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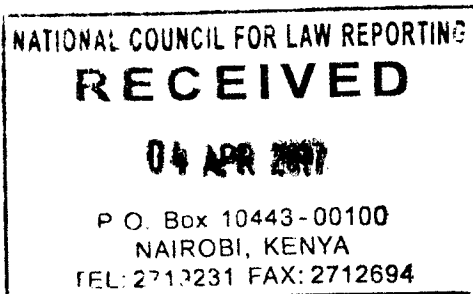
NAIROBI, 3rd April, 2017

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THE FINANCE BILL, 2017

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2017, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

(a) sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, 24, and 25, on the 3rd April, 2017;

(b) sections 40, 41, 47, 48 and 49, on the 1st July, 2017

(c) all other sections on, the 1st January, 2018.

PART II—EXCISE DUTY

2. Section 15 of the Excise Duty Act, 2015, is amended in subsection (1) by inserting the words “or illuminating kerosene” immediately after the word “spirit” appearing in paragraph (d).

Amendment of section 15 of No. 23 of 2015.

3. Section 29 of the Excise Duty Act, 2015, is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 29 of No. 23 of 2015.

“(b) the excise duty has been paid in respect of spirits or illuminating kerosene that have subsequently been used by a licensed or registered manufacturer to manufacture unexcisable goods.”

4. The First Schedule to the Excise Duty Act, 2015 is amended—

Amendments of the First Schedule to Act No. 23 of 2015.

(a) in Part I—

(i) by deleting the expression “Shs. 175 per litre” appearing in the second column against the description “spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous

beverages of alcoholic strength exceeding 10%" and substituting therefor the expression "Shs. 200 per litre";

- (ii) by deleting the description "cigarettes containing tobacco or tobacco substitutes" and the corresponding rates of excise duty and substituting therefor the following—

Cigarette with filters (Hinge lid and soft cap)	Shs 2,500 per mille
Cigarettes without filters (plain cigarettes)	Shs. 1,800 per mille

- (b) in Part III, by inserting the following new definition in proper alphabetical sequence—

"powdered beer" means any powder, crystals or any other dry substance which, after being mixed with water or any other nonalcoholic beverage, ferments to, or otherwise becomes an alcoholic beverage.

5. The Second Schedule to the Excise Duty Act, 2015 is amended—

Amendment of
Second Schedule to
No. 23 of 2015.

- (a) in paragraph 5 of Part A, by inserting the words "or St John Ambulance" immediately after the words "Kenya Red Cross";

- (b) in the proviso to Paragraph 6 of Part A—

- (i) by deleting the words "equivalent value" and inserting the words "whose current retail selling price shall not exceed that of the previously owned left-hand drive vehicle";

- (ii) by deleting paragraph (c).

- (c) Paragraph 10, by inserting the words "or purchased locally" immediately after the word "imported".

PART II—VALUE ADDED TAX

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

Amendment of
section 2 of No. 35
of 2013.

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

“Islamic finance arrangement” has the meaning assigned to it in section 2 of the Income Tax Act;

Cap. 470.

“Islamic finance return” has the meaning assigned to it in section 2 of the Income Tax Act;

“*Sukuk*” has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012.

No. 18 of 2012.

(b) by inserting the following new subsection immediately after subsection (2)—

“(3) For the purposes of this Act—

(a) Islamic finance return is treated as interest, whether received or paid on a financial arrangement; and

(b) reference to “interest” includes a reference to Islamic finance return.”.

7. Section 11 of the Value Added Tax Act, 2013, is amended—

Amendment of section 11 of No. 35 of 2013.

(a) in paragraph (b), by deleting the word “and” and substituting therefor the word “or”; and

(b) in paragraph (c), by inserting the word “where” at the beginning thereof.

8. Section 43 of the Value Added Tax Act, 2013 is amended by renumbering subsection (6) as (5).

Amendment of section 43 of the No. 35 of 2013.

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

Amendment of First Schedule to No. 35 of 2013.

