Approved for tabling.
SNA
22/6/2021

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

(FIFTH SESSION)

NA. L&P.2021/COMM (026) **June 22, 2021**

PAPER LAID

Hon. Speaker, I beg to lay the following Paper on the Table of the House, today **Tuesday, June 22, 2021 (Afternoon Sitting): -**

REPORT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING ON ITS CONSIDERATION OF THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2021) (VOLUME 1)

MEMORANDA FROM STAKEHOLDERS ON THE BILL (VOLUME II)

(CHAIRPERSON, COMMITTEE ON FINANCE & NATIONAL PLANNING)

Copies to: -
The Speaker
Deputy Speaker
The Leader of the Majority Party
The Leader of the Minority Party
The Clerk
Hansard Editor
Hansard Reporters
The Press

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 22 JUN 2021 DAY TUESDAY
TABLED BY: CHAIR, DC-FINANCE & N. PLANNING
CLERK HTO

Approved for tabling.
SNA
22/6/2021

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE:	22 JUN 2021	DAY. TUESDAY
TABLED BY:	CHAIR, DC-FINANCE & NATIONAL PLANNING	
CLERK-AT THE-TABLE:	HTO	

REPORT ON THE CONSIDERATION OF THE FINANCE BILL, 2021

(VOLUME I)

CLERKS CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

JUNE, 2021

3.22 THE EAST AFRICAN TAX AND GOVERNANCE NETWORK (EATGN), NATIONAL TAXPAYERS ASSOCIATION (NTA), THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) AND TAX JUSTICE NETWORK AFRICA (TJNA)

The above stakeholders under the *Okoa Uchumi Coalition* submitted a joint memorandum. They also made oral presentation to the Committee on 3rd June 2021. They submitted THAT—

209. Clause 2 be amended by deleting paragraphs (f)(i)(ii) and (g)(ii) because the provisions grant the Commissioner unrestrained powers to determine control will increase uncertainty amongst taxpayers.

Committee's Observation

The Committee observed that the deletion of paragraphs (f), (g) and (h) will negate the intention of dealing with tax avoidance by companies engaging in transfer pricing. The Committee however observed that before the Commissioner General renders his or her opinion that a certain dealing in either supply or sale constitutes control, he or she will have to do so having done a thorough assessment.

210. Clause 7 be amended by including the following new provision; "*This paragraph shall not apply to micro small and medium size enterprise.*" This is because the new proposal seeks to limit the amount of interest expense allowed as a deduction to 30% of the Earnings Before Interest, Taxes, Depreciation and Amortization (EBITD).

Committee's Observation

The Committee agreed to exempt micro small and medium size enterprise from the new Provisions of thin capitalisation. This is in order to allow for growth of the segment and also improve uptake of credit guarantee scheme. In addition, majority of business owners under MSMEs are financed through credit hence it's necessary to continue allowing the rule on debt-to-equity ratios. In view of that, the Committee supported the proposal to exempt MSMEs.

Committee's Observation

211. The proposed sub-clause 22(b) be deleted as it will increase the price of bread, thus negatively impacting numerous households, including the poor and informal sector workers.

Committee's Observation

The Committee agreed with the view raised above in order to maintain the price of ordinary bread at relatively lower levels since it's a basic commodity for the poor and informal sector people.

212. Opposed the proposal under sub-clause 25(a)(iv) seeking to amend the rate of excise duty on imported motorcycles from a fixed amount of KSh. 11,608 per unit to 15% of the excisable value, noting that the change would result to increased government revenues from high value motorcycles but will however potentially impact the *bodaboda* industry.

Committee's Observation

The Committee observed that the proposal in the Bill seeks to revise excise duty on imported motorcycles from a fixed amount of KSh. 11,608 per unit to 15% of the excisable value. The proposal will increase the price of motorcycles and therefore negatively affect the *bodaboda* industry. In view of that the Committee rejected the proposed proposal in the Finance Bill, 2021.

213. They were opposed to the provision in clause 29 which seeks to extend the statute of limitation from 5 to 7 years as this would increase the cost of administration where a business is compelled to incur costs for acquisition of storage facilities due to the high volume of transactions requiring safe custody.

Committee's Observation

The Committee agreed to delete the proposed amendment as it is in the Bill as it will increase inefficiency in tax audit.

