



REPUBLIC OF KENYA
13TH PARLIAMENT – SECOND SESSION, 2023
THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE
FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2023)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and the National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Finance Bill (*National Assembly Bill No. 14 of 2023*) was published on 28th April, 2023 and read a First Time on 4th May, 2023; and thereafter referred to the **Departmental Committee on Finance and National Planning** for consideration and reporting to the House;

THIS notifies the public that the Bill proposes amendments to various statutes, including: –

1. The Income Tax Act (Cap. 470)

Amendment of **Section 2** of the Act in the definition of “winnings” and insert new definitions of “digital content monetization”, “immovable property”, “person”, and “related person”.

Amendment of **Section 4A** of the Act, which relates to income from businesses where foreign exchange loss or gain may be realized, to provide that foreign exchange loss shall be deferred and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a non-resident person exceeds 30% of the company’s earnings before interest, taxes, depreciation and amortization in any year of income.

Amendment of **Section 5** of the Act on income from employment, to provide that club entrance and subscription fees disallowed against the employer’s income, shall be deemed as gains or profits, among other amendments.

Amendment by insertion of **Section 7B** to include tax payable on the repatriated income.

Amendment of **Section 12C** to provide for a charge of turnover tax for businesses with a turnover of Ksh. 500,000 but does not exceed Ksh. 15,000,000.

Amendment by insertion of **Section 12F** to introduce the Digital Asset Tax payable by a person on income derived from the transfer or exchange of digital assets.

Proposed amendment of the **First Schedule** to the Act to provide tax exemption for royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines, interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines, investment income from a post-retirement medical fund, and payment in the form of funds transfer from a post-retirement medical fund to a medical insurance cover provider.

Amendment of the Third Schedule:

- i. To include post-retirement medical fund relief at 15% of the amount contributed or Ksh 60,000 per annum, whichever is lower;
- ii. To provide adjustment of rates of tax as follows; 10% on the first Ksh. 288,000, 25% on the next Ksh. 100,000, 30% on the next Ksh. 5,612,000 and 35% on all income over Ksh. 6,000,000;
- iii. To increase the turnover tax from 1% of the gross receipts to 3%;
- iv. To decrease the rate of residential rental income from 10% to 7.5%;

Amendment of the **Fourth Schedule** to the Act to include Mortgage refinance companies licensed under the Central Bank of Kenya Act among the financial institutions.

Amendment of the **Ninth Schedule** to the Act to increase the notification to the Commissioner on the change in the underlying ownership of a licensee or contractor from 10% to 20%, among other proposed amendments.

2. The Value Added Tax Act (No. 35 of 2013)

To provide an exemption from VAT of liquefied petroleum gas including propane, aviation spirit and Natural gas in gaseous state, among others.

To provide an exemption of pharmaceutical substances for retail sale for medical, surgical, dental or veterinary purposes.

To provide exemption on inputs or raw materials supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, agricultural pest control products, transportation of sugarcane from farms to milling factories, all tea sold for the purpose of value addition before exportation.

To remove from exemption taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities.

To remove from exemption plant, machinery and equipment used in the construction of a plastics recycling plant, among other proposed amendments

To remove from the zero-rated list; inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products, agricultural pest control products.

Other items removed from the zero-rate list are: the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% percent in weight, transportation of sugarcane from farms to milling factories, exportation of taxable services in respect of business process outsourcing, fertilizers of Chapter 31, inputs, or raw materials locally purchased or imported by manufacturers of fertilizer. Also included in the zero-rated list is inbound international sea freight offered by a registered person.

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 disputes out of the Tax Appeals Tribunal. To require a party who is aggrieved by a tax decision to pay a deposit of at least 20% of the disputed tax before filling an appeal.

4. The Excise Duty Act (No. 23 of 2015)

To repeal section 10 which previously provided for inflation adjustment.

Amend Section 20 5(b) to specify the days the Commissioner shall provide the licensed person a written notice of action as not less than 14 days.

Amend Section 36 to insert a new subsection to provide for payment of excise duty within 24 hours.

Amend First Schedule Part I to impose Excise Duty for various items such as imported fish, powdered juice, human hair, wigs, false beards, artificial nails, imported cement, imported cellular phones, and imported paints, among others

Increase gambling taxes: gaming, betting, lotteries, and price completion from the current 7.5% to 20% of the amount wagered.

