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CONTENT

Bill for Introduction into the National Assembly —

The Income Tax Bill, 2020 ................................................................. 337

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THE INCOME TAX BILL, 2020
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY
1—Short title and commencement.
2—Interpretation.

PART II—ADMINISTRATION
3—Act to prevail.
4—No. 29 of 2015 to apply.

PART III—IMPOSITION OF INCOME TAX
5—Imposition of income tax.
6—Income from business.
7—Income from business where foreign exchange gain or loss is realized.
8—Income from employment, etc.
9—Income from the use of property.
10—Imposition of residential rental income tax.
11—Dividend income.
12—Dividend distributed out of untaxed gains or profits.
13—Repatriated income.
14—Income from retirement benefits funds.
15—Income of certain non-resident persons deemed derived from Kenya.
16—Income from management or professional fees, royalties, interest and rents.
17—Trust income, etc. deemed income of trustee.
18—Income under a settlement.
19—Imposition of advance tax.
20—Imposition of fringe benefits tax.
21—Imposition of turnover and presumptive tax.
PART IV—EXEMPTION FROM TAX
22—Certain income exempt from tax.

PART V—ASCERTAINMENT OF TOTAL INCOME
23—Allowable deductions.
24—Separate computation of gains or profits from specified sources.
25—Deductions not allowed.
26—Computation of chargeable income from indirect transfer of interest in a person.
27—Ascertainment of income from farming business.
28—Ascertainment of gains or profits of business in relation to certain non-resident persons.
29—Ascertainment of income of insurance business.
30—Co-operative societies.
31—Collective investment schemes.
32—Members’ clubs and trade associations.
33—Purchased annuities, other than retirement annuities, etc.
34—Deduction of contributions to registered pension or provident funds.
35—Deduction of contributions to a registered individual retirement fund.
36—Arrangements designed to avoid liability to tax.
37—Avoidance of tax liability by non-distribution of dividends.
38—Accounting periods not coinciding with year of income, etc.
39—Income and expenditure after cessation of business.

PART VI—RESIDENT INDIVIDUAL TAX RELIEFS
40—Individual relief.
41—Affordable housing relief.
42—Insurance relief.
PART VII—RATES, DEDUCTIONS, SET-OFF OF TAX AND DOUBLE TAXATION RELIEF

A—Rates of tax
43—Rates of tax.

B—Deduction of Tax
44—Deduction of tax from certain income.
45—Deduction of tax from annuities etc. paid under a will etc.
46—Deduction of tax from emoluments.
47—Application to Government.

C—Set-off of Tax
48—Set-off of tax.

D—Double Taxation Relief
49—Special arrangements for relief from double taxation.
50—Agreements for exchange of information.
51—Computation of tax credits under special arrangements.

PART VIII—ASSESSABLE PERSONS
52—Income of a person assessed on that person.
53—Income of incapacitated person.
54—Income of non-resident person.
55—Income of deceased person, etc.
56—Liability of joint trustees.
57—Liability of person in whose name income of another person assessable.

PART IX—RETURNS AND NOTICES
58—Final Return with self-assessment.
59—Documents to be included in return of income.
60—Keeping of records.

PART X—COLLECTION, RECOVERY AND REPAYMENT OF TAX
61—Due date for payment of tax.
62 — Due date for payment of tax under self-assessment.
63 — Due date for payment of tax by instalments.
64 — Due date for payment of tax by companies winding-up.
65 — Tax payable out of deceased person’s estate.
66 — Collection of tax from ship owner, etc.
67 — Refund of tax paid on income accumulated under trusts.

PART XI — MISCELLANEOUS PROVISIONS

68 — Regulations.
69 — Repeal of Cap. 470 and transitional provisions.

SCHEDULES

First Schedule — Income Exempt from Tax
Second Schedule — Investment Allowance
Third Schedule — Resident Individual Tax Reliefs and Rates of Tax
Fourth Schedule — Financial Institutions
Fifth Schedule — Computation of Gains from Transfer of Property
Sixth Schedule — Taxation of income from Extractive Industries
Seventh Schedule — Taxation of income of Export Processing Zone Enterprises and Special Economic Zone Enterprises
Eighth Schedule — Transfer Pricing Adjustment
THE INCOME TAX BILL, 2020

A Bill for

AN ACT of Parliament to provide for the charge, ascertainment and collection of income tax; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Income Tax Act, 2020 and shall come into operation on a date to be appointed by the Cabinet Secretary by notice in the Gazette.

2. In this Act, unless the context otherwise requires—

“accounting period” means the period for which a person prepares the accounts of the business;

“actuary” has the meaning assigned to it in the Insurance Act;

“adjusted cost” means a cost that is adjusted in accordance with paragraph 7 of the Fifth Schedule;

“agency fee” means a payment made to a person acting on behalf of another person and includes a payment for advertisement or marketing services but excludes a payment made by an agent on behalf of a principal when that payment is recoverable;

“all loans” means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness advanced to a company by a non-resident person for which the company pays a financial charge, interest, discount, premium or a similar charge;

“annuity contract” means a contract providing for the payment of an annuity to an individual;

“arm’s length” in relation to the sale or purchase of an item, means the consideration that is determined between an independent willing buyer and independent willing seller;

“assessment” has the meaning assigned to it in the Tax Procedures Act, 2015;
"associated" in relation to a person and another, means where—

(a) a person participates directly or indirectly in the management, control or capital of the business of the other person;

(b) a third person participates directly or indirectly in the management, control, or capital of the business of both persons; or

(c) the individual referred to in paragraph (a) is related by marriage, consanguinity or affinity to an individual who participates in the management, control, or capital of the business of the other person;

"bank" means a bank or financial institution licensed under the Banking Act; Cap. 488.

"bearer" means a person in possession of a bearer instrument;

"bearer instrument" includes a certificate of deposit, bond, note or similar instrument, payable to the bearer;

"beneficial owner" means the person who ultimately owns or controls a business or the person on whose behalf a transaction is being conducted, or a person who exercises ultimate effective control over a person or arrangement;

"beneficial tax regime" means a regime anchored in any law or administrative practice which provides a preferential rate of tax on income or profit, including a reduction in the tax rate or the tax base;

"business" includes a trade, profession or vocation, and every manufacture, leasing of property, adventure and concern in the nature of trade, but does not include employment;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;
“civil works” means—

(a) roads and parking areas;

(b) railway lines and related structures;

(c) water supply, industrial effluent and sewerage works;

(d) communication and electrical posts and pylons, and other electricity supply works; or

(e) security walls and fencing;

“collective investment scheme” has the meaning assigned to it in the Capital Markets Act; Cap. 485A.

“commercial activity” means trading-in, breaking bulk, grading, repacking, or relabelling of goods and industrial raw materials;

“commercial vehicle” means a motor vehicle which is—

(a) manufactured for the transportation of goods and used in connection with a business; or

(b) used for the transportation of passengers for hire or consideration;

“Commissioner” means the Commissioner-General appointed under the Kenya Revenue Authority Act, 1995 No. 2 of 1995.

“company” has the meaning assigned to it in the Tax Procedures Act, 2015 No. 29 of 2015.

“comparable transaction” means a transaction that is comparable to a controlled transaction under examination;

“consideration” in relation to the disposal of—

(a) an interest in a person;

(b) a mining right or petroleum right; or
(c) mining information or petroleum information,

means the total amount received or receivable, including the fair market value of an amount in kind, determined at the time of the disposal;

"constituent entity" means—

(a) a separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or would be included if the equity interest in the business unit of a multinational enterprise group were traded on a securities exchange;

(b) a business unit that is excluded from the consolidated financial statements of a multinational enterprise group solely based on the size of the business unit or materiality grounds; or

(c) where a business unit prepares a separate financial statement for the purposes of a permanent establishment for—

(i) financial reporting;

(ii) regulatory purposes;

(iii) tax reporting purposes; or

(iv) internal management control,

the permanent establishment of a separate business unit of a multinational enterprise group specified in paragraph (a) or (b);

"consultancy fee" means a payment made to any person for acting in an advisory capacity but does not include a payment made under a contract of service;

"contract area" means an area that is—
(a) the subject of a petroleum agreement; and

(b) if any part of an area is relinquished pursuant to a petroleum agreement, the area under paragraph (a) that was originally granted;

"contract of service" means an agreement to employ or serve as an employee for any period of time under which the employer has the power of selection or dismissal of the employee, pays the employee's wages or salary and supervises the work done by the employee, and includes a contract of apprenticeship or indentured learnership;

"contractor" means a person with whom the Government has entered into a petroleum agreement and includes any successor or assignee of the person;

"control" means, and shall be deemed to arise at any time during the year of income where—

(a) one person holds, directly or indirectly, at least twenty per cent of the voting rights in a company;

(b) a loan advanced by one person to the other person, constitutes at least seventy per cent, of the book value of the total assets of the other person but does not include a loan from a financial institution that is not associated with the person advancing the loan;

(c) a guarantee for any form of indebtedness by one person to the other person constitutes at least seventy per cent, of the total indebtedness of the other person but does not include a guarantee from a financial institution that is not associated with the guarantor;

(d) one person appoints more than half of the board of directors or at least one director or executive member of the governing board of one person or of each of two different persons;

(e) one person is the owner of or has the exclusive rights over the know-how, patent, copyright, trade
mark, licence, franchise or any other business or commercial right of a similar nature, on which the other person is wholly dependent for the manufacture or processing of goods or articles or business carried on by that person;

(f) one person or a person designated by that person—

(i) supplies at least ninety per cent of; or

(ii) in the opinion of the Commissioner, influences the prices or other conditions relating to,

the supply of the purchases of the other person;

(g) one person purchases or designates a person—

(i) to purchase at least ninety per cent; or

(ii) in the opinion of the Commissioner, influences the price or any other condition,

of the sales of the other person; or

(h) any other relationship, dealing or practice that the Commissioner may deem to constitute control;

“controlled transaction” means a transaction entered into by associated persons or any other transaction deemed to be a controlled transaction;

“co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1997;

“cost” in relation to an interest in a person, a mining right or petroleum right, or mining information or petroleum information, means the total consideration given for the acquisition of the interest, right or information, including the fair market value of the consideration given in kind, determined at the time the consideration is given;

“current year of income” in relation to income charged to instalment tax, means the year of income for which a tax is payable in instalments;
"debenture" includes a debenture stock, mortgage, mortgage stock, or any similar instrument acknowledging indebtedness, that is secured on the assets of the person issuing the debenture;

"de-commissioning plan" means a plan for the de-commissioning, abandonment, relocating or removal and, where applicable, the redeployment of wells, flowlines, pipelines, facilities, infrastructure or assets related to an upstream petroleum operation;

"deemed interest" means the amount by which the interest payable at the average risk-free rate of interest in the country of a non-resident on a loan exceeds the amount paid by a resident company in respect of a loan provided or secured by a non-resident person who exercises control on the resident company, at an interest rate that is lower than the average risk-free rate of interest in the country of that non-resident;

"development expenditure" means the capital expenditure incurred by a contractor when undertaking an operation authorized under a development plan and includes expenditure incurred when acquiring—

(a) an interest in a petroleum agreement other than an interest with the Government or under a farm-out agreement; or

(b) petroleum information other than information from the Government or under a farm-out agreement relating to exploration operations;

"development plan" means a development plan prepared and adopted under a petroleum agreement;

"digital marketplace" means a platform that allows the direct interaction between the buyers and sellers of goods and services through electronic means;

"discount" means interest measured by the difference between the amount received on the sale, final satisfaction or redemption of any debt, bond, loan, claim, obligation or evidence of indebtedness, and the price paid on the
purchase or original issuance of the bond or evidence of indebtedness or the sum originally loaned upon the creation of the loan, claim or other obligation;

“disposal” in relation to an interest in a person, a mining right or petroleum right, or mining information or petroleum information, means a change in the ownership of the interest, right or information by way of a sale, transfer or assignment, and includes the cancellation or redemption of the interest in the person, right or information;

“dividend” includes an amount distributed or deemed to be distributed under section 11;

“due date” means the date by which a tax is due and payable or another date as the Commissioner may specify in a notice;

“employee” means an individual engaged under a contract of service, and includes an executive member of staff or a director;

“employer” means a resident person responsible for the payment of, or accounting for, emoluments to an employee, and includes an agent, manager or any other representative in Kenya, of a non-resident employer;

“excluded multinational enterprise group” in respect of the financial year of a group, means a group having a total consolidated group revenue of less than one hundred billion shillings during the financial year immediately preceding the reporting financial year, as reflected in its consolidated financial statements for the preceding financial year;

“exploration expenditure” means an expenditure incurred by a contractor in undertaking exploration operations authorized under a petroleum agreement and includes expenditure incurred in acquiring—

(a) an interest in a petroleum agreement with the Government or under a farm-out agreement; or

(b) petroleum information from the Government or under a farm-out agreement relating to exploration operations;
“exploration operations” means work authorised under a petroleum agreement in the search for petroleum before the approval of a development plan and includes—

(a) geological, geophysical and geochemical surveys and analyses;

(b) aerial mapping;

(c) investigations of subsurface geology;

(d) stratigraphic tests;

(e) the drilling of wells to test a geological feature that has not already been determined to contain producible petroleum sufficient for commercial production; or

(f) any other necessary work that is connected with the activities described in paragraphs (a) to (e);

“export processing zone enterprise” has the meaning assigned to it in the Export Processing Zones Act;

“extraction expenditure” means a capital expenditure incurred by a licensee when undertaking an operation authorized under an extraction right and includes an expenditure incurred when acquiring—

(a) an interest in a mining right or mining information other than an interest from the Government or under a farm-out agreement;

(b) a right to extract minerals issued under the Mining Act, 2016; or

(c) a right to extract geothermal resources issued under the Energy Act, 2019;

“farm-out agreement” means an agreement to which paragraph 12 of the Sixth Schedule applies;

“farm works” means farmhouses, labour quarters, any other immovable buildings, fences, dips, drains, windbreaks,
civil works for water and electricity supply, other than machinery, or any other civil works;

“financial indicator” means—

(a) in relation to the comparable uncontrolled price method, the price;

(b) in relation to the cost-plus method, the gross markup on costs;

(c) in relation to the resale price method, the resale gross margin;

(d) in relation to the transaction net margin method, the net profit margin relative to an appropriate base such as costs, sales, assets, or capital employed;

(e) in relation to the transactional profit split method, the division of net profit; or

(f) any other indicator approved by the Commissioner;

“financial year” means an annual accounting period with respect to which the ultimate parent entity of a multinational enterprise group prepares its financial statements;

“foreign tax”, in relation to income charged to tax in Kenya, means income tax or tax of a similar nature, charged under any law in another jurisdiction where a special arrangement has been made by the Government of Kenya and which is the subject of that arrangement;

“full time service director” means a director of a company who is required to devote all of his time to the service of that company in a managerial or technical capacity but is not the beneficial owner of, or able, directly or through the medium of other companies or by any other means, to control more than five percent of the share capital or voting rights of that company;
“group” means a collection of enterprises related through ownership or control that prepares consolidated financial statements;

“immovable property” includes—

(a) any structural improvement to land or a building;

(b) an interest in land or a building;

(c) an interest in a structural improvement to land or a building; and

(d) a mining right, an interest in a petroleum agreement, or an interest in mining information or petroleum information;

“incapacitated person” means a minor or an individual adjudged under any written law to be in a state of unsound mind;

“individual” means a natural person;

“individual retirement fund” means a fund held in trust for a resident individual for the purpose of receiving and investing funds in order to provide a pension or retirement benefit to the individual or the surviving dependant of the individual;

“insurance business” has the meaning assigned to it in the Insurance Act;

“interest”, other than interest charged on late payment of tax, means a charge payable on a loan, deposit, debt, claim or other right or obligation, and includes a premium or discount by way of interest and commitment or service fee paid for a loan or credit or an Islamic finance return;

“interest in a person” includes a share or other form of ownership in a company, partnership, trust, or any other entity;

“investee company” has the meaning assigned to it in the Capital Markets Act;
“Islamic finance arrangement” means a financial arrangement that is structured in accordance with Islamic law, and includes a transaction, instrument, product or related activity;

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

“land” includes—

(a) a building and anything attached to land or permanently fastened to anything attached to land;

(b) standing timber, trees, crops and other vegetation growing on land; and

(c) land covered by water;

“licence area” means the geographical area that is the subject of a mining right;

“licensee” means a person who has been issued with, or been granted, a mining right;

“loss” in relation to gains or profits means an amount computed in the same manner as gains or profits by which the deductible expenditure is more than the income of a person;

“machinery” includes a pipeline, plant or equipment;

“management or professional fee” means a payment made to a person, other than an employee by his employer, as consideration for managerial, technical, agency, contractual, professional or consultancy services, and includes a payment incidental to the provision of the services;

“market value” means the value of an item when sold or purchased at arm’s length;

“mineral” has the meaning assigned to it in the Mining Act, 2016;
“mining information” means information relating to mining operations;

“mining operations” means authorized operations undertaken under a mining right;

“mining right” means a prospecting or extraction right;

“National Social Security Fund” means the National Social Security Fund established under the National Social Security Fund Act, 2013;

“natural resource income” means—

(a) an amount including a premium or similar amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea; or

(b) an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.

