

SPECIAL ISSUE

Kenya Gazette Supplement No. 121 (Acts No. 10)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2018

NAIROBI, 21st September, 2018

CONTENT

Act—

PAGE

The Finance Act, 2018 165

THE FINANCE ACT, 2018

No. 10 of 2018

Date of Assent: 21st September, 2018

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, 2018, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

- (a) sections 48, 49, 50, 54, 56, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, and 78, on the 1st October, 2018;
- (b) sections 4, 6, 7, 11(a), and 11(c) on the 1st January, 2019;
- (c) all other sections on the 1st July, 2018.

PART II—INCOME TAX

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

Amendment of section 2 of Cap. 470.

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

“demurrage charges” means the penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods”.

- (b) by deleting the definition of the word “winnings” and substituting therefor the following definition—

“winnings” includes winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly;

3. Section 7 of the Income Tax Act is amended by deleting subsection (1) and substituting therefor the following new subsection -

Amendment of section 7 of Cap. 470.

- (1) For the purpose of section 3(2)(b)—
- (a) a dividend paid by a resident company shall be deemed to be income of the year of income in which it was payable;
 - (b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where –
 - (i) any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any person related to that shareholder;
 - (ii) the shareholder or any person related to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person;
 - (iii) the amount is used by that company in any other manner for the benefit of the shareholder or any person related to that shareholder;
 - (iv) any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company;
 - (v) the amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment.

4. The Income Tax Act is amended by repealing section 7A and replacing it with the following new section—

Amendment of section 7A of Cap. 470.

Dividend distributed out of untaxed gains or profits.

7A. Where a dividend is distributed out of gains or profits on which no tax is paid, the company distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the resident corporate rate of tax on the gains or profits from which such dividends are distributed:

Provided that this section shall not apply to registered collective investment schemes.

5. Section 10 of the Income Tax Act is amended in subsection (1) by adding the following new paragraphs immediately after paragraph (h)—

Amendment of
section 10 of Cap.
470.

- (i) demurrage charges; and
- (j) an insurance premium.

6. The Income Tax Act is amended by repealing section 12C and replacing it with following new section -

Amendment of
section 12C of
Cap. 470.

Presumptive tax.

12C. (1) Notwithstanding any other provision of this Act, a tax to be known as presumptive tax shall be payable by a resident person whose turnover from business does not exceed five million shillings during a year of income.

(2) The presumptive tax shall apply to persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

(3) A person liable to pay tax under subsection (1) may, by notice in writing, addressed to the Commissioner, elect not to be subject to the provisions of this section in which case the other provisions of this Act shall apply to such person.

(4) The due date for payment of tax under subsection (1) shall be at the time of payment for the business permit or trade license or renewal of the same.

(5) Notwithstanding subsection (1), presumptive tax shall not apply to income derived from—

- (a) management and professional services; or
- (b) rental business; or
- (c) incorporated companies.

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

Amendment of
Section 15 of Cap
470

- (ab) thirty percent of electricity cost incurred by manufacturers in addition to the normal

electricity expense, subject to conditions set by the Ministry of Energy.

8. Section 19 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (6A)—

(6B) For the avoidance of doubt, the gains arising from the transfer of property by an insurance company other than property connected to life insurance business shall be taxed in accordance with the provisions of the Eighth Schedule.”

9. Section 34 of the Income Tax Act is amended in subsection (2) by inserting the following paragraphs immediately after paragraph (m)—

Amendment of section 34 of Cap. 470.

(n) demurrage charges; or.

(o) an insurance premium except insurance premium paid for insurance of aircraft.

10. Section 35 of the Income Tax Act is amended by —

Amendment of section 35 of Cap. 470.

(a) in subsection (1), by inserting the following paragraph immediately after paragraph (l)—

(m) demurrage charges;

(n) an insurance premium except insurance premium paid for insurance of aircraft;

(b) inserting the following new subsection immediately after subsection (5)—

(5A) The Commissioner shall pay the tax deducted from winnings under subsection (1) (i) and (3) (h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

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

Amendment of the Third Schedule to Cap. 470.

(a) in paragraph (2), by adding the following new subparagraph immediately after subparagraph (j)-

(k) in the case of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be to the extent provided in the arrangement.

- (b) in paragraph 3, by inserting the following new subparagraphs immediately after subparagraph (n)—
 - (o) demurrage charges, paid to ship operators, twenty per cent of the gross amount payable;
 - (p) an insurance premium, five per cent of the gross amount payable; and
- (c) by deleting paragraph 9 and substituting therefor the following new paragraph—

9. The rate of presumptive tax shall be an amount equal to fifteen percent of the amount payable for a business permit or trade licence issued by a County Government:

Provided that the tax charged shall be final.”

PART III— VALUE ADDED TAX

12. Section 2 of the Value Added Tax Act, 2013 is amended by deleting the definition of the expression “electronic notice system”.

Amendment of section 2 of No. 35 of 2013.

13. Section 5 of the Value Added Tax Act, 2013 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (a)-

Amendment of section 5 of No.35 of 2018

- (aa) in the case of goods listed in section B of Part I of the First Schedule, eight percent of the taxable value, effective from the date of assent:

Provided that—

- (i) the taxable value in respect of these goods shall exclude excise duty, fees and other charges; and
- (ii) despite section 1 of the Finance Act, 2018, this paragraph comes into effect upon enactment of the Supplementary Appropriation (No.2)Act, 2018.

14. Section 13 of the Value Added Tax Act, 2013 is amended by deleting subsection (2).

Amendment of section 13 of No. 35 of 2013.

