

**THE FINANCE BILL, 2019**

**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**

Short title and commencement.

**1.** This Act may be cited as the Finance Act, 2019, and shall come into operation, or be deemed to have come into operation, as follows—

(a) sections 7, 12 and 46, on the 1<sup>st</sup> January, 2020; and

(b) all other sections, on the 1<sup>st</sup> October, 2019.

**PART II—INCOME TAX**

Amendment of s. 2 of Cap. 470.

**2.** Section 2 of the Income Tax Act is amended –

(a) by deleting the definition of “demurrage charges”.

(b) by inserting the following definition in proper alphabetical sequence—

“investee company” means an investee company within the meaning of the Capital Markets Act and the regulations made thereunder..

Amendment of s. 3 of Cap. 470.

**3.** Section 3 of the Income Tax Act is amended by inserting the following new paragraphs immediately after

paragraph (c) –

**(d) income chargeable to tax includes income accruing through a digital marketplace.**

(e) “digital marketplace” means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

Amendment of s.  
7A of Cap. 470.

**4.** Section 7A of the Income Tax Act is amended by deleting the proviso thereto and substituting therefor the following new proviso –

Provided that this section shall not apply to income which is exempt under this Act.

Amendment of s.  
9 of Cap. 470.

**5.** Section 9 of the Income Tax Act is amended in subsection (1) by inserting the following proviso –

Provided that all income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods shall be deemed to be income derived from Kenya.

Amendment of s.  
10 of Cap. 470.

**6.** Section 10 of the Income Tax Act is amended in subsection (1) by—

(a) deleting paragraph (i);

(b) inserting the words “or reinsurance” immediately after the word “insurance” appearing in paragraph (j);

(c) adding the following new paragraph immediately after paragraph (j) –

(k) security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion, and marketing and advertising services.

(d) adding the words “except for deductions provided for by agreements under section 41” to paragraph (ii) of the proviso thereto;

Repeal and replacement of s. 12C of Cap. 470.

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

Turnover and presumptive tax.

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

(2) Despite subsection (1), a person who would otherwise be liable to pay turnover tax under this section 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.

(3) Notwithstanding subsection (1), turnover tax shall not apply to—

- (a) rental income;
- (b) management or professional or training fees;
- (c) the income of incorporated companies; or
- (d) any income which is subject to a final withholding tax under this Act.

(4) A person subject to turnover tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(5) A person required to pay turnover tax under this section, shall be liable to pay presumptive tax equal to fifteen percent of the amount payable for a business permit or trading license issued by a county government which shall be offset against the tax payable under subsection (1).

(6) The presumptive tax under subsection (5) shall be payable at the time of payment for the business permit or trade license or renewal of the licences.

(7) A person subject to turnover tax under this section shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedures Act, 2015.

(8) For purposes of this Section a “tax period” means a calendar month.

Amendment of s.  
20 of Cap. 470.

**8.** Section 20 of the Income Tax Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (c)—

(d) an investee company of a real estate investment trust.

Amendment of s.  
34 of Cap. 470.

**9.** Section 34 of the Income Tax Act is amended—

(a) in subsection (1), by deleting the words “five percent” appearing in paragraph (j) and substituting therefor the words “twelve and a half percent”; and

(b) in subsection (2), by deleting paragraph (n).

Amendment of s.  
35 of Cap. 470.

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

(a) in subsection (1),—

(i) by deleting paragraph (m);

(ii) by deleting paragraph (n) and substituting therefor the following new paragraph—

(n) insurance or reinsurance premium, except

insurance or reinsurance premium paid in respect of aircraft.

(iii) by adding the following new paragraph immediately after paragraph (n)—

(o) security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion, and marketing and advertising services.

(b) in subsection (3), by adding the following new paragraph immediately after paragraph (j) –

(k) security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion, and marketing and advertising services.

Repeal of s. 72D of Cap. 470.

**11.** The Income Tax Act is amended by repealing section 72D.

Amendment of the First Schedule to Cap. 470.

**12.** The First Schedule to the Income Tax Act is amended in Part I by inserting the following new paragraphs immediately after paragraph 56 –

57. The income of the National Housing Development Fund.

58. Income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1<sup>st</sup> January 2020;

Provided that –

- (a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and
- (b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

Amendment of  
the Third  
Schedule to Cap.  
470.