“net gain”, in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest in a person;

“outdoor catering services” means catering services provided at a venue other than the caterer’s usual place of business;

“paid” has the same meaning as payment;

“payment” includes an amount accrued, distributed, credited, transferred, payable in cash or kind, or conferred by any other means for the benefit of, or on behalf of, a person;

“pension fund” means a fund for the payment of pensions or other similar benefits to employees on retirement, or to the dependants of employees on the death of those employees;
“permanent establishment” means a fixed place of business through which business is wholly or partly carried on and includes—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;

(g) a warehouse, in relation to a person whose business is providing storage facilities to others;

(h) a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on; and

(i) a sales outlet;

and shall be deemed to include—

(i) a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days;

(ii) the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve-month period commencing or ending in the year of income concerned; and
(iii) an installation or structure used in the exploration for natural resources for a period of at least one hundred and eighty-three days;

“permanent home” means a place where an individual lives or is available to him for residential purposes in Kenya, or where, in the opinion of the Commissioner, the individual’s personal or economic interests are closest;

“permanent or semi-permanent crop” means a crop which the Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for agriculture, by notice in the Gazette, declare to be permanent or semi-permanent for the purposes of this Act;

“person” has the meaning assigned to it in the Tax Procedures Act, 2015;

“petroleum agreement” has the meaning assigned to it in the Petroleum Act, 2019;

“petroleum information” means information relating to petroleum operations;

“petroleum operations” means authorized operations undertaken under a petroleum agreement;

“preferential tax regime” means a jurisdiction that has any of the following features—

(a) it does not tax income, or taxes income at a rate that is lower than two-thirds of the corporate rate of tax specified in the Third Schedule;

(b) it does not have an exchange of information arrangement with Kenya;

(c) it does not allow access to banking information; or

(d) it lacks transparency, including details of corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, and financial disclosure;
“premises” means—

(a) a building, the land and any improvement thereon; or

(b) a part of a building that is occupied as a separate dwelling;

“property” means—

(a) in the case of a company, land, building, securities, right, scientific formula or patent, acquired or held, for investment purposes; and

(b) in the case of an individual, land and any right or interest in or over that land or securities, situated in Kenya;

“prospecting expenditure” means an expenditure incurred in undertaking operations authorised under a prospecting right and includes an expenditure incurred in acquiring—

(a) an interest in a prospecting right from the Government or under a farm-out agreement; or

(b) prospecting information from the Government or under a farm-out agreement;

“prospecting information” means mining information relating to the search for minerals under a prospecting right;

“prospecting right” means—

(a) a right to prospect for minerals issued or granted under the Mining Act, 2016; or

(b) an authority or right to search for geothermal resources issued or granted under the Energy Act, 2019;

“provident fund” means a fund or scheme for the payment of lump sums and other similar benefits, to employees when the employees leave employment or to the
dependants of the employees on the death of the employees, but does not include the National Social Security Fund;

"public pension scheme" means a pension scheme that pays pensions or lump sums out of the Consolidated Fund;

"real estate investment trust" has the meaning assigned to it in the Capital Markets Act; Cap. 485A.

"registered annuity contract" means an annuity contract which has been registered with the Commissioner in accordance with this Act;

"registered fund" means a registered pension fund or a registered provident fund;

"registered individual retirement fund" means an individual retirement fund registered with the Commissioner in accordance with this Act;

"registered pension fund" means a pension fund which has been registered with the Commissioner in accordance with this Act;

"registered provident fund" means a fund which has been registered with the Commissioner in accordance with this Act;

"registered trust scheme" means a trust scheme for the provision of retirement annuities which has been registered with the Commissioner in accordance with this Act;

"registered unit trust" means a unit trust registered with the Commissioner in accordance with this Act;

"registered venture capital company" means a venture capital company registered with the Commissioner in accordance with this Act;

"related" in relation to one person and another has the same meaning as "associated"

"repealed Act" means the Income Tax Act repealed under section 70; Cap. 470.
"reporting entity" means a constituent entity that is required to file a country-by-country report in its jurisdiction of tax residence on behalf of a multinational enterprise group;

"resident", when applied in relation—

(a) to an individual means—

(i) that he has a permanent home in Kenya and was present in Kenya for any period in a particular year of income under consideration; or

(ii) that he has no permanent home in Kenya but was present in Kenya for a period of, or periods amounting in the aggregate to, at least one hundred and eighty-three days in that year of income; or

(iii) that he has no permanent home in Kenya but was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than one hundred and twenty-two days in each year of income;

(b) to a body of persons, means—

(i) that the body is formed, incorporated or registered under any written law in Kenya; or

(ii) that the management and control of the affairs of the body was exercised wholly or partly in Kenya in a particular year of income under consideration;

"retirement annuity" means a retirement annuity payable under a registered annuity contract;

"return of income" means a return of income under section 58;

"risk-free rate of interest" means the yield rate from treasury bills or other government borrowing instrument;
“royalty” means—

(a) a payment made as a consideration for the use of or the right to use—

(i) the copyright of a literary, artistic or scientific work;

(ii) a cinematograph film, including film or tape for radio or television broadcasting or internet broadcasting;

(iii) a patent, trademark, design or model, plan, formula or process;

(iv) an industrial, commercial or scientific equipment;

(v) information concerning industrial, commercial or scientific equipment or experience; or

(vi) any other intellectual property; or

(b) gains derived from the sale or exchange of any right or property giving rise to that royalty;

“Sacco society” means a savings and credit co-operative society registered under the Co-operative Societies Act; No. 12 of 1997.

“securities” has the meaning assigned to it in the Capital Markets Act, and includes— Cap. 485A.

(a) securities issued by the Government or by a body created by the Government; and

(b) securities that are situated where they are registered and, if registered in more than one register, where the principal register is situated;

“securities exchange” has the meaning assigned to it in the Capital Markets Act; Cap. 485A.
“shares” has the meaning assigned to it in the Capital Markets Act, and includes—

(a) shares issued by the Government or by a body created by the Government; and

(b) shares that are situated where they are registered and, if registered in more than one register, where the principal register is situated;

“Special Economic Zone” has the meaning assigned to it in the Special Economic Zones Act, 2015;

“subcontractor” means a person supplying services to—

(a) a licensee in respect of mining operations;

(b) a contractor in respect of petroleum operations; or

(c) a licensee carrying out geothermal exploration;

“specified source” means a source of income specified in section 24;

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

“surrogate parent entity” means a constituent entity of a multinational enterprise group that has been appointed by the group to file a country-by-country report in the constituent entity’s resident tax jurisdiction on behalf of the group;

“tax” means income tax charged under this Act;

“total income”, in relation to a person, means the aggregate amount of their income other than an income exempt from tax;

“trade association” means an association of persons whose main object is safeguarding or promoting the business interests of its members;
"training fee" means a payment for training services designed to improve the work practices and efficiency of an organization, and includes a payment for incidental costs associated with provision of those services:

Provided that training fees shall not include fees paid for educational services provided by—

(a) a pre-primary, primary, or secondary school;

(b) a technical college or university; or

(c) an institution established for adult education, vocational training or technical education;

"transfer" means a transfer, whether in whole or in part, in accordance with paragraph 5 of the Fifth Schedule;

"transfer value" means the value of a transfer determined in accordance with paragraph 6 of the Fifth Schedule;

"ultimate parent entity" means a constituent entity of a multinational enterprise group that has control over at least one constituent entity of the group and is required to prepare a consolidated financial statement;

"underlying ownership" in relation to a person, means an interest in the person held through an interposed person, by an individual or person not ultimately owned by the individual;

"unit holder", in relation to a unit trust, means a shareholder in the unit trust;

"unit trust" has the meaning assigned to it in the Capital Markets Act;

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

"year of income" means the period of twelve months that commences on the first day of January in any year and ends on the thirty-first day of December in that year.
PART II—ADMINISTRATION

3. This Act shall prevail in the case of any inconsistency between this Act and any other legislation in regard to tax on
the income of a person.

4. The Tax Procedures Act, 2015 shall apply to this Act.

PART III—IMPOSITION OF INCOME TAX

5. (1) A tax known as income tax shall be charged for each year of income on all the income of a person which
accrued in or was derived from Kenya.

(2) The tax is chargeable on the following income—

(a) a gain or profit from—

(i) a business;

(ii) employment or services rendered;

(iii) a right granted to another person for the use or occupation of property;

(b) a dividend or interest;

(c) a pension, charge or annuity, or a withdrawal from, or payment out of, a registered pension fund, or a registered provident fund or a registered individual retirement fund;

(d) an amount deemed to be the income of a person under this Act;

(e) a gain on the transfer of property computed under the Fifth Schedule;

(f) the net gain, computed in accordance with section 26, derived from the disposal of an interest in a person, if the interest derives twenty per cent or more of its value at any time within a period of three hundred and sixty five days before its disposal, directly or indirectly, from immovable property in Kenya;
(g) a natural resource income; and

(3) For the purposes of this section -

(a) "person" does not include a partnership;

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

6. (1) Under section 5 (2) (a) (i) —

(a) where a business is carried on or exercised, partly in and partly out of Kenya, by a resident person, the whole of the gains or profits from that business shall be deemed to have accrued in or been derived from Kenya;

(b) the gains or profits of a partner shall be the sum of—

(i) the remuneration and interest on capital payable to him by the partnership, less interest on capital payable by him to the partnership; and

(ii) his share of profits from the partnership;

(c) a sum received under insurance against loss of profits, or received as damages or compensation for loss of profits, shall be deemed to be gains or profits of the year of income in which it is received;

(d) where an expenditure, provision or loss has been deducted and, in a later year of income, the whole or part of that expenditure, provision or loss is recovered, then the sum recovered shall be deemed to be the gains or profits of the year of income in which it is recovered;

(e) a balancing charge or trading receipt computed under the Second Schedule, shall be deemed to be the gains or profits of that year of income;

(f) the gains or profits of a licensee, contractor or subcontractor, shall be computed in accordance with the Sixth Schedule; and
(g) the gains or profits of an export processing zone enterprise and a special economic zone enterprise, shall be computed in accordance with the Seventh Schedule.

(2) In computing the total income of a partnership for a year of income under paragraph (1) (b), there shall be deducted—

(a) the cost of medical expenses up to two million shillings in respect of each partner; or

(b) medical insurance premium paid by the partnership for the benefit of any partner;

7. (1) A foreign exchange gain or loss realized by a business carried on in Kenya shall be treated as a trading receipt or deductible expense when computing the gains and profits of that business for the year of income in which that gain or loss was realized.

(2) Notwithstanding subsection (1), a foreign exchange loss shall not be deducted where the foreign exchange loss is realized by a company on a loan from a person who controls that company and the highest amount of all loans borrowed by that company that are outstanding at any time during the year of income, is more than two times the sum of the company’s revenue reserves and the issued and paid up capital of all classes of shares of the company.

(3) For the purposes of subsection (2), an accumulated loss shall be taken into account in computing the amount of the company’s revenue reserves.

(4) The amount of foreign exchange gain or loss shall be the difference between \( A \times r_2 \) and \( A \times r_1 \):

\[
A \times r_2 - A \times r_1
\]

Where —

\( A \) is the amount of foreign currency received or paid with respect to a foreign currency asset or liability in the transaction in which the foreign exchange gain or loss is realized;
\( r_1 \) is the applicable rate of exchange for that foreign currency ("A") at the date on which the foreign currency asset or liability was obtained or incurred; and

\( r_2 \) is the applicable rate of exchange for that foreign currency ("A") at the date of the transaction in which the foreign exchange gain or loss is realized.

(5) A foreign exchange loss shall be deemed not to have been realized where a substantially similar foreign currency asset or liability is obtained or established within sixty days of the date of disposal or settlement of the foreign currency asset or liability.

(6) In this section—

(a) "foreign currency asset or liability" means an asset or liability denominated in a currency other than the Kenya shilling; and

(b) "company" does not include a bank or a financial institution licensed under the Banking Act.

8. (1) Under section 5 (2) (a) (ii), an amount paid to—

(a) a resident person in respect of employment or services rendered by him out of Kenya; or

(b) a non-resident person in respect of employment with, or services rendered to, a resident employer or the permanent establishment in Kenya of a non-resident employer,

shall be deemed to have accrued in or been derived from Kenya.

(2) Income from employment or services rendered chargeable to tax under section 5 (2) (a) (ii) includes—

(a) a wage, salary, leave pay, sick pay, payment in lieu of leave, fee, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received:
Provided that—

(i) an amount received in a year of income other than the year of income in which it accrued, shall be deemed to relate to the year of accrual;

(ii) where the amount received relates to a period of more than five years before to the year of income of receipt, it shall be deemed to be the income of the year of income which ended five years before the year of income in which it was received;

(iii) where the Commissioner is satisfied that a subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from employment or services rendered, that amount shall be excluded from the gains or profits of the recipient;

(iv) where payment of a subsistence, travelling, entertainment or other allowance to an employee is in respect of a period spent outside his usual place of work, the amount reimbursed and excluded from the gains and profits of the recipient under subparagraph (iii) shall not exceed the rates prescribed for the public service by the Salaries and Remuneration Commission as published by the Commissioner;

(b) a benefit, advantage, or facility not provided in this section granted in respect of employment or services rendered, whose aggregate value is not less than sixty thousand shillings per year of income;

(c) an amount paid by an employer as a premium for insurance on the life of the employee and for the benefit of that employee or his dependant:
Provided that this paragraph shall not apply where the amount is paid for a group life policy cover.

(3) Income from employment or services rendered chargeable to tax under section 5 (2) (a) (ii) shall include an amount received as compensation for the termination of a contract of employment or service, which shall be deemed to have accrued evenly over the succeeding three years immediately following the date of the termination of the contract:

Provided that this subsection shall not apply to a director who is not a full time service director;

(4) Income from employment or services rendered chargeable to tax under section 5 (2) (a) (ii) includes the value of premises provided by an employer for occupation by his employee for residential purposes.

(5) For the purposes of subsection (4), the value of premises, excluding the value of any furniture or other contents provided, shall be deemed to be—

(a) an amount equal to fifteen per cent of the income from employment excluding the value of those premises, the market rental value or the rent paid by the employer whichever is the highest;

(b) in the case of an agricultural employee required by the terms of employment to reside on a plantation or farm, an amount equal to ten per cent of the income from his employment:

Provided that for the purposes of this paragraph—

(i) "agricultural employee" does not include a director other than a full-time service director; and

(ii) "plantation" does not include a forest or timber plantation;

(c) where the premises are provided under an agreement with a third party which is not at arm's
length, then the value of the premises is the fair
market rental value of the premises in that year, or
the rent paid by the employer, whichever is the
higher;

(d) where the premises are owned by the employer, the
value of the premises is the fair market rental
value;

Provided that—

(i) where a person occupies premises for part only
of a year of income, the value shall be
determined on the basis of the period occupied; or

(ii) where the employee pays rent to his employer
for premises, the value ascertained under this
paragraph shall be reduced by the amount of
the rent; or

(iii) where part only of any premises is provided,
the Commissioner may reduce the value
ascertained under this paragraph to the amount
which he considers just and reasonable.

(6) Where an employee is provided with a motor vehicle
by the employer, he shall be deemed to have received a
benefit in that year of income equal to two per cent of the
initial expenditure on the vehicle by the employer:

Provided that where—

(a) the motor vehicle is hired or leased from a third
party, the employee shall be deemed to have
received a benefit in that year of income equal to
the cost of hiring or leasing; or

(b) an employee has restricted use of the motor vehicle,
the Commissioner shall, upon proof by the
employee, determine a lower rate for the benefit
depending on the usage of the vehicle.

(7) In the case of an employee share ownership
plan, the value of the benefit shall be the difference
between the market value per share and the offer price per share at the date the option is granted by the employer.

(8) In subsection (7)—

(a) "market value", in relation to shares, means—

(i) where the shares are fully listed on a securities exchange, the average market value on the date the shares were granted by the employer; or

(ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, which shall be agreed upon with the Commissioner before grant of the shares;

(b) "offer price" means the price at which an employer's shares are initially offered to an employee;

(c) "share option" means an offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for after the end of the vesting period; and

(d) "vesting period" means a fixed period between the date an employer makes an offer and the date after which the option to purchase can be exercised by the employee.

(9) The benefits chargeable under subsection (7) shall accrue where the plan is registered with the Commissioner as a collective investment scheme and shall accrue to the employee at the date of exercising the option.

(10) The value of a benefit, excluding the value of premises, a motor vehicle and an employee share ownership plan, shall be the higher of the cost to the employer or the fair market value of the benefit:

Provided that where the cost or fair market value of a benefit cannot be ascertained, the Commissioner may prescribe the value.
(11) Income from employment or services rendered shall not include—

(a) the expenditure incurred on passages of a non-citizen employee between Kenya and any place out of Kenya—

(i) when coming to Kenya to take up employment;

(ii) when travelling on annual leave; and

(iii) when leaving Kenya at the termination of employment;

(b) the value of any medical services or medical insurance premium paid for an employee, his spouse or child whose age shall not exceed twenty-four years, by his employer:

Provided that in the case of a director other than a full-time service director, the value of the medical services shall not exceed the limit prescribed by the Cabinet Secretary;

(c) an amount paid by the employer as a contribution to a registered or unregistered pension fund, provident fund, or individual retirement fund:

Provided that this paragraph shall not apply to a contribution paid by an employer who is not a person chargeable to tax—

(i) to an unregistered pension fund, provident fund, or individual retirement fund; or

(ii) to a registered pension fund, provident fund or individual retirement fund, exceeding the amount specified in section 34 or 35;

(d) education fees of an employee's dependant or relative which have been taxed on the employer;

(e) fringe benefits subject to tax under section 20;
The Income Tax Bill, 2020

(f) the value of meals served to an employee by the employer where the value of the meals does not exceed forty-eight thousand shillings per year of income per employee;

(g) an amount paid by an employer as gratuity or similar payment for employment or services rendered, which is paid into a registered pension fund, provident fund or individual retirement fund:

Provided that—

(i) the amount does not exceed two hundred and forty thousand shillings for each year of service; and

(ii) the employee is not eligible for a deduction under section 34.

9. Income chargeable to tax under section 5 (2) (a) (iii) includes a royalty, rent, premium or similar consideration determined in accordance with this Act.