(a) in Section A of Part 1 —

(i) by deleting the word “blind” appearing in paragraph 39(1)(b) and substituting therefor the word “disabled”;

(ii) by deleting the following item —

1102.20.00 – Maize (corn) flour;

1101.00.00 – Wheat or meslin flour and ordinary bread;

(iii) in paragraph 63—

(a) by inserting the words “equipment and apparatus” immediately after the word “goods”;

- (b) by inserting the words “with a minimum bed capacity of 50” immediately after the word “hospitals”.
- (iv) by inserting the following new paragraphs immediately after paragraph 87—
 - “88. The supply of Liquefied Petroleum Gas;
 - 89. Taxable goods for use in the manufacture of liquid petroleum gas cylinders by licensed manufacturers upon recommendation by the Cabinet Secretary responsible for Energy and petroleum.
 - 90. Goods falling under tariff number 4907.00.90;
 - 91. Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;
 - 92. Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture;
 - 93. Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions—
 - (i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime;
 - (ii) the vehicles shall be used exclusively for the transportation of tourists;
 - (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and

- (iv) any other condition the Commissioner may impose:

Provided that tax shall become payable upon change of use or disposal of the vehicle for other use.”

(b) in Part II—

- (i) by inserting the word “*Sukuk*” immediately after the word “bonds” appearing in subparagraph 1(k); and
- (ii) by adding a new paragraph immediately after subparagraph (m) as follows—
 - (n) asset transfers and other transactions related to the transfer of assets into Real Estates Investment Trusts and Asset Backed Securities.
 - (o) any services set out in items (a) to (n) that are structured in conformity with Islamic finance.

10. The Second Schedule to the Value Added Tax Act, 2013, is amended—

Amendment of
Second Schedule to
No 35 of 2013.

(a) in Part A—

- (i) by deleting paragraph 13;
- (ii) by adding the following new paragraph—

13. The supply of maize (corn) flour, wheat or meslin flour and ordinary bread.

14 Taxable goods supplied to marine fisheries and fish processors upon recommendation by relevant state department.

(b) in Part B—

- (i) by deleting the words “of equivalent value” appearing in subparagraph (iii) of the proviso to 6(3)(c) and substituting therefor the words “whose current retail selling price does not exceed that of the previously owned left-hand-drive vehicle”;
- (ii) by deleting paragraph 6(3) (iii) (C);
- (iii) by inserting the word “services” immediately after the word “goods” appearing in paragraph 4;

- (iv) by inserting the words “and services” immediately after the word “goods” appearing in paragraph 8;
- (c) in Part C, by deleting the tariff Nos.3003.10.00 and 3003.90.00 and substituting therefor the following—

<i>Tariff No.</i>	<i>Description</i>
3003.10.00 -	Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycins or their derivatives.
3003.90.00 -	Other.

PART III—INCOME TAX

11. Section 2 of the Income Tax Act is amended—

Amendment of
section 2 of Cap.
470.

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

“Islamic finance arrangement” means all financial arrangements, including transactions, instruments, products or related activities that are structured in accordance with Islamic law;

“Islamic finance return” means any amount received or paid in relation to *Sukuk* or an Islamic finance arrangement;

“*Sukuk*” has the meaning assigned to it in the Public Finance Management Act, 2012;

No. 18 of 2012.

- (b) by adding the words “or an Islamic finance return” at the end of the definition of the word “interest”.

12. Section 15 of the Income Tax Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (z)—

Amendment of
section 15 of Cap.
470.

- (aa) expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to

alleviate the effects of a national disaster declared by the President.

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

Insertion of new section 18A in Cap. 470.

Ascertainment of gains or profits of business in a non-preferential tax regime.

18A. (1) Where a resident entity operating in a preferential tax regime carries on business—

- (a) with a related resident person not operating in a preferential tax regime; and
- (b) the business produces to the resident person not operating in a preferential tax regime either no profits or less than the ordinary profits which would have been expected to accrue from that business if there had been no such relationships,

then, the gains or profits of that resident person from that business shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length.

(2) For the purposes of this section, the expression "preferential tax regime", with respect to an item of income or profit, means any legislation, regulation or administrative practice which provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or the tax base.

14. The Income Tax Act is amended by repealing section 108.

Repeal of section 108 of Cap. 470.

15 The First Schedule to the Income Tax Act is amended in Part I by inserting a new paragraph immediately after paragraph 54 as follows—

Amendment of First Schedule to Cap. 470.

55. Dividends paid by Special Economic Zone Enterprise, developers or operators to any non-resident person.

16. The Second Schedule to the Income Tax Act is amended by inserting a new paragraph immediately paragraph 24B as follows—

Amendment of
Second Schedule to
Cap. 470.

