 13 of the Central Bank Act is amended in subsection (1) by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of section 13 of Cap. 491.

46. The Road Maintenance Levy Fund Act is amended in subsection (3) by renumbering the existing provision as subsection (1) and inserting the following new subsection –

Amendment of section 3 of No. 9 of 1993.

(2) Out of the levy collected under subsection (1) there shall be paid an amount of three shillings per litre of petroleum sold into the Road Annuity Fund established under the Public Finance Management Act, 2012.

47. Section 34 of the Retirement Benefits Act, 1998 is amended in subsection (4) by deleting the word "six" and substituting therefor the word "three".

Amendment of section 34 of No. 7 of 1998.

48. Section 2 of the Proceeds of Crime and Anti-Money Laundering Act is amended by deleting the definition of the word "Minister" and substituting therefor the following new definition –

Amendment of section 2 of No. 9 of 2009.

"Minister" means the Cabinet Secretary for the time being responsible for matters relating to finance, and all references in this Act to "the Minister" shall be construed accordingly.

49. Section 23 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended in subsection (1) by adding at the end thereof the words "and the financing of terrorism".

Amendment of section 23 of No. 9 of 2009.

50. Section 24 of the Proceeds of Crimes and Anti-Money Laundering Act, 2009 is amended—

Amendment of
section 24 of No. 9
of 2009.

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

(a) shall receive, analyse and interpret—

- (i) reports of usual or suspicious transactions made by reporting institutions pursuant to section 12;
- (ii) all reports made pursuant to section 44;
- (iii) information disclosed to it pursuant to section 42 of the Prevention of Terrorism Act, 2012; and
- (iv) any additional or other information disclosed to it and obtained by it in terms of this Act.

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

(b) shall send information received under this Act to the appropriate law enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered the reports, the Director has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism.

(c) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) shall send to the appropriate law enforcement authorities, intelligence agency, or supervisory body any other information derived from an inspection carried out pursuant to paragraph (c) if such inspection gives the Director reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or the financing of terrorism.

(d) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) may instruct any reporting institution to—

- (i) provide it with such other or additional information or documents to enable the centre to properly undertake its functions under this Act; or
- (ii) take such steps as may be appropriate to facilitate any investigation undertaken or to be undertaken by the Centre including providing documents and other relevant information.

51. Section 36A of the Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended by inserting the following new subsection immediately after subsection (7)—

Amendment of section 36A of No. 9 of 2012.

(8) Notwithstanding the provisions of subsection (1) or any other provision of this Act, the Centre may require a reporting institution to report on that institution's compliance with this Act or any order, determination, instruction, or direction in the manner and within such period as may be determined by the Centre.

52. Section 2 of the Public Service Superannuation Scheme Act is amended—

Amendment to Section 2 of No. 8 of 2012.

(a) by deleting the definition of the term “bond”;

(b) in the definition of the term “child”, by deleting the word “twenty-one” and substituting therefor the word “eighteen”.

53. Section 6 of the Public Superannuation Scheme Act is amended by inserting the following new subsection immediately after subsection (5)—

Amendment to Section 6 of No. 8 of 2012.

(5A) The contribution specified in subsections (1) and (2) shall commence from such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

54. Section 50 of the Public Service Superannuation Scheme Act is amended—

Amendment to section 50 of No. 8 of 2012.

(a) in subsection (1) (b), by deleting the words “a bond to be known as the Government of Kenya Public Service Superannuation Bond in favour of the member” appearing at the end and substituting therefor the words “a letter recognizing accrued benefits at the date of joining the scheme under this Act”.

(b) by deleting subsections (2), (3) and (4).

(c) in subsection (5) by deleting the words “from the bond” appearing immediately after the word “benefit” and substituting therefor the words “under this Act”

55. The Public Service Superannuation Scheme Act is amended by deleting section 60 and replacing therefor with the following—

Amendment to
section 60 of No. 8 of
2012.

Amendment to the
First Schedule of
No. 45 of 2013.

60 The First Schedule to the National Social Security Fund Act is amended by inserting the following new paragraph (3) immediately after paragraph (2)—

“(3) A person who is a beneficiary of a pension scheme funded out of the Consolidated Fund shall be exempt from Tier II contributions under this Act”.

56. Section 20 of the Kenya Deposit Insurance Act, 2012 is amended in subsection (3)—

Amendment of
section 20 of the No.
10 of 2012

(a) by inserting the words “or from any other person” immediately after the expression “section 21”.

(b) by deleting item (e).

57. Section 76 of the Kenya Deposit Insurance Act, 2012 is amended—

(a) in subsection (4), by deleting the expression “twelve months” and substituting therefor the expression “twenty four months”;

(b) by inserting the following new subsection immediately after subsection (7)—

(8) All legal proceedings pending by or against, the Deposit Protection Fund Board, in respect of the repealed Act, shall be deemed to continue or be continued by or against the Corporation.

Amendment of
section 76 of the No.
10 of 2012.

58. Section 62 of the Consumer Protection Act, 2012 is amended by inserting the following new subsection immediately after section (4)—

Amendment of
section 62 of No.46
of 2012.

(5) The provisions of this section shall not apply to a credit agreement where the National or the County Government is the principal borrower or guarantor or where the borrower is a public entity.

59. Section 4 of the Public Private Partnership Act is amended in subsection (1) by—

Amendment to
section 4 of Act No.
15 of 2013.

(a) deleting item (b)

(b) inserting the following new items immediately after item (h)—

“(i) the Principal Secretary in the State department for the time being responsible for transport;

(j) the Principal Secretary in the State department for the time being responsible for infrastructure;

(k) the Principal Secretary in the State department for the time being responsible for energy”.

60. Section 43 of the Public Private Partnership Act is amended in subsection (2) by inserting the following new item (gg) immediately after item (g)—

Amendment to
section 43 of Act
No.15 of 2013.

“(gg) conditions under which bidders may submit request for clarifications; and.”

61. Section 13 of the Tax Appeals Tribunal Act, 2013 is amended by inserting the following proviso immediately after subsection (7)—

Amendments of
section 13 of No 40
of 2013.

Provided that during the period of one year from the date of its first sitting, the Tribunal may extend the period for the hearing an appeal for a period of up to sixty days if there are sufficient grounds to do so.

62. Section 44 of the Tax Appeals Tribunal Act, 2013 is amended by inserting the followed new subsection immediately after subsection (2)—

Amendment of
section 44 of No. 40
of 2013.

(3) The Tribunal shall hear and determine appeals relating to tax decision made before its first sitting (if it was not concluded by the appeal mechanism that existed before the establishment of the Tribunal) within a period of one year from the date of first sitting.