10. (1) A tax known as residential rental income tax shall be payable by a resident individual on the gross income received from the use or occupation of residential property.

(2) Subsection (1) shall—

(a) apply to income exceeding the lowest tax band set out in the Third Schedule but not exceeding ten million shillings during a year of income; and

(b) not apply to an individual who, by notice in writing addressed to the Commissioner, elects not to be subject to residential rental income tax.

11. (1) In the case of income chargeable to tax under section 5 (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 its shareholder, where—

(i) cash or an asset is distributed or transferred by that company for the benefit of that shareholder or a person related to that shareholder;

(ii) profit is distributed in cash or any other manner, including profit realized on the disposal of assets of a company that is being wound up voluntarily, whether earned before or during the winding up;

(iii) the difference on shares held where ordinary shares, debentures or redeemable preference shares were issued by that company to its shareholders for a sum less than their nominal, redeemable or market value, whichever is greater;

(iv) a debt owed by the shareholder or person related to the shareholder to a third party, is paid by the company;

(v) an obligation measurable in money owed by its shareholder or a person related to the shareholder, is discharged by the company;

(vi) an amount is used by the company in any other manner for the benefit of its shareholder or a person related to the shareholder; and

(vii) an amount resulting from an adjustment of a transaction with the shareholder or a person related to the shareholder which represents additional chargeable income or a reduction in the assessed loss of the company.

(2) A bonus or interest paid by a co-operative society under section 30 shall be deemed to be a dividend.
Notwithstanding section 5 (2) (b), a dividend received by a resident company that holds at least twenty-five percent of the shares of the company paying the dividend shall not be deemed to be income chargeable to tax.

12. Where a dividend is distributed out of gains or profits on which tax has not been paid, the company distributing the dividend shall be liable to pay tax on the gains or profits from which the dividend is distributed, in the year of income in which the dividend is distributed, at the resident corporate rate of tax:

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

13. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income.

(2) The repatriated income under subsection (1) shall be computed using the following formula—

\[ R = A_1 + (P \cdot T) - A_2 \]

Where—

- \( R \) is repatriated income;
- \( A_1 \) is the net assets at the beginning of the year;
- \( P \) is the net profit for the year of income calculated in accordance with generally accepted accounting principles;
- \( T \) is the tax payable on the chargeable income; and
- \( A_2 \) is the net assets at the end of the year.

(3) Tax imposed under this section shall be in addition to tax chargeable on income of the permanent establishment under section 6.

(4) In this section, “net assets” means the total book value of the assets less the total liabilities for the year of
income but does not include the revaluation value of the assets.

14. (1) For the purposes of section 5 (2) (c), the following income shall be deemed to have accrued in or been derived from Kenya—

(a) a pension received by a resident individual from a pension fund or pension scheme established out of Kenya in the proportion to which it relates to employment or services rendered by the individual, or the spouse or parent of the individual, in Kenya and

(b) a pension or retirement annuity received by a non-resident individual from a pension fund or pension scheme or under an annuity contract established or made in Kenya.

(2) Notwithstanding subsection (1), the following shall be deemed to be income not chargeable to tax—

(a) the first sixty thousand shillings per full year of pensionable service or six hundred thousand shillings, whichever is lower, of a lump sum received upon retirement or withdrawal from a registered pension fund, provident fund, the National Social Security Fund, or an individual retirement fund:

Provided that where the pensionable service includes a period that is shorter than a full year, the sixty thousand shillings shall be apportioned in relation to that period;

(b) the first three hundred thousand shillings of the total pensions and retirement annuities received by a resident individual from a registered fund in a year of income;

(c) the total pensions or individual retirement benefits and retirement annuities received by a resident individual from an unregistered pension fund or an unregistered individual retirement fund or
scheme—

(i) the contributions to which have not been allowed as a deduction under this Act; and

(ii) the income thereof has been taxed.

(3) Upon the death of a member or beneficiary of a registered fund—

(a) the widow, widower or dependant shall be entitled to receive the tax-exempt amount out of pension income and lump sum available under subsection (2) as if such amounts had been received by the employee; and

(b) where the registered fund does not provide for payment of retirement benefits other than the payment of a lump sum to an estate, the first one million four hundred thousand shillings of that lump sum payment shall be deemed to be income not chargeable to tax.

(4) Where the beneficiary of a registered individual retirement fund dies, the balance of funds shall be deemed to have been withdrawn in the year immediately preceding the time of his death and shall be included in his income for that year, except—

(a) where the funds have been bequeathed to a spouse, the ownership of the fund shall be transferred to the spouse; and

(b) where the funds are bequeathed to a child under the age of eighteen years at the time of his death, the funds shall be included in the income of that child.

(5) Where the marriage of a beneficiary of a registered individual retirement fund is dissolved, all or part of the balance of funds of that beneficiary may be transferred to a registered individual retirement fund in the name of the former spouse of that beneficiary, as part of a written agreement.
(6) Where the Commissioner determines that a registered pension fund or registered individual retirement fund does not comply with the registration regulations, the fund shall be deemed to have ceased to be a pension fund or an individual retirement fund and the balance of the fund shall be included in the income of the beneficiary in the year of income in which the fund ceased to comply with the regulations.

(7) In this section—

(a) a pension and a lump sum paid from a public pension scheme, shall be deemed to be received from a registered pension fund or registered provident fund, as the case may be;

(b) an income drawdown paid from a pension fund shall be deemed to be a pension; and

(c) surplus funds in respect of a registered pension fund or a registered provident fund withdrawn by or refunded to an employer shall be deemed to be the income of that employer.

(8) In subsection (7), “surplus funds” means surplus funds identified through an actuarial investigation carried out in accordance with this Act.

15. (1) Where a non-resident person carries on business as a ship-operator, ship charterer, air transport operator or air transport charterer, the gross amount received in respect of—

(a) the transportation of passengers who embark from, or cargo or mail which is loaded in, Kenya;

(b) the delay in taking delivery of goods or returning any of the equipment used for transportation of goods in Kenya; or

(c) any other activity carried out in Kenya,

shall be deemed to be income derived from Kenya.
(2) Subsection (1) shall not apply to gains or profits from the transportation of passengers who embark from, or cargo or mail which is loaded in, Kenya solely as a result of transit or transshipment.

(3) Where a non-resident person carries on in Kenya the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal, internet, satellite or by any other similar method of communication, the gross amount received for the transmission whether or not those messages originate from Kenya, shall be deemed to be income derived from Kenya.

16. (1) Where a resident person or a non-resident person having a permanent establishment in Kenya, pays a person—

(a) a management or professional fee or training fee;
(b) a royalty or natural resource income;
(c) interest or deemed interest;
(d) for the use of property;
(e) for an appearance at, or performance in, a public or private place for the purpose of entertaining, instructing, taking part in a sporting activity or otherwise attracting the attention of an audience;
(f) for an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (e);
(g) an insurance or reinsurance premium;
(h) for security, cleaning, fumigation, outdoor catering, sales promotion, marketing or advertising services, transportation of goods by any means; or
(i) winnings,

the payment shall be deemed to be income which accrued in or was derived from Kenya:
Provided that this subsection shall—

(i) only apply to a payment incurred in the production of income accrued in or derived from Kenya or in connection with a business carried on or to be carried on, in whole or part, in Kenya; and

(ii) not apply to a payment, the deduction of which is disallowed under section 28 (5) unless the deduction is provided for by an arrangement under section 49.

(2) The net gain referred to in section 5 (2) (f) of a resident person or a non-resident person having a permanent establishment in Kenya, shall be deemed to be income that accrued in or was derived from Kenya.

17. (1) Income chargeable to tax under this Act and received by a person in his capacity as a trustee, executor or administrator of a deceased person's estate, shall be deemed to be the income of that trustee, executor or administrator.

(2) A dividend or interest on which the tax is final which is included in the income of the trustee, executor or administrator under subsection (1), shall not be subject to further tax.

18. (1) Where income is vested by a settlor under a settlement arrangement in another person without transferring the assets that produce that income, the income shall be chargeable to tax on the settlor.

(2) In this section—

(a) "settlement" means an arrangement where income is conferred to a person as directed by the settlor through a disposition, trust, covenant, agreement or a similar document; and

(b) "settlor" means a person who has provided or undertaken to provide funds for the purpose of a settlement.
19. (1) A tax known as advance tax shall be payable for a commercial vehicle at the rates specified in the Third Schedule.

(2) The Commissioner shall prescribe the conditions and procedures governing the payment of advance tax.

20. (1) A tax known as fringe benefits tax shall be payable by an employer for a loan advanced at an interest rate that is lower than the market interest rate, to an employee or an employee’s relative, by virtue of his employment or the employment of the employee’s relative.

(2) The taxable value of a fringe benefit is the difference between the interest that would have been payable on the loan if calculated at the market interest rate and the actual interest paid on the loan.

(3) Where the term of the loan extends for a period beyond the date of termination of employment, this section shall apply as long as the loan remains unpaid.

(4) Fringe benefits tax shall be chargeable on the total taxable value of a fringe benefit provided by an employer in a month and shall be due by the ninth day of the following month.

(5) The Commissioner shall prescribe the manner in which fringe benefits tax shall be payable and the period for which the market interest rate is applicable.

(6) In this section—

(a) “employee’s relative” means the employee’s spouse, son, daughter, brother, sister, uncle, aunt, nephew, niece, parent, grand-parent, step-parent, step-son, step-daughter or, in the case of an adoption, the adoptive parent, adoptive son or adoptive daughter, or a spouse of a son, daughter, brother, sister, uncle, aunt, nephew, niece, parent, grand-parent, step-parent, step-son, step-daughter, adoptive parent, adoptive son or adoptive daughter; and...
(b) "market interest rate" means the average ninety-one-day treasury bill rate of interest for the previous quarter.

21. (1) A tax known as turnover tax shall be payable by a resident person whose turnover from business does not exceed, or is not expected to exceed, five million shillings during a year of income.

(2) A person liable to pay turnover tax may, by notice in writing to the Commissioner, elect not to be subject to this section, in which case the other provisions of this Act shall apply to that person.

(3) Turnover tax shall not apply to—

(a) rental income;

(b) a management, professional or training fee;

(c) the income of an incorporated company; or

(d) income on which the withholding tax is final.

(4) A person liable to pay turnover tax shall submit a return and pay the tax due to the Commissioner by the twentieth day of the month following the end of the tax period.

(5) A person liable to pay turnover tax shall pay presumptive tax at the rate of fifteen per cent of the amount payable for a business permit or trade licence issued by a county government.

(6) The presumptive tax payable under subsection (5) shall be paid when paying for or renewing a business permit or trade licence.

(7) The presumptive tax paid under subsection (5) shall be offset against the turnover tax payable by that person.

(8) A person liable to pay turnover tax shall keep the records necessary for the determination and ascertainment of that tax.
(9) For purposes of this section, "tax period" means a calendar month.

PART IV—EXEMPTION FROM TAX

22. (1) The income specified in the First Schedule shall be exempt from tax.

(2) The Cabinet Secretary may, if it is in the public interest to do so, by notice in the Gazette, provide that income, or a class of income, which accrued in or was derived from Kenya, shall be exempt from tax.

(3) A notice under subsection (2) shall be laid before the National Assembly within seven sitting days after publication in the Gazette, and if the National Assembly does not pass it within twenty days on which it next sits after the notice is laid, the notice shall be void, but without prejudice to the validity of anything previously done thereunder.

(4) The income of a person may be exempt from tax only in accordance with this Act.

PART V—ASCERTAINMENT OF TOTAL INCOME

23. (1) In ascertaining the total income of a person for a year of income—

(a) there shall be deducted expenditure wholly and exclusively incurred in the production of that income; and

(b) the deduction under paragraph (a) shall not include expenditure whose deduction is not allowed under section 25.

(2) Where the accounting period has been adjusted in accordance with section 38, the allowable expenditure shall be confined to the adjusted period in ascertaining the total income for that year of income.

(3) Notwithstanding subsection (1), in computing the gains or profits chargeable to tax under section 5 (2) (a) for a year of income, the following shall be deducted—
(a) bad and doubtful debts incurred in the production of those gains or profits determined in accordance with the guidelines prescribed by the Commissioner;

(b) deductions allowed under the Second Schedule for that year of income;

(c) deductions allowed under the Sixth Schedule for that year of income;

(d) twenty-five per cent, in equal instalments, of the diminution in value of an implement, utensil or similar article, not being machinery for which a deduction may be made under the Second Schedule, used in the production of those gains or profits;

(e) expenditure of a capital nature incurred in that year of income by the owner or tenant of agricultural land, on clearing that land or clearing and planting thereon a permanent or semi-permanent crop;

(f) expenditure incurred by a person on business being—

(i) expenditure of a capital or revenue nature on scientific research; or

(ii) a sum paid to a recognized university, college, research institute, association or other similar institution;

(g) subject to section 34, a sum contributed in that year of income by an employer to a registered retirement benefits fund;

(h) expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to—

(i) the authorization and issue of shares, debentures or similar securities, offered for purchase by the general public;
(ii) listing on a securities exchange without raising additional capital; or

(iii) rating for the purposes of listing on a securities exchange.

(i) a club subscription paid by an employer on behalf of an employee;

(j) meals, accommodation expenses incurred on business trips, during training courses, work-related conventions, conferences, or meals provided to employees on the employer's premises;

(k) expenditure of a capital nature incurred in that year of income by a person on the construction of a public school with the prior approval of the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for education;

(l) expenditure of a capital nature incurred in that year of income by a person on the construction of a public hospital with the prior approval of the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for health;

(m) expenditure incurred in that year of income by a person sponsoring a sporting activity with the prior approval of the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for sports;

(n) expenditure incurred in that year of income on a donation to the Kenya Red Cross, a county government or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President;

(o) expenditure incurred on passages of a non-citizen employee between Kenya and any place out of Kenya—
(i) when coming to Kenya to take up employment;

(ii) when traveling on annual leave; and

(iii) when leaving Kenya at the termination of employment;

(p) one hundred and fifty per cent of the emoluments paid to a university graduate intern, where an employer has engaged at least ten interns, for six to twelve months during that year of income:

Provided that in this paragraph, "university graduate intern" means a graduate who has a bachelor's degree from a university recognized in Kenya and is bound by a written contract of internship;

(q) income tax paid in a foreign country on income deemed to have accrued in or been derived from Kenya:

Provided that no deduction shall be allowed in this paragraph where a set-off of tax has been granted under section 48 or 49;

(r) thirty per cent of the cost of electricity incurred by a manufacturer subject to the conditions set by the Cabinet Secretary responsible for energy, in addition to the normal electricity expense; and

(s) expenditure incurred in connection with a business, before the date of commencement of that business where the expenditure would have been deductible under this section, if incurred after that date.

(4) In ascertaining the total income of a person for a year of income, the following shall be deducted—

(a) interest not exceeding three hundred thousand shillings paid by an individual for that year of income on money borrowed from one of the first five financial institutions specified in the Fourth
Schedule and applied to the purchase or improvement of premises occupied by the individual during that year of income for residential purposes:

Provided that—

(i) if the individual occupies the premises for part only of a year of income the deduction under this subsection shall be reduced accordingly;

(ii) in determining the period of occupancy, any period of temporary absence from the residence shall not be included; and

(iii) an individual may claim a deduction under this subsection for only one residence;

(b) a loss realized from a transfer of property under the Fifth Schedule shall be deducted only from gains under section 5 (2) (e) in that year of income and, insofar as it has not already been deducted, from such gains in subsequent years of income; and

(c) in the case of a sole proprietorship, the cost of medical expenses up to two million shillings per year or medical insurance cover incurred for the benefit of the proprietor.

(5) Where the ascertainment of the total income of a person results in a deficit for a year of income, that deficit shall be deducted in ascertaining the total income of that person for that year and the next nine years of income:

Provided that—

(a) a deficit carried forward under the repealed Act shall be limited to the remaining period specified under that Act; and

(b) a deficit shall not be carried forward where—
(i) the ownership or control of the person has changed by more than fifty per cent since the deficit was incurred; or

(ii) the principal business activity of the person at the time the deficit occurred has changed in the subsequent years of income.

(6) Notwithstanding subsection (5), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction by up to two years upon an application for an extension and provision of evidence of the inability of the applicant to extinguish the deficit within the permitted period of ten years.

(7) A person who inherits a business of a deceased person may deduct the losses incurred by the deceased person in the business in that year of income or in earlier years of income:

Provided that where there are at least two beneficiaries, each beneficiary may deduct the proportion of the amount deductible for their share in the business as the will or the intestacy bears to the total shares.

(8) In this section "scientific research" means an activity in a field of natural or applied science, for the extension of human knowledge, and when applied to a business, includes—

(a) scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class; and

(b) scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class.

(9) Expenditure of a capital nature on scientific research does not include expenditure incurred in the acquisition of a right in, or arising out of, scientific research, but includes expenditure incurred in conducting, or providing facilities for conducting, scientific research.
(10) The Cabinet Secretary shall make regulations for the better carrying out of this section.

24. (1) The gains or profits of a person derived from a specified source shall be computed separately from the gains or profits of that person derived from any other specified source and separately from any other income of that person;

(2) Where the computation of gains or profits of a person in a year of income derived from a specified source results in a loss, that loss may only be deducted from gains or profits of that person derived from the same specified source in the following year and, insofar as the loss has not already been deducted, in subsequent years of income; and

(3) a gain under section 5 (2) (e) and a loss referred to in section 23 (4) (b) shall not be deemed to be an income or a loss, respectively, if derived or resulting from a specified source.

(4) A specified source of income shall be construed to be mutually exclusive of any other source and not incidental to any other source.

