

SPECIAL ISSUE

Kenya Gazette Supplement No. 104 (Acts No. 8)



REPUBLIC OF KENYA

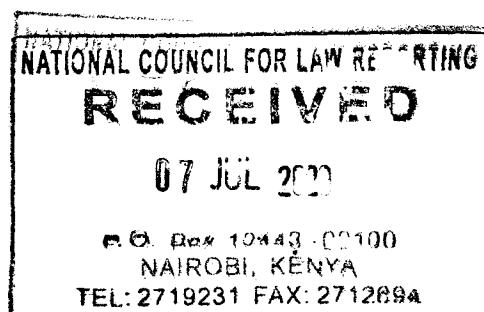
KENYA GAZETTE SUPPLEMENT

ACTS, 2020

NAIROBI, 30th June, 2020

CONTENT

Act—	PAGE
The Finance Act, 2020	103



THE FINANCE ACT, 2020

No. 8 of 2020

Date of Assent: 30th June, 2020

Date of Commencement: See Section 1

AN ACT of Parliament to amend the laws relating to various taxes and duties and for matters incidental thereto

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2020 and shall come into operation as follows—

Short title and commencement.

- (a) sections 2, 3, 4, 5, 6, 7, 8 (a), 9, 16, 18 and 19, the 1st January, 2021;
- (b) section 13 (a) (i) and (iv), 13 (d), 14 (a) and 22 (a) (i) on 1st July, 2021; and
- (c) all other sections, on the date of assent.

PART II—INCOME TAX ACT

2. Section 6A of the Income Tax Act is amended in subsection (1) by deleting—

Amendment of section 6A of Cap. 470.

- (a) the words “one hundred and forty-four thousand shillings” and substituting therefor the words “two hundred and eighty-eight thousand shillings”; and
- (b) the word “ten” and substituting therefor the word “fifteen”.

3. Section 12 of the Income Tax Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 12 of Cap. 470.

- (a) if the minimum tax payable under section 12D is higher than the instalment tax under this section; and

4. The Income Tax Act is amended by inserting the following new sections immediately after section 12C—

Insertion of new sections 12D and 12E in Cap. 470.

Minimum tax.

12D. (1) Notwithstanding any other provision of this Act, a tax to be known as minimum tax shall be payable by a person if—

- (a) that person’s income is not exempt under this Act;

- (b) that person's income is not chargeable to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules; or
- (c) the instalment tax payable by that person under section 12 is higher than the minimum tax.

(2) The tax payable under this section shall be paid in instalments which shall be due on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month of the year of income.

Digital service tax.

12E. (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from the provision of services is derived from or accrues in Kenya through a digital market place:

Provided that a resident person or a non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income.

(2) The tax payable under subsection (1) shall be due at the time of the transfer of the payment for the service to the service provider.

5. Section 15 of the Income Tax Act is amended in subsection (2) by—

- (a) deleting paragraph (h);
- (b) deleting paragraph (s);
- (c) deleting paragraph (ss);
- (d) deleting paragraph (u); and
- (e) deleting paragraph (v).

Amendment of section 15 of Cap. 470.

6. The Income Tax Act is amended by repealing section 22C.

Repeal of section 22C of Cap. 470.

7. Section 34 of the Income Tax Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (m)—

Amendment of section 34 of Cap. 470.

(n) tax upon the gross turnover of a person whose income is chargeable to tax under section 12D shall be charged at the rate specified in the Third Schedule.

(o) tax upon the gross transaction value of services chargeable to tax under section 12E shall be charged at the rate specified in the Third Schedule.

8. Part I of the First Schedule to the Income Tax Act is amended by—

Amendment of the First Schedule to Cap. 470.

(a) deleting paragraph 44;

(b) deleting both paragraphs 53.

(c) inserting the following new paragraph immediately after paragraph 52—

53. Monthly pension granted to a person who is sixty- five years of age or more.

9. The Third Schedule to the Income Tax Act is amended in Head B by inserting the following new paragraphs immediately after paragraph 10—

Amendment of Third Schedule to Cap. 470.

11. The rate of tax in respect of minimum tax under section 12D shall be one per cent of the gross turnover.

12. The rate of tax in respect of digital service tax under section 12E shall be one point five per cent of the gross transaction value.

10. The Eighth Schedule to the Income Tax Act is amended in paragraph 3 by deleting sub-paragraph (2) and substituting therefor the following sub-paragraph—

Amendment of Eighth Schedule to Cap. 470.

