

SPECIAL ISSUE

Kenya Gazette Supplement No. 159 (Acts No. 38)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2016

NAIROBI, 20th September, 2016

CONTENT

Act—

PAGE

The Finance Act, 2016.....949

THE FINANCE ACT, 2016**No. 38 of 2016***Date of Assent: 13th September, 2016**Date of Commencement: See Section 1***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, 5, 7, 9, 10, 11, 12, 13, 14, 15, 18, 19, 22, 23, 24, 25, 28, 29, 30, 31, 32, 34, 36, 54 and 67, on the 9th June, 2016;
- (b) Sections 39(a) and 41, on the 19th January, 2016;
- (c) Sections 16, 20, 21, 26, 29, 33 and 37, 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.

4. Section 10 of the Income Tax Act is amended by deleting paragraph (g).

Amendment of section 10 of Cap. 470.

No. 38

5. Section 12 of the Income Tax Act is amended –Amendment of
section 12 of Cap.
470.

- (a) by inserting the word “or” immediately before the expression “37”;
- (b) by deleting the expression “or 17A” and all the words appearing thereafter.

6. Section 15 of the Income Tax Act is amended in –Amendment of
section 15 of Cap.
470.

- (a) subsection (2) by inserting the following new paragraph immediately after paragraph (y)–

“(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports”;

- (b) subsection (3) (b) by deleting the words “one hundred and fifty” and substituting therefor the words “three hundred”.

7. Section 16 of the Income Tax Act is amended in subsection (3) by deleting the definition of the expression “deemed interest”.Amendment of
section 16 of Cap.
470.**8.** Section 34 of the Income Tax Act is amended -Amendment of
section 34 of Cap.
470.

- (a) in subsection (1) by deleting paragraph (m); and
- (b) in subsection (2) by deleting the following paragraph (i) –
 - (i) winnings payable by bookmakers to punters (players).

9. Section 35 of the Income Tax Act is amended-Amendment of
section 35 of Cap.
470.

- (a) in subsection (1) by deleting paragraph (j);
- (b) in subsection (3) –
 - (i) by inserting the words “subject to subsection (3A)” at the beginning thereof;
 - (ii) by deleting paragraph (i);
 - (iii) by inserting the following new paragraph immediately after paragraph (i)–
 - (j) rent, premium or similar consideration for the use or occupation of immovable property;

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

(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.

(d) by deleting subsection (6).

10. The Income Tax Act is amended in section 37—

Amendment of section 37 of Cap. 470.

(a) by deleting subsection (6);

(b) by deleting subsection (7).

11. The Income Tax Act is amended by repealing section 51A.

Repeal of section 51A of Cap. 470.

12. The Income Tax Act is amended by repealing section 72.

Repeal of section 72 of Cap. 470.

13. The Income Tax Act is amended by repealing section 75A.

Repeal of section 75A of Cap. 470.

14. The Income Tax Act is amended by repealing section 98.

Repeal of section 98 of Cap. 470.

15. The Income Tax Act is amended by repealing section 105.

Repeal of section 105 of Cap. 470.

16. 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.

17. 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 the following new subparagraph immediately after subparagraph (h)—

- (i) in the case of a company that constructed at least four hundred residential units annually, fifteen per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing,

provided that where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of fifteen per cent shall be applied proportionately to the extent of the turnover arising from the housing activity.

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

(e) Head B of the Third Schedule to the Income Tax Act is amended—

- (i) in paragraph 3 by deleting subparagraph (m);
- (ii) in paragraph 5 by deleting subparagraph (j).

18. 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.

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

Repeal of the Thirteenth Schedule to Cap. 470.

PART III –EXCISE DUTY

20. 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;

21. 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.

22. 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.

23. 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.

24. 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>
2710.1 9.22	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 excluding locally assembled motor vehicles and substituting therefor the expression “20%”;

- (e) by inserting the words “and locally assembled motor cycles” immediately after the words “motor cycles ambulances” appearing in the item titled “Motor cycles of tariff 87.11 other than motor cycle ambulances”;
- (f) by inserting the words “excluding school buses for use by public schools” immediately after the word “vehicles” appearing in the item titled “motor vehicles of tariff heading 87.02, 87.03 and 87.04”;
- (g) by deleting the formula “AxB” in paragraph 2 (2) and substituting therefor with the formula “A(1+B)”.