(5) The specified sources of income are—

(a) a right granted to a person for the use or occupation of an immovable property;

(b) employment income;

(c) agricultural, pastoral, horticultural, forestry or similar activities, not falling within paragraphs (a) or (b);

(d) surplus funds withdrawn by, or refunded to, an employer in respect of a registered pension fund or a registered provident fund which are deemed to be the income of the employer under section 14 (7);

(e) income of a licensee from one license area or a contractor from one contract area determined under the Sixth Schedule; and
(f) any other source of income, except income under paragraphs (a), (b) and (c), chargeable to tax under section 5 (2) (a).

25. (1) A deduction shall not be allowed of—

(a) capital expenditure or any loss, diminution or exhaustion of capital;

(b) expenditure incurred by an individual in the sustenance or maintenance of himself, his family or establishment, or for any other personal or domestic purpose;

(c) expenditure or loss which is recoverable under an insurance or indemnity contract;

(d) income tax or tax of a similar nature;

(e) a premium paid under an annuity contract;

(f) deemed interest;

(g) a fine, penalty or a similar charge imposed for non-compliance with any obligation under any written law;

(h) a payment made by a person for failure to deduct tax as required under section 44;

(i) an expenditure on a gift to an individual;

(j) interest paid in proportion to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds twice the total of the revenue reserves and the issued and paid up capital of all classes of shares of the company where a non-resident person is in control of the company:

Provided that this paragraph shall also apply to a loan advanced to the company by a non-resident associate of the non-resident person who controls the resident company but shall not apply to a bank.
or a financial institution licensed under the Banking Act or an institution licensed under the Microfinance Act, 2006; and

(k) a general provision for loss of income.

(2) For the purpose of subsection (1) (j), revenue reserves include accumulated losses

26. For the purpose of section 5 (2) (f), the net gain to be included in income chargeable to tax shall be computed according to the following formula—

\[ A \times \frac{B}{C} \]

Where—

A is the amount of the net gain;

B is the value of the interest in a person derived, directly or indirectly, from immovable property in Kenya; and

C is the total value of the interest in a person.

27. (1) This section shall apply in ascertaining income from farming business.

(2) Where a person has been allowed farm works deductions in previous years, an amount that accrued to that person during any year of income on the disposal of the property in relation to which they were deducted shall be included in the gross income of that person derived from the farming business for that year of income.

(3) Where a person donates livestock or produce to another person during a year of income, an amount equal to the market price of the livestock or produce at the date of the donation shall be included in the gross income of the donor for that year of income.

(4) Where a person ceases to carry on farming business but does not dispose of the whole of the livestock or produce during a year of income, the value of the
livestock or produce held shall be included in that person’s
gross income for that year of income.

(5) A person shall include in their tax return for each
year of income the value of livestock or produce held and
not disposed of at the beginning and end of each year of
income:

Provided that livestock used as working animals or
held for purposes other than for the farming business shall
not be included in the value of livestock held.

28. (1) Where a non-resident person carries on
business in Kenya which consists of manufacturing,
producing, extraction of natural resources, growing or
harvesting of crops for sale or delivery out of Kenya, the
gains or profits from that business shall be deemed to be
income derived from Kenya.

(2) The gains or profits under subsection (1) shall be
deemed to be the amount that would have accrued if the
product or produce had been sold at the best advantage.

(3) In subsection (2), “best advantage” means the
wholesale price at which the product or produce would
have been sold or delivered in an arm’s length transaction
in Kenya or the country in which it was sold or delivered,
whichever is higher.

(4) Where a bank which is a permanent establishment
of a non-resident person holds out of Kenya any deposits,
assets or property acquired from its operations in Kenya,
the gains or profits accruing from the deposits, assets or
other property held out of Kenya shall be deemed to be
income accrued in or derived from Kenya.

(5) Notwithstanding any other provision of this Act,
when a non-resident person carries on business in Kenya
through a permanent establishment, the gains or profits
shall be ascertained without any deduction of—

(a) interest, royalties or management or professional
fees paid or purported to be paid by the permanent
establishment to the non-resident person; and
(b) a foreign exchange loss or gain on net assets or liabilities purportedly established between the permanent establishment and the non-resident person:

Provided that a non-resident person includes the head office and other offices of the non-resident person.

(6) The Eighth Schedule shall apply in computing the gains or profits of associated persons.

29. (1) Notwithstanding any other provision of this Act, this section shall apply when computing the gains or profits from insurance business which is chargeable to tax.

(2) Where an insurance company carries on life insurance business in conjunction with general insurance business, the life insurance business of the company shall be treated as a separate business.

(3) The gains or profits for a year of income from a general insurance business of a resident insurance company shall be the amount arrived at after—

(a) taking, for that year of income, the sum of—

(i) the amount of the gross premiums from that business, less the premiums returned to the insured and the premiums paid on reinsurance relating to that business; and

(ii) the amount of other income from that business, including commission and any expense allowance received or receivable from reinsurers and any income derived from investments held in connection with that business;

(b) deducting from the sum arrived at under paragraph (a) the lower of—

(i) a reserve for unexpired risks relating to that business at the percentage adopted by the company at the end of that year of income and
adding to it the reserve deducted for unexpired risks at the end of the previous year of income; and

(ii) the reserve for unexpired risks estimated on the basis of an actuarial valuation, including discounting of ultimate costs; and

(c) deducting from the figure arrived at under paragraph (b)—

(i) the amount of the claims admitted in that year of income in connection with that business less any amount recovered under reinsurance:

Provided that claims incurred but not paid or not reported before the end of the accounting period shall be estimated on the basis of actuarial principles including the discounting of ultimate costs;

(ii) the amount of agency expenses incurred in that year of income relating to that business; and

(iii) the amount of any other expenses wholly and exclusively incurred in the production of that income:

(4) Notwithstanding subsection (3), the costs and expenses attributable to earning investment income shall be determined by the ratio of investment income to the total income.

(5) The gains or profits for a year of income from the life insurance business of a resident insurance company, shall be the sum of the following—

(a) the amount of actuarial surplus recommended to be transferred from the life insurance fund for the benefit of shareholders and policy holders;

(b) any other amount transferred from the life insurance fund for the benefit of the shareholders; and
(c) thirty percent of management expenses and commissions that exceed the maximum amounts allowed under the Insurance Act.

(6) Where an actuarial valuation of a life insurance fund results in a deficit for a year of income and the shareholders are required to transfer money into the fund, the amount transferred shall be treated as a negative transfer for the purposes of subsection (5) (a).

(7) The negative transfer referred to in subsection (6) shall not be more than the actuarial surplus recommended by the actuary to be transferred from the life insurance fund for the benefit of shareholders in the five years immediately preceding the year of income.

(8) The gains arising from 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 Fifth Schedule.

(9) In this section—

(a) “annuity fund”, where an annuity fund is not kept separately from the life insurance fund of an insurance company, means that part of the life insurance fund which represents the liability of the company under its annuity contracts;

(b) “investment income” does not include—

(i) dividends chargeable to tax under section 5 (2) (b); or

(ii) income from the disposal of investment shares traded in any securities exchange operating in Kenya; and

(c) “life insurance fund” does not include an annuity fund or that part of a life insurance fund which constitutes the liability of an insurance company under a registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund.
30. (1) Income of a co-operative society, other than a Sacco society, chargeable to tax shall be its total income for the year of income, less the aggregate of bonuses and dividends distributed to its members which shall not exceed the total income of the society for that year of income.

(2) The total income of a Sacco society chargeable to tax for a year of income shall be the aggregate of all income except interest from its members.

(3) In this section—

(a) “bonus” has the same meaning assigned to it in the Co-operative Societies Act; and

(b) “dividend” has the same meaning assigned to it in the Co-operative Societies Act.

31. (1) Subject to any conditions that may be imposed by the Cabinet Secretary—

(a) a unit trust;

(b) a collective investment scheme set up by an employer for purposes of receiving contributions from emoluments of his employees and investing them primarily in shares traded on a securities exchange;

(c) a real estate investment trust; or

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

registered with the Commissioner, shall be exempt from income tax.

(2) Investment income distributed to a unit holder or a shareholder of a collective investment scheme shall be subject to tax in accordance with section 43.

(3) The Cabinet Secretary may make regulations for the better carrying out of this section.
32. (1) A members' club or a trade association shall be deemed to be carrying on business and subject to tax on its income which shall include entrance fees and subscriptions paid by its members.

(2) In this section—

(a) “member” means—

(i) in relation to a members' club, a person who, while he is a member, is entitled to an interest in all the assets of that club in the event of its liquidation; and

(ii) in relation to a trade association, a person who is entitled to vote at a general meeting of that trade association; and

(b) “members’ club” means a club or similar institution whose assets are owned by, or are held in trust for, the members.

33. (1) Notwithstanding section 5 (2) (c), that part of an annuity which has been ascertained to be the capital element shall not be chargeable to tax.

(2) In this section—

(a) “annuity” includes an amount payable periodically at intervals which may be shorter or longer than a year; and

(b) “capital element” shall be that proportion of each payment which the consideration for, or purchase price of, the contract bears to the total payments.

(3) This section shall not apply to an annuity—

(a) payable under a registered annuity contract or a registered trust scheme;

(b) purchased under a direction in a will, or purchased to provide for an annuity payable under a will or settlement out of income from property disposed of by that will or settlement;
(c) purchased under a pension scheme or a pension fund; or

(d) purchased by a person in recognition of the services or past services of another person.

34. (1) The amount, up to two hundred and forty thousand shillings in a year, contributed by an employee to a registered fund shall be an allowable deduction for the employer.

(2) The amount contributed by an employer for an employee to a registered fund shall be limited to the difference between the actual amount contributed by the employee under subsection (1) and two hundred and forty thousand shillings in a year.

(3) The funds in a registered fund in respect of an employee may be transferred to another registered fund or a registered individual retirement fund.

(4) For the purposes of subsection (3)—

(a) a transfer to another registered fund or a registered individual retirement fund shall not be treated as a withdrawal under section 5 (2) (c) (ii); and

(b) a transfer shall only be made after thirty days from the date on which the Commissioner was notified, in writing, of the intended transfer.

(5) Where a registered fund is wound up, any surplus funds shall be deemed to be the funds of the employer and shall be deemed to have been withdrawn by the employer unless the trust deed of the registered fund specifies to the contrary.

35. Where an individual who is not a member of a registered fund or a public pension fund contributes to a registered individual retirement fund, the amount contributed, up to two hundred and forty thousand shillings in a year of income, shall be deducted.

36. (1) Where an arrangement was effected with intent to avoid or reduce liability to tax for a year of income, the
Commissioner may direct that appropriate adjustments be made for liability to tax.

(2) A direction of the Commissioner under this section shall specify the arrangement giving rise to the adjustments.

37. (1) Where a company realizes accounting profits for an accounting period, of which the whole or part of the profit could be distributed without detriment to the requirements of the company's business, and does not distribute dividends to its shareholders within twelve months after the end of its accounting period, the Commissioner shall direct that at least sixty per cent of that profit shall be deemed to have been distributed to the shareholders on a date after twelve months after that accounting period.

(2) A company which is a shareholder of another company to which subsection (1) applies, shall be deemed to have received that dividend as part of its income that is available for distribution to its shareholders.

38. (1) Where a person, other than an individual, prepares the accounts of their business for a period of twelve months ending on a day other than thirty first of December, the income of that period shall be taken to be the income of the year of income in which that period ends.

(2) A person carrying on an incorporated business may, subject to the prior written approval of the Commissioner, alter the date to which the accounts of the business are prepared.

(3) A person seeking approval under subsection (2) shall apply in writing at least six months before the date to which the accounts are intended to be prepared.

(4) The Commissioner shall, within three months from the date of receipt of an application under subsection (3), communicate his decision in writing to the applicant, failing which it shall be deemed that the application has been granted.
(5) Where a person prepares the accounts of their business for a period longer or shorter than twelve months, the Commissioner may treat the income of that accounting period as income of the year of income in which the accounting period ends, and tax shall be chargeable accordingly.

39. (1) A sum received by a person after the cessation of their business, shall be the income of that person for the year of income in which the business ceased, if such sum had not been previously included in the gains or profits of that business.

(2) An expenditure or a loss established by a person after the cessation of business shall be deducted in ascertaining the total income for the year of income in which the business ceased, if such expenditure or loss would have been deductible in computing the gains or profits from that business before the cessation.

(3) A deduction under subsection (2) shall only be made within twelve months from the time the expenditure or loss was established.

(4) Notwithstanding the Tax Procedures Act, 2015, a penalty or interest shall not be imposed or charged on the additional tax under subsection (1).

PART VI—RESIDENT INDIVIDUAL TAX RELIEFS

40. A resident individual in receipt of taxable income shall be entitled to the individual relief specified in Part I of the Third Schedule.

41. (1) A resident individual who satisfies the Commissioner that in a year of income he—

(a) is eligible to apply for;

(b) has applied and is awaiting the allocation of; and

(c) is saving to purchase,

a house under an affordable housing scheme shall, for
that year of income, be entitled to the affordable housing relief specified in Part I of the Third Schedule.

(2) A person who has been allocated a house under an affordable housing scheme and has been granted an affordable housing relief under subsection (1) shall not be eligible for another relief in respect of the same house or another house.

(3) In this section, “affordable housing scheme” means an affordable housing scheme approved by the Cabinet Secretary responsible for housing.

42. (1) A resident individual who satisfies the Commissioner that in a year of income he or his employer has paid a premium to an insurance company registered in Kenya or the National Hospital Insurance Fund, for—

(a) an insurance policy on the life of the individual, spouse or child;

(b) an education policy with a maturity period of at least ten years; or

(c) a health policy,

shall, for that year of income, be entitled to the insurance relief specified in Part I of the Third Schedule.

(2) If a life insurance policy is surrendered before its maturity, the insurance relief granted to the policyholder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

(3) In this section, “child” includes a dependant of the resident individual who was younger than eighteen years on the date the premium was paid.

PART VII—RATES, DEDUCTIONS, SET-OFF OF TAX AND DOUBLE TAXATION RELIEF

A—Rates of tax

43. (1) The tax chargeable on the income specified in this section shall be at the rates specified in the Third Schedule.
(2) For a resident person or non-resident person having a permanent establishment in Kenya, the rate of tax on—

(a) the total income of an individual, other than fringe benefits, dividend and interest;
(b) that part of the total income of an individual that comprises interest;
(c) the total income of a person other than an individual;
(d) a dividend for the year it is paid;
(e) the total fringe benefits provided by an employer;
(f) the income chargeable to tax under section 21;
(g) residential rental income of a person chargeable to tax under section 10;
(h) a commission or fee paid by an insurance company to any person for the provision of an insurance cover to any person;
(i) a distribution of investment income to a unit holder or shareholder of a collective investment scheme;
(j) repatriated income; and
(k) winnings,
shall be the applicable resident rates for that year of income.

(3) The applicable rate of tax on the gains on transfer of property of a resident person or a non-resident person having a permanent establishment in Kenya, shall be the rate for that year of income and shall not be subject to further tax.

(4) For a non-resident person not having a permanent establishment in Kenya, the rate of tax on—
(a) a management or professional fee;

(b) a royalty or natural resource income;

(c) a rent, premium or similar consideration for the use or occupation of property;

(d) a dividend;

(e) interest;

(f) an insurance or reinsurance premium except a premium paid for insurance of an aircraft;

(g) a pension or retirement annuity;

(h) a payment in respect of an appearance at, or performance in, a public or private place, for the purpose of entertaining, instructing, taking part in a sporting activity or otherwise attracting the attention of an audience;

(i) a payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (viii);

(j) a payment in respect of gains or profits from the business of ship-operator or charterer, air transport operator or charterer which are chargeable to tax under section 15 (1);

(k) a payment in respect of gains or profits from the business of transmitting messages which are chargeable to tax under section 15 (3);

(l) a commission or fee paid by an insurance company to a person for the provision of an insurance cover to a person;

(m) a distribution of investment income to a unit holder or a shareholder of a collective investment scheme; and

(n) winnings,
shall be the applicable non-resident rate at the date of the payment of that income.

(5) A transfer of interest in a person shall be chargeable to tax in accordance with the Sixth Schedule.

(6) In this section, "person" does not include a partnership.

B—Deduction of Tax

44. (1) A resident person or non-resident person having a permanent establishment in Kenya shall, upon payment to a non-resident person not having a permanent establishment in Kenya, deduct tax at the appropriate non-resident rate specified in the Third Schedule, in respect of the following—

(a) a management or professional fee or training fee except—

(i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in a market out of Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or

(ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel;

(b) a royalty or natural resource income;

(c) a rent, premium or similar consideration for the use or occupation of property, except an aircraft or aircraft engine;

(d) a dividend;

(e) interest or deemed interest:

Provided that the Commissioner shall specify the non-resident rate applicable to deemed interest and the period to which the rate shall apply;
(f) an insurance or reinsurance premium, except a premium paid for the insurance of an aircraft, air cargo and passengers;

(g) security, cleaning, fumigation, outdoor catering, transportation of goods:

Provided that this paragraph shall not apply to services provided to aircrafts and ships;

(h) sales promotion, marketing or advertising services;

(i) a pension or retirement annuity;

(j) an appearance at, or performance in a public or private place for the purpose of entertaining, instructing, taking part in a sporting activity or otherwise attracting the attention of an audience;

(k) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (i);

(l) gains or profits from the business of ship-operator or charterer, air transport operator or charterer which are chargeable to tax under section 15 (1);

(m) gains or profits from the business of transmitting messages which are chargeable to tax under section 15 (3);

(n) a commission or fee paid by an insurance company to any person for the provision of an insurance cover to any person;

(o) distribution of investment income to a unit holder or a shareholder of a collective investment scheme; or

(p) winnings.