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

(a) in Head A, by deleting the words “gross emoluments” appearing in paragraph 3 and substituting therefor the words “employee’s contribution”;

(b) in Head B—

(i) by inserting the following new subparagraph immediately after subparagraph 2 (k) –

(l) in the case of a company operating a plastics recycling plant, fifteen percent for the first five years from the year of commencement of its operations.

(ii) by deleting subparagraph 3(o);

(iii) by inserting the following new subparagraph immediately after subparagraph 3(p)—

(q) in the case of security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion services, marketing and advertising services, twenty percent of the gross amount;

(iv) by adding the following new subparagraph immediately after subparagraph 5(k) –

(l) in the case of security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services) sales promotion services, marketing and advertising services, five percent of the gross amount.

(v) by deleting paragraph 9 and substituting therefor the following new paragraph—

9. The rate of turnover tax shall be three percent of the gross receipts of the business of a taxable person under section 12C.

Amendment of  
the Eighth  
Schedule to Cap.  
470.

**14.** The Eighth Schedule to the Income Tax Act is amended by deleting paragraph 13 and substituting therefor the following new paragraph—



13. Exemption

No gain or loss shall be included in the computation of income under section 3 (2) (f) in the case of a transfer of property that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, where such transfer is –

- (a) a legal or regulatory requirement;
- (b) as a result of a directive or compulsory acquisition by the government;
- (c) an internal restructuring within a group which does not involve transfer of property to a third party; or
- (d) in the public interest and approved by the Cabinet Secretary.

**PART III—VALUE ADDED TAX**

Amendment of s.  
2 of No. 35 of  
2013.

**15.** Section 2 of the Value Added Tax Act is amended—

- (a) in the definition of “supply of imported services” by deleting the words “a person who is a registered person” and substituting therefor the words “any person”.
- (b) by inserting the following new definition in proper alphabetical sequence—

“concessional loan” means a loan with at

least twenty-five percent grant element.

Amendment of s.  
5 of No. 35 of  
2013.

**16.** Section 5 of the Value Added Tax Act, 2013 is amended by inserting the following new subsections immediately after subsection (6)—

(7) The provisions of subsection (1) shall be applicable to supplies made through a digital market place

(8) For the purposes of this section, “digital market place” means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

Amendment of s.  
12 of No. 35 of  
2013.

**17.** Section 12 of the Value Added Tax Act, 2013, is amended in subsection (4) by inserting the words “or a special economic zone” immediately after the words “export processing zone” appearing in paragraph (c).

Amendment of  
the First Schedule  
to No. 35 of  
2013.

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

(a) in section A of Part I—

(i) by adding the words “upon **the** recommendation of the Cabinet Secretary responsible for matters relating to energy” at the end of paragraph 45;

(ii) by adding the words “other than road tractors for semitrailers” immediately after the word “tractor” appearing in paragraph 47;

(iii) by adding the following new paragraphs

immediately after paragraph 104—

105. Inputs for electric accumulators and separators including lead battery separator rolls, whether or not rectangular or square, supplied to manufacturers of automotive and solar batteries in Kenya, upon **the** recommendation **of** the Cabinet Secretary for the time being responsible for industrialization.

106. Agricultural pest control products.

107. Locally manufactured motherboards.

108. Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for information communication technology.

109. Plant, machinery and equipment used in the construction of a plastics recycling plant.

(b) in Part II by deleting the words “stock exchange brokerage” appearing in paragraph 10 and substituting therefor the words “securities brokerage services”;

Amendment of  
Second Schedule  
to No. 35 of  
2013.

**19.** The Second Schedule to the Value Added Tax Act, 2013, is amended –

(a) by deleting paragraph 18;

(b) by adding the following new paragraph in proper sequence—

19. The supply of denatured ethanol.

**PART IV—EXCISE DUTY**

Amendment of s. 2 of No. 23 of 2015.                   **20.** Section 2 of the Excise Duty Act, 2015, is amended by inserting the following new definitions in proper alphabetical sequence—

Cap. 131.   “betting” shall have the meaning assigned to it under the Betting, Lotteries and Gaming Act;

Cap 131   “bookmaker” shall have the meaning assigned to it under section 2 of the Betting, Lotteries and Gaming Act.