15. Section 16 of the Value Added Tax Act, 2013 is amended by deleting subsection (6) and substituting therefor the following new subsection—

Amendment of section 16 of No. 35 of 2013.

(6) A credit or debit note issued under this section shall be in the prescribed form.

16. The Value Added Tax Act, 2013 is amended by repealing section 40.

Repeal of section 40 of No. 35 of 2013.

17. The Value Added Tax Act, 2013 is amended by repealing section 41.

Repeal of section 41 of No. 35 of 2013.

18. Section 44 of the Value Added Tax Act, 2013 is amended by deleting subsections (2), (3), (4) and (5).

Amendment of section 44 of No. 35 of 2013.

19. 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 I—

(i) by deleting the expressions “1001,” and “and 1003” appearing in paragraph 25;

(ii) by inserting the words “used for the manufacture of goods” at the end of paragraph 27;

(iii) by deleting paragraph 28;

(iv) by inserting the tariff Nos. “1213.00.00, 1214.10.00 and 2303.20.00” in paragraph 43 in proper sequence;

(v) by deleting paragraph 45 and substituting therefor the following new paragraph—

45. Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power.

(vi) by deleting the words “primary school laptop tablets” appearing in paragraph 53 and substituting therefor the word “computer”;

(vii) by deleting paragraph 63 and substituting therefor the following new paragraph—

63. Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for

health who may issue guidelines for determining eligibility for the exemption.

- (viii) by deleting paragraph 64;
- (ix) by deleting paragraph 92;
- (x) in paragraph 93, by inserting the words “and equipment” immediately after the word “materials”;
- (xi) by deleting paragraph 98;
- (xii) by adding the following new paragraphs—

101. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

102. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.

103. Hearing aids, excluding parts and accessories, of tariff No.9021.40.00.

104. One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse and which is not exempted from Value Added Tax under the First Schedule:

Provided that the exemption under this item shall not apply—

- (a) unless the officer is returning to Kenya from a posting in a Kenyan mission abroad upon recall;
- (b) unless, in the case of an officer’s spouse, the spouse accompanied the officer in the foreign mission and is returning with the officer;
- (c) if the officer or the spouse has either enjoyed a similar privilege within the previous four years from the date of importation or has imported a motor

vehicle free of duty under item 6 of Part A of this Schedule;

(d) unless the vehicle is imported within ninety days of the date of arrival of the officer or spouse or such longer period, not exceeding three hundred and sixty days from such arrival as the Commissioner may allow; and

(e) to a State officer.

(b) in Part II—

(i) by deleting item (n) of paragraph 1; and

(ii) by adding the following new paragraphs—

29. Postal services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto.

30. Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities.

31. Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

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

Amendment
of Second
Schedule to
No. 35 of
2013.

(a) Part A by inserting the following new paragraph immediately after paragraph 13A—

13B. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight.

(b) Part C by deleting tariff No. 3004.40.00 and the corresponding description and inserting the following—

<i>Tariff No.</i>	<i>Description</i>
3004.41.00	Containing ephedrine or its salts

2018

Finance

No. 10

- 3004.42.00 Containing pseudoephedrine (INN) or its salts
- 3004.43.00 Containing norephedrine or its salts
- 3004.49.00 Other

PART IV—TAX APPEALS TRIBUNAL

21. Section 10 of the Tax Appeals Tribunal Act, 2013, is amended in subsection (3) by deleting the words “the proceedings shall be adjourned, and”.

Amendment of section 10 of No. 40 of 2013.

22. Section 13 of the Tax Appeals Tribunal Act, 2013, is amended by inserting a new subsection as follows-

Amendment of section 13 No. 40 of 2013.

(8) The parties to an appeal may apply, in writing, to the Tribunal to settle the dispute out of the Tribunal and in such a case, the time taken to resolve or conclude the settlement out of the Tribunal shall be excluded when calculating the period contemplated in subsection (7).

PART V—EXCISE DUTY

23. Section 6 of the Excise Duty Act, 2015 is amended in subsection (5) by deleting the expression “section 34” and substituting therefor the expression “section 36”.

Amendment of section 6 of No. 23 of 2015.

24. Section 7 of the Excise Duty Act, 2015 is amended by deleting subsection (5) and substituting therefor the following new subsection –

Amendment of section 7 of Act No. 23 of 2015.

(5) An exemption granted under this section shall apply if the Commissioner is satisfied that—

- (a) the goods referred to in subsection (1)(a) have been received and consumed by the exempt person; and
- (b) excisable goods or services for export under subsections (1)(b) and (c) have not been, and shall not be consumed in Kenya.

25. Section 10 of the Excise Duty Act, 2015 is amended by deleting the expression “every two years” and substituting therefor the word “once every year”.

Amendment of section 10 of No. 23 of 2015.

26. Section 20 of the Excise Duty Act, 2015 is amended in subsection (1) by inserting the words “Subject to section 23” immediately before the words “The Commissioner”.

Amendment of section 20 of No. 23 of 2015.

27. Section 21 of the Excise Duty Act, 2015 is amended in subsection (1) by deleting paragraph (d).

Amendment of section 21 of No. 23 of 2015.

28. The Excise Duty Act, 2015 is amended by repealing section 23 and replacing it with the following new section—

Repeal and replacement of section 23 of No. 23 of 2015.

Commissioner to notify licensee prior to suspension of license.

23. (1) Where the Commissioner seeks to suspend a licence under this Act, the Commissioner shall give the licensee twenty-one days' notice prior to the suspension, giving grounds on which the suspension shall be done.

(2) A notice issued under this section may require the licensee to remedy any circumstances which may be required to be remedied.

(3) Where a licensee fails to comply with the requirements indicated in the notice issued under this section, the Commissioner may proceed to suspend the licence under section 20.