(2) Subsection (1) (i) and (j) shall not apply to a payment made by a filming agent or a filming producer certified by the Kenya Film Commission, to an actor or crew member.
(3) A person shall, upon payment to a resident person or a non-resident person having a permanent establishment in Kenya, who is not exempt from tax, deduct tax at the appropriate resident rate in respect of the following—

(a) a dividend;

(b) interest, other than interest paid to a financial institution specified in the Fourth Schedule which is resident or which has a permanent establishment in Kenya;

(c) an annuity payment excluding that portion of the payment which represents the capital element;

(d) a commission or fee paid by an insurance company to any person for the provision of an insurance cover to a person;

(e) a pension or lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund, or an amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund, exceeding the tax exempt amount specified in section 14 (2);

(f) surplus funds withdrawn from or paid out of registered pension or provident funds;

(g) a management or professional fee or training fee:

Provided that a contractual fee within the meaning of “management or professional fee” shall mean payment in respect of building, civil or engineering works;

(h) a royalty or natural resource income;

(i) rent, premium or similar consideration for the use or occupation of immovable property:

Provided that only a person appointed in writing by the Commissioner for that purpose shall deduct tax under this paragraph;
(j) distribution of an investment income to a unit holder or a shareholder of a collective investment scheme;

(k) winnings.

(4) A deduction under subsections (1) or (3) shall not be made from a payment which income is exempt from tax under this Act.

(5) Where a person deducts tax under this section he shall, on or before the twentieth day of the month following the month in which the deduction was made—

(a) remit the amount deducted to the Commissioner; and

(b) furnish the person for whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.

(6) The Commissioner shall pay the tax deducted from winnings under subsection (1) (o) and (3) (k) into the Sports, Arts and Social Development Fund established under the Public Finance Management Act, 2012.

45. (1) The trustees of a will or settlement shall, upon payment of an annuity under the will or settlement, deduct tax therefrom at the rate specified in the Third Schedule, on the income out of which the annuity is payable.

(2) A trustee, executor or administrator of a deceased person's estate shall furnish, each person to whom or on whose behalf tax is paid on the income received under section 17, with a certificate setting out the gross amount of the payment, the tax thereon and the net amount paid in that year of income.

46. (1) An employer shall deduct, and account for, the tax deducted from emoluments paid to an employee in a year of income, at the rates specified in the Third Schedule.

(2) Where an employer deducts tax under this section, the employer shall remit the amount deducted to the
Commissioner by the ninth day of the month following the month in which the deduction was made.

47. The provisions of this Part relating to deduction of tax shall bind the Government.

C—Set-off of tax

48. (1) An amount of tax which—

(a) has been deducted under sections 44 (3), 45 or 46;

(b) has been borne by a trustee, executor or administrator of a deceased person’s estate in their capacity as such on an amount paid as income to a beneficiary; or

(c) has been paid by a person under section 19,

shall be deemed to have been paid by the person liable to pay that tax and be set off against the tax chargeable on the income of that person for the year of income in which it was deducted, borne or paid.

(2) If a Kenyan, whose income is chargeable to tax in Kenya for a year of income, satisfies the Commissioner that he has paid tax on that income out of Kenya for that year of income, he shall be allowed to set off that tax against the tax charged in Kenya on that income.

(3) The income referred to in subsection (2) is employment income or income from an activity under section 16 (1) (e), accrued in or derived from another country.

(4) The tax set off under subsection (2) shall not exceed the amount of tax payable in Kenya on employment income or income from an activity under section (16) (1) (e).

D—Double Taxation Relief

49. (1) The Cabinet Secretary may, by notice in the Gazette, declare that an arrangement shall, subject to subsection (3), have effect in relation to income tax.
(2) The arrangement referred to in subsection (1) is an arrangement between the Government and the government of another country affording relief from double taxation in relation to income tax or any other tax of a similar character imposed by the laws of that other country.

(3) For the purposes of the arrangement referred to in subsection (1), a relief shall only be available to a resident of the other country if—

(a) at least fifty percent of the underlying ownership of that person is held by an individual who is a resident of that other country for the purposes of the arrangement;

(b) the underlying ownership subsisted for a period of at least one hundred and eighty-three days in that year; and

(c) the person is engaged in business in the other country, other than—

(i) operating as a holding company;

(ii) providing overall supervision or administration of a group of companies;

(iii) providing group financing, including cash pooling; or

(iv) making or managing investments.

(4) Subsection (3) shall not apply if the resident of that other country is a company listed in a securities exchange in that other country.

50. (1) The Cabinet Secretary may, by notice in the Gazette, declare that an arrangement shall have effect in relation to exchange of information.

(2) The arrangement referred to in subsection (1) shall be between the Government and the government of another country for the exchange of information relating to income tax or any other tax of a similar character imposed under the laws of that other country.
51. (1) A foreign tax payable may, under a special arrangement, be allowed as a credit against tax chargeable on the income of a person who is resident in Kenya.

(2) A credit allowed under subsection (1) shall be the lesser of the amount of tax payable under this Act or the foreign tax payable.

(3) A claim for credit shall be made to the Commissioner within five years from the end of the year of income to which it relates.

PART VIII—ASSESSABLE PERSONS

52. The income of a person chargeable to tax shall be assessed, and the tax thereon charged, on that person in accordance with this Act.

53. The income of an incapacitated person shall be assessed, and the tax thereon charged, on that person in the name of his trustee, guardian, curator, committee or receiver, in the same manner as that incapacitated person would have been assessed and charged if he were not an incapacitated person.

54. (1) The income of a non-resident person shall be assessed, and the tax thereon charged, on that person in the name of that person or in the name of that person’s trustee, guardian, curator or committee, or of any attorney, factor, agent, receiver or manager.

(2) The master of a ship or the captain of an aircraft, owned or chartered by a non-resident person who is chargeable to tax under section 15, shall not, to the exclusion of any agent, be deemed the agent of that non-resident person.

(3) The income of a non-resident person shall not be assessable or chargeable in the name of a broker, general commission agent or other agent where that broker, general commission agent or other agent is not the usual agent of the non-resident person.

55. (1) The income accrued to, or received prior to the date of death of, a deceased person which would, but for his death, have been assessed and charged to tax on him for
a year of income shall be assessed on, and the tax charged on, the executors or administrators of the deceased person’s estate for that year of income.

(2) An amount received by the executors or administrators of the estate of a deceased person which would, but for his death, have been his income for a year of income shall be deemed to be the income of his executors or administrators and shall be assessed on, and the tax charged on, them for that year of income.

(3) Where the executors or administrators of a deceased person distribute his estate before a change in the rate of tax at which they are liable to pay tax in respect of a year of income, they shall not be liable to pay an increased tax resultant from that change.

56. Where at least two persons are trustees, an assessment made on the trustees in that capacity may be made on any one or more of them but each trustee shall be jointly and severally liable for the payment of tax charged in the assessment.

57. A person in whose name the income of another person is assessable shall be responsible, in relation to the assessment of that income, for doing all things that are required of a person whose income is chargeable to tax, and shall be responsible for the payment of the tax to the extent of any assets of that other person which are in his possession or may come into his possession on or after the date of the service of a notice of assessment on him.

PART IX—RETURNS AND NOTICES

58. (1) Notwithstanding any other provision of this Act—

(a) every individual chargeable to tax shall, for any year of income, furnish to the Commissioner a return of income, including a self-assessment of his tax from all sources of income, by the last day of the sixth month following the end of his year of income; and
(b) every person, other than an individual, chargeable to tax shall for any accounting period furnish to the Commissioner a return of income, including a self-assessment of the tax on the income, by the last day of the sixth month following the end of that person’s accounting period.

(2) A self-assessment shall be made in reference to the applicable tax relief and rates of tax for the year of income.

(3) Every person, other than an individual, liable to pay tax shall include in the return of income an assessment and return of tax on dividends distributed out of untaxed gains or profits, which shall be payable on the due date for the self-assessment.

59. (1) Where a person who carries on business makes a return for a year of income and the accounts of the business for an accounting period relating to that year of income have been prepared or examined by a professional person, that person shall furnish the Commissioner with that return of income, a copy of the accounts signed by that person and by that other person, and a certificate signed by that other person stating their opinion on the accounts.

(2) Subject to sections 711 and 712 of the Companies Act, 2015, where a person who carries on business makes a return of income for a year of income and the accounts of the business for an accounting period relating to that year of income have not been prepared or examined by a professional person, that person shall furnish the Commissioner with the return of income, the books of account of the business for the accounting period relating to that year of income necessary to support the information contained in the return and a copy of a statement signed by that person—

(a) specifying the nature of the books of account and documents from which the accounts were prepared; and

(b) stating whether the accounts reflect all the transactions of the business and present a true and fair view of the gains or profits from the business for that accounting period.
(3) In this section—

(a) "accounts" means a statement of financial position or a statement of assets and liabilities, a statement of income, receipts and payments accounts, or other similar statement; and

(b) "professional person" means a holder of a practicing certificate issued under the Accountants Act, 2008.

60. A person carrying on business shall keep records of all receipts and expenses, goods purchased and sold, accounts, books, deeds, contracts and vouchers, which are adequate for computing tax.

PART X—COLLECTION, RECOVERY AND REPAYMENT OF TAX

61. Notwithstanding any other provision of this Act, the tax assessed under this Act shall be due and payable in accordance with this Part.

62. Where any person is required to furnish a return under section 58, the tax chargeable thereunder shall be due and payable on the last day of the fourth month following the end of that person's year of income or accounting period.

63. (1) Notwithstanding section 62, a person shall pay tax for a year of income in instalments, except—

(a) in the case of emoluments where the tax has been deducted under section 46; and

(b) where the total tax payable for the year of income does not exceed forty thousand shillings.

(2) The amount of tax payable in instalments by any person for any year of income shall be the lesser of—

(a) the amount equal to the estimated tax that would be payable by that person for the current year of income; or
(b) the amount payable in the assessment of the immediate preceding year multiplied by one hundred and ten per cent:

Provided that where there were no activities in the preceding year, subparagraph (a) shall apply.

(3) The amount of tax determined under subsection (2) shall be reduced by the aggregate of the tax that has been or shall be paid in the current year under sections 19, 44, or 46.

(4) Where the tax is payable under subsection (2) (b) and—

(a) the person's immediate preceding year of income was for a period shorter or longer than twelve months, the tax payable shall be calculated by multiplying the tax in the preceding year of income by the ratio of the twelve months period to the number of months in the preceding year of income;

(b) the person, other than an individual, that is paying the tax, was the product of a merger of at least two persons, the tax assessed and payable for the immediate preceding year shall be the aggregate of the tax that would have been payable by all the predecessor persons; and

(c) where a person, other than an individual, prepares the accounts of the business for a period longer than twelve months as approved by the Commissioner, the tax payable for that period shall be calculated by multiplying the tax in the preceding year by the ratio of the number of months in the current year of income to twelve months.

(5) Tax payable by a person under this section shall be paid in equal instalments by the twentieth day of the fourth, sixth, ninth and twelfth month of the accounting period of the current year of income.

(6) Notwithstanding subsection (5), where more than two-thirds of a person's income is derived from agricultural, pastoral, horticultural or similar activities, the
tax payable shall be paid in proportions of seventy-five percent and twenty-five per cent, by the twentieth day of the ninth and twelfth month, respectively, of that year of income.

(7) In this section, "merger" includes amalgamation and acquisition.

64. Where a company is being wound up, the due date for payment of tax on income charged for the year of income in which the winding-up commences and for the preceding year of income shall be deemed, for the purpose of priority of debts, to be the date immediately before the date of the winding-up order or the resolution, special resolution or extraordinary resolution passed for the winding-up of the company, whether or not an assessment has been made before that date.

65. Where a person dies and—

(a) tax charged in an assessment made upon him has not been paid; or

(b) the executor or administrator of his estate is liable to pay tax in an assessment made under section 55, the amount of unpaid tax shall be a debt due and payable out of the estate.

66. (1) In addition to any other powers of collection of tax provided in this Act, the Commissioner may, where tax recoverable under the Tax Procedures Act, 2015, has been charged on the income of a person who carries on business as a ship-operator, ship charterer, air transport operator or air transport charterer, issue a certificate to the proper officer of Customs by whom clearance may be granted.

(2) A certificate issued under subsection (1) shall contain the name of the person and the amount of the tax due and payable.

(3) The proper officer of Customs shall, on receipt of a certificate issued under subsection (1), deny clearance from Due date for payment of tax by companies winding-up.

Tax payable out of deceased person's estate.

Collection of tax from ship owner, etc. No. 29 of 2015.
any port or airport in Kenya, to any ship or aircraft owned, operated or chartered by that person, until the Commissioner confirms that the tax due has been paid.

(4) Civil or criminal proceedings shall not be instituted or maintained against the proper officer of Customs or any other authority, for a denial of clearance under this section.

(5) The detention of a ship or aircraft under subsection (3) shall not affect the liability of the owner, operator, charterer or agent, to pay harbour or airport dues and charges, for the period of detention.

67. (1) The beneficiary of a trust under a will or settlement, other than a settlement to which section 18 applies, shall, upon the occurrence of a contingency and making a claim, be entitled to a refund of tax paid on the income accumulated under the trust pending the occurrence of the contingency.

(2) The refund under subsection (1) shall be the excess of the tax paid by the trust during the period of accumulation over the tax which would have been paid by the beneficiary during that period.

(3) A claim for a refund shall be made in writing to the Commissioner within five years after the expiry of the year of income in which the contingency occurred.

PART XI—MISCELLANEOUS PROVISIONS

68. (1) The Cabinet Secretary may make regulations for the better carrying out of this Act.

(2) For the purpose of Article 94(6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;

(b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to
bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;

(c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

(3) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations for—

(a) the taxation of business income arising from transactions carried out on a digital marketplace;

(b) transfer pricing;

(c) farming business;

(d) the exemption of income of persons with disability;

(e) residential rental income; and

(f) any other matter required to be prescribed under this Act.

69. (1) The Income Tax Act (Cap. 470) is repealed.

(2) An export processing zone enterprise shall enjoy the tax exemption granted under the repealed Act for the unexpired period of the first ten years from the commencement of its operations and immediately thereafter the provisions of paragraph 8 (b) and 8 (c) of the Third Schedule to this Act shall apply.

(3) An exemption granted under the repealed Act shall remain in force for a period not exceeding three years from the date of commencement of this Act.

(4) Where, immediately prior to the commencement of this Act, there is for the purpose of the Second Schedule to
the repealed Act, a residue of expenditure in relation to a person, the residue of expenditure shall, for that person, be the residue of expenditure for the purposes of the Second Schedule to this Act.

(5) Any subsidiary legislation made under the repealed Act, in force at the commencement of this Act, shall remain in force, so far as it is not inconsistent with this Act, until subsidiary legislation with respect to the same matter is made under this Act.

(6) An arrangement specified in a notice issued under section 41 of the repealed Act, shall continue to have effect as if it had been issued under this Act.

(7) Where a tax was due to be paid or refunded under the repealed Act but was not paid or refunded, it shall be paid or refunded as though it were due under this Act.

(8) Unless the context otherwise requires, the commencement of this Act shall not—

(a) revive anything not in force or existing at the time at which the commencement takes effect;

(b) affect a penalty, interest or punishment for an offence committed under the repealed Act, which was in force at the commencement of this Act;

(c) affect an assessment, investigation, legal proceedings or remedy in respect of a right, privilege, obligation, liability, penalty, interest or punishment in force at the commencement of this Act;

(d) affect the institution, continuation or enforcement of an assessment, investigation, legal proceedings or remedy, and the penalty, interest or punishment may be imposed as if this Act had not commenced; or

(e) affect the employment or appointment of any person to the services of the Kenya Revenue Authority subsisting at the commencement of this Act.
FIRST SCHEDULE  
(Section 22)  
INCOME EXEMPT FROM TAX

1. The income of a person expressly exempted from tax under the provisions of the Privileges and Immunities Act.

2. The income of a person with disability to the extent specified in regulations made under this Act.

3. The income, other than income from investments, of a sporting association—
   (a) whose sole or main object is to promote a sporting activity;
   (b) whose members consist of amateur sportspersons or affiliated associations, the members of which consist only of amateur sportspersons; and
   (c) whose by-laws, constitution or memorandum of association provide that, to the extent specified in regulations made under this Act, a person shall not be or continue to be a member of that association if that person is not an amateur sportsperson.

4. The income of a county government.

5. (1) The income of an institution, body of persons, or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education—
   (a) established in Kenya; or
   (b) whose regional headquarters is situated in Kenya, insofar as the Commissioner is satisfied that the income is to be expended either in Kenya or for purposes which result in the benefit of the residents of Kenya.

   (2) Income referred to in subparagraph (1) which consists of gains or profits from a business shall not be
exempt from tax unless those gains or profits are applied solely to the purposes specified in that subparagraph and either—

(a) the business is carried on in the course of the actual execution of those purposes;

(b) the work in connection with the business is mainly carried on by beneficiaries under those purposes; or

(c) the gains or profits consist of rents, including premiums or similar consideration in the nature of rent, received from the leasing of land and chattels leased therewith.

(3) Upon complying with all the requirements of this paragraph and regulations made under this Act, an applicant shall be issued with an exemption certificate within sixty days.

(4) The exemption granted under subparagraph (3) shall be valid for a period of five years and may be renewed upon application.

(5) The exemption granted under subparagraph (3) may be revoked by the Commissioner for non-compliance with this paragraph.

6. The income of a person from a management or professional fee, royalty or interest, if the Cabinet Secretary certifies that the income is to be paid free of tax under an agreement to which the Government is a party either as principal or guarantor, and it is in the public interest that the income shall be exempt from tax.

7. The income of a registered pension fund, registered trust fund, registered provident fund and registered individual retirement fund:

Provided that this paragraph shall apply only to the investment income in respect of contribution into the fund as specified under sections 34 and 35.

8. The income from the investment of an annuity fund, as defined in section 29.
9. Compensation paid for a wound or disability, resulting from war, suffered by the recipient of the compensation.