24C. Capital expenditure on buildings and machinery for use in a Special Economic Zone

Subject to this Schedule, where capital expenditure is incurred on the construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise for use by the enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction, equal to one hundred percent of the capital expenditure, against the gains or profits of that enterprise in the year in which the building or machinery is first used.

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

Amendment of
Third Schedule to
Cap. 470.

(a) in item 1 of Head A (Resident Personal Relief) by deleting the expression “fifteen thousand three hundred and sixty and substituting therefor the expression “sixteen thousand eight hundred and ninety six”.

(b) in Head B—

(i) by deleting items 1 and 1A (Rates of Tax) substituting therefor the following new items—

1. The individual rates of tax shall be—

On the first Shs.147,580	10%
On the next Shs.139,043	15%
On the next Shs. 139,043	20%
On the next Shs. 139,043	25%
On all income over Shs 564,709	30%

1A. The wife's employment, wife's professional and wife's self-employment income rates of tax shall be:

On the first Shs.147,580	10%
On the next Shs.139,043	15%
On the next Shs. 139,043	20%
On the next Shs. 139,043	25%
On all income over Shs. 564,709	30%

(ii) in item 2 by—

- (a) inserting the expression “whether the enterprise sells its products to markets within or outside Kenya” immediately after the word “enterprise” in paragraph (h);
- (b) adding the following new subparagraph immediately after subparagraph (i)—

“(j) in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations”.

(c) in item 3 by—

- (i) deleting the proviso to paragraph (a) and substituting therefor the following new proviso—

Provided that—

- (a) the rate applicable to any payments made by Special Economic Zone Enterprise, Developer or Operator to a non-resident persons shall be 5% of the gross amount payable.
 - (b) the rate applicable to the citizen of the East African Community Partner States in respect of consultancy fee shall be fifteen per cent of the gross sum payable.
- (ii) by inserting the following proviso at the end of paragraph (b)—

Provided that the rate applicable to any royalty paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable.

(iii) inserting the following subparagraph at the end of paragraph (e)—

(iii) in respect of interest paid by any Special Economic Zone Enterprise, Developer or Operator to a nonresident persons, 5% of the gross amount payable.

(iv) in paragraph 5(d)(ii) by deleting the tabulation of rates and income bands at the end and substituting therefor the following new rates and income bands—

On the first Shs.147,580	10%
On the next Shs.139,043	15%
On the next Shs. 139,043	20%
On the next Shs. 139,043	25%
On all income over Shs 564,709	30%

PART V—TAX PROCEDURES

18.Section 6 of the Tax Procedures Act, 2015, is amended by deleting the words “the of” appearing in paragraph (h) and substituting therefor the words “of the”.

Amendment of
section 6 of No. 29
of 2015.

19.Section 7 of the Tax Procedures Act, 2015 is amended by renumbering the existing provision as subsection (1) and adding a new subsection as follows—

Amendment of
section 7 of No. 29
of 2015.

“(2) Without prejudice to the generality of subsection (1), the authorised officer shall have the power to enter and search any premises or vessels and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law or tax appeals tribunal.”

20.Section 8 of the Tax Procedures Act, 2015 is amended in subsection (1) by deleting the expression “(d)” appearing immediately after paragraph (c).

Amendment of
section 8 of No. 29
of 2015.

21.Section 16 of the Tax Procedures Act, 2015 is amended in subsection (9) by inserting the words “penalty or” immediately after the word “any”.

Amendment of
section 9 of 29 of
2015.

22.Section 17 of the Tax Procedures Act, 2015 is amended in subsection (6) by inserting the words “penalty or” immediately after the word “any”.

Amendment of
section 17 of 29 of
2015.

23.Section 18 of the Tax Procedures Act, 2015 is amended—

Amendment of section 18 of 29 of 2015.

- (a) in subsection (2), by deleting paragraph (c); and
- (b) in subsection (3), by inserting the words “penalty or” immediately after the word “any”.

24.Section 37B of the Tax Procedures Act, 2015 is amended by—

Amendments to Section 37B of Act No 29 of 2015.

- (a) deleting the expression “31st December, 2017” appearing in item (b) and substituting therefor the expression “30th June 2018”;
- (b) adding the following item immediately after item (b)—

“(c) the voluntarily declared funds have been transferred back to Kenya.”