(4) Despite any other provision of this Act, the Commissioner may suspend a licence, without notice, where the licensee—

- (a) has engaged in tax fraud;
- (b) has been found in possession of, or using, counterfeit stamps on excisable goods;
- (c) has been found in possession of goods bearing counterfeit stamps; or
- (d) has violated any regulations relating to health and safety, standards or packaging of goods.

29. Section 36 of the Excise Duty Act, 2015 is amended by inserting the following new subsection immediately after subsection (4)—

Amendment of Section 36 of No. 23 of 2015

(5) The Commissioner shall pay into the Sports, Arts and Social Development Fund established under the Public Finance Management Act, 2012 to support social development including universal health care

sixteen percent of the excise duty paid in respect of money transfer by cellular phone service providers.

30. Section 38 of the Excise Duty Act, 2015 is amended in subsection (1)—

Amendment of section 38 of Act No. 23 of 2015.

- (a) by inserting the words “or five million shillings, whichever is higher” immediately after the word “licensed” appearing in paragraph (a).
- (b) by inserting the words “or five million shillings, whichever is higher” immediately after the word “payable” appearing in paragraph (b).

31. Section 39 of the Excise Duty Act, 2015 is amended—

Amendment of section 39 of No. 23 of 2015.

- (a) in subsection (1) by deleting the expression “26(1) or (28(4))” and substituting therefor the expression “or 26(1)”.
- (b) by inserting the following new subsection immediately after subsection (5) –

(6) Any plant or excisable goods or any materials, in respect of which an offence has been established in relation to sections 15,18,19, or 28 shall, in addition to any other penalty imposed under this Act, be forfeited to the Commissioner.”

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

Amendment of First Schedule to No. 23 of 2015.

(a) in Part I—

- (i) by deleting tariff No. 2710.19.22 and the corresponding tariff description and rate of duty in paragraph 1 and substituting therefor the following—

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate</i>
2710.19.22	Illuminating Kerosene Ksh per 1000l @ 20degC	10,305.00

- (ii) by deleting the expression “Waters (excluding water of tariff No. 2201.90.00) and other non-alcoholic beverages not including fruit or vegetable juices” appearing in paragraph 1 and substituting therefor the following—

“Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices”.

- (iii) by deleting the description “Motor vehicles excluding locally assembled motor vehicles and school buses for use by public schools of tariff heading 87.02, 87.03 and 87.04” and rate of excise duty thereof and substituting therefor the following new items –

<i>Description</i>	<i>Rate of Excise Duty</i>
Motor vehicles (excluding locally assembled motor vehicles, school buses for use by public schools, and motor vehicles of tariff no. 8703.24.90 and 8703.33.90) of tariff heading 87.02, 87.03 and 87.04	20%
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	30%
Sugar confectionery (including white chocolate) of tariff heading 17.04; per kg chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	

- (iv) by deleting the expression “every two years” in paragraph 2 (1) and substituting therefor the words “at the beginning of every financial year”; and
- (v) by deleting the expression “column 2 of” in paragraph 2 (2).
- (b) in Part II—
- (i) by deleting paragraph 1 and substituting therefor the following new paragraph—
1. Telephone and internet data services shall be charged excise duty at a rate of fifteen percent of their excisable value.
- (ii) by deleting paragraph 2 and substituting therefor the following new paragraph —

2. Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value

(iii) by deleting paragraph 3 and substituting therefor the following new paragraph—

3. Excise duty on fees charged for money transfer services by cellular phone service providers, shall be twelve percent of the excisable value.

(iv) by deleting paragraph 4 of the Act and substituting therefor the following new paragraph—

4. Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value.

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

Amendment of
Second Schedule
to No. 23 of 2015.

12. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

13. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

14. One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his or her spouse and which is not exempted from excise duty under item 6 of Part A of the Second Schedule:

Provided that the exemption under this item shall not apply—

- (a) unless the officer is returning to Kenya from a posting in a Kenyan mission abroad upon recall;
- (b) unless, in the case of an officer's spouse, the spouse accompanied the officer in the foreign mission and is returning with the officer;
- (c) if the officer or the spouse has either enjoyed a similar privilege within the previous four years

from the date of importation or has imported a motor vehicle free of duty under item 6 of Part A of this Schedule;

(d) unless the vehicle is imported within ninety days of the date of arrival of the officer or spouse or such longer period, not exceeding three hundred and sixty days from such arrival as the Commissioner may allow; and

(e) a state officer.

PART V—TAX PROCEDURES

34. Section 3 of the Tax Procedures Act, 2015 is amended in the definition of the words “prescribed form” by deleting the expression “section 70” and substituting therefor the expression “section 71”.

Amendment of section 3 of No. 29 of 2015.

35. Section 12 of the Tax Procedures Act, 2015 is amended in subsection (4) by deleting the words “the application” appearing immediately after the expression “subsection (3)”.

Amendment of section 12 of No. 29 of 2015.

36. Section 16 of the Tax Procedures Act, 2015 is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 16 of Act No. 29 of 2015.

(3) Where a taxpayer has more than one tax representative, each tax representative shall be responsible for the tax obligation for which the tax representative has been appointed.

37. The Tax Procedures Act, 2015 is amended by repealing section 25 and replacing it with the following new section—

Repeal and replacement of section 25 of No. 29 of 2015.

Extension of time to submit tax return

25. (1) A person required to submit a tax return under a tax law may apply in writing to the Commissioner for an extension of time to submit the return.

(2) An application under subsection (1) shall be made at least—

(a) fifteen days before the due date in the case of a monthly return; or

(b) thirty days before the due date in the case of an annual return.