10. The income of an institution established under the Treaty for the Establishment of the East African Community and the income of a company wholly owned by that institution.

11. Employment income of an individual in the public service of the government of a foreign country in respect of his office under that government where he resides in Kenya solely for the purpose of performing the duties of his office, and the employment income is payable from the public funds of that country.

12. Employment income payable out of foreign sources for duties performed in Kenya in connection with technical assistance or other agreement for development services or purpose to which the Government is a party, to a non-resident person or to a person who is resident solely for the purposes of performing those duties, and the agreement provides for the exemption of the employment income.

13. Interest earned on contributions paid into the Deposit Insurance Fund established under the Kenya Deposit Insurance Act, 2012.

14. The income of a non-resident person who carries on business as an aircraft owner or charterer, or air transport operator, where the country in which the non-resident person is resident extends a similar exemption to an aircraft owner or charterer, or air transport operator, who is not resident in that country but is resident in Kenya.

15. The income of the National Social Security Fund.

16. The income of the National Hospital Insurance Fund.
17. Interest income accruing from bonds listed in the securities exchange, notes or other similar securities, issued by the Government to raise funds for infrastructure or social services, on condition that the bonds, notes or securities have a maturity of at least three years.

18. Retirement benefits paid to a person who is at least sixty five years old.

19. Income from employment paid as a bonus or an overtime allowance:

Provided that this paragraph shall only apply to—

(a) an employee whose taxable employment income before the bonus or overtime allowance does not exceed the lowest tax band specified under Part II of the Third Schedule; and

(b) the aggregate of the bonus and overtime allowance does not exceed the taxable income of the employee before the bonus or overtime allowance.

20. Interest income on a bond issued by the East African Development Bank.

21. The income of a beneficiary from a trust fund that has been taxed under section 17.

22. The income of the National Housing Development Fund.
SECOND SCHEDULE
(Sections 6 and 23)

INVESTMENT ALLOWANCE

1. Where a person incurs capital expenditure in respect of an item listed in the first column of the table, an investment allowance may be deducted in computing the gains or profits of that person at the corresponding rate specified in the second column, for each year of income—

<table>
<thead>
<tr>
<th>Capital expenditure incurred on:</th>
<th>Rate of Investment Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Buildings—</td>
<td></td>
</tr>
<tr>
<td>(i) Commercial building</td>
<td>10% per annum in equal instalments</td>
</tr>
<tr>
<td>(ii) Hotel building</td>
<td>60% in the first year of use</td>
</tr>
<tr>
<td>(iii) Building used for manufacture</td>
<td>100% in the first year of use</td>
</tr>
<tr>
<td>(iv) Petroleum or gas storage facilities</td>
<td>60% in the first year of use</td>
</tr>
<tr>
<td>(v) Residual value of a hotel building referred to in item (a) (ii) and a petroleum or gas storage facility referred to in item (a) (iv)</td>
<td>25% per annum in subsequent years in equal instalments</td>
</tr>
<tr>
<td>(vi) Educational buildings including student hostels</td>
<td>10% per annum in equal instalments</td>
</tr>
<tr>
<td>(vii) Hospital buildings</td>
<td>100%</td>
</tr>
<tr>
<td>(b) Machinery—</td>
<td></td>
</tr>
<tr>
<td>(i) Machinery used for manufacture</td>
<td>100%</td>
</tr>
<tr>
<td>(ii) Hospital equipment</td>
<td>100%</td>
</tr>
<tr>
<td>(iii) Ships or aircrafts</td>
<td>60% in the first year of use</td>
</tr>
<tr>
<td>(iv) Residual value of a ship or aircraft referred to in item (b) (iii)</td>
<td>50% per annum in subsequent years in equal instalments</td>
</tr>
<tr>
<td>(v) Motor vehicles and earth moving equipment</td>
<td>25% per annum in equal instalments</td>
</tr>
<tr>
<td>(vi)</td>
<td>Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines</td>
</tr>
<tr>
<td>(vii)</td>
<td>Furniture and fittings</td>
</tr>
<tr>
<td>(viii)</td>
<td>Telecommunications equipment</td>
</tr>
<tr>
<td>(ix)</td>
<td>Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming</td>
</tr>
<tr>
<td>(x)</td>
<td>Machinery first used to undertake operations under a prospecting right</td>
</tr>
<tr>
<td>(xi)</td>
<td>Machinery first used to undertake exploration operations under a mining right</td>
</tr>
<tr>
<td>(xii)</td>
<td>Other machinery</td>
</tr>
<tr>
<td>(c)</td>
<td>Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator</td>
</tr>
<tr>
<td>(d)</td>
<td>Farm works</td>
</tr>
</tbody>
</table>

Provided that—

(a) in the case of change of user of a building, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate;

(b) in respect of a hotel, educational or hospital building, the building shall be licensed by the competent authority; and
(c) "building used for manufacture" includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;

(d) "commercial building" includes—

- (i) a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or
- (ii) civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;

(e) "machinery used for manufacture" means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes—

- (i) generation, transformation and distribution of electricity;
- (ii) clean-up and disposal of effluents and other waste products;
- (iii) reduction of environmental damage;
- (iv) water supply or disposal;
- (v) maintenance of the machinery; or
- (vi) scientific research and development;

(f) "manufacture" means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity;
2. The written down or residual value of each item referred to in paragraph 1 shall be calculated separately, and shall be the balance of capital expenditure taking into account the sale of the item after deducting investment allowance.

3. Where the amount realised from the sale of an item referred to in paragraph 1 exceeds the written down or residual value, the excess shall be treated as a trading receipt or, conversely, a trading loss for the year of income.

4. (1) Where an investment allowance has been deducted under paragraph 1 in computing the gains or profits of a person and that person ceases to carry on business for the purposes of which the item was used and the item ceases to be owned by him, a balancing charge or balancing deduction shall be made or allowed for the year of income in which he ceased to carry on business.

    (2) Where the person referred to in subparagraph (1) is a partnership, the person shall be deemed to have ceased to carry on business only when all the partners cease to carry on that business.

    (3) Where the items are sold by a liquidator of a company, the balancing charge or balancing deduction shall be made or allowed in the year of income in which the winding up commenced.

    (4) Where on cessation of a business, a balancing charge or balancing deduction is to be made or allowed under this paragraph and—

        (a) the consideration received exceeds the residual value at the time of cessation, the balancing charge shall be the excess amount or, where the residual value is nil, the consideration received; or

        (b) a consideration is not received by the person who owns the items, or the residual value at the time of the cessation exceeds the consideration received, the balancing deduction shall be the residual value at the time of cessation, or the excess thereof over the consideration received.
5. Where an item is brought into use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or amount realized shall be deemed to be the market value.

6. (1) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle, other than a commercial vehicle, that capital expenditure shall be restricted to three million shillings.

   (2) Where the motor vehicle referred to in subparagraph (1) is sold, the sale price shall be deemed to be the proportion of the proceeds of sale, having regard to the original purchase price and three million shillings.

7. Capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, land.

8. (1) Where a building is used partly for purposes other than the purposes specified in paragraph 1, the capital expenditure on which the deduction in respect of the building is calculated shall be the expenditure attributable to that portion of the building which is used for those purposes, but where the expenditure attributable exceeds ninety per cent of the total expenditure incurred on the construction of the building the whole building shall be treated as used for the specified purposes.

   (2) Where an existing building is extended by further construction, the extension shall be treated as a separate building.

   (3) Where capital expenditure is incurred on the construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.

   (4) Where a person purchases the building referred to in subparagraph (3), that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the amount paid by him, whichever is lesser.
(5) Where the building referred to in subparagraph (3) is sold more than once before it is used, subparagraph (4) shall apply but only in relation to the last sale.

(6) Where a building referred to in subparagraph (3) is sold by a person carrying on a business of construction for sale, the qualifying capital expenditure shall be the price paid on the sale.

9. Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.

THIRD SCHEDULE
(Sections 19, 40, 41, 42, 43, 44, 45, 46 and 47)
RESIDENT INDIVIDUAL TAX RELIEFS AND RATES OF TAX
PART I—RESIDENT INDIVIDUAL TAX RELIEFS

1. The amount of personal relief shall be eighteen thousand shillings in a year.

2. The amount of affordable housing relief shall be fifteen per cent of the individual's contribution but not exceeding one hundred and eight thousand shillings in a year.

3. The amount of insurance relief shall be fifteen per cent of the amount of premiums paid but not exceeding sixty thousand shillings in a year.

PART II—INDIVIDUAL RATES OF TAX

4. Individual rates of tax—

<table>
<thead>
<tr>
<th>Amount</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>On the first shs. 150,000</td>
<td>10%</td>
</tr>
<tr>
<td>On the next shs. 150,000</td>
<td>15%</td>
</tr>
<tr>
<td>On the next shs. 150,000</td>
<td>20%</td>
</tr>
<tr>
<td>On the next shs. 150,000</td>
<td>25%</td>
</tr>
<tr>
<td>Over shs. 600,000</td>
<td>30%</td>
</tr>
</tbody>
</table>
PART III—CORPORATE RATES OF TAX

5. A resident company, thirty per cent.

6. A non-resident company having a permanent establishment in Kenya, thirty per cent.

7. A company that is newly listed on securities exchange and which has at least forty per cent of its issued share capital listed, twenty-five per cent, for five years commencing in the year of income immediately following the date of the listing.

8. An export processing zone enterprise which does not engage in any commercial activity—

(a) for the first ten years from the date of first operation, ten per cent;

(b) for the next ten years, fifteen per cent; and

(c) after twenty years from the date of first operation, thirty per cent.

9. A special economic zone enterprise, whether the enterprise sells its products to markets in or out of Kenya, developer and operator—

(a) for the first ten years from the date of first operation, ten per cent;

(b) for the next ten years, fifteen per cent; and

(c) after twenty years from the date of first operation, thirty per cent.

10. A company that develops at least one hundred low-cost residential units annually, with the prior approval by the Cabinet Secretary responsible for housing, fifteen per cent on the gains or profits from the development of the units for that year of income.
11. (1) A company whose business is the local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations, thereafter thirty per cent.

(2) The Cabinet Secretary shall extend the period under subparagraph (1) for a period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles.

12. (1) A company operating a plastics recycling plant, fifteen per cent for five years from the year of commencement of its operations or commencement of this Act, whichever is later and thirty per cent shall be applicable immediately thereafter:

Provided that the rate of fifteen per cent shall only be applicable to the income derived from the operations of recycling plastics upon approval by the Cabinet Secretary responsible for environment.

(2) A company operating a plastics recycling plant that enjoyed a corporation rate of tax of fifteen per cent under the repealed Act shall continue to enjoy that rate for the unexpired period of five years and immediately thereafter, the rate of thirty per cent shall apply.

13. A company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be as provided in the arrangement and shall not be less than ten per cent.

PART IV—NON-RESIDENT RATES OF TAX

14. Repatriated income of a non-resident person having a permanent establishment in Kenya, ten per cent.

15. (1) Management, professional or training fees for a non-resident person, twenty per cent of the gross sum payable.

(2) Payment made under subparagraph (1) by—
(a) a special economic zone enterprise, special economic zone developer, special economic zone operator, export processing zone enterprise, export processing zone developer or export processing zone operator to a non-resident person, five per cent of the gross amount payable; and

(b) a licensee or a contractor to a subcontractor under the Sixth Schedule, ten per cent of the gross amount payable:

16. A service fee payable by a licensee or contractor to a non-resident subcontractor under the Sixth Schedule, ten per cent of the gross amount payable.

17. (1) A royalty or natural resource income, twenty per cent of the gross amount payable.

(2) A royalty paid by a special economic zone enterprise, special economic zone developer, special economic zone operator, export processing zone enterprise, export processing zone developer or export processing zone operator to a non-resident person, five per cent of the gross amount payable.

18. Rent, premium or similar consideration for the use or occupation of property, twenty per cent of the gross amount payable.

19. (1) A dividend, ten per cent of the amount payable.

(2) A dividend paid by a special economic zone enterprise, special economic zone developer, special economic zone operator, export processing zone enterprise, export processing zone developer or export processing zone operator, five per cent of the gross amount payable.

20. Interest or deemed interest, fifteen per cent of the gross amount payable.

21. Interest paid by a special economic zone enterprise, special economic zone developer, special economic zone operator, export processing zone enterprise, export processing zone developer or export processing zone operator, etc.
zone operator to a non-resident person, five per cent of the gross amount payable.

22. An insurance or reinsurance premium, five per cent of the gross amount payable.

23. A pension or retirement annuity, ten per cent of the gross amount payable.

24. (1) An appearance at, or performance in a public or private place for the purpose of entertaining, instructing, taking part in a sporting activity or otherwise attracting attention of an audience, twenty per cent of the gross amount payable.

(2) An activity by way of supporting, assisting or arranging an appearance or performance under subparagraph (1), twenty per cent of the gross amount payable.

25. Income from a business which is chargeable to tax under section 15 (1), three per cent of the gross amount received.

26. Income which is chargeable to tax under section 15 (3), ten per cent of the gross amount received.

27. A commission or fee paid by an insurance company for the provision of insurance business, twenty per cent of the gross amount payable.

28. The distribution of investment income to a unit holder or a shareholder of a collective investment scheme, ten per cent of the gross amount payable.

29. Winnings, twenty per cent.

30. Security, cleaning, fumigation, outdoor catering, transportation of goods, sales promotion, marketing, advertising services, twenty per cent of the gross amount payable.

PART V—RESIDENT WITHHOLDING RATES OF TAX

31. (1) A dividend paid by a co-operative society, ten per cent of the amount payable.
(2) Any other dividend, five per cent.

(3) Tax payable under this paragraph shall be final.

32. (1) Interest arising from a bearer instrument or another source, fifteen per cent of the gross amount payable

(2) The tax payable under subparagraph (1) to an individual by the following institutions, shall be final—

(a) a bank or any other financial institution licensed under the Banking Act;

(b) an institution licensed under the Microfinance Act, No. 19 of 2006; and

(c) the Central Bank of Kenya.

33. A commission or fee paid by an insurance company for the provision of insurance business, five per cent of the gross amount payable.

34. (1) A payment of a pension or any withdrawal made—

(a) after the expiry of fifteen years from the date of joining the fund;

(b) on the attainment of the age of fifty years; or

(c) upon earlier retirement on the grounds of ill health or infirmity of body and mind,

from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund, exceeding the tax-free amounts specified under section 14 (2) in any one year,

<table>
<thead>
<tr>
<th>Amount</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shs. 400,000</td>
<td>10%</td>
</tr>
<tr>
<td>Shs. 400,000</td>
<td>15%</td>
</tr>
<tr>
<td>Shs. 400,000</td>
<td>20%</td>
</tr>
</tbody>
</table>
on the next shs. 400,000          ............  25%
on any amount over shs. 1,600,000  ............  30%

(2) Tax payable under this paragraph shall be final.

35. A withdrawal, before the expiry of fifteen years from the date of joining the fund, from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund exceeding the tax-free amounts specified under section 14 (2) in any one year,

<table>
<thead>
<tr>
<th>Amount</th>
<th>Tax Rate</th>
</tr>
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<tbody>
<tr>
<td>on the first shs. 150,000</td>
<td>10%</td>
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<tr>
<td>on the next shs. 150,000</td>
<td>15%</td>
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<td>on the next shs. 150,000</td>
<td>20%</td>
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<tr>
<td>on the next shs. 150,000</td>
<td>25%</td>
</tr>
<tr>
<td>on all income over shs. 600,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

36. Surplus funds withdrawn by or refunded to an employer from a registered pension fund or registered provident fund, thirty per cent of the gross amount withdrawn or refunded.

37. Management, professional or training fees, other than contractual fees, five per cent of the gross amount payable.

38. Contractual fees, three per cent of the gross amount payable.

39. A royalty or natural resource income, five per cent of the gross amount payable.

40. Rent, premium or similar consideration for the use or occupation of immovable property, ten per cent of the gross amount payable.

41. The distribution of investment income to a unit holder or shareholder of a collective investment scheme, five per cent of gross amount payable.
42. Winnings, twenty per cent.

**PART VI—OTHER RATES OF TAX**

43. Fringe benefits, thirty per cent of the amount payable.

44. (1) Gains on the transfer of property other than transfers under the Sixth Schedule, seven point five per cent.

   (2) Tax payable under this paragraph shall be final.

45. Advance tax under section 19—

   (a) for a van, pick-up, truck, prime mover, trailer or lorry, the higher of one thousand five hundred shillings per tonne of load capacity or two thousand four hundred shillings in a year of income;

   (b) for a saloon, station-wagon, mini-bus, bus and a coach, the higher of sixty shillings per passenger capacity per month or two thousand four hundred shillings in a year of income.

46. Turnover tax, three per cent of the gross receipts of the business of a taxable person under section 21.

47. Residential rental income under section 10, ten per cent of the gross amount received.
FOURTH SCHEDULE
(Sections 23 and 44)
FINANCIAL INSTITUTIONS

1. A bank or a financial institution licensed under the Banking Act.


3. An insurance company licensed under the Insurance Act.

4. The National Housing Corporation established under the Housing Act.


FIFTH SCHEDULE

(Section 5 (2) (e))

COMPUTATION OF GAINS FROM TRANSFER OF PROPERTY

1. Income on which tax is chargeable under section 5 (2) (e) is the whole of the gain which accrues to a person on the transfer of property situated in Kenya and shall include net gains derived by a non-resident from the transfer of shares of a company (or comparable interests) which is a resident of Kenya, if the non-resident at any time during the period of three hundred and sixty five days preceding such transfer, held directly or indirectly at least twenty five per cent of the capital of that company.