214. Clause 10 be amended by deleting the words "*six to twelve months*" and replacing the words "*three months*" in the definition of graduate apprentice in paragraph 2 of the Income Tax Act (Set-Off Tax Rebate for Graduate Apprenticeships) 2016. Further, delete the words "*six to twelve months*" in paragraph 5(i) of the same Act. Delete the words "*ten employees*" and insert the words "*two employees*" and the words "*six to twelve months*" and insert the words "*three months*" in section 39B(1) of the Income Tax Act Cap 470. This would have a direct impact on the increase in employment rates.

Committee's Observation

The Committee observed that the above proposal to reduce the training period to three months will negate the objectives of the provision because 3 months is not sufficient time for a graduate to gain the needed skills. In addition, in order to ensure that the tax rebates are enjoyed by MSMEs, the Committee agreed to reduce the number of graduates from ten to five.

215. The proposal relating to the amendment to the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 be amended by inserting a proviso to include the following provision in Part A: "*Such other goods the exemption of which was determined to be in the public interest or promotion of investment prior to 30th June, 2020*". The proposed transitional provisions allow for IDF and RDL exemption on supplies relating to contracts executed prior to 30th June, 2020 for the approved duration of the contracts.

Committee's Observation

The proposal will lead to loss of revenue and therefore it was rejected.

216. They were opposed to the proposed amendment to the First Schedule to the Excise Duty Act on the deletion of the word "*imported*" appearing in the description "*imported sugar confectionary of tariff heading 17.04*", recommending that a cost benefit analysis be carried out before implementation of the same.

Committee's Observation

The Committee observed that the proposal to impose excise duty on locally manufactured sugar confectionery and white chocolate will hurt local manufacturers. The Committee therefore proposed to raise excise duty to Shs.35 per kg. The increase in excise duty is expected to increase and continue protecting local manufacturers.

217. Section 34 of the VAT Act be amended by deleting the words, "*The Cabinet Secretaries may, in regulations, provide for the registration of a group of companies as one registered person for the purposes of the Act*" and replacing with the words "*A group of companies may be registered as one person for the purposes of the Act*". The former interpretation would increase compliance costs for VAT groups and reduce the ease of doing business.

Committee's Observation

The Committee agreed with the proposal to delete Clause 20 as it was removing the role of Parliament in the scrutiny of subsidiary legislation contrary to Statutory Instruments Act.

ADDITIONAL ISSUES:

DOUBLE TAXATION AGREEMENTS

CLAUSE 11

412. Delete the proposed clause 11 and substitute therefor the following new clauses –

11. The Income Tax Act is amended by deleting section 41 and substituting therefor the following new section–

41. (1) Every special arrangement for relief from double taxation made with the Government of any country outside of the Republic of Kenya with a view of affording relief from double taxation in relation to income tax and any taxes of similar character imposed by the laws of that country shall, subject to sub-section (2) but notwithstanding any other provision to the contrary in this Act or in any other written law, have effect in relation to income tax, and every such agreement shall be subject to the provisions of the Treaty Making and Ratification Act, 2012.

(2) Subject to sub-section (3), where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by a person or persons who are not residents of that other contracting state for the purposes of the agreement.

(3) Sub-section (2) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state.

(4) In this section, the terms "*person*" and "*underlying ownership*" have the meaning assigned to them in the Ninth Schedule.

11A. The Income Tax Act is amended in section 41A by deleting the words "*specified in the notice being arrangements*".

Justification

In addition to the amendment proposed in the Bill to delete the words "*an individual or individuals*" and replace with "*a person or persons*", this amendment is made to provide that Double taxation agreements/arrangements should be considered in accordance with the Treaty making and Ratification Act and not the Statutory Instruments Act. This is in line with the Committee's recommendations last year during consideration of the Mauritius DTA.

3.29 NATIONAL TAXPAYERS ASSOCIATION

244. The National Taxpayers Association submitted their memorandum which supported the proposals under clause 25. They proposed a 15% increase in excise tax specifically for cigarettes and adoption of uniform specific excise tax structure. As a result, they noted that the government would be able to raise revenue from tobacco products to fund its development programmes as well as reducing the use of tobacco products thus improving public health.