The Institute of Certified Public Accountants of Kenya

ICPAK SUBMISSIONS

ON

THE FISCAL BUDGET FOR THE FINANCIAL YEAR 2018-2019

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1. INCOME TAX PROPOSALS

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1.	**Revise PAYE threshold to take into account inflationary changes** Although the PAYE bands have been revised recently, they still bring to the tax net persons whose income is very low and can hardly afford to meet the rising cost of living.	Increase the minimum PAYE threshold to KES 18,000 per month by amending the Third Schedule as follows: • HEAD A: by increasing the personal relief to KES 24,000 • Introduce a proviso under paragraph 1 of Head A as follows: "provided that the amount of personal relief shall be adjusted every 3 year by 10%	• Cushion low income earners • Adjust personal relief in line with inflationary changes • Increase disposable income to spur consumption which will increase consumption taxes
2.	**Exemption of Groups undertaking Restructuring** • According to Schedule 8 Para 13 – Exemption from CGT is considered for groups undertaking restructuring and should be in public interest. • The growing complexity of business structures attracts inward and outward investments restructuring. However, in the case where there is internal reorganization CGT should be exempted.	• The aim of CGT is to tax realized gains on sale, the Eight Schedule therefore needs to be amended to allow for internal reorganization where the ultimate ownership of the group does not change. • For consistent application, the exemption should mirror the provisions of Section 96 of the Stamp Duty Act, which exempts transfers between associated companies from stamp duty. • The Stamp Duty Act limits the exemption of	• Define public Interest • Internally referral and external

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		transfers between associated companies to transfers whose effect thereof is to convey or transfer a beneficial interest in property from one company with limited liability (hereinafter called the transferor) to another such company (hereinafter called the transferee); and that either— (i) one of such companies is beneficial owner of not less than ninety per centum of the issued share capital of the other company; or (ii) not less than ninety per centum of the issued share capital of each of the companies is in the beneficial ownership of a third company with limited liability.	
3.	**Mortgage interest relief from SACCOs and NSSF** Currently, Section 15 (3)(b) of the Income Tax Act provides for mortgage interest relief of KShs. 300,000 per annum from the following institutions: a) Banks or financial institutions licensed under the Banking Act b) An insurance company licensed under the Insurance Act c) A building society registered under the Building Societies Act d) The National Housing Corporation established under the Housing Act. The housing landscape has changed and there are	Amend Section 15(3)(b) as follows ***The amount of interest not exceeding four hundred and eighty thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first seven financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:*** • Amend the Fourth Schedule as follows: By adding the following as number 6, and 7 in the listing of financial institutions:	• In line with the Big 4 Agenda: affordable housing • Equity for financial sector players offering similar products – mortgage finance • Encourage uptake of mortgages by Aligning the mortgage interest

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	other players such as SACCOs, MFIs and NSSF that are providing mortgage facilities. These should be included in the schedule to ensure equity and expand mortgage financing options to consumers	*The National Social Security Fund established under the NSSF Act* *A Microfinance Institution licensed under the Microfinance Act*	relief to the inflationary pressures;
4.	**Increase the Home Ownership Saving Plan Deduction** Section 22C (2) of the Income Tax Act provides for Home Ownership Savings Plan ("HOSP) deduction of KShs. 4,000 per month or KShs. 48,000 per year. The benefit is extended for a period of 10 years. Effectively, the total deductions allowable over the 10 year period would be KShs. 480,000. Noting that the above provision is a tax incentive intended to entice Kenyans to own homes, this values do not reflect the reality in the current housing market. As such, there has been limited uptake of this scheme. While the second pillar of the jubilee manifesto, outlines the party's committed to provide decent housing to all, we further note that there has been limited policy initiatives to facilitate the delivery of this promise. The enhancement of the deductible HOSP benefit would go a long way in enhancing the uptake of home ownership schemes and thereby directly contributing to the delivery of "decent housing to	Amending Section 22C (2) of the Income Tax Act to increase the allowable deductions to **Ksh. 480,000** per annum. This amount is in line with the Mortgage Interest Relief provided in Sec 15(3)(b) *"Notwithstanding the provisions of section 16(2)(d), deduction shall be allowed in respect of the funds of a depositor under a registered home ownership saving plan in the qualifying year and the subsequent nine years of income, subject to a maximum of **four hundred and eighty hundred thousand shillings** per year of income or twenty-five thousand shillings in respect to each month."*	• In line with Big 4 Agenda to encourage saving for home ownership • Aligning the HOSP deduction with the mortgage interest relief to encourage more people to own houses. • The savings interest provided in the Banking Amendment Act 2016 will also encourage Kenyans to save under this scheme.

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	all".		
5.	**Increase the per diem threshold from the current KShs. 2,000 per day to amounts that are reflective of the cost of living in various places.** Section 5(2)(a)(iii) provides that *"Notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the first two thousand shillings per day expended by him for the duration of that period shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits."* KShs. 2,000 per day is not reflective of the cost of living in various cities. Within the country, the cost of accommodation per day could be as high as KShs. 10,000. This increases significantly when one travels outside the country	The Commissioner should be empowered to prescribe the per diem rates on a regular basis and the prescribed rates should mirror the Government approved daily per diem rates (Daily Subsistence Allowance) that differ from location to location. This can be achieved by replacing the current section 5(2)(a)(iii) with the following: *"Notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the amounts as prescribed by the Commissioner shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits."* To ensure neutrality across board, have the government rates as the base and eventually, have annual inflationary adjustments just like in the Excise Duty Act.	• The daily per diem rates will be reflective of the current cost of living in various locations. • Reduced tax leakages
6.	**Compensating tax** Section 7A of the Income Tax Act provides for compensating tax. This arises where a company resident in Kenya distributes dividends from untaxed	We propose introduction of Section 7A (8) with the following wording: *"where dividends have been declared out of gains taxed under sec 3(2) f, then compensating tax shall*	• Align the law with the current tax legislation and prevent double taxation and reduce

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	income. Compensating tax was introduced to act as a safeguard against companies making perpetual losses and still distribute dividends. While Section 34 (j) sets the CGT rate at 5% as a final tax, there have has been no attempts to amend Section 7A of the Income Tax Act dealing with Dividend Tax Account and Compensating Tax. This implies that where a company (as opposed to an individual) sells a capital asset and pays capital gains tax at a rate of 5%, it will still be required to pay an additional 25% compensating tax when it declares such a gain as a dividend Furthermore, where a company benefits from investment deductions, the benefit is clawed back through Compensating Tax upon distribution of dividends. This also amounts to double taxation since investment deductions are timing differences – being accelerated capital allowances.	*not apply."* We propose introduction of the following proviso to Section 7A (5) as follows: *"provided that in a year of income where a company has benefitted from deductions under Paragraph 24 of the Second Schedule to the Act, any compensating tax payable shall be reduced by 30% of the deductions claimed in that year of income*	claw-backs on incentives.
7.	Limitation of Tax Treaty Benefits Section 41(5) of the Income Tax Act contains a provision limiting tax treaty benefits to the following: a) Residents of the other contracting state if at least 50% of the underlying ownership of the resident person is held by individuals who are	We propose deletion of the current section 41(5) and (6) of the Income Tax Act and replacement with the following *Except for a public listed company, where an international agreement concluded by the Government of Kenya with another contracting state*	This will provide the needed balance between providing certainty to foreign investors and protecting the tax base.