25. The Second Schedule to the Excise Duty Act, 2015 is amended in Part A by inserting the following new paragraphs 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.

10. Excisable goods imported for direct use in the manufacture of sanitary towels.

11. All goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police Service.

PART IV—VALUE ADDED TAX

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

Amendment of section 2 of No. 35 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;

No. 16 of 2015

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

27. Section 13 of the Value Added Tax Act, is amended in subsection (7)—

- (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—

Amendment of section 13 of No. 35 of 2013.

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 per cent of the price of the service, excluding such service charge.

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

Repeal of section 33 of No. 35 of 2013.

29. 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.

30. 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, 2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00 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 parks of one hundred acres or more approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for Industrialisation” appearing in paragraph 55 and substituting therefor the words “parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury”;

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

57. All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service.

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

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

59. Wheat seeds of tariff number 1001.11.00 and 1001.91.00.

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

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

62. Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities 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.

63. 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.

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

65. Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy.

66. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy.

67. Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, or iron or steel of tariff numbers 7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00.

68. Super absorbent polymer (SAP) of tariff number 39.06.90.0.

69. Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00.

70. IP super soft fluff pulp – fr-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.0.

71. Perforated PE film 15-22 gsm of tariff number 3921.190.0.

72. Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8.

73. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.

74. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.

75. Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.

76. Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.

77. Pressure sensitive adhesive of tariff number 3506.91.90.

78. Plain polythene film/LPDE of tariff number 39.21.190.0.

79. Plain polythene film/PE of tariff number 39.21.190.0.

80. PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.

81. ADL – 25-40gsm of tariff number 56.03.1190.8.

82. Elasticized side tape of tariff number 5402.4410.

83. 12-16 gsm spunbound piyropononwoven coverstock/12gsm spunbound PP non-woven SMS hydrophobic leg cuffs of tariff number 56.03.1190.8.

84. Polymetric elastic 2/3 strands of tariff number 3919.90.90.10.

85. Plain polythene film/PE of tariff number 39.20.10.10.

86. PE white 25-40gsm/release paper of tariff number 48.10.99.00

87. 12-16 gsm spunbound piyropononwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.

(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 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” appearing in paragraph 22 and substituting therefor the words “parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury”;
- (iii) by deleting paragraph 24 and substituting therefor the following new paragraph—

24. Entry fees into the national parks and national reserves.
- (iv) by inserting the following new paragraphs immediately after paragraph 24—

25. The services of tour operators, excluding in-house supplies.

26. Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities 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.

(c) Section B of Part I of the First Schedule is amended by—

- (i) renumbering the existing provision in section B of Part I as paragraph (1);
- (ii) inserting the following new paragraph immediately after paragraph (1)—

(2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1st September, 2016.

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

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

(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.

13. The supply of liquefied petroleum gas.

(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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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 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; 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 per cent 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 31st 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 31st 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.

40. 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.

41. 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 per cent 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.

(5) A person who, prior to the commencement of this section, was appointed to withhold tax under section 25A of the Value Added Tax Act, 2013 shall, notwithstanding the repeal of that section, be deemed to be a person appointed under subsection (1),

provided that this provision shall not be construed to impose any penalty whatsoever on any such person who ceased to withhold tax for any period following the repeal of that section upto the 8th June, 2016.

42. 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”.

- (c) by inserting the following new subsection immediately after subsection (4) –

(5) The Commissioner shall repay the overpaid tax within a period of two years from the date of application, failure to which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of two years.

43. The Tax Procedures Act, 2015 is amended by deleting section 48 and substituting therefor the following new section—

Amendment of section 48 of No. 29 of 2015.

Erroneous refund of tax.

48 (1) Where any tax has been refunded in error, the person to whom the refund has been erroneously made shall, on demand by the Commissioner, pay the amount erroneously refunded.

(2) Where a demand has been made for any amount of tax under subsection (1), that amount shall be deemed to be due from the person liable to pay the tax on the date upon which the demand is served upon him or her and if payment is not made within thirty days of the date of service, an interest equal to 1% per month or part thereof of such unpaid amount shall forthwith be due and payable,

provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due.