“concessional loan” means a loan with at least twenty-five percent grant element;

“official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency.

Amendment of s. 4 of No. 23 of 2015.                   **21.** Section 4 of the Excise Duty Act, 2015, is amended by inserting the following new subsection immediately after subsection (1)—

(1A) In relation to a betting transaction, the time of supply shall be the time a person wagers or stakes money on a platform or other medium provided by a bookmaker.

Amendment of s.                                   **22.** The Excise Duty Act, 2015 is amended by inserting

41A of No. 23 of 2015. the following section immediately after section 41—

General penalty.

**41A.** A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is provided commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both.

Amendment of the First Schedule to No. 23 of 2015.

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

(a) in paragraph 1 of Part I—

(i) by deleting the rates of excise duty in respect of the descriptions set out in the first column hereunder and substituting therefor the new rates respectively specified in the second column—

<i>Description</i>	<i>Rate of Excise</i>
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,098 per kg
Electronic cigarettes	Shs. 3,629 per unit
Cartridge for use in electronic cigarettes	Shs. 2,420 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,025 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,177 per mille
Other manufactured tobacco	Shs. 8,469

and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs.181 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 242 per litre

- (ii) by deleting the descriptions relating to motor vehicles together with the corresponding rates of excise duty and substituting therefor the following –

<i>Description</i>	<i>Rate of Excise Duty</i>
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding— (i) locally assembled motor vehicles; (ii) school buses for use by public schools; (iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and (iv) imported motor vehicles of cylinder capacity exceeding 1500cc	20%
Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading	25%.

87.02, 87.03 and 87.04	
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	35%
100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00	10%.

(iii) by deleting the description “plastic shopping bags” and the corresponding rate of excise duty;

(b) in Part II, by adding the following new paragraph immediately after paragraph 4—

5. Excise duty on betting shall be ten percent of the amount wagered or staked.

(c) in Part III—

(i) by deleting the word “July” appearing in the definition of “Adjustment day” and substituting therefor the word “October”;

(ii) by adding the words “specified in the Insurance Act or Regulations” made thereunder at the end of the definition of “other fees”;

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

“amount wagered or staked” means the amount of money placed by a person for an

outcome in a betting transaction.

**PART V—TAX PROCEDURES**

Amendment of s.  
12 of No. 29 of  
2015.

**24.** Section 12 of the Tax Procedures Act, 2015 is amended by adding the following new subsection immediately after subsection (5)—

(5A) The Commissioner may, upon receipt of an application made by or on behalf of any person or class of persons, exempt such person or class of persons from the requirement for a PIN for any of the transactions specified in the First Schedule.

Insertion of new  
section 37C in  
No. 29 of 2015.

**25.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 37B—

Commissioner  
to refrain from  
assessing or  
recovering  
penalties or  
interest from  
companies that  
list on the  
growth  
segment.

**37C.** (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering penalties or interest from a company that lists on the growth segment of a securities exchange in Kenya, in respect of any year of income prior to the date of listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing:

Provided that the principal tax shall be paid in full.

(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 or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Notwithstanding subsection (1), a company that delists from the exchange in which it is listed before the expiry of five years from the date of listing shall be assessed for all taxes, penalties or interest for the years it was in operation prior to listing.

(4) The provisions of subsection (1) shall cease to apply after three years from the commencement of this section.

Insertion of new section 39A in No. 29 of 2015.

**26.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 39—

Penalty for failure to deduct or withhold tax.

**39A.** Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection

and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

Amendment of s.  
42A of No. 29 of  
2015.

**27.** Section 42A of the Tax Procedures Act, 2015 is amended in subsection (1)—

(a) by deleting the expression “six percent” and substituting therefor the expression “two percent”;

(b) by inserting the following proviso—

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies.

Amendment of s.  
45 of No. 29 of  
2015.