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	residents of that contracting state. b) Residents listed on the stock exchange in that other contracting state The objective of the limitation of tax treaty benefit is to deny treaty benefits to a company whose "underlying ownership" is mostly in a third country. We further recognize that Kenya has joined the **BEPS inclusive framework** that brings together over 100 jurisdictions to collaborate on the implementation of the OECD/ G20 Base Erosion and Profit Shifting (BEPS) Package. Action 6 of the OECD/G20 Project identifies treaty abuse, and in particular treaty shopping, as one of the most important sources of BEPS concerns. To safeguard the Country's revenue bases and provide assurance to investors, we propose the incorporation of the BEPS anti-abuse rule based on the principal purposes of transactions or arrangements, known as the principal purposes test or "PPT" rule	*provides that income derived by a person resident in such other contracting state from sources in Kenya is exempt from Kenyan tax or is subject to a reduction in the rate of Kenyan tax, the benefit of that exemption or reduction shall not be available to any person who –* *a. Receives the income in a capacity which is other than that of a beneficial owner, within the meaning accorded to that term by the relevant international agreement, and who does not have full and unrestricted ability to enjoy that income and to determine its future uses; and* We further propose the inclusion of principle purpose test through the following clause; *"a credit under this section shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit"*	
8.	Harmonizing tax legislation with administrative developments – iTax and Tax Procedures Act: • With the administrative requirement to pay tax and file returns on I-Tax, the provisions of Paragraph 11 of the Income Tax (Withholding Tax) Rules, 2001 – the requirement to submit	• Delete paragraph 11 of the Income Tax (Withholding Tax) Rules, 2001. • Amend Section 84(2) (b) of the Income Tax Act by introducing the following proviso: *provided that the penalty specified under Rule 14A of the Withholding Tax Rules shall*	To ensure consistency and certainty of the law

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	annual withholding tax return – has become unnecessary. • Rule 14A of The Income Tax Act (Withholding Tax) Rules of 2001 provides specific penalties for non-compliance with the withholding tax requirement. However, the Tax Procedures Act provide for other general penalties, such as the Tax Shortfall leading to confusion regarding the applicable penalties.	*apply in case the shortfall relates to Withholding Tax*	
9.	**Increasing the tax-deductible threshold for contributions to pension Schemes** A recent World Bank report has noted that Kenya's savings rates compared to the country's disposable income has remained at below 15 per cent over the past decade and are indeed declining.	Amend Section 22A to increase the tax-deductible threshold for contributions to ***four hundred and eighty thousand***.	Will increase retirement savings; avail additional funds for investment in government securities and improve security for senior citizens.
10.	**Deemed interest** Deemed interest provisions were introduced as an anti-avoidance measure under Section 16 of the Income Tax Act. However, the impact of these provisions has been to punish investors who fund businesses at the start-up phase by charging tax on notional income and making an investor incur additional cost of funding the operations of an entity in Kenya, i.e. contribute capital and pay tax on debt funding. This makes Kenya uncompetitive especially for certain sectors which are capital intensive such as oil and gas,	Delete and do away with the Deemed Interest provisions as follows: • by deleting the words ***"or an amount of deemed interest"*** *appearing immediately after Section 16(2)(j)(ii);* • by deleting the definition of deemed interest appearing under Section 16(3); • by deleting the words ***"and deemed interest"*** *appearing in Section 35(1)(e)*	

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	manufacturing entities and financial sector – such as microfinance. Furthermore, with Transfer Pricing legislation in place, there is adequate mechanism for the KRA that any non-arm's length arrangements can be challenged and adjustments made to income of the Kenyan entity to ensure fair share of taxes payable in Kenya are obtained.		
11.	**Transfer Pricing** Although Kenya has Transfer Pricing Rules, several gaps and challenges have been experienced in practice and it is necessary to update the Rules to take into account the following best practices and opportunities. a. Multinationals operating in Eastern Africa are increasingly setting up regional offices in Kenya to provide services to the group entities on a regional scale. The cross-border transactions are subject to transfer pricing considerations to ensure that the expenses charged to the related parties in different countries are at arm's length. Many entities set up service hubs in countries that are competitive and/or have educated/affordable labour. To ensure Kenya becomes a hub for shared services or outsourcing, it is necessary to put in place a supportive tax policy on regional offices. We	We propose the following changes/additions to the Transfer Pricing Rules: • Incorporate a simplified approach on low value adding intragroup services as per the changes in the Organisation for Economic Cooperation and Development ("OECD") TP Guideline under the Base Erosion and Profit Sharing (BEPS) project. The guidance provides for a simplified approach to document the low value adding intra group services which reduces the burden taxpayers face in preparing transfer pricing documentation. • The Rules should adopt best practice safe harbor provisions such as a mark-up of between 0-5% mark-up for low value adding services as recommended by the OECD and ATAF.	• Promote Kenya as a shared services/ outsourcing/ regional headquarters hub • Reduce compliance burden for taxpayers • Promote certainty in tax legislation

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	propose a simplification of the TP requirements for regional services entities to encourage set-up of regional service centres in Kenya b. Our current Transfer Pricing Rules do not have provisions for Advance Pricing Agreements (APA). APA are necessary to reduce transfer pricing disputes and encourage taxpayer compliance. c. The Kenyan TP rules do not address the relation between TP and customs duties. As a result, even where taxpayers set transaction price in compliance with TP rules, they still face a challenge and a price adjustment from the customs authorities employing a different pricing methodology. For example, when a taxpayer imports goods from an overseas related party, the Income Tax team would review the transaction to ensure the purchase value is not overstated that it could increase the cost of goods and reduce the taxable income from a corporate income tax perspective. Conversely, the customs authority would question whether the transaction value is understated and thereby result in underpayment of customs duties. Due to lack of harmony between the taxing rules, taxpayers incur double taxation.	• Introduce provisions for APA and mutual agreement procedure under the Kenyan Transfer Pricing Rules similar to what has been adopted by other regional authorities. The APA guideline should stipulate a clear process, starting from pre-filing discussions, filing of a proposal, its evaluation by the tax authorities, the discussion and conclusion of the mutual agreement, the implementation of that mutual agreement and finally the monitoring of the agreement and possible renewal • In line with Guidelines provided by the World Customs Organisation, the TP Rules and the EACCMA should be amended to provide guidance on setting prices that will satisfy the requirements of both corporate and Customs authorities. The EACCMA should provide for customs authorities to consider the transfer pricing policy in evaluation the customs value of transactions.	