5. Tax Procedures Act (No. 29 of 2015)

Proposed amendment to Section 3 of the Act in the definition of “tax decision” to clarify that the decision does not include a refund decision and to include late payment interest.

Proposed amendment to Section 6A of the Act to provide that any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.

Proposed new Section 23A of the Act to provide that the Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept for the purposes of the Act.

Proposed new Section 32A to allow the Commissioner to recover or collect a tax claim pursuant to an international tax agreement.

Proposed new Section 37E to provide that the Commissioner refrains from recovering interest, penalties, or fines in cases an individual paid all the principal tax due before the 31st of December 2022.

Proposed new Section 42C to provide that the Commissioner may appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.

Proposed amendment to section 47 of the Act to provide a timeline of one hundred and twenty days within which the Commission is required to determine an application made to offset or refund overpaid tax.

Proposed new Section 59A to provide that the Commissioner may establish a data management and reporting system for the submission of electronic documents.

Proposed amendment to section 86 of the Act to provide a penalty for failing to comply with the electronic tax system.

Proposed new Section 97A to provide for the offence of impersonating an authorized officer.

Proposed new Section 108A to provide that where any matter under a tax law is in issue in any ongoing criminal case and is also in issue in any pending civil case, then this shall not be ground for any stay, prohibition, or delay of either the criminal or civil case, among other proposed amendments.

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

Amendment of Section 7 to reduce the Import Declaration Fee from 3.5% to 2.5%.

Introduction of a new Section 7A to introduce the Export and Investment Promotion Levy to be paid on specified goods imported into the country at the rate provide in the Third Schedule.

Amend Section 8 to reduce the Railway Development Levy from 2.5% to 1.5%.

Amends the Second Schedule, Part I of the Act to reduce the export levy on raw hides and skins from 80% or USD 0.5 to 50% or USD 0.32 per kilogram

Exempt inputs and raw materials imported by manufacturers of fertilizer products from payment of Import Declaration Fees and Railway Development Levy. This will encourage investment in the agriculture sector and improve food security in the country.

7. The Employment Act, 2007 (No. 11 of 2007)

Amend the Employment Act, 2007 by inserting a new section 31B:

- a. to provide for the deductions of payments by employers and employees to the National Housing Development Fund established under the Housing Act at 3% of the employees monthly basic salary.
- b. Providing the benefits of an employee contributing to the Fund.

It also provides for the regulations that shall prescribe the qualifications to participate in the affordable housing scheme which shall commence the operation of the section.

8. The Betting, Gaming and Lotteries Act (Cap. 131)

The Bill seeks to amend section 131 of the Betting, Gaming and Lotteries Act to provide for the application of the provisions of the Tax Procedures Act, 2015 in the collection of taxes under the Betting, Gaming and Lotteries Act.

9. The Kenya Roads Board Act, 1999 (No.7 of 1999)

The Bill seeks to amend section 35 of the Kenya Roads Board Act, 1999 to provide that the Board shall submit a collated annual roads programme together with the annual estimates.

10. The Kenya Revenue Authority Act, 1995 (No. 2 of 1995)

The Bill seeks to amend section 5 of the Kenya Revenue Authority Act, 1995 to provide for the capacity building and training offered by the institution to be available to the staff of the Authority, the public and other jurisdictions.

11. The Unclaimed Financial Assets Act, 2011 (No. 40 of 2011)

The Bill seeks to amend section 28 of the Unclaimed Assets Act, 2011, to provide for the appointment of other persons as beneficiaries of a claimant.

12. The Statutory Instruments Act, 2013 (No. 23 of 2013)

The Bill seeks to amend sections 20 and 21 of the Statutory Instruments Act, 2013, with respect to mandatory expiration of statutory instruments.

13. The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No.8 of 2015).

The Bill seeks to align the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 with the judgement of the Court and to make provision for payment of pension to entitled persons, who hold an appointive or elective position in Government.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committee on Finance and National Planning hereby invites the public and stakeholders to submit written memoranda on the Finance Bill, 2023.

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.nationalassembly@parliament.go.ke; to be received **on or before Saturday, 20th May 2023 at 5.00 p.m.**

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>.

S. NJORGE
CLERK OF THE NATIONAL ASSEMBLY
7th May 2023