**28.** Section 45 of the Tax Procedures Act, 2015 is amended—

(a) in subsection (1), by inserting the words “or tax representative” at the end of paragraph (b);

(b) in subsection (2), by inserting the words “or tax representative” at the end of paragraph (b);

(c) in subsection (7) –

(i) by inserting the words “or tax representative” at the end of paragraph (a);

(ii) by inserting the words “or tax representative” at the end of paragraph

(b).

Amendment of s.  
51 of No. 29 of  
2015.

**29.** Section 51 of the Tax Procedures Act, 2015 is amended by deleting subsection (11) and substituting therefor the following new subsection –

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of—

(a) the notice of objection; or

(b) any further information the Commissioner may require from the taxpayer,

failure to which the objection shall be allowed.

Amendment of s.  
83 of No. 29 of  
2015.

**30.** Section 83 of the Tax Procedures Act, 2015 is amended by adding the following proviso to subsection (1) –

Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits.

Amendment of s.  
84 of No. 29 of  
2015.

**31.** Section 84 of the Tax Procedures Act, 2015 is amended in subsection (2) by deleting paragraph (b).

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

**32.** The First Schedule to the Tax Procedures Act, 2015 is amended by adding the following new paragraphs immediately after paragraph 11 –

(12) Registration and renewal of membership by professional bodies and other licensing agencies.

(13) Registration of mobile cellular pay bill and till numbers by telecommunication operators.

**PART VI—MISCELLANEOUS FEES AND LEVIES**

Amendment of s.  
2 of No. 29 of  
2016.

**33.** Section 2 of the Miscellaneous, Fees and Levies Act, 2016 is amended by inserting the following definition in proper alphabetical sequence—

“concessional loan” means a loan with at least twenty five percent grant element.

Amendment of s.  
7 of No. 29 of  
2016.

**34.** Section 7 of the Miscellaneous, Fees and Levies Act, 2016 is amended in subsection (2) by –

(a) deleting the word “two” appearing immediately after the words “rate of” and substituting therefor the words “three point five

(b) inserting the following proviso at the end –

Provided that raw materials and intermediate products imported by approved manufacturers shall be charged import declaration fee of at the rate of one-point five percent of the customs value

Amendment of s.  
8 of No. 29 of  
2016.

**35.** Section 8 of the Miscellaneous, Fees and Levies Act, 2016 is amended in subsection (2) by –

(a) deleting the words “one point five” appearing immediately after the words “rate of” and substituting therefor the word “two”

(b) inserting the following proviso at the end –

Provided that raw materials and intermediate products imported by approved manufacturers shall be charged the levy at the rate of one-point five percent of the customs value.

Amendment of s. 8A of No. 29 of 2016.

**36.** Section 8A of the Miscellaneous Fees and Levies Act, 2016 is amended by adding the following new subsection immediately after subsection (2)—

(3) The Commissioner shall refund the levy on the written application of an importer where the Commissioner is satisfied that the levy was paid in respect of illuminating kerosene that has subsequently been used by a licensed or registered manufacturer to manufacture paint, resin or shoe polish.

Amendment of the First Schedule to No. 29 of 2016.

**37.** The First Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new items in proper sequence—

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export levy rate</i>
4104.11.00	Full grains, unsplit; grain splits tanned or crust hides of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4104.41.00	Full grains, unsplit; grain splits of Tanned or crust hides and skins of bovine	10%

	(including buffalo) or equine animals, without hair on, whether or not split, but not further prepared in the dry state (crust) in the dry state (crust)	
4104.49.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared in the dry state (crust) in the dry state (crust)	10%
4105.10.00	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4105.30.00	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared in the dry state (crust)	10%
4106.21.00	Tanned or crust goats or kids hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4106.22.00	Tanned or crust goats or kids hides and skins of	10%

	other animals, without wool on or hair on, whether or not split, but not further prepared in the dry state (crust)	
4106.31.00	Tanned or crust swine hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4106.32.00	Tanned or crust swine hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared in the dry state (crust)	10%
4106.40.00	Tanned or crust hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared reptiles in the dry state (crust)	10%
4106.91.00	Other tanned or crust hides of other animals, without wool on or hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4106.92.00	Other tanned or crust hides and skins of other animals, without wool or	10%

	hair on, whether or not split, but not further prepared in the dry state (crust)	
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**PART VII—MISCELLANEOUS**

Amendment of Fourth Schedule to Cap. 179.

