REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

In the Matter of Article 118 (1) (b) of the Constitution
And In the Matter of Consideration by the National Assembly of the: -
Finance Bill (National Assembly Bill No. 22 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Finance Bill (National Assembly Bill No. 22 of 2022).

The Finance Bill (National Assembly Bill No. 22 of 2022) was published on 8th April 2022 and read a First Time on 12th April 2022, and thereafter submitted to the **Departmental Committee on Finance and National Planning** for consideration and reporting to the House. The Bill proposes amendments to the following statutes:

	STATUTE PROPOSED TO BE AMENDED	PROPOSED AMENDMENT
1.	**The Income Tax Act (Cap. 470)**	i. Amendment of **Sections 3, 9, 34** and **35** of the Act to introduce taxation of gains from financial derivatives for non-resident persons and set the tax rate at 15% of the gains. ii. Amendment of **Section 12E** to exempt non-resident persons with a permanent establishment in Kenya from the provisions of the Digital Service Tax. iii. Amendment of **Section 15** to allow entities or institutions that make donations to charitable organisations to deduct such donations from their taxable income. iv. Amendment of **Section 16** to allow microfinance institutions to make deductions from taxable income gross interest paid or payable to third parties even if it exceeds the 30% limit set by the law. v. Amendment of **Section 18B** by enhancing the provisions of reporting framework in relation to returns on activities of multinational enterprise groups and their parent entities in Kenya and other jurisdictions. The amendment also specifies that the proposed reporting provisions will apply to the income from the year 2022 onwards. vi. Amendment of **Section 34** to increase Capital Gains Tax from 5% to 15% of the gains. vii. Amendment of the **Third Schedule** to increase Digital Service Tax from 1.5% to 3% of the gross transaction value, among other amendments.
2.	**The Value Added Tax Act (No. 35 of 2013)**	i. To remove from the exemption list, taxable goods for the exclusive use for the construction and equipment of a specialised hospital with a bed capacity of more than 50 upon necessary approvals. ii. To remove from the exemption and zero-rated list the supply of maize flour, cassava flour and wheat flour, among others. iii. To provide exemption on plant and machinery imported for the manufacture of pharmaceutical products. Other proposed exemptions include medical oxygen supplied to registered hospitals, urine bags, adult diapers, artificial breasts, and colostomy or ileostomy bags for medical use. iv. Exemption from VAT inputs and raw materials used in the manufacture of passenger motor vehicles and locally manufactured passenger motor vehicles, among other proposed amendments.
3.	**The Tax Appeals Tribunal Act (No. 40 of 2013)**	The Bill proposes to amend this Act to streamline the process and timelines of resolving disputes and settling such disputes out of the Tax Appeals Tribunal.
4.	**The Excise Duty Act (No. 23 of 2015)**	i. Amend section 10 to provide that the Commissioner (KRA) may, by notice in the Gazette and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the conditions prevailing in the economy in that year in respect of such products. ii. Introduce excise duty on liquid nicotine at a specific rate of Kshs. 70 per ml rather than per kg. The excise duty at a rate of 15% will apply to fees charged on advertisements for alcohol, gambling and gaming activities on various media. iii. Increase excise duty rates for various items such as fruit juice, bottled water, alcoholic products, tobacco products, and confectioneries, among others. iv. Increase gambling taxes: gaming, betting, lotteries and price completion from the current 7.5% to 20% of the amount wagered. v. Some proposed exempt items include fertilised eggs for hatcheries, neutral spirits for pharmaceuticals and locally manufactured passenger motor vehicles, among others.
5.	**Tax Procedures Act (No. 29 of 2015)**	i. Amendment to provide for a specified period of six months allowable for deduction of input tax after the end of the tax period in which the supply or importation occurred. ii. Amendment to provide for the security of property for unpaid tax. In so doing, the Commissioner will notify the Registrar in writing that the property, to the extent of the taxpayers' interest in the property, shall be the subject of a security to the unpaid tax specified in the notification. iii. Regularise and streamline the procedures and processes for effecting tax payments and refunds that include offset or refund of overpaid tax, refund of tax paid in error, refund of tax paid on exempted or zero-rated supply.
6.	**The Miscellaneous Fees and Levies Act (No. 29 of 2016)**	i. Make amendments to the First Schedule of the Act to reduce the export levy on raw hides and skins from 80 per cent or USD 0.5 per kilogram to 50 per cent or USD 0.32 per kilogram. ii. Exempt inputs and raw materials imported by manufacturers of pharmaceutical products from payment of Import Declaration Fees and Railway Development Levy. This will encourage investment in the health sector and improve access to affordable health care services by promoting the manufacturing of pharmaceutical products.
7.	**The Evidence Act (Cap. 80)**	The Bill proposes to amend section 133 of the Evidence Act to accommodate all officers involved in administering tax laws as set out in the First Schedule of the Kenya Revenue Authority Act (Cap. 469).
8.	**The Capital Markets Act (Cap. 485A)**	The Bill seeks to amend the Capital Markets Act to address the shortage of investment advisory services being experienced across the country, due to the restrictive nature of the Act, by expanding the spectrum of persons who may act as investment advisors in offering the much-needed investment advisory services.
9.	**The Insurance Act (Cap. 487)**	The Bill proposes to amend sections 10(4) and (8) of the Insurance Act to align the section with section 21A of the Act.
10.	**The Unclaimed Financial Assets Act (No. 40 of 2011)**	The Bill seeks to amend the Unclaimed Assets Act, 2011 to introduce capping penalties and interest to the value of assets found to be reportable and deliverable. This is meant to address the cases where the asset may increase beyond the value of the asset, thus discouraging compliance to avoid penalties.
11.	**The Statutory Instruments Act (No. 23 of 2013)**	The Bill proposes to amend the Statutory Instruments Act, 2013, to exempt statutory instruments legislated under various tax laws from automatic expiry as provided in section 21 of the Act.
12.	**The Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015)**	The Bill proposes to amend the Retirement Benefits (Deputy President and State Officers) Act, 2015, to provide for the administration of the benefits payable to entitled persons under the Act by the respective entities.

A copy of the Bill is available at the National Assembly Table Office or http://www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **clerk@parliament.go.ke;** to be received **on or before Wednesday, 4th May 2022 at 5.00 p.m.**

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

20th April 2022

"For the Welfare of Society and the just Government of the People"