(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1 (b) of the Second Schedule is not chargeable to tax under section 3(2) (f).

PART III—VALUE ADDED TAX ACT

11. Section 17 of the Value Added Tax Act, 2013, is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 17 of No. 35 of 2013.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1)—

- (a) the person does not hold the documentation referred to in subsection (3), or
- (b) the registered supplier has not declared the sales invoice in a return,

the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation:

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

12. Section 68 of the Value Added Tax Act, 2013 is amended by inserting the following new sub-section immediately after subsection (2)—

Amendment of section 68 of No. 35 of 2013.

(2A) Notwithstanding the repeal of paragraph 102 of the First Schedule, the exemption of goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government, shall continue for existing projects for the remaining period of the agreement.

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

Amendment of First Schedule to No. 35 of 2013.

(a) in Section A of Part I by—

- (i) deleting tariff numbers 8802.11.00, 8802.12.00, 8802.20.00, 8803.30.00, 8805.10.00, 8805.21.00 and 8805.29.00 and their respective descriptions appearing immediately after paragraph 39;
- (ii) deleting tariff numbers 8309.90.90 and its corresponding description appearing in paragraph 39 (3);
- (iii) deleting paragraph 45;
- (iv) deleting paragraph 47;
- (v) deleting paragraph 50;
- (vi) deleting paragraph 65;
- (vii) deleting paragraph 67;

- (viii) deleting paragraph 104;
- (ix) by inserting the following proviso in paragraph 108—

“Provided that this paragraph shall, subject to paragraph 20 of the Second Schedule, be suspended for six months from the date of assent.”

- (b) in Section A of Part I, by inserting the following new paragraph immediately after paragraph 110—
111. Maize (corn) seeds of tariff no. 1005.10.00.
- (c) in Part II, by inserting the word “ambulance” immediately after the word “dental” appearing in paragraph 4.
- (d) in Part II, by inserting the words “excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00” at the end of paragraph 18.

14. The Second Schedule to the Value Added Tax Act, 2013, is amended in Part A by—

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

- (a) deleting paragraph 13;
- (b) deleting paragraph 18.
- (c) inserting the following new paragraph immediately after paragraph 19—

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

Provided this paragraph shall be in operation for a period of six months from the date of assent.

PART IV—EXCISE DUTY ACT

15. Section 2 of the Excise Duty Act, 2015, is amended by deleting the definition of “licence” and substituting therefor the following new definition—

Amendment of
section 2 of No.
23 of 2015.

“licence”—

- (a) in the case of excisable services, means the certificate of registration;
- (b) in the case of excisable goods, means the licence issued under section 17; or
- (c) in the case of any activity under section 15 (1) (e), means the licence required thereunder.

16. The Excise Duty Act, 2015 is amended by deleting section 10 and substituting therefor the following new section—

Amendment of section 10 of No. 23 of 2015.

Adjustment for inflation

10. (1) Despite section 8, the Commissioner may, with the approval of the Cabinet Secretary, by notice in the *Gazette*, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule.

(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.

(3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under subsection (2), consider the notice and make a resolution either to approve or reject the notice.

(4) The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.

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

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

(a) in paragraph 1 of Part 1 by—

(i) deleting the expression “10%” appearing in the description “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%” and substituting therefor the expression “6 %”;

(ii) by deleting the expression “10%” appearing in the second column against the description “Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%” and substituting therefor the expression “6 %”;

(b) by deleting paragraph 5 in Part II.

PART V—TAX PROCEDURES ACT

18. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 37C—

Insertion of a new section 37D in No. 29 of 2015.

Voluntary Tax
Disclosure
Programme.

37D. (1) There is established a programme to be known as the Voluntary Tax Disclosure Programme which shall be for a period of three years with effect from the 1st January, 2021.

(2) For purpose of this section, “voluntary tax disclosure programme” means a programme where a person discloses the person’s tax liabilities to the Commissioner for the purpose of being granted relief of penalties and interest on the tax disclosed.

(3) A person with a tax liability may apply to the Commissioner for relief in the prescribed form with respect to tax liabilities that accrued within a period of five years prior to the 1st July, 2020.

(4) A person granted relief under this section—

- (a) shall not be prosecuted with respect to the tax liability disclosed under this section; and
 - (i) where the disclosure is made and tax liability paid in the first year of the programme, a full remission of the interest and penalty;
 - (ii) where the disclosure is made and tax liability paid in the second year of the programme, remission of fifty per cent of the interest and penalty; and
 - (iii) where the disclosure is made and tax liability paid in the final year of the programme, remission of twenty-five per cent of the interest and penalty.