**38.** The Fourth Schedule to the Privileges and Immunities Act is amended in paragraph 4 by deleting the words “importation of goods directly imported” and substituting therefor the words “goods or services imported or purchased locally”.

Amendment of s. 2 of Cap. 485A.

**39.** Section 2 of the Capital Markets Act is amended by deleting the words “and chief financial officers and Board of Directors of issuers of securities” appearing in paragraph (a) of the definition of “key personnel”.

Amendment of s. 11 of Cap. 485A.

**40.** Section 11 of the Capital Markets Act is amended in subsection (3) (cc) by adding the following proviso to subparagraph (i) of subparagraph (cc)—

Provided that the financial penalties shall be recoverable summarily by the Authority as civil debts.

Amendment of s. 25A of Cap. 485A.

**41.** Section 25A of the Capital Markets Act is amended by inserting the following new subsection immediately after subsection (1)—

(1A) The financial penalties and recoveries set out under paragraphs (1) (a) (v) and (vii), (1) (b) (iii) and (iv), (1) (c) (ii) and (iii), (2) and (6) shall be recoverable summarily by the Authority as civil debts.

Amendment of s.

**42.** Section 34A of the Capital Markets Act is amended



34A of Cap.  
485A.

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

(1A) The financial penalties imposed under subsections (1) and (2) shall be recoverable summarily by the Authority as civil debts.

Repeal of s. 33B  
of Cap. 488.

**43.** The Banking Act is amended by repealing section 33B.

Amendment of s.  
37 of No. 3 of  
1997.

**44.** Section 37 of the Retirement Benefits Act is amended by adding the following new subsection immediately after subsection (3) –

(4) Where scheme funds are invested in a guaranteed fund asset class, the approved issuer shall, upon termination of the relevant agreement, transfer the funds out of the asset class within twelve months, or such other shorter period as may be specified in the instrument of appointment.

Repeal and  
replacement of s.  
45A of No. 3 of  
1997.

**45.** The Retirement Benefits Act is amended by repealing section 45A and replacing it with the following new section—

Treatment of  
unclaimed  
benefits.

No. 40 of  
2011.

**45A.** (1) If within a period of two years from the completion of winding up proceedings in respect of a scheme under the Act, the liquidator is unable to trace any member of the scheme, the accrued benefits due to such member shall become unclaimed assets within the meaning of section 13 (1) of the Unclaimed Financial Assets Act, 2011, at the end of that period.

(2) At the end of the period specified in subsection (1), a trustee of the scheme may treat accrued benefits as unclaimed benefits if—

- (a) a scheme member entitled to such accrued benefits has not lodged any claim and the trustee is unable to locate that member after taking the specified steps;
- (b) a scheme member has lodged a claim with the trustee but the trustee is subsequently unable to locate that member after taking the specified steps; and
- (c) the member or beneficiary has not—
  - (i) increased or decreased the principal;
  - (ii) accepted any payment in respect of the accrued benefits;
  - (iii) communicated with the scheme concerning the accrued benefits; or
  - (iv) indicated any other interest in the accrued

benefits as evidenced  
by a record prepared by  
the trustees.

Amendment of s.  
2 of No. 11 of  
2007.

**46.** Section 2 of the Employment Act, 2007 is amended  
by—

(a) deleting the definition of “employee earnings”;

(b) inserting the following new definition in proper  
alphabetical sequence—

“basic salary” means an employee’s gross  
salary excluding allowances and other benefits.

Amendment of s.  
17 of No. 15 of  
2008.

**47.** Section 17 of the Accountants Act, 2008 is amended  
by repealing subsection (2A).

Amendment of s.  
2 of No. 9 of  
2009.

**48.** Section 2 of the Proceeds of Crime and Anti-Money  
Laundering Act, 2009 is amended in the definition of  
“designated non-financial businesses and professions” by  
inserting the following new paragraph immediately after  
paragraph (fa)—

(fb) advocates, notaries and other independent  
legal professionals who are sole practitioners,  
partners or employees within professional  
firms.