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12.	NPLs in financial services sector Section 15 of the Income Tax Act allows a deduction for bad and doubtful debts and empowers the Commissioner to issue guidelines on the deductibility of bad debts. The Commissioner issued Guidelines which essentially focus on bad debts – i.e. debts that are proved to have become uncollectible. However, the KRA has applied this standard to provisions for doubtful debts resulting into increased disputes between the KRA and financial institutions on the taxation of provisions for bad debts. For financial institutions, their main business is lending and thus they are exposed to significant non-performing loans (NPL's) especially during slow economic times. Thus, provisions for NPLs make up a huge cost for financial institutions. In addition, Banks are highly regulated by the Central Bank of Kenya ("CBK") and there are guidelines on what provisions should be made and how the same should be computed under the CBK prudential guidelines. Furthermore IFRS 9 has introduced fundamental changes in terms of provisions for NPLs. The new Standard requires entities to account for expected credit losses from when financial instruments are first recognized and it lowers the threshold for recognition of full lifetime expected losses. The above guidelines provide a conflicting treatment of bad debts for tax and accounting purposes in the	We therefore propose that the guidelines on deductibility of bad debts be based on IFRS 9 for the financial sector comprising licensed banks and micro-finance institutions.	This will ensure certainty of the tax legislation and also reduce cost of tax compliance/administration.

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	financial sector hence a need to bring congruence.		
13.	**Mining, Oil and Gas (Extractives) Sector** The taxes and incentives governing a country's extractive sector is a key factor determining local and foreign companies' investment in exploration and exploitation projects. As a global industry, the extractives sector investors expect taxation regime to be internationally competitive in order to provide a basis for commercial viability. From the perspective of the host country, the revenues that it hopes to generate must be maximized for the benefit of the country. The taxation mechanism designed should thus be a balance of interests for the country with those of the exploration companies.	We propose the following: ▪ Harmonization of the provisions of the mining legislation, the Income Tax Act together with the Ninth Schedule of the ITA for consistency and stability within the fiscal regime. ▪ Consider revising the Investment Deduction Allowance for the sector to 100% for both the pipeline and the petroleum depots. ▪ Consider reclassifying accommodation/meals/upkeep- in remote areas- that is currently treated as a taxable benefit. The provision of this services is essential for companies to carry out operations in remote areas. ▪ Geothermal resources are currently classified as solid minerals. We recommend that the definition of minerals be based on the Mining Act.	
14.	**Equity in treatment of financial institutions** Commercial Banks and MFI are involved in similar business which is the provision of financial services to customers. The financial services sector is a highly capital-intensive business which requires funding through loans and customer deposits. MFI's are disadvantaged since they are currently subjected to thin capitalisation rules and the interest income they earn is also subject to withholding tax. The interest	We propose the following amendments: • Section 2 by including the following under the definition of qualifying interest: (i) A microfinance institution licensed under the Microfinance Act • by replacing the words "a bank or financial institution licensed under the Banking Act" *appearing immediately after Section 16(2)(j)(ii)*_with the following words ***"a***	This will ensure equity and promote growth in the financial services sector and financial inclusivity

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	paid to their depositors is also not classified as qualifying interest. MFI's should get similar tax treatment as Financial institutions licensed under the Banking ACT	*financial institution specified in the Fourth Schedule"*; • by deleting the definition of deemed interest appearing under Section 16(3); by deleting the words ***"and deemed interest"*** *appearing in Section*	
15.	Capital Markets Fiscal Incentives for Green Bonds The Constitution recognizes clean and healthy environment as a basic human right and provides for sustainable exploitation, utilization, management and conservation of the environment and natural resources. On the other hand, Kenya Vision 2030 aims at achieving an annual growth of 10 percent per annum and transforming Kenya into a globally competitive and prosperous country with a high quality of life by 2030. The Government is developing a green economy strategy to support development efforts towards addressing key challenges such as poverty, unemployment, inequality, clean water, environmental degradation, climate change and variability, infrastructure gaps and food insecurity. The Capital Market will play a key role in mobilizing international and domestic finance to drive this national green strategy.	• Insert the following definition into Part I, Section 2 of the Capital Markets Act: "Green Bond" means a debt security listed on a securities exchange and independently certified by a recognized verifier. The instrument can be issued either by the National Government, County Government or a Company to enable capital-raising and investment for new and existing projects with environmental and social benefits. • "Social Impact Bond" means a debt security issued either by the National Government, County Government or a Company to enable capital-raising and investment for new and existing projects with environmental and social benefits." • "Verifier" means an independent person approved by the Climate Standards Board. • Amend Section 51 in Part I of the First Schedule of the Income Tax Act to read as follows: "Interest income accruing from all listed	

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		bonds, notes or other similar securities used to raise funds for infrastructure, green economy and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years." • Insert the following definition into Part I, Section 2 (1) of the Income Tax Act: "Green Economy" is one in which the production of goods (and services), is optimized to ensure minimum negative impact on the environment and maximum socio-economic benefits for the population.	
ENERY AND RESOURCES			
1.	Withholding Tax on Natural Resources Income (NRI) was introduced through the Finance Act,2014. NRI is defined as 'an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living on non-living resource from the land or sea an amount calculated in whole or in part by reference to the quantity or value of minerals or of living or non-living resource taken from the land or sea'. WHT on NRI is chargeable at the rate of 5% & 20% for residents & non-residents respectively. From the wording of legislation, it is unclear what type of transactions NRI is designed to tax, and could be construed to refer to sale of hydrocarbons and/or transfer of interest in a licence.	Amend the provisions on NRI to make it clear that NRI only applies to overriding royalties and not to transfer of interest and sale of hydrocarbon	The current definition results in uncertainty for potential investors and therefore discourages transactions which are critical for the evolution of the industry.

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2.	CGT on share disposals- Transfers of PSC interests including share disposals is a common practice in the upstream O&G sector in order to attract appropriate foreign investment & skill set required at the various stages of the upstream oil and gas life cycle. The legislation as currently framed makes such transfers of ownership potentially not commercially viable and which will have far reaching impact on the growth of the industry: CGT is imposed on the gains at the rate of 30%/37.5% compared to the 5% for other sectors; There is no re-investment relief for proceeds that are re-invested in the country's petroleum sector; The cost base for share disposals for CGT purposes is also not clearly defined, and appears to restrict allowable costs to acquisition costs only;	▪ Introduce reinvestment relief granted where funds earned from farm downs and share disposals are reinvested in the country's upstream petroleum sector ▪ Retain schedule 9 provisions as is ▪ The tax rate should be comparable to other industries for similar transactions. 30%/37.5% rate makes most transactions potentially not commercial and therefore very difficult to close. ▪ Amend definition of cost base for share disposals to ensure all appropriate costs (namely acquisition costs, post-acquisition costs, incidental costs of acquisition and disposal) are captured in line with other industries	This will encourage transactions which will increase investment in the industry.
3.	Deemed interest; most form of debt financing to project SPVs within the oil and gas sector is from related non-residents. In other instances, the debt financing is guaranteed by group companies. Due to the fact that the project is not revenue generating for the pre-production stages, it becomes difficult for the project companies to pay withholding tax on the interest due from the debt financing. As a result, the parties might opt to give an interest free loan. In such a case, the deemed interest provisions kick in and withholding tax being a cost to the project has an impact on project costs.	SPVs should be exempt from deemed interest provisions during pre-production phase.	This should ease the cost of project SPVs during the pre-production phase and hence increase investments in the sector.