(3) The Commissioner may grant an application under this section if satisfied that there is reasonable cause and shall notify the applicant accordingly at least five days before the due date:

Provided that—

- (a) where no notification is received under this subsection, the application shall be deemed to have been granted;
- (b) only one extension may be granted to an applicant in respect of a tax period.

(4) The grant of an extension under this section shall not alter the date for payment of any tax due (referred to as the "original due date") under the return as specified in the tax law under which the return has been made.

(5) The provision of section 83 relating to penalties for late submission of returns shall not apply where an extension to submit a return has been granted under this section.

38. Section 31 of the Tax Procedures Act, 2015 is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 31 of No. 29 of 2015.

(3) Where an amended self-assessment return has been submitted under subsection (2), the Commissioner may accept or reject the amended self-assessment return and where he rejects, he shall furnish the taxpayer with the reasons for such rejection within thirty days of receiving the application.

39. The Tax Procedures Act, 2015 is amended by repealing section 37B and substituting therefor the following new section—

Repeal and replacement of section 37B of Act No. 29 of 2015

Commissioner to refrain from assessing tax for income earned outside Kenya

37B. (1) 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, 2017, and from following up on the sources of income under the amnesty where —

- (a) that income has been declared for the year 2017 by a person earning taxable income outside Kenya;
- (b) the returns and accounts for the year 2017 are submitted on or before the 30th June, 2019; and
- (c) the funds declared voluntarily have been transferred back to Kenya.

(2) This section shall not apply in respect of any tax where the person who should have paid the tax —

- (a) has been assessed in respect of the tax or any matter relating to the tax; or
- (b) is under audit, investigation or is a party to ongoing litigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Where no funds have been transferred within the period of the amnesty, there shall be a five year period for remittance but a penalty of ten percent shall be levied on the remittance.

(4) The funds transferred under the amnesty shall be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 or any other Act relating to reporting and investigation of financial transactions, to the extent of the source of the funds excluding funds derived from proceeds of terrorism, poaching and drug trafficking.

40. Section 42 of the Tax Procedures Act, 2015 is amended—

Amendment of section 42 of No. 29 of 2015.

- (a) in subsection (2), by deleting the word “payer” and substituting therefor the words “an agent”;

- (b) in subsection (3), by deleting the word “payer” wherever it occurs and substituting therefor the words “an agent”;
- (c) in subsection (5), by deleting the word “payer” and substituting therefor the words “an agent”;
- (d) in subsection (6)—
 - (i) by deleting the word “taxpayer” and substituting therefor the words “an agent”; and
 - (ii) by deleting the word “payer” wherever it occurs and substituting therefor the words “an agent”;
- (e) in subsection (7), by deleting the word “payer” wherever it occurs and substituting therefor the words “an agent”;
- (f) in subsection (8), by deleting the word “payer” and substituting therefor the words “an agent”;
- (g) in subsection (9), by deleting the word “payer” and substituting therefor the words “an agent”;
- (h) in subsection (10), by deleting the word “payer” wherever it occurs and substituting therefor the words “an agent”; and
- (i) in subsection (11), by deleting the word “payer” and substituting therefor the words “an agent”.

41. Section 51 of the Tax Procedures Act, 2015 is amended in subsection (3)—

Amendment of
section 51 of No.
29 of 2015.

- (a) by inserting the words “or has applied for an extension of time to pay the tax not in dispute under section 33(1)” at the end of paragraph (b); and
- (b) by adding the following new paragraph immediately after paragraph (b)—
- (c) all the relevant documents relating to the objection have been submitted.

42. Section 62 of the Tax Procedures Act, 2015 is amended by deleting the expression “section 62” appearing in subsection (1) and substituting therefor the expression “section 63”.

Amendment of
section 62 of No.
29 of 2015.

43. Section 80 of the Tax Procedures Act, 2015 is amended by deleting the expression “section 48” appearing in subsection (3) and substituting therefor the expression “section 47”.

Amendment of section 80 of No. 29 of 2015.

44. Section 83 of the Tax Procedures Act, 2015 is amended in subsection (1)—

Amendment of section 83 of No. 29 of 2015.

- (a) by deleting paragraph (c);
- (b) by adding the following new paragraphs immediately after paragraph (b)—
- (c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty;
- (d) in any other case—
 - (i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or
 - (ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual.

45. The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 83—

Insertion of section 83A into No. 29 of 2015.

Late payment penalty.

83A. A person who fails to pay tax on the due date shall be liable to pay a late payment penalty of five percent of the tax due and payable.

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

Amendment of section 89 of No. 29 of 2015.

- (a) in subsection (2), by deleting the word “may” appearing immediately after the word “Commissioner” and substituting therefor the word “shall”;
- (b) by deleting subsection (7) and substituting therefor the following new subsection—
 - (7) The Commissioner may, upon an application under subsection (6) or on his own motion, remit in whole or in part, any penalty or

interest payable by a person, except a penalty imposed under section 85, if satisfied that the remission is by reason of—

- (a) consideration of hardship or equity; or
- (b) impossibility or undue difficulty or expense, of recovery of the tax:

Provided that the Commissioner shall—

- (i) where the amount of the penalty or interest exceeds one million five hundred thousand shillings, seek prior approval of the Cabinet Secretary; and
- (ii) make quarterly reports to the Cabinet Secretary on the remissions granted under this section.

47. The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 103—

Insertion of sections 103A and 103B in No. 29 of 2015.

Unauthorized access or improper use of computerized tax system.