2. Income shall not be chargeable to tax under section 5 (2) (e) where it is—

(a) chargeable to tax under any other provision of this Act;

(b) a gain accruing to a company on a transfer of machinery classified in paragraph 1 of the Second Schedule; or

(c) income exempt from tax under paragraph 12.

3. (1) The gain which accrues to a person on a transfer of property is the amount by which the transfer value of the property exceeds the adjusted cost of the property.

(2) Where the adjusted cost of the property exceeds the transfer value of the property, the excess is the loss realized by the person on the transfer of that property.

(3) A gain or loss realized by a person on a transfer of property shall be deemed to be realized by that person at the time of the transfer, whether or not the consideration is paid in instalments.

(4) Interest on part of the consideration shall not be treated as part of the transfer value of the property.
(5) A debt incurred on the transfer of property which the Commissioner considers as having become bad shall be deemed to be a loss for the purposes of section 23 (4) (b).

(6) Section 23 (3) (s) shall not apply to a transfer of property.

4. (1) Where property is held by a person—

(a) as a nominee;
(b) as a trustee; or
(c) as a liquidator,

this Schedule shall apply as if the property were vested in, and the acts of the nominee, trustee or liquidator in relation to the property were the acts of that person.

(2) Where a person entitled to property as security or charge or encumbrance on property, deals with the property for the purpose of enforcing the security, charge or encumbrance, that person’s dealings with it shall be treated as if they were done through that person as nominee of the person entitled to the property.

5. (1) A transfer of property occurs—

(a) where the property is sold, exchanged, conveyed or disposed of in any manner, directly or indirectly, whether or not for consideration;
(b) on the loss, destruction or extinction of the property whether or not compensation is received, unless that compensation is utilized to reinstate the property in essentially the same form and in the same place within one year of the compensation or a longer period as the Commissioner may approve; or
(c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, the property, including the surrender of
shares or debentures on the dissolution of a company.

(2) A transfer of property does not occur where—

(a) the transfer of property is for the purpose of securing a debt or a loan, or on a transfer by a creditor for the purpose of discharging security;

(b) a company issues its own shares or debentures;

(c) the property of a deceased person vests in the personal representative of the deceased person by operation of law;

(d) a personal representative of a deceased person transfers the property of the deceased person in the course of the administration of the estate;

(e) the property of a company vests in its liquidator;

(f) the property of a bankrupt vests in the Official Receiver or other bankruptcy trustee under the Insolvency Act, 2015;

(g) a trustee transfers property to a beneficiary on the beneficiary becoming absolutely entitled thereto;

(h) a person transfers property to the person’s nominee; or

(i) an asset is transferred—

   (i) between spouses;
   (ii) between former spouses as part of a divorce settlement or separation agreement;
   (iii) to the transferor’s immediate family; or
   (iv) to a company where a spouse, or transferor’s immediate family, or a spouse and the transferor’s immediate family, hold all of the company’s shares.
(3) In this paragraph, "immediate family" means children of a spouse or former spouse.

6. (1) The transfer value of property shall be computed by reference to the following amounts—

(a) the value of the consideration for the transfer of the property;

(b) the sum received in return for the abandonment, forfeiture or surrender of the property;

(c) the sum received as consideration for the use or exploitation of the property;

(d) the sum received as compensation for damage to the property or for the loss of the property; or

(e) the sum by which a security, charge or encumbrance held by a person is reduced as a result of dealings with the property for the purposes of enforcing the security, charge or encumbrance, together with a sum received by the person out of the proceeds of those dealings.

(2) In computing the transfer value of property, a transferor shall deduct the incidental costs incurred when making the transfer.

(3) Where no amount is ascertainable as the transfer value of property, the transfer value of the property shall be the market value as determined by the Commissioner.

7. (1) The adjusted cost of property shall be—

(a) the amount or value of the consideration for the acquisition or construction of the property;

(b) the amount of expenditure wholly and exclusively incurred on the property after its acquisition by or on behalf of the transferor in enhancing or preserving the value of the property;

(c) the amount of expenditure wholly and exclusively incurred after the acquisition of the property by the transferor in establishing, preserving or defending the title to, or a right over, the property, and
(d) the incidental costs to the transferor of acquiring the property.

(2) In computing the adjusted cost of property, the amount computed shall be reduced by the amounts deducted under section 23 (3).

(3) Where a company issues to its shareholders shares—

(a) that do not constitute a dividend under section 11, the cost of the shares—

(i) shall be the sum paid for the shares; or

(ii) if no sum is paid for the shares, shall be deemed to be nil,

and the shareholder shall allocate, in the manner prescribed by the Commissioner, the cost of his existing shares between the old shares and the new shares; or

(b) that constitute wholly or partly a dividend under subparagraph (a), the amount which constitutes a dividend shall be treated as part of the cost of the shares, and the shareholder shall allocate the cost of the existing shares between the old shares and the new shares in the manner prescribed by the Commissioner.

(4) Where there is a part transfer of property, the adjusted cost of the property shall be allocated to the part transferred in accordance with a manner prescribed by the Commissioner.

(5) The Commissioner may make regulations for the better carrying out of this paragraph.

8. (1) Where property is transferred—

(a) in a transaction not made at arm’s length; or

(b) by way of a gift in whole or in part,
for the purposes of paragraph 6, the consideration shall be the market value at the time of the transfer.

(2) In this paragraph, “market value” means the price which the property would fetch if sold in the open market.

9. The incidental costs referred to in paragraph 6 (2) shall be expenditure wholly and exclusively incurred by the transferor, including—

(a) fees, commission or remuneration paid for the professional services of a surveyor, valuer, accountant, agent or legal adviser;

(b) the cost of advertising; and

(c) any other cost that is just and reasonable.

10. (1) A deduction shall not be allowed under paragraph 6 (2) if that amount has been allowed as a deduction in computing gains or profits chargeable to tax under section 5 (2) (a).

(2) The due date for payment of tax on transfer of property shall be the date the transfer is registered.

11. Where property is transferred together with other property, the transfer value shall be the value that is reasonably attributable to each property.

12. (1) A gain or loss shall not be included in the computation of income under section 5 (2) (e) where—

(a) a transfer of property is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, and the transfer is—

(i) a legal or regulatory requirement;

(ii) a directive or compulsory acquisition, by the Government;
(iii) an internal restructuring within a group which does not involve a transfer of property to a third party; or

(iv) in public interest and approved by the Cabinet Secretary;

(b) the transfer is of securities traded on a securities exchange;

(c) the transfer is of a private residence if the individual owner has occupied the residence continuously for at least three years immediately before the date of transfer;

(d) the transfer is of land transferred by an individual where the transfer value does not exceed three million shillings;

(e) the transfer is by an individual of agricultural land of less than twenty hectares situated outside an area declared to be an urban area by the Cabinet Secretary responsible for urban areas and cities by notice in the Gazette;

(f) the transfer is for the administration of the estate of a deceased person; or

(g) the transfer is to a real estate investment trust.

(2) In determining whether a property is subject to subparagraph (1) (c)—

(a) a period of temporary absence from the residence shall not be considered in computing the period of occupancy;

(b) a reference to a private residence includes the immediate surrounding land not used for the production of income;

(c) an individual who is a dependent of his parent shall not claim, or be taken, to have used a residence as a residence; and
(d) where a residence is used in part for business, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of that property used for residential purposes shall be separately determined from that which is used for business or for the production of income.

13. (1) A resident person shall notify the Commissioner in writing if there is a change of at least ten per cent in its underlying ownership within thirty days of the change.

(2) If the person disposing of the interest to which the notice under subparagraph (1) relates is a non-resident person, the resident person shall be liable, as an agent of the non-resident person, for any tax payable under this Act by the non-resident person for the disposal.

SIXTH SCHEDULE
(Sections 6 (f), 23 (3) (c), 24 (3) (d) and 43 (2))

TAXATION OF INCOME FROM EXTRACTIVE INDUSTRIES

PART I—MINING OPERATIONS

1. (1) Tax chargeable on the income of a licensee shall be determined in accordance with this Schedule.

(2) Where there is any inconsistency between this Schedule and any other provision of this Act on the taxation of the income of a licensee, this Schedule shall prevail.

2. (1) A deduction of expenditure wholly and exclusively incurred by a licensee in mining operations in a licence area during a year of income shall only be allowed against the income derived by the licensee from the mining operations in that licence area.

(2) If a licensee incurs a loss in mining operations in a licence area for a year of income, the loss shall be carried forward and deducted from the income of the licensee derived from mining operations in that licence area in the next year of income.
(3) The loss for a year of income that is not deducted under subparagraph (2) shall be carried forward by the licensee to the next year of income and be deductible in that year in accordance with subparagraph (2), until exhausted or up to the next fourteen years.

3. (1) A licensee shall be allowed a deduction for prospecting expenditure in the year of income in which the licensee incurred the expenditure.

(2) Subject to paragraph 12, if a licensee—

(a) disposes of an interest in a mining right or mining information, the cost of which was deducted as prospecting expenditure under subparagraph (1); or

(b) recovers or recoups an amount deducted as prospecting expenditure under subparagraph (1),

the consideration for the disposal, or the amount recovered or recouped, is income of the licensee chargeable to tax under section 5 (2) (a) (i) in the year of income in which the interest is disposed of or the amount is recovered or recouped.

4. (1) A licensee shall be allowed a deduction for extraction expenditure at a rate of twenty per cent per year from the year of income in which the licensee incurred the expenditure and in the following years in equal instalments.

(2) If a licensee incurs an extraction expenditure before the commencement of commercial production, the expenditure shall be deemed to have been incurred at the commencement of commercial production and shall be deducted in accordance with subparagraph (1).

(3) Subject to paragraph 12, if a licensee disposes of an interest in a mining right or mining information whose cost was deducted as extraction expenditure under subparagraph (1) in a year of income, the licensee shall not deduct the extraction expenditure for the year in which the disposal was made.
(4) Subject to paragraph 12, if a licensee disposes off an interest in a mining right or mining information and—

(a) the consideration for the disposal exceeds its written down value at the time of disposal, the excess shall be the income of the licensee chargeable to tax under section 5 (2) (a) (i) in the year of income in which the disposal occurred; or

(b) the consideration for the disposal is less than its written down value at the time of disposal, the licensee may deduct the difference in the year of income in which the disposal occurred.

(5) Except where subparagraphs (3) and (4) apply, if a licensee recovers or recoups an amount deducted as extraction expenditure under subparagraph (1), the amount recovered or recouped shall be income of the licensee chargeable to tax under section 5 (2) (a) (i) in the year of income in which the amount is recovered or recouped.

(6) In this paragraph—

(a) “commencement of commercial production” means the level of production as determined by the Cabinet Secretary responsible for mining; and

(b) “written down value”, in relation to the interest in a mining right or mining information of a licensee, means the cost of the mining right or mining information reduced by the deductions allowed to the licensee for the mining right or mining information.

5. (1) An amount set aside by a licensee for the rehabilitation of a licence area may be deducted by the licensee in the year of income in which it was set aside.

(2) An expenditure incurred in carrying out the rehabilitation work required under an approved rehabilitation plan for the licensee’s mining operations, may be deducted by the licensee in the year of income in which it was incurred.
(3) A deduction under subparagraph (2) shall not be allowed if the rehabilitation work is paid for out of the amount referred to in subparagraph (1).

(4) Where the amount referred to in subparagraph (1) is utilised for an activity other than an activity specified in an approved rehabilitation plan, the amount shall be treated as the income of the licensee chargeable to tax under section 5 (2) (a) (i) in the year of income in which it was utilised.

(5) A remainder of the amount referred to in subparagraph (1) after completion of rehabilitation work referred to in subparagraph (2) shall be treated as the income of the licensee chargeable to tax under section 5 (2) (a) (i) in the year of income in which the rehabilitation work is completed.

(6) In this paragraph, “approved rehabilitation plan” means a site mitigation and rehabilitation or mine-closure plan approved under the Mining Act, 2016.

PART II—PETROLEUM OPERATIONS

6. (1) Tax chargeable on the income of a contractor shall be determined in accordance with this Schedule.

(2) Where there is any inconsistency between this Schedule and any other provision of this Act on the taxation of the income of a contractor, this Schedule shall prevail.

(3) Where more than one person has entered into a petroleum agreement, each person shall be considered as a separate contractor.

7. (1) A deduction of expenditure wholly and exclusively incurred by a contractor in petroleum operations in a contract area during a year of income shall only be allowed against the income derived by the contractor from the petroleum operations in that contract area.

(2) If a contractor incurs a loss in petroleum operations in a contract area for a year of income, the loss
shall be carried forward and deducted from the income of the contractor derived from petroleum operations in the contract area in the next year of income.

(3) The loss brought forward under subparagraph (2) shall be deducted by the contractor in the next year of income following that year of income and subsequent years of income until it is exhausted or the petroleum operations in that contract area cease.

8. (1) A contractor may deduct exploration expenditure in the year of income in which the contractor incurred the expenditure.

(2) Subject to paragraph 12, if a contractor—

(a) disposes of an interest in a petroleum agreement or petroleum information, the cost of which was deducted as exploration expenditure under subparagraph (1); or

(b) recovers or recoups an amount deducted as exploration expenditure under subparagraph (1),

the consideration for the disposal, or the amount recovered or recouped, shall be considered as the income of the contractor and be chargeable to tax under section 5 (2) (a) (i) in the year of income in which the interest is disposed of or the amount is recovered or recouped.

9. (1) A contractor shall deduct development expenditure at the rate of twenty per cent in the year of income in which the contractor incurred the expenditure and in the following years in equal instalments.

(2) If a contractor incurs development expenditure before the commencement of commercial production, the expenditure shall be deemed to have been incurred at the commencement of commercial production and may be deducted in accordance with subparagraph (1).

(3) Subject to paragraph 15, if a contractor disposes of an interest in a petroleum agreement or petroleum
information whose cost was deducted as development expenditure under subparagraph (1) in a year of income, the contractor shall not deduct the development expenditure for the year in which the disposal was made.

(4) Subject to paragraph 15, if a contractor disposes of an interest in a petroleum agreement or petroleum information and—

(a) the consideration for the disposal exceeds its written down value at the time of disposal, the excess shall be considered as the income of the contractor chargeable to tax under section 5 (2) (a) (i) in the year of income in which the disposal occurred; or

(b) the consideration for the disposal is less than its written down value at the time of disposal, the contractor may deduct the excess in the year of income in which the disposal occurred.

(5) Except where subparagraphs (3) and (4) apply, if a contractor recovers or recoups the deduction under subparagraph (1), the amount recovered or recouped shall be considered as the income of the contractor chargeable to tax under section 5 (2) (a) (i) in the year of income in which the amount is recovered or recouped.

(6) In this paragraph—

(a) “commencement of commercial production” means the first day of commercial production as determined under the petroleum agreement; and

(b) “written down value”, in relation to the interest in a petroleum agreement or petroleum information, of a contractor, means the acquisition cost of the interest or information reduced by the deductions allowed to the contractor for the interest or information under this paragraph.

10. (1) An amount set aside by a contractor for the abandonment and decommissioning of petroleum operations in a contract area may be deducted by the contractor in the year of income in which it was set aside.
(2) An expenditure incurred in carrying out work required under an approved decommissioning plan for the contractor’s petroleum operations, may be deducted by the contractor in the year of income in which it was incurred.

(3) A deduction under subparagraph (2) shall not be allowed if the work is paid for out of the amount referred to in subparagraph (1).

(4) Where the amount referred to in subparagraph (1) is utilised for an activity other than an activity specified in an approved decommissioning plan, the amount shall be treated as the income of the contractor chargeable to tax under section 5 (2) (a) (i) in the year of income in which it was utilised.

(5) A remainder of the amount referred to in subparagraph (1) after completion of the work referred to in subparagraph (2) shall be treated as the income of the contractor chargeable to tax under section 5 (2) (a) (i) in the year of income in which the work is completed.

(6) In this paragraph, “approved decommissioning plan” means a field decommissioning plan approved under the Petroleum Act, 2019.

11. (1) This paragraph shall apply where the portion of profit oil or gas that the Government is entitled to receive under a petroleum agreement is inclusive of taxes payable by the contractor under this Act.

(2) The portion of profit oil or gas that the Government is entitled to receive under a petroleum agreement shall be inclusive only of the taxes payable by the contractor under this Act directly in relation to the petroleum operations undertaken by the contractor but shall exclude—

(a) the tax payable on a gain made by a contractor or any other person, on the disposal of an interest in the petroleum agreement; or

(b) a tax that a contractor is liable to deduct under this Act from a payment made by the contractor.
PART III—COMMON RULES APPLICABLE TO MINING AND PETROLEUM OPERATIONS

12. (1) This paragraph shall apply where—

(a) a licensee or contractor has entered into a farm-out agreement with a transferee for the transfer of an interest in a mining right or petroleum agreement; and

(b) the consideration given by the transferee for the interest wholly or partly includes the transferee undertaking some or all of the work commitments of the licensee or contractor under the right or agreement.

(2) Where the transfer of the interest under subparagraph (1) occurs at the time the farm-out agreement is entered into, the consideration received by the licensee or contractor for the interest shall not include the value of any work undertaken by the transferee on behalf of the licensee or contractor to the extent the expenditure on the work has not been deducted by the licensee or contractor.

(3) Where the transfer of the interest under subparagraph (1) is deferred until the transferee completes some or all of the work commitments of a licensee or contractor, under a mining right or petroleum agreement—

(a) an amount payable under the farm-out agreement before the transfer of the interest shall be included in the income of the licensee or contractor chargeable to tax under section 5 (2) (a) (i) in the year of income in which it is payable; and

(b) the value of work undertaken by the transferee on behalf of the licensee or contractor shall be excluded—

(i) in the consideration received by the licensee or contractor for the transfer of the interest; or

(ii) in the income of the contractor chargeable to tax,
to the extent that an expenditure on the work shall not be deducted by the licensee or contractor.