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CONSUMER INDUSTRY			
4.	The Finance Act 2014 introduced an amendment under Section 41 (5) of the Income Tax Act to restrict the application of a double tax treaty. Under the amendment, where a double tax treaty provides that income derived from Kenya is exempt or excluded from tax, or the application of the treaty results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction should only be available to a person, being a body corporate, if and only if the corporate: o Is listed on the stock exchange of the treaty partner state; or o Where the same is not listed, not less than 50% of its shareholding is held by citizens of the treaty partner state. This limitation renders most treaties useless as it is very hard for businesses to meet this requirement. On the other hand, given that international treaty provisions usually override domestic law provisions, this provision appears to be redundant as a treaty provision would still prevail notwithstanding the limitation under Section 41 (5) of the ITA.	The Income Tax Act should be amended by deleting Section 41 (5).	• An amendment will be beneficial to Kenya as it will prevent disputes between Kenya and partner states that have treaties with Kenya. • An amendment would also make Kenya attractive to investments and it will have removed a bottleneck that hinders companies investing in Kenya.
5.	Under section 16 (3) (2) (j) of the ITA, a company is considered thinly capitalized if it is under the control of a non-resident and the debt to equity ratio exceed 3:1. The implications include restriction of interest expense deduction and deferment of realized foreign exchange losses. Due to substantial capital investments, the manufacturing and energy sectors	▪ Consider broadening the thin capitalization thresholds to ensure that Kenya remain attractive to foreign investors bringing in capital for mega projects and or manufacturing. ▪ Exempt start-ups for the first five years from thin capitalization provisions	This will help in fostering industrialization in Kenya in line with the Big-Four Agenda. It will further enhance equity and ease the

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	heavily rely on both local and overseas debt financing resulting into huge debts. Most of the companies in these sectors are non-residents investing into Kenya and therefore get caught by thin capitalization thresholds in Kenya.		punitive effects of new investments.
6.	The Finance Act 2016 amended the Income Tax Act by deleting Section 35 (6) – which empowered the Commissioner to impose a penalty for failure to comply with the withholding tax requirement. However, Rule 14A of The Income Tax Act (Withholding Tax) Rules of 2001 – which relied on Section 35 (6) - were not amended despite the deletion of Section 35 (6). This leaves taxpayers with varied interpretations as to what penalty apply in the event of non-compliance with the withholding tax requirement. We have noted instances where other KRA officers apply the 20% shortfall penalty as stipulated under the Tax Procedures Act while others still apply the 10% penalty capped to KES 1M per the withholding tax rules. There is also a school of thought which argues that with the deletion of Section 35 (6), there is currently no penalty for withholding tax.	▪ Amended ITA to clarify what penalty applies for non-compliance with the withholding tax requirement. We propose that: ▪ The penalty applicable shall be as prescribed under the rules. ▪ Retain the 10% penalty capped to a maximum of ten million. ▪ Reinstate Section 35(6) under the Tax Procedure Act for withholding tax	This will ensure uniformity in the application of the penalty by taxpayers and KRA
7.	Sport betting While the intentions of increasing the rates were to deal with the negative social effect on the youth, the intended effect has not been realized. The current rates are prohibitive and have led to a dip in the government revenue, re-emergence of background	▪ Extend Tax incentives for sport betting companies who spend 40% of their incomes to sponsor sporting activities. ▪ Sports tourism and sport development be exempted from corporation tax. ▪ Provide that 10-15% of revenue generated be utilized specifically in promoting social services	This will spur sports, talent development and hence increase employment opportunities for the youth; which would in

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	betting, rise on social ills, drugs and pyramid schemes. There is need for a moderate rate	and sports development	turn
FINANCIAL SERVICE INDUSTRY			
8.	Commercial Banks and MFI are involved in similar business which is the provision of financial services to customers. The financial services sector is a highly capital-intensive business which requires funding through loans and customer deposits. MFI's are disadvantaged since that are currently subjected to Thin capitalization and the interest income is also subject to withholding tax. The interest paid is also not classified as qualifying interest. MFI's should get similar tax treatment as Financial institutions licensed under the Banking ACT	Inclusion of MFI's in the Fourth Schedule of the ITA, Section 2 under definition of qualifying interest and section 16 on thin capitalization.	The MFI's will be exempted from thin capitalization similar to other financial institutions licensed under the Banking Act. In addition, Interest income for the MFI's will be exempted from withholding tax and the interest paid by the MFI's will be classified as qualifying interest.
9.	Similar to financial institutions, cooperative societies provide financial services to their customers the main objective being cheaper lending. Unlike for financial institution, currently there is no mortgage relief on loans from cooperative societies.	We propose that Section 15(3)(b) and the 4th schedule be amended to include cooperative societies so that home loans given by these institutions qualify for mortgage relief.	Currently, interest paid to cooperative societies in respect of borrowings to finance home ownership does not qualify for mortgage relief unlike those for Banks, Insurance companies, Building societies and the statutory National Housing Corporation.

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			The change will accord both the high and low income borrowers similar tax incentives.
10.	CGT on sale of collateral: KRA has been using paragraph 5(2) of the ITA to demand the Banks to pay CGT when selling collateral yet they are not property owners	The eighth schedule of the ITA, paragraph 5(2) should be clarified or deleted to avoid the current stalemate. The loanee is the transferor of the collateral and it is the responsibility of such loanee to account for CGT and not the bank. This is more so as it is the loanee who would be better placed to determine the capital gain to be subjected to CGT since he would have the information required to ascertain the adjusted cost	The proposed change to paragraph 5(2) of the Eighth Schedule would remove the ambiguity being encountered currently
11.	Taxation of forex for Banks- The ITA requires unrealized forex gain NOT to be taxed or the loss to be disallowed until realized. It has been practically impossible to determine realized or unrealized forex for Banks as this is a daily line of business with uncountable transactions per day. In addition, currently, unrealized forex differences relating to trading transactions are treated as unrealized in the year they arise and as realized in the following year. Unfortunately, this tax treatment is not legislated for.	Amend Section 4(A) of the ITA with the following provision: which " forex for financial institutions whether realised or unrealised shall be taxed /allowed. This section should also be amended to make a provision in respect of forex on trading transactions to be treated as realised in the following year.	To simply the tax regime as the computations on the same tend to get complex. This will further lessen tax controversies for banks in relation to forex gains and losses and help legalise the current practice.
12.	There has been increased disputes between the KRA and the banks on the taxation of provisions for bad debts. For Banks, their main business is lending making this expense a huge cost equated to cost of sales for other companies. In addition, the Banks are highly regulated by the CBK and there are guidelines	The ITA should be very clear on how the allowable provisions for Banks should be determined especially in view of the newly implemented IFRS 9. The KRA and CBK should align the guidelines on allowability of the provisions.	To reduce tax disputes for Banks in relation to provisions for bad and doubtful debts