44. Section 89 of the Tax Procedures Act, 2015 is amended—

Amendment of section 89 of No. 29 of 2015.

- (a) in subsection (6) by inserting the words “or interest” immediately after the word “penalty” wherever it appears;
- (b) by deleting subsection (7) and substituting therefor with the following new subsection –

“(7) The Commissioner may, upon an application under subsection (6) or on the Commissioner’s own motion and with the approval of the Cabinet Secretary, remit, in whole or in part, any penalty or interest payable by a person except a penalty imposed under section 85,

Provided that the remission of interest is by reason of—

- (a) uncertainty as to any question of law or fact;
- (b) consideration of hardship or equity; or
- (c) impossibility or undue difficulty or expense, of recovery of tax.

45. The Second Schedule to the Tax Procedures Act, 2015 is amended—

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

- (a) in paragraph 2 by deleting the words “section 51 A (a)” and substituting therefor the words “sections 35 (6B), 37 (6) and 51A (a)”;
- (b) in paragraph 3 by deleting the words “section 56” and substituting therefor the words “sections 55 and 56”.

PART VI—MISCELLANEOUS PROVISIONS

46. 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 30th 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. Section 31 of the Banking Act is amended—

Amendment of section 31 of the Cap. 488.

No. 14 of 2008.
Cap. 490.

- (a) in subsection (3)(b), by inserting the words “institutions licensed under the Sacco Societies Act, 2008, institutions registered under the Co-operative Societies Act, 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”;

No. 38

(c) in subsection (5)—

Cap. 490.

(i) by inserting the words “or institutions licensed under the Sacco Societies Act, 2008, institutions registered under the Co-operative Societies Act, 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) institutions registered under the Co-operative Societies Act;

(dc) public utility companies;

(dd) any institution mandated to share credit information under any written law; and

Cap. 490.

(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.

52. 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.

53. 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”.

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

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

55. 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.

56. 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.

57. Section 37 of the Public Finance Management Act, 2012 is amended—

Amendment of section 37 of No. 18 of 2012.

(a) in subsection (3) by deleting the word “officer” and substituting therefor the word “officers”;

(b) in subsection (5) by deleting the word “officer” and substituting therefor the word “officers”.

58. Section 66 of the Public Finance Management Act, 2012 is amended in subsection (1) by deleting the word “officer” and substituting therefor the word “officers”.

Amendment of section 66 of No. 18 of 2012.

59. 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.

60. 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.

2016

*Finance***No. 38**

61. 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.

62. 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”.

63. 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.

64. 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.

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

Repeal of section 43 of No. 40 of 2013.

No. 38

66. Section 4 of the Special Economic Zones Act, 2015 is amended in subsection (6) by inserting the following new paragraph immediately after paragraph (i) –

(j) convention and conference facilities.

Amendment of section 4 of No. 16 of 2015.

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

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

Amendment of section 35 No. 16 of 2015.

68. Section 2 of the Capital Markets Act, is amended by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of Cap. 485A.

“commodity” means—

- (a) agricultural, livestock, fishery, forestry, mining or energy goods or any product that is manufactured or processed from any such goods;
- (b) financial instruments;
- (c) an index, right, or interest in any such commodity;
- (d) such other thing as the Cabinet Secretary may, by notice in the *Gazette*, determine to be the subject of a commodity contract;

“commodity contract” includes—

- (a) spot commodity contract;
- (b) commodity futures contract; and
- (c) such other contract or class of contracts as the Authority may, by regulations prescribe;

“commodity market” means a market or facility licensed by the Authority or a facility, whether electronic or otherwise at which, offers or invitations to sell, purchase or exchange commodity contracts are regularly made on a centralized basis, being offers or invitations that are intended or may reasonably be expected to result directly or indirectly in the acceptance or making, respectively of offers to sell, purchase or exchange of commodity contracts but does not include—

- (a) the office or facilities of a commodity dealer or broker;

(b) the office or facilities of a clearing house.

“spot commodity trading” means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity, and “spot commodity contract” shall be construed accordingly.