103A. (1) A person who—

- (a) knowingly and without lawful authority, by any means, gains access to or attempts to gain access to any computerized tax system;
- (b) having lawful access to any computerized tax system, knowingly uses or discloses information obtained from such system for a purpose that is not authorised; or
- (c) knowing that he is not authorized to do so, receives information obtained from any computerized tax system, and uses, discloses, publishes, or otherwise disseminates such information, commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable—

- (a) in the case of a natural person, to imprisonment for a term not exceeding two years, or to a fine not exceeding four hundred thousand shillings, or to both; or
- (b) in the case of a body corporate, to a fine not exceeding one million shillings.

Interference with
computerized tax
system.

103B. (1) A person who knowingly—

- (a) falsifies any record or information stored in any computerized tax system;
- (b) damages or impairs any computerized tax system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a computerized tax system is held or stored otherwise than with the permission of the Commissioner,

commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings, or to both.

48. Section 104 of the Tax Procedures Act, 2015 is amended in subsection (2) by deleting the word “and” and substituting therefor the word “or”.

Amendment of
section 104 of No.
29 of 2015.

PART VI—MISCELLANEOUS FEES AND LEVIES

49. Section 2 of the Miscellaneous Fees and Levies Act, 2016 is amended—

Amendment of
section 2 of No.
29 of 2016.

- (a) by deleting the word “or” and adding the words “or special economic zone” at the end of the definition of the word “export”; and
- (b) by inserting the following new definition in proper alphabetical sequence—

“Special Economic Zone” has the meaning assigned to it under the Special Economic Zones Act, 2015.

50. The Miscellaneous, Fees and Levies Act, 2016 is amended by inserting the following new section 8A immediately after section 8-

Insertion of section 8A into No. 29 of 2016.

Anti-adulteration levy.

8A. (1) There shall be paid a levy to be known as the anti-adulteration levy, on all illuminating kerosene imported into the country for home use.

(2) The levy shall be at the rate of eighteen shillings per litre of the customs value of the illuminating kerosene and shall be paid by the importer at the time of entering the illuminating kerosene into the country.

51. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended—

Amendment of Second Schedule to No. 29 of 2016.

(a) in Part A, by adding the following new paragraph immediately after paragraph (xxii)—

(xxiii) goods imported for implementation of projects a under special operating framework arrangement with the Government.

(b) in Part B by adding the following new paragraph immediately after paragraph (vi)—

(vii) goods imported for implementation of projects under a special operating framework arrangement with the Government.

PART VII—MISCELLANEOUS

52. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 5—

Insertion of section 5A in Cap. 131.

Fit and proper criteria for casinos.

5A. (1) The Board shall, in determining whether an applicant is

suitable to hold a licence or permit under this Act, consider—

- (a) the financial status or solvency of the person;
- (b) the educational or other qualifications or experience of the applicant having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) the status of any other licence or approval granted to the applicant by any financial sector regulator;
- (d) the ability of the applicant to carry on the regulated activity competently, honestly and fairly; and
- (e) the reputation, character, financial integrity and reliability—
 - (i) in the case of a natural person, of that person; or
 - (ii) in the case of a company, of the company, its chairperson, directors, chief executive, management and all other personnel, including all duly appointed agents, and any substantial shareholder of the company, if the chairperson, director, chief executive, management or the personnel are shareholders of the company.

(2) Without prejudice to the generality of subsection (1), the Board may, in considering whether an applicant is fit and proper -

- (a) take into account whether the applicant —
 - (i) has contravened any law in Kenya or elsewhere designed

for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in transacting with marketable securities;

- (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
 - (iii) has taken part in any business practice which, in the opinion of the Board, was fraudulent, prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the applicant's methods of conducting business;
 - (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that applicant; or
 - (v) has acted in such a manner as to cast doubt on the applicant's competence and soundness of judgment;
- (b) take into account any information in the possession of the Board, whether provided by the applicant or not, relating to —
- (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent; and
 - (ii) where the applicant is a company in a group of companies, any other company

in the same group of companies, or any substantial shareholder or key personnel of the company or any company referred to under this subparagraph;

- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the applicant carries on or purports to carry on.

(3) The Board shall give the applicant an opportunity to be heard before determining whether the applicant is fit and proper for the purposes of this Act.

(4) An applicant who knowingly makes a false statement or declaration in an application for, or a renewal or variation of, a licence or permit commits an offence and shall, upon conviction, be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of this section, "group of companies" means any two or more companies, one of which is the holding company of the others.

53. Section 29A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".

Amendment of section 29 A of Cap. 131.

54. Section 44A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".

Amendment of section 44A of Cap. 131.

55. Section 55A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

Amendment of section 55A of Cap. 131.

56. Section 59B of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

Amendment of section 59B of Cap. 131.

57. The Betting, Lotteries and Gaming Act is amended by inserting the following new sections immediately after section 69—

Insertion of new section 69A and 69B in Cap. 131.

Taxes to be paid into fund.

69A. The Collector shall pay all the proceeds of tax paid under sections 29A (2), 44A (2), 55A (2) and 59B (2) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

Late payment penalty and interest.

69B. (1) Subject to subsection (2), a person who fails to pay a tax imposed under sections 29A, 44A, 55A and 59B, on the due date shall be liable—

(a) to a late payment penalty of five per cent of the tax payable; and

(b) to a late payment interest at a rate equal to one per cent per month or part of a month on the amount unpaid for the period until the tax is paid in full.

(2) The late payment interest payable under this section shall be computed as simple interest.

(3) The late payment penalty or interest shall be payable to the Collector and shall be treated as a tax payable by the person liable for the tax.

(4) The accrued late payment interest shall not, in aggregate, exceed the principal tax liability.