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	on what provisions should be made and how the same should be computed under the CBK prudential guidelines. The KRA and the CBK being two governing bodies should at the very least synchronize their guidelines. IFRS 9 has in addition to the above introduced new provisions requirements with an intention to make provisions on 12-month or lifetime Expected Credit Loss depending on credit quality of the asset including fully performing loans.		
	Employee & Expatriate Taxes		
13.	PAYE threshold With the rising cost of living, low income earners increasingly have less income to meet their day to day expenses. There is need to align the threshold with statistical data provided by the Kenya National Bureau of Statistics.	Increase the PAYE threshold. Currently, income below KES 12,290 is not subject to PAYE - following changes enacted in the Finance Bill 2017. For the benefit of lower income earners, it is recommended that the taxable floor be raised even higher - to KES 15,000/month (KES 180,000/year) inflationary adjustments	Increasing the taxable threshold will seek to mitigate this, by freeing up more cash as earned by low income earners by reducing their annual tax burden.
14.	The Compensating Tax has not served any purpose nor realized any significant revenues. It is seen as a deterrent to new investments.	This provision should be scrapped.	To increase investments within the country
15.	Section 55 of the Income Tax Act indicates that records ought to be retained for up to 10 years while the Tax Procedure Act Section 23 indicates 5years, one Act contradict the other	Review and align the Income Tax Act Section 55 and Tax Procedure Act Section 23	There is contradiction between the Acts which brings confusion to the Tax payers on which one to follow.
16.	Multinationals operating in Eastern Africa are increasingly setting up regional offices in Kenya to provide services to the group entities on a regional	The transfer pricing requirement for regional services in Kenya can be simplified as follows: • Zero mark-up should be applied on recharges	This would make Kenya a competitive destination for regional

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	scale. These regional offices are set up to provide services to related parties both within Kenya as well as exporting some of the services to their related parties in other countries. The latter scenario results in cross border transactions that are subject to transfer pricing considerations to ensure that the expenses charged to the related parties in different countries are at arm's length. For example, for compliance with the TP regulations in Kenya, the service fees charged to related parties should include a mark-up and detailed TP documentation are maintained to support such transactions. Despite the efforts to turn Kenya into a regional business hub, the country is still less competitive than key competitors in Africa, such as Mauritius and South Africa. Some factors affecting Kenya's competitiveness include high cost of services charges due to high cost labour cost and lack of tax incentives for regional offices set-up in Kenya. Sound tax policy on regional offices would increase government revenue while at the same time supporting a favourable investment climate. We propose a simplification of the TP requirements for regional services entities to encourage set-up of regional service centres in Kenya.	made by regional offices: Usually activities of the regional offices support the organization but do not confer on it competitive advantage and as such have the characteristic low value adding services. • Simplify the transfer pricing requirements for regional office: This would be including minimal supporting documentation to justify the arm's length nature of the service fees charged by regional offices in order to minimise the overall cost of such offices. One approach would be to adopt a simplified approach on low value adding intragroup services as per the changes in the Organization for Economic Cooperation and Development ("OECD") TP Guideline under the Base Erosion and Profit Sharing (BEPS) project. The guidance provides for a simplified approach to document the low value adding intra group services which reduces the burden taxpayers face in preparing transfer pricing documentation and supporting the cost recharges	offices by reducing the burden to maintain extensive transfer pricing documents and thus reduce the overall cost of running regional office.
17.	An advance pricing agreement (APA) is an ahead-of-time agreement between a taxpayer and a tax authority on an appropriate transfer pricing methodology (TPM) for a set of transactions at issue	We propose that the TP rules adopt guidelines on advance pricing agreements and mutual agreement procedures in order to enhance tax compliance and provide certainty on the TP policies adopted by the	An effective APA would help eliminate tax risks for taxpayers who are obliged to comply with

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	over a fixed period of time. APA aim to prevent transfer pricing disputes from arising by determining criteria for applying the arm's length principle to transactions in advance of those transactions taking place.	companies operating in Kenya. The APA guideline should stipulate a clear process, starting from pre-filing discussions, filing of a proposal, its evaluation by the tax authorities, the discussion and conclusion of the mutual agreement, the implementation of that mutual agreement and finally the monitoring of the agreement and possible renewal.	the transfer pricing requirements. This would offer relief to taxpayers who have done their best to comply with the TP regulations in Kenya. Further, APA will reduce the cost of carrying out transfer pricing audits for the KRA and the taxpayers since transfer pricing audits are often time-consuming and expensive.
18.	Management services tend to dominate cross border transactions in Kenya and how these are analysed is adequately documented in the OECD Guidelines. The Kenyan transfer pricing rules 2006 (TP rules) do not provide any guidelines on the intra group services. A separate section on management services would be more useful to the tax payers. Supporting the benefit received on services can be a resource intensive exercise. It imposes a heavy administrative burden on the taxpayer to demonstrate that it has benefited from the services	We propose that the TP rules provide a detailed section on management services including the type of records/documents required by the KRA to demonstrate that an economic benefit has been derived from the services received by the local entity. The TP rules should provide that the extent of documentation should also be commensurate with the materiality of the charges. Further, a simplified approach on low value adding intragroup services can be adopted in line with the OECD & BEPS actions. For instance services can qualify for the application of the simplified	This will provide certainty to tax payer on the extent of documentation that should be maintained to support the management service charges.

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	on one hand, and on the KRA to prove taxpayer's compliance on other hand.	approach if the services: a) Are of a supportive nature b) Are not part of the core business of the multinational group i.e. the services do not create a profit earning; c) Do not require the use of unique and valuable intangibles and do not lead to the creation of unique and valuable intangibles For these services that qualify for the application of the simple approach, the arm's length charge should be calculated using a simplified approach as follows: a) Identification on an annual basis of the pooled costs associated with the services b)Allocation of the costs to the group members using a simple allocation key ü Preparation of simplified documentation to support the charge. ü 0-5% mark-up on low value adding services would reduce the compliance burden on tax payers that have to carry out benchmarking studies on low value adding services	
19.	The Kenyan TP rules do not address the relation between TP and customs duties, despite the inherent tension between TP and customs. The importance of transfer pricing in relation to customs valuation of	We propose that the TP rules provide guidance on setting prices that will satisfy the requirements of both corporate and Customs authorities. The TP rules should provide that the extent to which prices	This will provide certainty to tax payers on the acceptability of the transfer pricing