25.Section 42A of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (4)—

Amendments to section 42A of No 29 of 2015.

“(4A) The Commissioner may at any time exempt any supplier from the provisions of this section if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty-four months

(4B) The tax withheld under this section shall be remitted to Commissioner within fourteen days after the tax was deducted.

(4C) A person who is required under this section to withhold tax commits an offence if the person—

- (a) fails to withhold the whole amount of the tax which should have been withheld; or
- (b) fails to remit the amount of the withheld tax to the Commissioner within fourteen days following the time the withholding was made or ought to have been made.

PART VI—MISCELLANEOUS

26 Section 29A of the Betting, Lotteries and Gaming Act is amended by deleting the words “seven point five” appearing in subsection (1) and substituting therefor the word “fifty”.

Amendment of section 29A of Cap 131.

27. Section 44A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the word “five” and substituting therefor the word “fifty”.

Amendment of section 44A of Cap 131.

28. Section 55A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the word “twelve” and substituting therefor the word “fifty”.

Amendment of section 55A of Cap 131.

29. Section 59B of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the word “fifteen” and substituting therefor the word “fifty”.

Amendment of section 59B of Cap 131.

30. The First Schedule to the Kenya Revenue Authority Act is amended in Part I by inserting the following new paragraphs immediately after paragraph 8—

Amendment of First Schedule to Cap. 469.

9. Value Added Tax Act, 2013;

10. Excise Duty Act, 2015;

11. Tax Procedures Act, 2015;

12. Miscellaneous Fees and Levies Act, 2016.

31. Section 2 of the Stamp Duty Act is amended by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of Cap. 480.

“Islamic finance arrangement” has the meaning assigned to it in section 2 of the Income Tax Act;

“Islamic finance return” has a meaning assigned to it in section 2 of the Income Tax Act.

“Islamic property finance” means property or land leased or sold to a financial institution and then leased or resold to a person for a return in accordance with Islamic law;

“*Sukuk*” has a meaning assigned to it in section 2 of the Public Finance Act, 2012.

No. 18 of 2012.

32. Section 5 of the Stamp Duty Act is amended in the proviso, by inserting the words “or an Islamic property finance arrangement” immediately after the word “mortgage”.

Amendment of section 5 of Cap. 480.

33. Section 27 of the Stamp Duty Act is amended by inserting the words “or Islamic finance return” immediately after the word “interest” wherever it appears.

Amendment of section 27 of Cap. 480.

34. The Stamp Duty Act is amended by inserting a new section 68A immediately after section 68 as follows—

Insertion of section 68A in Cap. 480.

Islamic property finance
arrangement

68A. In any mortgage under which—

- (a) a financial institution provides an Islamic finance arrangement that enables a person to own property or land; and
- (b) where the title or interest in the property or land is first transferred to the financial institution from the vendor and afterwards to that person,

the duty shall be charged on the transfer of the title or interest to the financial institution by the vendor but shall not be charged on the transfer of the title or interest from the financial institution to that person.

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

Insertion of section
96B in Cap.480.

Exemption from
payment of stamp duty
on transfer of title
relating to *Sukuk*
arrangement.

96B. (1) A *Sukuk* arrangement shall be exempt from stamp duty where the arrangement requires the transfer of title in an asset if—

- (a) at the beginning of the arrangement, the title shall be transferred from the original owner of the asset to the entity representing the interests of the *Sukuk* holders; and
- (b) during or at the end of the arrangement, the title shall be transferred back to the original owner of the asset from the entity representing the interests of the *Sukuk* holders.

(2) An exemption under subsection (1) shall also apply if the asset is replaced during the term of the *Sukuk* arrangement:

Provided that the conditions specified in subsection (1) (a) and (b) are satisfied.

(3) An arrangement shall not be exempt from stamp duty if—

- (a) the title to the asset is transferred during or after the *Sukuk* arrangement to any party other than the original owner;
- (b) the arrangement is not effected for genuine commercial reasons; or
- (c) the arrangement forms part of arrangements whose main purpose is the evasion of a tax liability under any tax law.

36. The Schedule to the Stamp Duty Act is amended in paragraph 4 of the part headed the “General Exemption” by inserting the word “*Sukuk*” immediately after the words “Government security”.