(5) A person liable to a late payment penalty or interest may apply in writing to

the Collector for the remission of the penalty or interest payable and such application shall include the reasons for the application.

(6) The Collector may, upon an application under subsection (5) or on his own motion, remit in whole or in part, late payment penalty or interest payable by a person if satisfied that the remission is by reason of—

- (a) consideration of hardship or equity; or
- (b) impossibility or undue difficulty or expense, of recovery of tax:

Provided that—

- (i) where the amount of the penalty or interest exceeds one million five hundred thousand shillings, the collector shall seek prior approval of the Cabinet Secretary responsible for finance; and
- (ii) make quarterly reports to the Cabinet Secretary responsible for finance on the remissions granted.

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

Amendment of section 2 of Cap. 390.

“Commissioner” has the meaning assigned to it in section 2 (1) of the Insurance Act.

59. Section 16A of the Marine Insurance Act is amended by deleting the words “this Act” appearing immediately after the words “registered under” and substituting therefor the words “the Insurance Act”.

Amendment of section 16A of Cap. 390.

60. Section 3 of the Air Passenger Service Charge Act is amended in subsection (3) by deleting the words “Kenya Airport Authority and the Kenya Civil Aviation Authority” and substituting therefor the words “Kenya Airports Authority, the Kenya Civil Aviation Authority and the Tourism Promotion Fund.

Amendment of section 3 of Cap. 475.

61. The Stamp Duty Act is amended by inserting the following new section immediately after section 82—

Payment of stamp for “policy of life insurance” and “policy of insurance against accident”

82A. For purposes of this Act, the stamp duty payable for “policy of life insurance” and “policy of insurance against accident” shall be payable monthly as an aggregate of all policies issued within the month.

Insertion of new section 82A in Cap. 480.

62. Section 117 of the Stamp Duty Act is amended in subsection 1 by adding the following new paragraphs immediately after paragraph (l) -

- (m) an instrument executed for purposes of collection and recovery of tax,
- (n) an instrument relating to the business activities of special economic zone enterprises, developers and operators licenced under the Special Economic Zones Act, 2015.

Amendment to section 117 of the Cap. 480.

63. The Banking Act is amended by inserting the following new section immediately after section 31—

Information on next of kin.

31A. (1) A bank or financial institution licensed under this Act shall, in respect of all accounts operated at the institution, maintain a register containing particulars of the next of kin of all customers operating such accounts, and shall update this register on an annual basis.

(2) A bank or financial institution which contravenes subsection (1) commits an offence and shall be liable, for each account in which there is default, to a fine not exceeding one million shillings.

Insertion of new section 31A in Cap. 480

64. Section 33B of the Banking Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

(1) A bank or a financial institution shall set the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the Central

Amendment of section 33B of Cap. 488.

Bank Rate set and published by the Central Bank of Kenya.

65. The Banking Act is amended by inserting the following new clause immediately after clause 33B—

Insertion of new section 33C in Cap. 488.

Power of Central Bank to prescribe conditions on deposits or withdrawals.

33C. (1) The Central Bank shall prescribe, in regulations, conditions on deposits or withdrawals by customers in banks and financial institution.

(2) The Central Bank shall within thirty days of coming into force of this Act, prescribe regulations setting out conditions for deposits and withdrawals by customers in banks and financial institutions in accordance with the Statutory Instruments Act.

(3) For avoidance of doubt no other person shall purport to make regulations required under this section and any existing guidelines or regulations prescribing conditions on deposits or withdrawals by customers shall cease to be operational within fourteen days of the coming into force of the regulations made under this section.

66. Section 2 of the Central Bank of Kenya Act is amended by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of Cap. 491.

“mortgage refinance business” means the business of providing long term financing to primary mortgage lenders for housing finance and any other activity that the Bank may from time to time prescribe;

“mortgage refinance company” means a non-deposit taking company established under the Companies Act, 2015 and licensed by the Bank to conduct mortgage refinance business; and

“specified mortgage refinance company” means a licensed mortgage refinance company within the meaning of section 33P, which is specified by the Bank for the purposes of the Act.

67. Section 4A of the Central Bank of Kenya Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (f)—

Amendment of section 4A of Cap. 491.

- (g) license and supervise mortgage refinance companies.

68. The Central Bank of Kenya Act is amended by inserting the following new Part immediately after Part VIA—

Insertion of a new Part VIB in Cap. 491.

PART VIB—MORTGAGE FINANCING BUSINESS

Licensing.

33P. (1) A person shall not engage in mortgage refinance business unless that person has been licensed by the Bank.

(2) An application for a licence under in subsection (1) shall be made to the Bank in the prescribed form and accompanied by the prescribed fee.

(3) A person who contravenes the provision of subsection (1) commits an offence.

Powers of the Bank.

33Q. (1) The Bank shall have the following powers with respect to the regulation of mortgage refinance companies—

- (a) to license mortgage refinance companies;
- (b) to determine the capital adequacy standards and requirements for mortgage refinance companies;
- (c) to prescribe the minimum liquidity requirements and permissible investments for mortgage refinance companies;
- (d) to supervise mortgage refinance companies, including —
 - (i) conducting both on-site and off-site supervision;
 - (ii) assessing professional and moral suitability of persons

managing or controlling the mortgage refinance companies;

(iii) approving the Board and management of the mortgage refinance companies;

(iv) approving the appointment of the external auditors;

(v) collecting regular data from mortgage refinance companies;

(vi) approving the annual audited accounts of mortgage refinance companies before publication and presentation at the annual general meetings;

(e) to revoke or suspend a licence;

(f) to direct or require such changes as the Bank may consider necessary; and, and

(g) to take any other action as the Bank may consider necessary.