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	imported goods is often less obvious when developing TP policies for purposes of complying with the corporate tax laws. As a result, even where taxpayers set transaction price in compliance with TP rules, they still face a challenge and a price adjustment from the customs authorities employing a different pricing methodology. For example, when a taxpayer imports goods from an overseas related party, the transaction would be scrutinized whether its value is so high that it could increase the cost of goods and reduce the taxable income from a corporate income tax perspective. Conversely, the customs authority would examine whether the transaction value is too low and thereby result in underpayment of customs duties.	set using the arm's length principle would be acceptable to the customs authorities.	documentation
20.	Multinationals operating in Eastern Africa are increasingly setting up regional offices in Kenya to provide services to the group entities on a regional scale. These regional offices are set up to provide services to related parties both within Kenya as well as exporting some of the services to their related parties in other countries. The latter scenario results in cross border transactions that are subject to transfer pricing considerations to ensure that the expenses charged to the related parties in different countries are at arm's length. For example, for compliance with the TP regulations in Kenya, the service fees charged to related parties should include a mark-up and detailed TP documentation are maintained to support such transactions.	The transfer pricing requirement for regional services in Kenya can be simplified as follows: • Zero mark-up should be applied on recharges made by regional offices: Usually activities of the regional offices support the organization but do not confer on it competitive advantage and as such have the characteristic low value adding services. • Simplify the transfer pricing requirements for regional office: This would be including minimal supporting documentation to justify the arm's length nature of the service fees charged by regional offices in order to minimize the overall cost of such offices. One approach would be to adopt a simplified approach on low value adding intragroup services as per the changes in the	This would make Kenya a competitive destination for regional offices by reducing the burden to maintain extensive transfer pricing documents and thus reduce the overall cost of running regional office.

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	Despite the efforts to turn Kenya into a regional business hub, the country is still less competitive than key competitors in Africa, such as Mauritius and South Africa. Some factors affecting Kenya's competitiveness include high cost of services charges due to high cost labour cost and lack of tax incentives for regional offices set-up in Kenya. Sound tax policy on regional offices would increase government revenue while at the same time supporting a favourable investment climate. We propose a simplification of the TP requirements for regional services entities to encourage set-up of regional service centres in Kenya.	Organization for Economic Cooperation and Development ("OECD") TP Guideline under the Base Erosion and Profit Sharing (BEPS) project. The guidance provides for a simplified approach to document the low value adding intra group services which reduces the burden taxpayers face in preparing transfer pricing documentation and supporting the cost recharges	
21.	There is need to facilitate Advance Pricing agreement to assist companies to lock in prices or margins for large transaction especially on the intercompany transaction for a given period of time.	The Transfer Pricing Rules 2006 in the Income Tax Act be reviewed to cater to provide for a situation where the Commissioner can agree on an Advance Price Agreement with the Tax payer and or his/her respective representative. The agreement should be legally binding depending on the nature of the contract in place	Advance Price Agreement will assist companies to lock in prices or margins for large transaction especially on the intercompany transaction for a given period of time. This will enhance growth and transparency both from the multinational and KRA during audits.

Conclusion

There should be transitional clauses in the amendment of the Income Tax Act

2. EXCISE DUTY PROPOSALS

2.1. EXCISE DUTY ACT 2015

The Excise Duty Act (Act) has simplified the tax structure which came into force on 1 December 2015.

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
1.	Classification of products • Classification of excisable goods under the First Schedule of the Act partially moved from the tariff code-based classification to mere descriptions. This therefore means that the descriptions of the products no longer resemble those contained in the East African Community Common External Tariff (EAC-CET). Some descriptions of the excisable goods might such as water and food supplements overlap and this shift is likely to trigger endless disputes between taxpayers and KRA.	Amend the Act should be to adopt code based classification in order to avoid overlapping of excisable goods.	For consistency in interpretation across the region
2.	Excise duty on cards' related payments discourages use of cards as a mode of payment. Penetration of card usage in Kenya is still in its infancy stage and it needs to be incentivized. Some of the fees involved are Interchange fees between banks which are charged by the card-issuing bank to the payment processor (or "acquirer") for each transaction. The interchange fee is bundled into total fees that merchants pay for transaction processing.	Excise duty on these fees and any other related charges/fees should be exempted from excise duty in order to Support innovative financial and paperless mode of payments; and	This will Improve access of financial services as well as promote Globalization through usage of cards.

3. VAT ACT 2013

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
1.	Sec 8(1) Lack of clarity on VAT on exported services. The law does not prescribe guidelines for determining the place of 'use or consumption of services.	The VAT Act should be amended to remove the ambiguity as to when a service qualifies as exported. The amendment should align to Section 2 definition of a service exported out of Kenya, the OECD and destination principle in order to make Kenya a competitive source of services. Specifically, guidelines should be drafted to determine the country with taxing rights over cross-border trade in services.	to remove the ambiguity as to when a service qualifies as exported and conform to international best practice
2.	Paragraph 30 of Part I of the First Schedule to the VAT Act **Taxable supplies** (excluding motor vehicles imported or procured locally), subject to approval from Government, are **exempt** from VAT. However, the provisions are under **Part 1 (Goods)** of the First Schedule to the VAT Act. Current legislation is ambiguous given the exemption is in respect of taxable supplies (i.e. Taxable goods and taxable services).	We propose that a legislative amendment provide for zero rating of goods and services imported or purchased locally by O&G companies for all phases of the Oil and Gas cycle. This will significantly reduce the costs of exploration, speed up the pre-production cycle and enhance the government's take of profit oil.	
3.	Paragraph 7 of Part II of the First Schedule to the VAT Act **Clarification of the word hire under Part II – services of the first schedule**	We propose that the Regulations provide clarity on the definition of hire/charter since persons use the taxi cabs to transport them from one point to another. In particular, we propose that the VAT Regulations include a new definition "hiring for purposes of transportation of passengers to mean where the means of	

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
		transportation is for the exclusive use of the hirer or charterer."	
4.	First Schedule and Second Schedule Part C Zero rating medicaments of HS Code 3003.20.00	Medicaments of HS Code 3003.20.00 (currently exempted from VAT) should have been included among the zero-rated medicaments upon publication of the Finance Act, 2015. We propose for the deletion of HS Code 3003.20.00 from the first schedule and its inclusion in the newly introduced Part C of the Second Schedule.	To enhance universal health care provisions
5.	Second Schedule - Part C Deletion of a non-existing HS Code 3303.20.00 for medicaments	HS Code 3303.20.00 which was erroneously included under the Second Schedule should be deleted since such code does not exist in the CET.	
6.	Second Schedule - Part C To provide for description of HS Codes 3003.10.00 and 3003.90.00.	The Finance Act 2015 included HS Codes 3003.10.00 and 3003.90.00 under the newly introduced Part C of the Second Schedule. However, the Finance Act 2015 did not provide the description thereof. Provide for descriptions under HS Codes 3003.10.00 and 3003.90.00.for clarity	
7.	Supplies During the Development and Extraction Stages – Need for clarity by moving supplies during extraction stages from schedule I to Schedule II	Currently, supplies to mining companies involved in prospecting are exempt. Once the companies reach the development stage, supplies to them will become vatable. We propose an amendment to Part A of the Second Schedule to the VAT Act by inserting a new Paragraph	