(5) An application under subsection (3) shall be voluntary and disclose all material facts.

(6) Where the Commissioner is satisfied with the facts disclosed in the application under subsection (3), the Commissioner shall grant the relief applied for:

Provided that the relief shall not result in the payment of a refund to the person.

(7) Where the Commissioner grants relief under subsection (6), the Commissioner shall enter into an agreement with the person setting out the terms of payment of the tax liability and the period within which the payment shall be made which shall not exceed one year from the date of the agreement.

(8) Where a person fails to meet the terms of the agreement under subsection (7), that person shall be liable to pay the full interest and penalty that had been remitted under the agreement.

(9) A person granted relief under this section shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner.

(10) Where, before the expiry of the agreement between the Commissioner and the person, the Commissioner establishes that the person failed to disclose a material fact in respect of the relief granted under this section, the Commissioner may—

- (a) withdraw any relief granted;
- (b) assess and collect any balance of the tax liability; or
- (c) commence prosecution under section 80.

(11) A person aggrieved by a decision of the Commissioner under subsection (10) may appeal against the decision.

(12) This section shall not apply to a person if the person—

(a) is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or

(b) has been notified of a pending audit or investigation by the Commissioner.

(13) The disclosure of a tax liability under this section shall be confidential.

19. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 42A—

Insertion of a new section 42B in No. 29 of 2015.

Appointment of digital service tax agent.

42B. (1) The Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner.

(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.

PART VI—MISCELLANEOUS FEES AND LEVIES ACT

20. Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended in subsection (3) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 7 of No. 29 of 2016.

(b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee at a rate of one point five per cent of the customs value.

21. The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new section immediately after section 9—

Insertion of a new section 9A in No. 29 of 2016.

Duty on goods for home use from an export processing zone enterprise.

9A. Notwithstanding the import duties payable under section 110 of the East African Community Customs Management Act, 2004, an additional duty at a rate of two point five per cent of the customs value shall be payable in respect of goods entered for home use from an export processing zones enterprise.

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

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

(a) in Part A by—

(i) deleting paragraph (xv) and substituting therefor the following new paragraph—

(xv) aircraft, excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00.

(ii) deleting paragraph (xxii);

(iii) deleting paragraph (xxiii);

(iv) by inserting the following new paragraph immediately after paragraph (xxiv)—

(xxv) equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.

(b) in Part B—

(i) deleting paragraph (vi);

(ii) by inserting the following new paragraphs immediately after paragraph (vii)—

(viii) currency notes and coins imported by the Central Bank of Kenya.

- (ix) equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.

PART VII—TAX APPEALS TRIBUNAL

23. Section 13 of the Tax Appeals Tribunal Act, 2013, is amended in subsection (6) by inserting the words “or documents” immediately after the word “appeal”.

Amendment of section 13 of No. 40 of 2013.

PART VIII—MISCELLANEOUS

24. Section 2 of the Public Roads Toll Act is amended—

Amendment of section 2 of Cap. 407.

- (a) by deleting the definition of the term “toll collector” and substituting therefor the following new definition—

“toll collector” means a public toll collector appointed under section 4 and includes a private toll collector appointed under section 4B;

- (b) by inserting the following new definitions in proper alphabetical sequence—

“base toll rate” means the unit rate prescribed by the Minister under section 4A for the calculation of applicable tolls;

“Fund” means the National Roads Toll Fund established under section 6A;

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to roads.

25. Section 3 of the Public Roads Toll Act is amended—

Amendment of section 3 of Cap. 407.

- (a) by inserting the following subsection immediately after subsection (1)—

(1A) Notwithstanding subsection (1), a private toll collector shall only levy toll and collect monies payable on a public toll road constructed

under an agreement entered into under section 4A.

- (b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The stations specified in the first column of the First Schedule are declared to be transit toll stations for the public roads respectively set out in the second column.

- (c) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The toll in respect of every vehicle approaching and proceeding through a toll station shall be paid to the toll collector in such manner as may be prescribed by the Minister.

26. Section 4A of the Public Roads Toll Act is amended—

Amendment of section 4A of Cap. 407.

- (a) by deleting subsection (3);
 (b) by deleting subsection (4);
 (c) by deleting subsection (5).

27. Section 4B of the Public Roads Toll Act is amended—

Amendment of section 4B of Cap. 407.