69. Section 43 of the Central Bank of Kenya Act is amended in subsection (1) by inserting the words “specified mortgage refinance companies” immediately after the words “specified microfinance banks”.

Amendment of section 43 of Cap.491.

70. Section 57 of the Central Bank of Kenya Act is amended in subsection (1) by inserting the words “,issue guidelines, circulars and directives” immediately after the word “regulations”.

Amendment of section 57 of Cap. 491.

71. The First Schedule to the Kenya Revenue Authority Act, 1995 is amended in Part II by adding the following new paragraph immediately after paragraph 13—

Amendment of First Schedule to No. 2 of 1995.

14. Public Finance Management Act, 2012.

72. Section 34 of the Retirement Benefits Act, 1997 is amended by deleting subsection (4C) and inserting the following new subsections—

Amendment of section 34 of No. 2 of 1997.

(4C) A trustee who fails to submit a copy of audited accounts of the scheme to the Chief Executive

Officer by the due date shall pay a penalty of one hundred thousand shillings and where the returns remain un-submitted, the trustee, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for each day or part thereof during which the returns remain unsubmitted:

Provided that a person who pays a penalty under this subsection may also be liable to prosecution in court under subsection (4A).

(4D) A fund manager who fails to submit an investment return of a scheme to the Chief Executive Officer by the due date shall pay a penalty of ten thousand shillings and where the returns remain un-submitted, the fund manager, in addition to the prescribed penalty shall pay a further fine of one thousand shillings for every day or part thereof during which the returns remain unsubmitted.

(4E) An administrator who fails to submit contribution returns of a scheme to the Chief Executive Officer by the due date shall pay a penalty of ten thousand shillings and where the returns remain un-submitted, the administrator, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for every day or part thereof during which the returns remain unsubmitted.

73. The Retirement Benefits Act, 1997 is amended by inserting the following new section immediately after section 53A—

Insertion of a new section 53B in No. 2 of 1997

Powers to recover unremitted contributions.

53B. Notwithstanding the provisions stated under section 53A, where there is non-remittance of the contribution by the employer, the Authority shall—

(a) require the employer to—

- (i) pay the contributions and interest accrued to the scheme in full within the period specified in the notice and a penalty of five per cent of un-remitted contributions or twenty thousand shillings whichever is higher, payable to the Authority within seven days of receipt of the notice;

- (ii) pay the penalty specified in paragraph (a) (i) and submit to the Authority for approval a remedial plan providing the period within which the accumulated contributions and interest thereon shall be offset; or
- (iii) immediately cease further deductions from employees' emoluments and notify all the members of the scheme of the cessation:

Provided that —

- (A) the Authority may lift the cessation order where it is satisfied that the employer is able to remit the employee emoluments as and when they fall due;
 - (B) where there is a failure by an employer to comply with a direction to cease deductions from employees' emoluments under this provision, the Authority shall take the necessary action or issue such other directions as it may deem necessary and expedient in protecting the interests of the members, including instituting summary proceedings to recover the amounts due to the scheme; and
- (b) initiate the process of winding up the scheme and facilitate members to join individual schemes where their contributions shall be remitted.

74. Section (2) (1) of the Accountants Act, 2008 is amended—

Amendment of
No. 15 of 2008.

- (a) by deleting the definition of the word “accountant” and substituting therefor the following new definition—

“accountant” is a person registered as an accountant under Section 24 of this Act and is a member as defined in section 4 (2) (a) and (b) with expertise achieved through formal education and practical experience, and shall be held to a high professional standard in respect to—

- (a) demonstrating and maintaining competence in accountancy in line with International Accounting standards;
 - (b) compliance with the Institute's code of ethics;
 - (c) maintaining good standing status; and
 - (d) subject to enforcement of the rules and regulations of the Institute;
- (b) by deleting the definition of the word “Minister” and substituting therefor the following new definition—
- “Minister” means the Cabinet Secretary responsible for matters relating to finance; and
- (c) by inserting the following new definition in proper alphabetical sequence—

“company” has the meaning assigned to it under section 2 of the Companies Act, 2015;

“accountancy” means practice in accounting, financial reporting, control systems, systems auditing, auditing, assurance, forensic accounting and auditing, finance, financial management, public finance management, taxation, financial risk management, management accounting and advisory services related thereto; and

“trainee accountant” means a person registered by the Examinations Board and who has commenced professional accountancy education or training or is practicing

accountancy as part of initial professional development required for qualification as an accountant.

75. Section 5 of the Accountants Act, 2008 is amended by—

Amendment of section 5 of No.15 of 2008.

(a) renumbering section 5 as section 5(1); and

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

(2) Despite subsection (1), a trainee accountant, student or a person required by the Institute to be registered as a member prior to attaining the qualifications under section 26 shall not be required to pay any fees or subscriptions.

76. Section 8 of the Accountants Act, 2008 is amended by inserting the following new paragraph immediately after paragraph (f)—

Amendment of section 8 of No. 15 of 2008.

(fa) prescribe the remuneration order for the accountancy profession with the approval of the Cabinet Secretary responsible for finance.

77. Section 17 of the Accountants Act, 2008 is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 17 of No. 15 of 2008.

(2A) The Examinations Board shall, prior to registering a person to undertake an examination in accounting, require that the person be registered as a member of the Institute.

78. Section 18 of the Accountants Act, 2008 is amended in subsection (2) by deleting the words “one hundred thousand” and substituting therefor the words “five hundred thousand”.

Amendment of section 18 of No. 15 of 2008.

79. Section 21 of the Accountants Act, 2008 is amended in subsection (8) by deleting the words “five thousand” and substituting therefor the words “five hundred thousand”.