(4) Where an interest referred to in subparagraph (1) is subsequently transferred, the consideration received by the licensee or contractor shall not include an amount included in the income of the licensee or contractor chargeable to tax under subparagraph (3) (a).

(5) In this paragraph, “transferee” means a person who has entered into a farm-out agreement with a licensee or contractor.

13.(1) A licensee or a contractor shall notify the Commissioner in writing if there is a change of at least ten per cent in the underlying ownership of a licensee or contractor within thirty days of the change.

(2) If the person disposing of the interest to which the notice under subparagraph (1) relates is a non-resident person, the licensee or contractor shall be liable, as an agent of the non-resident person, for any tax payable under this Act by the non-resident person for the disposal.

14. The rates of tax specified under the Third Schedule shall apply to the gains or profits of a licensee or contractor.

15. (1) A non-resident subcontractor who is paid a service fee shall pay tax at the non-resident rate.

(2) Subparagraph (1) shall not apply if the subcontractor provides the services through a permanent establishment in Kenya.

(3) A service fee shall be deemed to be income accrued in or derived from Kenya and shall be assessed on the subcontractor in accordance with section 52.

(4) A licensee or contractor paying a service fee to a non-resident subcontractor shall deduct tax at the rate specified in the Third Schedule and in accordance with section 43 from the gross amount paid, at the earlier of—
(a) the time the licensee or contractor credits the service fee to the account of the non-resident subcontractor; or

(b) the time the fee is actually paid.

(5) In this paragraph—

(a) "non-resident subcontractor" means a subcontractor that is not a resident and includes a subcontractor that is a foreign government or foreign government body; and

(b) "service fee" means a fee paid to a non-resident contractor for the provision of services to a licensee or contractor for mining or petroleum operations.

16. A licensee or contractor making a payment to a resident person, a non-resident person, or a non-resident person having a permanent establishment in Kenya that is subject to tax in accordance with section 44, shall deduct tax at the rate specified in the Third Schedule from the gross amount payable.

17. An amount that is by virtue of this Schedule chargeable to tax under section 5 (2) (a) (i) shall be deemed to be income accrued in or derived from Kenya.

18. Section 25 (j) shall apply to a licensee or contractor.

19. (1) Income from a hedging transaction entered into by a licensee or contractor shall be treated as a specified source.

(2) Subparagraph (1) shall not apply to a hedging transaction for project finance by a licensee or contractor with an annual turnover of less than ten million shillings.

(3) In this paragraph, "hedging transaction" means a transaction entered into by a licensee or contractor to manage commodity price risk.
SEVENTH SCHEDULE
(Section 6 (g))

TAXATION OF INCOME OF EXPORT PROCESSING ZONE ENTERPRISES AND SPECIAL ECONOMIC ZONE ENTERPRISES

PART I—TAXATION OF INCOME OF EXPORT PROCESSING ZONE ENTERPRISES

1. An export processing zone enterprise shall maintain its business accounts in a convertible foreign currency of its choice as approved by the Commissioner.

2. (1) An export processing zone enterprise shall be deemed to be a non-resident person subject to the non-resident rate of tax specified in the Third Schedule, on a payment made to the enterprise.

   (2) Where the payment referred to in subparagraph (1) is made by a person who is not an export processing zone enterprise, the person shall withhold tax at the non-resident rate specified in the Third Schedule.

   (3) The tax withheld under subparagraph (2) shall be final.

3. An export processing zone enterprise shall comply with section 46 in respect of its resident employees.

4. The income derived by an export processing zone enterprise from the sale of goods manufactured under contract by a related resident company that is not an export processing zone enterprise, shall be treated as the income of the related resident company, unless the services provided to the export processing zone enterprise were paid for at a fair market price.

5. A related resident company that is not an export processing zone enterprise shall not, in arriving at its income chargeable to tax, deduct the cost of providing services other than manufacturing services to an export processing zone enterprise, if the services were not provided at a fair market price.
6. Two companies are deemed to be related when one company owns, directly or indirectly, at least twelve point five per cent of the voting rights of the other company.

PART II—TAXATION OF INCOME OF SPECIAL ECONOMIC ZONE ENTERPRISES

7. Gains or profits of a special economic zone enterprise shall be chargeable to tax at the rate specified in the Third Schedule.

8. A payment made by a special economic zone enterprise shall be chargeable to tax at the applicable rate specified in the Third Schedule.

9. The income derived by a special economic zone enterprise from the sale of goods manufactured under contract by a related resident company that is not a special economic zone enterprise, shall be treated as the income of the related resident company, unless the services provided to the special economic zone enterprise were paid for at a fair market price.

10. A related resident company that is not a special economic zone enterprise shall not, in arriving at its income chargeable to tax, deduct the cost of providing services other than manufacturing services to a special economic zone enterprise, if the services were not provided at a fair market price.

11. Two companies are deemed to be related when one company owns directly or indirectly at least twelve point five per cent of the voting rights of the other company.

EIGHTH SCHEDULE

(Section 28 (7))

TRANSFER PRICING ADJUSTMENT

1. (1) Where a non-resident person carries on business with an associated resident person or through its permanent establishment, the gains or profits of the associated resident person or permanent establishment shall be computed in accordance with this Schedule.
(2) The gains or profits of an associated person whose dealings are not comparable to a transaction between independent persons, shall be deemed to be the amount that might have been expected to accrue if the dealings or transactions were by independent persons and shall be subject to transfer pricing adjustment.

2. Paragraph 1 shall also apply where—

   (a) a resident person operating in a beneficial tax regime carries on business with an associated resident person not operating in a beneficial tax regime;

   (b) a resident person engages in at least one transaction with a non-resident person located in a preferential tax regime;

   (c) a permanent establishment of a non-resident person operating in Kenya engages in at least one transaction with a non-resident person or its associated person, including a branch of the non-resident person, located in a preferential tax regime; or

   (d) a resident person or a permanent establishment of a non-resident person operating in Kenya engages in at least one transaction with a non-resident person and the transaction of the non-resident person lacks economic substance.

3. Transactions subject to transfer pricing adjustment include—

   (a) the purchase, sale, transfer, lease or use of tangible or intangible property;

   (b) provision of a service;

   (c) a financing transaction, including borrowing, lending or guarantee, purchase or sale of securities,
an advance payment, deferred payment, receivable or debt arising, during the course of business;

(d) an insurance or reinsurance transaction;

(e) a business restructuring or reorganization transaction between a person and an associated person;

(f) a cost contribution arrangement; and

(g) any other transaction which may affect the profit or loss of the persons involved.

4. In determining the arm's length price, a person shall apply any of the following methods—

(a) the comparable uncontrolled price method, in which the transfer price in a controlled transaction is compared with the price in an uncontrolled transaction and an adjustment made to eliminate material price differences;

(b) the resale price method, in which the transfer price of the product is compared with the resale price at which the product is sold to an independent enterprise:

Provided that in the application of this method, the resale price shall be reduced by the price margin indicated by the reseller;

(c) the cost-plus method, in which the cost is assessed using the cost incurred by the supplier of a product in a controlled transaction with a mark-up added to make an appropriate profit in light of the functions performed, the asset used and risk assumed by the supplier;

(d) the transactional profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction,
The Income Tax Bill, 2020

and compared with a profit split among independent enterprises in a joint venture;

(e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and

(f) any other method approved by the Commissioner in writing.

5. (1) When applying a cost-plus, resale price or transactional net margin method under paragraph 4, a person shall select a tested party to the transaction for which a financial indicator shall be tested under the applied transfer pricing method.

(2) Where the tested party is a foreign entity, the party shall supply the relevant information to verify the results of the transaction upon request by the Commissioner.

(3) In this paragraph “tested party” means a party to the controlled transaction for which a financial indicator is tested.

6. Notwithstanding paragraph 4—

(a) where a resident person or a permanent establishment in Kenya engages in a transaction with a non-resident associated person in respect of commodities, and a quoted or public price is obtained at the date of the transaction from—

(i) an international or domestic commodity exchange market;

(ii) recognized price reporting, statistical or governmental price-setting agencies; or

(iii) any other index that is used as a reference by unrelated parties to determine prices in transactions between them
that price, on the date on which the commodities are shipped, shall be the sale price used in computing the taxable income of that person, unless the person proves that the adjustments are appropriate;

(b) where the prices are not available on the shipment date, the price shall be determined by taking an average of the prices five days before and after the shipping date; and

(c) where commodities are exported from Kenya and if the price agreed upon between the group and an un-associated person is higher than the price determined under subparagraph (b), the agreed price in this case shall be considered as the sale price in computing the seller’s taxable income in Kenya.

7. (1) Where the application of the most appropriate method results in a number of financial indicators from comparable uncontrolled transactions, the interquartile range shall be considered to be the arm’s length range and the median shall be used as the reference point.

(2) Where the relevant financial indicator derived from a controlled transaction is different from the median of the arm’s length range, the taxable gains or profit of the person shall be computed in reference to the median of the arm’s length range.

(3) Notwithstanding subparagraph (2), an adjustment of the controlled transaction shall not be made to decrease the taxable profits or increase allowable losses.

8. (1) A person engaged in a controlled transaction shall have contemporaneous documentation that verifies that the conditions of the transaction for the relevant year of income are consistent with the arm’s length principle.

(2) The documentation referred to in subparagraph (1) shall, upon request, be furnished to the Commissioner within thirty days.
(3) Where a person fails to furnish the documentation as required in subparagraph (2), the person shall be liable to a penalty of two per cent of the value of the relevant controlled transaction.

(4) The imposition of a penalty under this paragraph shall not prevent the Commissioner from assessing and recovering taxes due.

9. Each ultimate parent entity or a constituent entity which is not the ultimate parent entity of a multinational enterprise group that is resident for tax purposes in Kenya shall file a country-by-country report with the Commissioner not later than twelve months after the last day of the reporting financial year of the group.

10. A service charge between a person and an associated person shall not be considered consistent with the arm’s length principle unless—

(a) it is charged for a service that is actually rendered;

(b) the service provided, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position;

(c) it is charged for a service that an independent person in comparable circumstances would have been willing to pay for if rendered by an independent person, or would have been rendered in-house; and

(d) the amount charged corresponds to that which would have been agreed between independent persons for comparable services in comparable circumstances.

11. The determination of arm’s length conditions for controlled transactions involving the exploitation of an intangible asset shall take into account the contractual arrangements for the development, enhancement, maintenance, protection and exploitation of the asset.
12. (1) Where a capital rich and low function person is involved in a controlled transaction and does not control the financial risks associated with its funding activities for tax purposes, it shall not be allocated the profits associated with those risks and shall be entitled to no more than a risk-free return.

(2) In this paragraph, “capital rich and low function person” means a person that is capitalized with a relatively high amount of equity, or equity-equivalent, capital, but who has a limited capacity to carry out risk-management functions.
MEMORANDUM OF OBJECTS AND REASONS

The Income Tax Bill, 2020, is intended to simplify the law on income tax, expand the tax base, adopt new developments in tax practices that are suited to the Kenyan economy, simplify tax administration, reduce the cost of compliance, and provide for matters incidental to and connected therewith. It is divided into seven Parts, 69 clauses and eight Schedules.

**Part I** of the Bill (clauses 1 and 2) provides for preliminary matters. Clause 1 provides for the short title while clause 2 provides for the definition of terms used in the Bill.

**Part II** of the Bill (clauses 3 and 4) provides for the principles that shall be applied in the administration of the Bill. Clause 3 provides for the supremacy of the Bill in regard to the tax on income while clause 4 applies the Tax Procedures Act, 2015, for the purposes of the administration of the Bill.

**Part III** of the Bill (clauses 5 to 21) provides for the imposition of income tax. Clause 5 provides for the charge of income tax and the categories of income upon which tax is chargeable. These include gains and profits; dividends or interest; pensions and other forms of retirement benefits; certain amounts deemed to be income; gains on the transfer of property; incomes derived from natural resources; and incomes from digital marketplaces. Clauses 6 to 18 describe different types of activities from which incomes are derived and on which income tax is imposed including businesses, employment, use of property, clause 10 provides for the imposition of residential rental income tax clause 19 provides for the imposition of advance tax, clause 20 provides for imposition of fringe benefits tax, and clause 21 provides for imposition of presumptive tax.

**Part IV** of the Bill (clause 22) provides for the exemption of certain income from tax and gives the Cabinet Secretary power to exempt income or a class of income from tax.

**Part V** of the Bill (clauses 23 to 39) provides for the method of ascertainment of total income. Clause 23 provides for the deduction of expenditure incurred in the production of income; clause 24 provides for the computation of gains or profits from specified sources; clause 25 provides for expenditure not allowed as deductions; clause 38 provides for accounting periods not coinciding with year of income while clause 39 provides for income and expenditure after cessation of business.

**Part VI** of the Bill (clauses 40 and 42) provides for individual tax reliefs. Clause 40 provides for individual relief, clause 41 provides for affordable housing relief and clause 42 provides for insurance relief.
**Part VII** of the Bill (clauses 43 to 51) provides for rates, deductions and set-off of tax, and double taxation relief. This Part of the Bill is further divided into separate sub-parts (A, B, C and D). Sub-part A provides for the application of rates of tax as set out in the Third Schedule to the listed categories or classes of income. Sub-part B provides for the deduction of tax from certain income. Sub-part C provides for set-off of tax deducted in the specified circumstances. Sub-part D provides for relief from double taxation. Clause 49 provides for special arrangements for relief from double taxation as may be declared by the Cabinet Secretary by notice; clause 50 provides for exchange of information while clause 51 provides for the computation of credits under special arrangements.

**Part VIII** of the Bill (clauses 52 to 57) provides for persons assessable to tax. Clause 5 provides for income of incapacitated persons; clause 54 provides for income of non-resident persons; clause 55 provides for income of deceased persons, his executors and administrators; clause 56 provides for the liability of joint trustees; and clause 57 provides for the liability of a person in whose name the income of another person is assessed.

**Part IX** of the Bill (clauses 58 to 60) provides for returns and notices. Clause 58 provides for furnishing a final return with self-assessment of tax; clause 59 provides for documents to be included in the return of income; and clause 60 provides for keeping of records.

**Part X** of the Bill (clauses 61 to 67) provides for the collection, recovery and repayment of tax. Clause 61 provides for the time within which payment of tax is to be made; clause 62 provides for the due date for payment of tax under self-assessment; clause 63 provides for the payment of tax by instalment; clause 64 provides for the due date for the payment of tax by companies that are winding up; clause 65 provides for deceased persons; clause 66 provides for collection of tax from ship owners; and clause 67 provides for the refund of tax in respect of income accumulated under trusts.

**Part XI** of the Bill (clauses 68 and 69) provides for miscellaneous matters. Clause 68 provides for the making of regulations while clause 69 provides for the repeal of the Income Tax Act (Cap. 470) and for transitional matters.

**The First Schedule** provides for income exempt from tax under clause 22 including incomes of persons exempted from tax under the Privileges and Immunities Act; incomes of persons with disability; certain incomes of sporting associations; incomes of county governments; and incomes of certain charitable entities. It also provides for the exemption from tax of incomes of registered pension funds, trust funds, provident
funds and individual retirement funds; compensation paid for wounds or disabilities resulting from wars; incomes of institutions established under the East African Community Treaty; incomes of the National Social Security Fund and National Hospital Insurance Fund; and the retirement benefits paid to persons older than sixty-five years.

The Second Schedule provides for the treatment of investment allowance provided for under clauses 6, 8 and 23. It sets out the rates for the deduction of certain kinds of capital expenditure; and the calculation of certain kinds of capital expenditure including capital expenditure on motor vehicles and buildings.

The Third Schedule provides for resident individual tax reliefs and rates of tax under clauses 40 to 47. The reliefs include personal relief; affordable housing relief; and insurance relief. The rates of tax are applicable to companies; export processing zone enterprises; special economic zone enterprises; companies that develop low-cost housing units; companies assembling motor vehicles locally; and companies operating plastic recycling plants. The Schedule also provides for rates applicable to certain non-resident persons and certain non-resident incomes. The Schedule also provides for withholding rates of tax on dividends; interest on bearer instruments, etc.; commissions or fees by insurers; pensions; management, professional and contractual fees; royalties and natural resource incomes; and winnings. It provides for the rates applicable to fringe benefits and the gains on the transfer of property, and prescribes the rate for advance tax, turnover tax, and residential rental income tax.

The Fourth Schedule provides for financial institutions under clauses 22 and 43.

The Fifth Schedule provides for the computation of gains from the transfer of property under clause 5 (2) (e). It imposes tax on these gains but excludes certain kinds of incomes. It describes the manner of computing gains including the computing of transfer value, adjusted cost, and market value and incidental costs relating to transfers of property.

The Sixth Schedule provides for the taxation of extractive industries under clauses 6 (f), 23 (3) (c), 24 (4) and 42 (2). It provides for taxation of income derived from the extractive industries, and the common rules applicable to those industries, including the treatment of farm-out agreements; indirect transfers of interest; the taxation of subcontractors; the deduction of withholding taxes by contractors and licensees; and the treatment of hedging transactions.
The Seventh Schedule provides for the taxation of export processing zone enterprises and special economic zone enterprises under clause 6 (g). It prescribes how business accounts are to be maintained; and the treatment of related or associated persons.

The Eighth Schedule provides for transfer pricing adjustments under clause 28 (7). It provides for computation of gains or profits of associated persons; the treatment of income derived from beneficial and preferential tax regimes; which transactions shall be subject to transfer pricing; the choice of methods of transfer pricing for the determination of arms-length prices of commodities; and the maintenance of transfer pricing documentation.

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

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill does not concern county governments

The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 5th May, 2020.

ADEN DUALE,
Leader of Majority.