Amendment of
Schedule to
Cap.480.

37. Section 5 of the Retirement Benefits Act, 1997 is amended by inserting a new paragraph immediately after paragraph (b) as follows—

Amendment of
section 5 of No. 3 of
1997.

- (ba) approve trustees’ remuneration approved by members during the annual general meeting after every three years.

38. Section 26 of the Retirement Benefits Act, 1997, is amended in subsection (2) by adding a new paragraph immediately after paragraph (d) as follows—

Amendment of
section 26 of No. 34
of 1997.

- (e) does not comply with the guidelines or practice notes issued by the Authority.

39. Section 34 of the Retirement Benefits Act, 1997, is amended by inserting a new subsection immediately after subsection 4(B) as follows—

Amendment of
section 34 of No. 3
of 1997.

(4C) Despite the provisions of subsection (4B), the Authority shall require a person who fails to submit any statutory return by the due date to the Authority to pay a penalty of one hundred thousand shillings and where the returns remain un-submitted, the person, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for each day or part thereof during which the offence continues:

Provided that a person who pays a penalty under this subsection shall not be prosecuted in court for the same offence.

40. Section 2 of the Public Finance Management Act, 2012, is amended—

Amendment of section 2 of No. 18 of 2012.

- (a) in the definition of "county government security" by inserting the word "*Sukuk*" immediately after the words "treasury bond";
- (b) in the definition of "national government security" by inserting the word "*Sukuk*" immediately after the words "Treasury Bond"
- (c) by inserting the following new definitions in proper alphabetical sequence—

"*Sukuk*" means certificates of equal value, representing undivided shares in ownership of tangible or intangible assets, usufruct of assets; services or an investment activity, structured in conformity with Islamic law;

"Islamic finance return" has the same meaning assigned to it under section 2 of the Income Tax Act;

- (d) by inserting the following new subsection immediately after subsection (2)—

(3) For the purposes of this Act, the reference to the term 'interest' in relation to a national government security or a county government security shall also apply to reference to Islamic finance return on *Sukuk*.

41. Section 205 of the Public Finance Management Act, 2012, is amended by inserting the following new subsections immediately after subsection (3)—

Amendment of section 205 of No. 18 of 2012.

(3A) Despite the generality in subsection (1), the Cabinet Secretary may make regulations for raising money by issuing a *Sukuk* bond which shall specify the purpose for which money may be raised.

(3B) Money raised through a *Sukuk* bond may be raised within or outside Kenya in Kenya shillings or in any other currency or medium of exchange.

42. The Tax Appeals Tribunal Act, 2013, is amended in section 13(7) by deleting the proviso thereto.

Amendment to section 13 of No. 40 of 2013.

43.Section 4 of the Co-operative Societies Act is amended by inserting the words “or adherence to the principles of Islamic law” immediately after the word “members” appearing in paragraph (a).

Amendment of
section 4 of Cap.
490.

44.Section 2 of the Sacco Societies Act is amended—

Amendment of
section 2 of Cap.
490B.

- (a) in the definition of the word “deposit”, by inserting the words “a return” immediately after the word “interest”;
- (b) in the definition of the expression “deposit taking business”, by deleting the words “to members” appearing at the end of paragraph (b) and substituting therefor the words “or funding or in compliance with the Islamic law”;
- (c) in the definition of the expression “sacco business”, by inserting—
 - (i) the words “or in compliance with Islamic law” immediately after the words “in accordance with this Act,”
 - (ii) the word “finance” immediately after word “loans” appearing in paragraph (a); and
 - (iii) the words “providing finance” immediately after the words “against borrowing” appearing in paragraph (b).

45.Section 23 of the Sacco Societies Act is amended by inserting a new subsection immediately after subsection (2) as follows—

Amendment of
section 23 of Cap.
490B.

(3) The Cabinet Secretary may, in consultation with the Authority, make regulations providing for the licensing and supervision of co-operative societies carrying out deposit taking business in compliance with Islamic law.

46.Section 68 of the Sacco Societies Act is amended by renumbering the existing provision as (1) and inserting a new subsection as follows—

Amendment of
Section 68 of Cap.
490B

(2) Despite the generality of subsection (1), the Cabinet Secretary may, after consultation with the Authority make regulations providing for the licensing and supervision of Cooperatives carrying out deposit taking business in compliance with Islamic law.