- (a) by inserting the following proviso immediately after subsection (1)—

Provided that the agreement may prescribe alternative arrangements for the levying, collection and administration of tolls and management of toll infrastructure.

- (b) by inserting the following proviso immediately after subsection (2)—

Provided that the Minister may prescribe the base toll rate in the agreement and permit the person referred to in subsection (1) to adjust, vary or otherwise revise the toll in accordance with an adjustment mechanism provided in the agreement.

28. The Public Roads Toll Act is amended by inserting the following new section immediately after

Insertion of new section on Cap. 407.

2020

section 6—

Establishment of
Fund.

No.18 of 2012.

6A. (1) The Minister responsible for the National Treasury shall establish a Fund to be known as the National Roads Toll Fund under the Public Finance Management Act, 2012.

(2) All tolls, except transit tolls, collected by the persons appointed under section 4 shall be remitted to the Fund.

(3) The purpose of the Fund shall be to provide funds for the—

- (a) proper functioning of toll roads and toll stations; and
- (b) development, repair or maintenance of roads as the Minister may direct, taking into account regional balancing.

(4) The Fund shall be administered in accordance with section 24 of the Public Finance Management Act, 2012, and the regulations made thereunder.

29. Section 8 of the Public Roads Toll Act is amended by—

Amendment of
section 8 of
Cap. 407.

- (a) deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand” appearing in subsection (1) and substituting therefor the words “commits an offence and shall upon conviction, be liable to a fine not exceeding fifty thousand.”;
- (b) inserting the following new subsection immediately after subsection (2)—

(3) Notwithstanding subsections (1) and (2), the person with whom the Minister enters into an agreement under section 4A may collect the unpaid tolls from defaulters as a civil debt

recoverable summarily.

30. Section 11 of the Capital Markets Act is amended in subsection (3) by inserting the following new paragraph immediately after paragraph (g)—

Amendment of section 11 of Cap. 485A.

(ga) license, approve and regulate private equity and venture capital companies that have access to public funds.

31. Section 18 of the Capital Markets Act is amended in subsection (1) by deleting the words “and paying beneficiaries from collected unclaimed dividends when they resurface”.

Amendment of section 18 of Cap. 485A.

32. Section 204A of the Insurance Act is amended in subsection (3) by inserting the expression “within thirty days” immediately after the word “may”.

Amendment of section 204A of Cap. 487

33. Section 5 of the Kenya Revenue Authority Act, 1995, is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 5 of No. 2 of 1995.

(2A) The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions.

34. Section 16 of the Kenya Revenue Authority Act, 1995, is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 16 of No. 2 of 1995.

(ba) any commission received by the Authority for collecting any revenue on behalf of a county government or government agency:

Provided that such commission shall not exceed two per cent of the total revenue collected on behalf of the county government or government agency.

35. The Kenya Revenue Authority Act, 1995, is amended by inserting the following new section immediately after section 20—

Insertion of a new section 20A in No. 2 of 1995.

Limitation of actions.

20A. Legal action against the Authority shall not be instituted unless—

(a) it is commenced within three years

after the act, neglect or default complained of;

- (b) in the case of continuing injury or damage, within six months after the cessation of the act; and
- (c) at least one month written notice specifying the particulars of the claim and intention to commence the action or legal proceeding has been served upon the Commissioner-General.

36. Section 21 of the Kenya Revenue Authority Act, 1995, is amended by inserting the following new paragraph immediately after paragraph (e)—

Amendment of section 21 of No. 2 of 1995.

- (f) with respect to capacity building and training.

37. Section 35 of the Retirement Benefits Act, 1997, is amended by renumbering the existing provision as subsection (1) and inserting the following new subsections—

Amendment of section 35 of No. 3 of 1997.

(2) A trustee who fails to submit a copy of the actuarial report to the Chief Executive Officer by the due date specified in the regulations shall pay a penalty of one hundred thousand shillings.

(3) Where the report remains unsubmitted, the trustee, in addition to the penalty specified under subsection (2), shall pay a further penalty of one thousand shillings for each day or part thereof during which the report remains unsubmitted.

38. The Second Schedule to the Insolvency Act, 2015, is amended in paragraph 3 (1) by inserting the following new item immediately after item (g)—

Amendment of Second Schedule to No. 18 of 2015.

- (h) all amounts that are held on behalf of the Kenya Revenue Authority by a person licensed under the Banking Act who has been appointed as an

No. 8

agent for revenue banking services by the Commissioner at the point of receivership or liquidation of the bank or institution.