69. Section 11 of the Capital Markets Act is amended—

Amendment of section 11 of Cap. 485A.

(a) in subsection (1) by inserting the word “commodities” immediately after the word “securities” wherever it appears in paragraph (b);

(b) in subsection (3)—

(i) by inserting the words “commodity exchange” immediately after the words “securities exchange” appearing in paragraph (f);

(ii) by inserting the following new paragraph immediately after paragraph (f)—

“(fa) regulate spot commodity markets”;

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

Amendment of section 12 of Cap. 485A.

(ka) spot commodity trading and commodity markets.

71. The heading to Part III of the Capital Markets Act is amended by deleting the word “securities”.

Amendment to Part III of Cap. 485A.

72. The Capital Markets Act is amended in section 19 by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear.

Amendment of section 19 of Cap. 485A.

73. The Capital Markets Act is amended in section 19A by—

Amendment of section 19A of Cap. 485A.

(a) inserting the words “commodities exchange” immediately after the words “securities exchange”;

(b) deleting the words “a securities exchange licence” and substituting therefor the words “an exchange licence”.

No. 38

74. Section 20 of the Capital Markets Act is amended by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear.

Amendment of section 20 of Cap. 485A.

75. Section 21 of the Capital Markets Act is amended by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear.

Amendment of section 21 of Cap. 485A.

76. Section 22A of the Capital Markets Act is amended—

Amendment of section 22A of Cap. 485A.

- (a) by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear;
- (b) by inserting the words “commodities markets” immediately after the words “securities markets” wherever they appear.

77. Section 23 of the Capital Markets Act is amended—

Amendment of section 23 of Cap. 485A.

- (a) in subsection (1) by inserting the words “commodity dealer”, “commodity broker” immediately after the words “authorized depository”;
- (b) in subsection (2) by inserting the words “commodities exchange” immediately after the words “securities exchange”.

78. Section 25A of the Capital Markets Act is amended in subsection (1) by inserting the words “commodities or derivatives” immediately after the word “securities” wherever it appears.

Amendment of section 25A of Cap. 485A.

79. Section 2 of the Betting, Lotteries and Gaming Act is amended by inserting the following new definitions in their proper alphabetical sequence —

Amendment of section 2 of Cap. 131.

“Collector” means the Commissioner-General appointed under the Kenya Revenue Authority Act;

“gaming revenue” means gross turnover less the amount paid out to customers as winnings;

80. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 29—

Insertion of new section 29A in Cap. 131.

29A. (1) There shall be a tax to be known as betting tax chargeable at the rate of seven point five per cent of the gaming revenue.

(2) The tax shall be paid to the Collector by the licensed bookmaker on the 20th day of the month following the month of collection.

81. Section 37 of the Betting, Lotteries and Gaming Act is amended—

(a) in subsection (2) by deleting paragraph (a);

(b) by deleting subsection 3.

Amendment of section 37 of Cap. 131.

82. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 44—

44A. (1) There shall be a tax to be known as lottery tax chargeable at the rate of five per cent of the lottery turnover.

(2) The tax shall be paid to the Collector by a person authorized to promote the lottery on the 20th day of the month following the month of collection.

Insertion of section new 44A in Cap. 131.

83. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 55—

55A. (1) There shall be a tax to be known as gaming tax chargeable at the rate of twelve per cent of the gaming revenue.

(2) The tax shall be paid to the Collector by a person carrying on a gaming business on the 20th day of the month following the month of collection.

Insertion of section 55A in Cap. 131.

84. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 59A—

59B. (1) There shall be a tax to be known as prize competition tax chargeable on the cost of entry to a competition which is premium rated at the rate of fifteen per cent of the total gross turnover.

(2) The tax shall be paid to the Collector by the licensed person on the 20th day of the month following the month of collection.

Insertion of new section 59B in Cap. 131.

No. 38

85. Section 975 of the Companies Act is amended in subsection (2) by deleting paragraph (b).

Amendment of section 975 of No. 17 of 2015.

86. Section 62 of the Consumer Protection Act is amended by inserting the words “or where the lender is either a bilateral or multilateral foreign financial institution” at the end of subsection (5).

Amendment of section 62 of No. 46 of 2012.