47.Section 10 of the Public Procurement and Asset Disposal Act is amended—

Amendment of
section 10 of No. 33
of 2015

- (a) in subsection (1)—
 - (i) by deleting paragraph (b) and substituting therefor the following new paragraph —
- (b) two members who shall be appointed by the Cabinet Secretary after nomination through a fair process by—
 - (i) the Institute of Certified Public Accountants of Kenya, and
 - (ii) the Kenya Institute of Supplies Management
- (ii) by deleting paragraph (c);
- (iii) by inserting the following new paragraph immediately after paragraph (e)—
 - (f) four other persons appointed by the Cabinet Secretary;
- (b) in subsection (2) by deleting the words “balance and gender parity” appearing at the end and substituting therefor the words “and gender balance”.

48.Section 29 of the Public Procurement and Asset Disposal Act, 2015 is amended—

Amendment of
section 29 of No. 33
of 2015

- (a) in subsection (1)—
 - (i) by deleting the words “balance and gender parity” appearing immediately after the word “regional” and substituting therefor the words “and gender balance”
 - (ii) by deleting the word “fourteen” appearing at the beginning of paragraph (b) and substituting therefor the word “seven”;
 - (iii) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) seven other persons appointed by the Cabinet Secretary.
- (b) in subsection (2)—
 - (i) by deleting the word “three” appearing in paragraph (a) and substituting therefor the word “two”;

- (ii) by deleting the word “three” appearing in paragraph (c) and substituting therefor the word “one”;
- (iii) by deleting the word “three” appearing in paragraph (d) and substituting therefor the word “one”;
- (iv) by deleting paragraph (e) and substituting therefor the following new paragraph (e)—
 - (e) one person nominated by the Institute of Engineers of Kenya;
- (v) by inserting the following new paragraph immediately after paragraph (e) —
 - (f) one person nominated by the Architectural Association of Kenya.

49. The Public Procurement and Asset Disposal Act, 2015 is amended by inserting the following new section immediately after Section 114—

Insertion of a new section in No. 33 of 2015.

K—Specially Permitted Procurement

114A. Specially permitted procurement procedure.

(1) A procuring entity may use a procurement procedure specially permitted by the National Treasury.

(2) The National Treasury may allow the use of specially permitted procedure—

- (a) Where exceptional requirements make it impossible, impracticable or uneconomical to comply with the Act and the Regulations;
- (b) where the market conditions or behaviour do not allow effective application of the Act and Regulations made under the Act;
- (c) for specialized or particular requirements which are regulated or governed by harmonized international standards or practices;
- (d) where strategic partnership sourcing is applied;
- (e) where credit financing procurement is applied; or
- (f) in such other circumstances as may be prescribed.

(3) The Cabinet Secretary may prescribe the procedure for carrying out specially permitted procurements under this section.

50. The First Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended in Part II by inserting the words “or Special Economic Zones” immediately after the words “Export Processing Zones”.

Amendment of First Schedule to No. 29 of 2016.

51. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended in item (ii) of Part A by inserting the words “or Special Economic Zones” immediately after the words “Export Processing Zones”.

Amendment of Second Schedule to No. 29 of 2016.

MEMORANDUM OF OBJECTS AND REASONS

The Bill formulates the proposals announced in the Budget for 2017/2018 relating to liability to, and collection of taxes and for matters incidental thereto.

The Bill also seeks to amend the following laws—

The Betting, Lotteries and Gambling Act (Cap. 131)

The Bill seeks to amend the Betting, Lotteries and Gambling Act to increase the tax rates from the current rates to 50%.

The Kenya Revenue Authority Act (Cap. 469)

The Bill seeks to amend the First Schedule to the Kenya Revenue Authority Act to include the newly introduced laws: the Tax Procedures Act, 2015, the Value Added Tax Act, 2013, the Miscellaneous Fees and Levies Act, 2016 and Excise Duty Act, 2015 as part of the revenue laws administered by the Kenya Revenue Authority.

The Stamp Duty Act (Cap. 480)

The Bill seeks to amend the Stamp Duty Act to provide for tax neutrality for Islamic financial products to favourably compete with similar conventional products in Kenyan market.

The Cooperative Societies Act (490)

The Bill seeks to address lack of recognition of Islamic finance in cooperative subsector in Kenya.