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
		14 to read: "The supply of taxable goods or taxable services to be used exclusively for development and extraction activities of a mining company granted a mining license in accordance with the Mining Act, upon recommendation by the Cabinet Secretary responsible for Mining	

2. CUSTOMS

#	ISSUE OF CONCERN	RECOMMENDATION.	LIKELY IMPACT
1.	Cost of vehicle importation	It is suggested that rules of importation be revised - particularly, the import threshold be reduced from 8 years to 5 years. However, to make this practical, it is further suggested that import duty be reduced depending on the age of the vehicle, with newer vehicles being charged lower excise duty - with the maximum excise duty being 25%. It is further suggested that additional tax measures, such as carbon emissions tax, be introduced to increase the cost of old, pollution heavy vehicles	The direct impact of lowering the age threshold when importing a vehicle would be an increase in the cost of vehicle purchase. However, this is mitigated by a lower custom duty rate, particularly to newer vehicles. Any tax losses that result due to lower import duty, can be met by an effective carbon tax measure that seeks to increase tax on older vehicles. This not only makes newer vehicles more affordable, but also serves to address the state of our roads - characterized by old pollution heavy vehicles
1.1.1	Capping of late payment interest - Section 249 of the EAC CMA provides for late	Section 249 of the EAC CMA should be amended to provide for capping of interest as well as clarify that	Capping of interest will be in line other domestic taxes across the region and will ensure importers

#	ISSUE OF CONCERN	RECOMMENDATION.	LIKELY IMPACT
	payment interest at 2% per month of the unpaid duty amount. The law is however silent on whether the interest is compounded or simple interest and does not provide for capping of the interest. This has led to uncertainty amongst importers on the computation of late payment interest. In practice the KRA compounds the interest. Compounding interest coupled with the fact that the interest is not capped makes this penalty very punitive for tax payers particularly for unpaid taxes which have been outstanding for a long period of time	the interest charged is simple interest	are not over-penalized.

3. AMENDMENTS TO THE TAX PROCEDURES ACT 2015

AREA OF INTERVENTION	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
Section 3	Related persons	We would recommend that the Second Schedule (Consequential amendments) of the TPA be updated	enhances harmony of

	The definition of the term 'Related Persons ' as provided under Section 3 of the TPA is more comprehensive than the definitions as provided in:- • Section18 (6) of the Income Tax Act (ITA) • Paragraph 1(3) of the Eight Schedule of the ITA • Section 13 (8) of the VAT Act. Under Section 3 of the TPA, the following are related persons: (a) Persons who are treated as related under Section 13(8) of the Value Added Tax (VAT) Act (b) An individual and a relative of the individual This present inconsistency in the various tax laws.	to include: • Section18 (6) of the Income Tax Act (ITA) • Paragraph 1(3) of the Eight Schedule of the ITA	tax law
Section 9(v)	These provision sets out that a taxpayer is required to notify the commissioner of the change of particulars. This should set out clearly that the tax payer should notify the commissioner of the details of the <u>new</u> ownership.	Amend Section 9(v) to include the word *'new'* as follows: read '***cessation or sale of the business, all relevant information regarding liquidation or details of new ownership '***	enhances clarity of tax law
Section 15 (A) (5)	The wording of the provision deems that the commissioner shall issue a PIN to the tax representative. Since the tax representative is acting on behalf of the tax payer, the PIN should be issued to the taxpayer.	Amend the Section 15(A) (5) to state that *"the commissioner shall issue a PIN to the tax representative on behalf of the taxpayer."*	enhances clarity of tax law
Section 16(3)	This section states where a tax payer has more than one tax representative, each representative will be responsible for all the obligations of the tax payer as required under the Act.	We would recommend that Section 16(3) be amended to include the wording that: "the tax representative shall be responsible for the tax obligation to which he has been appointed to	Enhance fairness

	This move fails to recognize that a tax representative may have been appointed to represent the tax payer on a particular obligation and thus it would not be just for the representative to be responsible for all the tax obligations of the tax payer.	represent the tax payer."	
Section 19 (1)- Application for tax agent license	The section states that, an individual or partnership may apply to the commissioner for a license as a tax agent. Limited Liability Partnerships have been defined under Section 3 of the TPA to include those registered under the Limited Liability Partnership Act, 2012. It also defines a person to include a partnership and a limited partnership. This indicates that partnership and limited liability partnership are different and distinct and thus they should be not be used interchangeably.	We recommend that Section 19 (1) to read' *An individual, partnership, or a limited liability partnership may apply to the commissioner for a license as a tax agent.'* *We further recommend that the definition of a person under section 3 be amended to include a limited liability partnership*	Enhance clarity
Section 19 (3)- Tax Agent Committee	The section states that, an applicant for tax agent license will be recommended for registration by the Tax Agent Committee. The provision fails to give guidelines as to who forms the Tax Agent Committee as well as stipulate the duties and responsibilities of the Tax Agent committee.	We recommend amend of this section with detailed information or issuance of regulations establishment of a Tax Agent committee akin to those written in paragraphs 8 &9 of the Legal Notice No. 60, Kenya Revenue Authority (Tax Agents) Regulations, 2012:	Promote independence and impartiality among stakeholders
Section 33 (5)	This section allows a tax payer to apply for extension of the period to pay a tax under a tax law. However, subsection 5 takes away this privilege by imposing late payment interest on tax paid after the original due date. As per the provision, the interest is to accrue from the date the tax fell due. This negates the	Section 33 (5) should be amended to read as follows: ''Late payment interest shall not accrue on principal tax paid where the Commissioner has approved extension of time to pay''.	• Enhance tax compliance by tax payers.

	reprieve granted to tax payers on filing extensions. The core reason behind application for extension of tax payment period by a tax payer is that he/she could be experiencing cash challenges. The fact that the application has to be approved by Commissioner upon verification is, indeed proof that the affected tax payer is experiencing challenges in meeting his tax compliance obligations. The imposition of the late payment interest defeats the essence of this provision.		• Reduction of compliance cost on taxpayers facing cash flow challenges.
Section 37	The TPA provides for relief in case of doubt or difficulty in recovery of tax. This move fails to appreciate that there could be uncertainty in the law which would necessitate the relief of the case.	The provision should consider introducing additional ground and have section 37(1) to read as follows: This section applies where the Commissioner is of the opinion that he should refrain from assessing to tax, or recovering tax from, a person by reason of: - (a)Uncertainty as to any question of law or fact; or (b) it may be impossible to recover an unpaid tax; or (c) undue difficulty or expense in the recovery of an unpaid tax; or (d) hardship or inequity in relation to the recovery of an unpaid tax	Enhance fairness Enhance compliance Increase revenue to government.
Section 37C	The government lastly issued an open tax amnesty in 2003.To hasten the government bid to bring more tax payers into the tax net, it would be a positive move to introduce an open tax amnesty.	We propose introduction of a new section (37C) to read as follows: - *Notwithstanding any other provisions of this Act, the Commissioner shall refrain from assessing or recovering penalties and interest in respect of any year of income ending on or before 31 December 2017*	Enhance compliance Increase revenue to government.