Amendment of section 21 of No. 15 of 2008.

80. Section 24 of the Accountants Act, 2008 is amended in subsection (5) by deleting the words “fifty thousand” and substituting therefor the words “five hundred thousand”.

Amendment of section 24 of No. 15 of 2008.

81. Section 30 of the Accountants Act, 2008 is amended by inserting the following new subsections immediately after subsection (2)—

Amendment of section 30 of No. 15 of 2008.

(2A) An accountant shall observe the ethical guidelines and applicable standards in the discharge of duty.

(2B) The ethical guidelines and applicable standards of the accountancy profession shall take precedence over any instructions from a client or other person.

(2C) An accountant shall not be liable for taking such actions or decisions or rejecting instructions from a client if such action, decision or rejection is in pursuance of the provisions of subsections (2A) and (2B).

82. Section 41 of the Accounts Act, 2008 is amended by deleting subsection (4) and substituting therefor the following new subsection—

Amendment of section 41 of No. 15 of 2008.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding two million shillings, and, in the case of a continuing offence, a further fine not exceeding two thousand shillings for each day on which the offence continues

83. The Fifth Schedule to the Accountants Act, 2008 is amended in—

Amendment of Fifth Schedule to No. 15 of 2008.

- (a) paragraph (4) by deleting the words “one hundred thousand” appearing in subparagraph (1)(d) and substituting therefor the words “one million”; and
- (b) paragraph (8) by deleting the words “twenty thousand” appearing in subparagraph (3) and substituting therefor the words “five hundred thousand”.

84. The Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended by inserting the following new section immediately after section 45—

Insertion of section 45A in No. 9 of 2009.

Higher risk countries.

45A. (1) A reporting institution shall apply enhanced customer due diligence on business relationships and transactions with any natural and legal persons, legal

arrangements or financial institutions originating from countries identified as posing a higher risk of money laundering, terrorism financing or proliferation by—

- (a) the Financial Action Task Force (FATF) as having strategic money laundering and combating financing of terrorism deficiencies, that have not made sufficient progress in addressing the said deficiencies or have not committed to an action plan to address the deficiencies; or
- (b) the Cabinet Secretary as having ongoing substantial money laundering and terrorism financing risks.

(2) In addition to enhanced customer due diligence measures, a reporting institution shall apply appropriate countermeasures, proportionate to the risk presented by countries subject to a Financial Action Taskforce (FATF) public statement or as advised by the Cabinet Secretary.

(3) In order to protect the financial system from the ongoing and substantial money laundering or terrorism financing risks emanating from the jurisdictions referred to under subsection (2), a reporting institution shall apply countermeasures including—

- (a) limiting or terminating business relationships or financial transactions with natural and legal persons, legal arrangements, or financial institutions located in the concerned countries;
- (b) prohibiting reliance on third parties located in the concerned countries to conduct customer due diligence;
- (c) applying enhanced due diligence measures on correspondent banking

relationships with financial institutions located in the concerned countries;

- (d) when considering the establishment of subsidiaries or branches or representative offices of financial institutions from the concerned countries, take into account whether the financial institution is based in countries identified as having higher money laundering or terrorism financing risks or inadequate money laundering or terrorism financing systems;
- (e) submit a report listing customers, both natural and legal persons, and legal arrangements, originating from the higher risk countries to the Financial Reporting Centre on an annual basis; and
- (f) any other measures as may be specified by the Financial Reporting Centre.

85. The Employment Act, 2007 is amended in section 2 by inserting the following new definitions in the proper alphabetical sequence-

Insertion of section 45A in No. 9 of 2009.

“employer contribution” means the employer’s contribution payable into the National Housing Development Fund;

“employee contribution” means a contribution payable under this Act for his or her benefit;

“employee earnings” means the taxable amount determined under the Income Tax Act for purposes of levying income tax on the employee emoluments.

“National Housing Development Fund” means to the Fund established under section 6 of the Housing Act.

86. The Employment Act, 2007 is amended by inserting the following new section immediately after section 31-

Insertion of new section 31A into No. 11 of 2007

No. 10

Payment to the
National Housing
Development
Fund.

31A. (1) An employer shall pay to the National Housing Development Fund in respect of each employee—

- (a) the employer's contribution at one point five per centum of the employee's monthly basic salary; and
- (b) the employee's contribution at one point five per centum of the monthly basic employee's salary:

Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month.

(2) The benefits to an employee shall accrue as follows –

- (a) for employees who qualify for affordable housing, the contributions accrue to the employee and shall be used to finance the purchase of a home under the affordable housing scheme; or
- (b) for employees who are not eligible for affordable housing, upon the expiry of fifteen years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is sooner—
 - (i) a transfer of their contributions to a pension scheme registered with the Retirement Benefits Authority;
 - (ii) a transfer their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or
 - (iii) a transfer of their contributions to their spouse or dependent children; or

- (iv) to receive their contributions in cash:

Provided that contributions paid out in cash shall be included in the contributor's taxable income for the year and be subjected to tax at the prevailing rates.

(3) All contributions shall get a return based on the return on the Fund.

(4) The employer shall remit both employee and employer contributions to the National Housing Development Fund before the ninth day of the following month.

(5) If the contributions due under this section are not paid on or before the day on which the payments are due, a penalty of five percent of the contributions shall be payable by the employer for each month or part thereof during which the contributions remains unpaid, and any such penalties shall be recoverable as a sum due and payable to the National Housing Development Fund.

(6) This section shall become effective upon the gazettelement of regulations prescribing the requirements for qualification to the scheme by the Cabinet Secretary responsible for housing in consultation with the Cabinet Secretary responsible for finance.