The Sacco Societies Act (Cap. 490B)

The Bill seeks to define “deposits” and “deposit taking taking sacco business” to take on board the principles of Islamic law in the Act as a form of recognition of Islamic saccos.

The Retirement Benefits Act (No. 3 of 1997)

The Bill seeks to amend the Retirement Benefits Act to require a person who fails to submit any statutory return by the due date to the Authority to pay a penalty of one hundred thousand shillings and where the returns remain un-submitted, the person in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for each day or part thereof during which the offence continues.

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

The Bill seeks to amend the Public Finance Management Act, 2012, to provide for the equal footing for Islamic finance bond and the conventional bond.

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

The Bill seeks to amend section 13(7) of the Tax Appeals Tribunal Act, 2013, by deleting the proviso whose relevance has been overtaken by time.

The Public Procurement and Asset Disposal Act (No. 33 of 2015)

The Bill seeks to amend the Public Procurement and Asset Disposal Act, 2015, to address the three main issues missing in the Act and which are critical to the implementation of the Act, namely; the composition of the Public Procurement Regulatory Review Board, the composition of the Public Procurement Review Board and the introduction of specially permitted procurement method as an alternative procurement method.

The Miscellaneous Fees and Levies Act (No. 29 of 2016)

The Bill seeks to amend Part II of the First Schedule to the Miscellaneous Fees and Levies Act, 2016, to exclude Special Economic Zones from the provisions of Part I of the Schedule. The Bill further proposes to amend Part A of the Second Schedule of the Act to include goods destined for approved Special Economic Zone enterprises.

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

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

Statement of how the Bill concerns county governments.

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

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

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

Dated the 30th March, 2017.

BENJAMIN LANG'AT,
*Chairperson,
Departmental Committee on Finance, Planning and Trade.*

Section 29A of the Betting and Lotteries Act which it is intended to amend—

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.

Section 44 of the Betting and Lotteries Act which it is intended to amend—

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.

Section 55A of the Betting and Lotteries Act which it is intended to amend—

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.

Section 59B of the Betting and Lotteries Act which it is intended to amend—

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.

Section 5 of the Stamp Duty Act which it is intended to amend—

5. Subject to the provisions of, and to the exemptions contained in, this Act and any other written law, every instrument specified in the Schedule, wheresoever executed, which relates to property situated, or to any matter or thing done or to be done, in Kenya, shall be chargeable with the stamp duty specified in that Schedule:

Provided that the Government shall not charge stamp duty twice where a person moves a mortgage from one bank to another.

Section 27 of the Stamp Duty Act which it is intended to amend—

27. Where interest is expressly made payable by the terms of an instrument, the instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

The Schedule to the Stamp Duty Act which it is intended to amend—

(4) Agreement relating to the sale of a Government security or share in an incorporated company or other body corporate.

Section 4 of the Co-operative Societies Act which it is intended to amend—

4. Subject to the provisions of this Act, a society which has as its objects—

- (a) the promotion of the welfare and economic interests of its members; and

Section 2 of the Sacco Societies Act, 2008, which it is intended to amend—

“deposit” means a sum of money received or paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

“deposit-taking business” means—

- (a) a Sacco business in which the person conducting the business holds himself out as accepting deposits on a day-to-day basis; and
- (b) any other activity of the Sacco business which is financed, wholly or to a material extent, by lending or extending credit for the account and at the risk of the person accepting the deposit, including the provision of short-term loans to members;

“Sacco business” means financial intermediation and any other activity by a Sacco society based on co-operative principles and in accordance with this

Act, by way of—

- (a) receipt of withdrawable deposits, domestic money transfer services, loans, advances and credit facilities; or
- (b) receipt of non-withdrawable deposits from members and which deposits are not available for withdrawal for the duration of the membership of a member in a Sacco society and may be used as collateral against borrowings and domestic money transfer services;

Section 68 of the Sacco Societies Act, 2008, which it is intended to amend—

Section 2 of the Public Finance Management Act, 2012, which it is intended to amend—

“county government security” means a security issued by the county government under section 144 and includes a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the county government;

“national government security” means a security issued by the national government under section 53 or section 53A and a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the national government;

Section 12 of the Sports Act, 2013, which it is intended to amend—

12. (2) There shall be paid—

- (a) into the Fund all the proceeds of any sports lottery, investments and any other payments required by this Act to be paid into the Fund; and
- (b) out of the Fund, financial support for sports persons and sports organizations and any other payments required under the provisions of this Act to be paid out of the Fund.