Amendment of s.  
48 of No. 9 of  
2009.

**49.** Section 48 of the Proceeds of Crime and Anti-Money  
Laundering Act, 2009 is amended by inserting the words  
“advocates, notaries and other independent legal  
professionals” immediately after the word “accountants”  
appearing in the preamble.

## **MEMORANDUM OF OBJECTS AND REASONS**

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2019/2020 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws—

### **The Privileges and Immunities Act (Cap. 179)**

The Bill seeks to amend the Fourth Schedule to the Act to exempt goods and services imported or locally purchased by privileged organisations for their official use from taxes.

### **The Capital Market Act (Cap. 485)**

The Bill seeks to amend the Act to provide for financial penalties imposed by the Authority to be considered as civil debts with the Capital Markets Authority mandated to recover them in line with provisions for the recovery of decretal sums. The amendment is intended to enhance enforcement and recovery of financial penalties imposed by the Authority.

### **The Banking Act (Cap. 488)**

The Bill seeks to amend the Act by repealing section 33B to remove the caps on interest charged on loans. This is aimed at encouraging the banks to provide credit to Small and Medium Enterprises (SMEs).

### **The Retirements Benefits Act (No. 3 of 1997)**

The Bill proposes to activate the benefits and other accrued income of members of retirement benefits schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act, 2011. The amendment also intends to provide time limit in which approved issuers shall transfer scheme funds in guaranteed funds to 1 year to protect the interests of members by reducing the exposure to low returns over an extended transfer period.

### **The Employment Act (No. 11 of 2008)**

The Bill seeks to introduce the definition of “basic salary” to guide on the base amount for computing the levy payable to the National Housing Development Fund. The amendment also seeks to delete the definition of “employee’s earnings”, words which have not been used in the Act.

**The Accountants Act (No. 15 of 2008)**

The Bill proposes to remove the requirement for the students to register with ICPAK before qualifying as accountants.

**The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)**

The Bill seeks to designate lawyers, notaries and other independent legal professionals as amongst reporting entities to whom Anti-Money Laundering/Combating Financing of Terrorism obligations shall apply.

Dated the 13<sup>th</sup> June, 2019

Joseph K. Limo  
*Chairperson*  
*Departmental Committee on Finance and National Planning*

*Paragraph 4 of the Fourth Schedule of Cap. 179 which is intended to amend—*

**4.** Exemption from taxes on the importation of goods directly imported by the organization for its official use in Kenya or for exportation, or on the importation of any publications of the organization directly imported by it, such exemption to be subject to compliance with such conditions as any written law relating to customs and excise may prescribe.

*Section 33B of Cap. 488 which is intended to amend—*

**33B.** (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 Bank Rate set and published by the Central Bank of Kenya.

(2) A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law.

(3) A bank or financial institution which contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or in default, the Chief Executive Officer of the bank or financial institution shall be liable to imprisonment for a term not less than one year.

*Section 45A of No. 3 of 1997 which is intended to amend—*

**45A.** (1) The Authority shall establish a trust fund into which shall be paid the benefits and other accrued income of members of retirement benefits schemes who cannot be traced within a period of two years from the commencement of winding-up of the respective schemes under the Act.

(2) Any payment of the benefits from the fund established under this section shall be made in accordance with the rules of the scheme to which the member belonged at the time of its winding-up.

(3) The accounts of the fund established under this section shall be audited by the Controller and Auditor-General in accordance with the Public Audit Act, 2003.

(4) The Minister may make regulations for the management and operation of the fund.

*The definition of “employee earnings” in section 2 of No. 11 of 2007 which is intended to amend—*

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

*Section 17 of No. 15 of 2008 which is intended to amend—*

**17.** (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.

*Section 48 of No. 9 of 2009 which is intended to amend—*

**48.** The reporting obligations under this Part shall apply to accountants when preparing or carrying out transactions for their clients in the following situations—\

- (a) buying and selling of real estate;
- (b) managing of client money, securities or other assets;
- (c) management of bank, savings or securities accounts;
- (d) organisation of contributions for the creation, operation or management of companies;
- (e) creation, operation or management of buying and selling of business entities.