Section 11 of the Value Added Tax Act, 2013, which it is intended to amend—

11. A supply of goods occurs in Kenya if—

- (a) the goods are delivered or made available in Kenya by the supplier;
- (b) the supply of the goods involves their installation or assembly at a place in Kenya; and
- (c) the goods are delivered outside Kenya, the goods were in Kenya when their transportation commenced.

Paragraph 13 of Part A of the Second Schedule to the Value Added Tax Act, 2013, which it is intended to amend—

13. The supply of liquefied petroleum gas.

Paragraph 6(3)(iii)(C) of Part B of the Second Schedule to the Value Added Tax Act, 2013, which it is intended to amend—

6. (3) Subject to paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person on first arrival or by a returning resident of Kenya whom the proper officer is satisfied is *bona fide* changing residence from a place outside Kenya to a place within Kenya—

- (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—

- (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.

Section 13(7) of the Tax Appeals Tribunal Act, 2013, which it is intended to amend—

13. (7) The Tribunal shall hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal.

Section 8(1) of the Tax Procedures Act, 2013, which it is intended to amend—

8. (1) A person who—

(c) expects to supply excisable services;

Section 16(9) of the Tax Procedures Act, 2013, which it is intended to amend—

16. (9) A reference in this section to a tax liability of a taxpayer includes any late payment interest payable in respect of the liability.

Section 17(6) of the Tax Procedures Act, 2013, which it is intended to amend—

17. (6) A reference in this section to a tax liability of a taxpayer includes any late payment interest payable in respect of the liability.

Section 18 of the Tax Procedures Act, 2013, which it is intended to amend—

18. (2) A director, general manager, company secretary, or other senior officer or controlling member of a company shall not be liable under subsection (1) for the tax liability of the company if that director, general manager, company secretary, or other senior officer or controlling member did not derive a financial or other benefit from the arrangement and if—

(c) at the time the arrangement was entered into, that director, general manager, company secretary, or other senior officer or controlling member was not involved in the executive management of the company and had no knowledge of and could not reasonably have been expected to know of the arrangement.

(3) A reference in this section to a tax liability of a taxpayer includes any late payment interest payable in respect of the liability.

Section 10 of the Public Procurement and Asset Disposal Act, 2015, which it is intended to amend—

10. (1) The management of the Authority shall vest in a board to be known as the Public Procurement Regulatory Board which shall consist of—

(b) four members who shall be appointed by the Cabinet Secretary after nomination, through a fair process, by—

(i) the Law Society of Kenya;

(ii) the Institute of Certified Public Accountants of Kenya;

(iii) the Kenya Institute of Supplies Management;

(iv) the Association of Professional Societies in East Africa,

provided that the appointed nominee is not a member of a professional body under subparagraphs (i) to (iii);

(c) two persons nominated by the respective organizations representing—

(i) the youth; and

(ii) persons with disabilities;

(2) In the appointment of the chairperson and members under this section, the appointing authority shall ensure regional balance and gender parity.

Section 29 of the Public Procurement and Asset Disposal Act, 2015, which it is intended to amend—

29. (1) The Review Board shall comprise of the following 15 members who shall be appointed by the Cabinet Secretary taking into account regional balance and gender parity—

(b) fourteen other members whose qualifications and experience shall be as prescribed in the regulations.

(2) A person appointed as a member under subsection (1) shall be nominated by the following professional bodies from amongst their members as follows—

(a) three persons nominated by the Law Society of Kenya;

(c) three persons nominated by the Kenya Institute of Supplies Management;

(d) three persons nominated by the Institute of Certified Public Accountants of Kenya; and

(e) four persons nominated by the Association of Professional Societies in East Africa, provided that the appointed nominees are not members of professional bodies mentioned under subparagraphs (i) to (iv).

Part II of the First Schedule to the Miscellaneous Fees and Levies Act, 2016, which it is intended to amend—

Part I shall not apply to exports to Export Processing Zones.

Paragraph (ii) of Part A of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016, which it is intended to amend—

(ii) goods destined for approved Export Processing Zones enterprises.