		where *(a) The tax is paid and* *(b) The returns, or amended returns, containing a full disclosure of the previously undisclosed income, are submitted.* *On before the 31 December 2018* *Provided that this section shall not apply in respect of any tax if the person who should have paid the tax* *Has been assessed in respect of all the tax or any matter relating to the tax.''*	
Section 38	The provision does not specifically state that tax penalty is not liable to late payment interest.	Introduce a proviso as follows: *'This section shall not apply in the case of penalties imposed for breach of any other provision of this Act.'*	Enhance clarity and fairness
Section 46- Transferred tax liabilities	The TPA indicates that where a transferor, who has a tax liability transfers all/some of the assets of the business to a related person (transferee), the transferee shall be liable for the tax liability (transferred liability). This is a good move save for the fact that it fails to recognize a transfer of tax losses and tax recoverable in a similar transaction.	The Provision should be amended to read as follows: Section 46 – Transferred tax liabilities/ losses/ tax recoverable.	Enhance Equality
Section 48	The section provided for procedure and interest accruing on erroneous refund of tax to the tax payer by the Commissioner. The tax payer is required to pay the amount within 30 days failure to which attract interest at a rate of 1% per	Introduce Subsection 48(3) which provides as follows: Where the tax payer has made an erroneous tax payment to the Commissioner, the Commissioner should upon notification by the tax payer, refund the tax paid within thirty days of the service of notice.	Equity

	month The section has failed to address the issue relating to refund of erroneous tax payment made by the tax payer by the Commissioner	Amounts paid after thirty days to attract interest equal to 1% per month or part thereof of such unpaid amount, Provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due from the Commissioner	
Section 51(3)(b)	The provision states that a tax payer should lodge an objection having satisfied the condition of paying the entire amount of tax not in dispute. This would deny the taxpayer the opportunity to object if they are in financially constrained.	The provision should be amended to read as follows: *'In relation to an objection to an assessment, the tax payer has paid the tax not in dispute or entered into an arrangement with the commissioner to pay the tax not in dispute."*	Enhance uniformity and harmony
Section 55	The Tribunal permits parties to settle a dispute out of court within ninety days from the date the permission is granted. This is a positive move to encourage finalization of disputes that have been pending under the Tribunal. However, in practice we note that this out of court settlements normally take more than ninety days to settle as the parties try to come to an agreement.	We propose deletion of the word' '*ninety*'' and insert the words '*one hundred and eighty'*	Enhance certainty
Section 56(3)	The provision provides that the tax payer shall rely on the grounds stated in the objection to which the decision relates unless the tribunal allows the person to add new grounds. This is a positive move however it fails to stipulate the process through which a person can bring up the additional grounds.	The section should stipulate the process through which a person may add up new grounds at the tribunal. Further, the section should be amended to specify the timelines within which a person can add new grounds. This will help to clarify as to the process that is to be followed to ensure conformity with the Tax Tribunal rules.	Enhance Equality
Section 69	The section requires publication of private rulings in at	We recommend the deletion of the requirement to	Confidentialit

	least two daily newspaper with a national circulation except that the applicant's details are not to be revealed We note that a private ruling relates to matters and facts unique to a transaction or the applicant/ tax payer and therefore there is a remote change such facts and circumstances would apply to another transaction or tax payer	publish a private ruling. The ruling should only be served to the applicant	y
Section 83 (1)	Penalty for late submission of tax return: The Income Tax Act provision Section 72 (1), that preceded Section 83 (1) (c) of the TPA, had a proviso that the 5% penalty for late submission of tax return would be on normal tax but that the normal tax shall be reduced by the amounts already paid and by withholding tax credits. Section 83 (1) (c) of the TPA does not have the same proviso meaning that the penalty is now determined on the gross tax as per the return.	A similar provision to Section 72 (1), ITA should be introduced under Section 83 (1) (c), TPA as follows: "Provided that in calculation of the additional tax for purposes of this section, the amount of tax payable under the return shall be reduced by the amounts already paid and withholding tax credits".	The proposed change will bring the determination of late submission of return penalty to be in line what was previously in the Income Tax Act
Section 84 – Tax Shortfall penalty	The provision lacks the yard stick of establishing when a tax payer may be deemed to have made or misleading statement to an authorized officer. It is thus prone to subjectivity. .	Repeal the whole section and replace it with Voluntary Disclosure Programme (VDP). The objective of the VDP is to encourage taxpayers who have made errors in their tax matters due to ignorance or negligence, and without willful intent to evade taxes, to come forward and inform the revenue authority on voluntary basis. A voluntary disclosure under the VDP is one which is timely, accurate, complete and self-initiated by the	Enhance fairness Enhance compliance Increase revenue to government.

taxpayer. The taxpayer is also expected to cooperate fully with the revenue authority. Under the VDP, the voluntary disclosure would be considered self-initiated and timely if:

- It is made before the revenue authority queries the tax payer in relation to his tax assessment;
- It is made before the taxpayer receives notification from the revenue authority in respect of the commencement of an audit or an investigation; and
- For cases already under revenue authority's query, audit or investigation, the disclosure must not be within the immediate scope of the query, audit or investigation.

Proposal

The amendment should be designed in such a way that the Kenya Revenue Authority (KRA) is in a position to accord penalty treatment for first time voluntary disclosures as follows:

Types of Voluntary Disclosure	Penalty and Interest trea
Timely voluntary disclosure made within a grace period of 3 years from the statutory filing date	A 100% waiver of penalt interest

		<table><tr><td>Voluntary disclosure made after the grace period of 3 years</td><td>An 80% waiver of penalty interest.</td></tr></table> The above waiver/ reduction in penalty should only be available once to taxpayers. The taxpayers are thereafter expected to implement good and sufficient controls to prevent a recurrence of similar errors or omissions. International Best Practices On 8 March 2009, Singapore through Inland Revenue Authority of Singapore (IRAS) issued an e-Tax Guide on its VDP. The programme has recorded a huge success by enhancing tax compliance and improving revenue collection to government. This will encourage taxpayers to come forward and declare their tax liabilities under the program.	
84 (8)	Statement includes, "those made *orally*" It is neither easy to authenticate the voice of a person nor differentiate a voice from another. Further, there are people who are good in oral imitation and this may be misused to implicate others. In view of this, oral statements , may be challenged and thus not reliable	Delete the term 'oral'	Enhance reliability of evidence
Section 85	The section imposes penalty on assessment arising from application of tax avoidance provision	The definition is not robust enough to assist in sorting out transactions and scheme that would be deemed	Enhance clarity and

	Section 3 of the TPA defines 'tax avoidance ' to mean "a transaction or a scheme designed to avoid liability to pay tax under any tax law"	to be geared toward tax avoidance Consider a more detailed/ illustrative definition or delete Section 85 altogether.	hence enforcement
Section 89 (7)	The Commissioner can waive all penalty, upon approval of the cabinet secretary, except for penalty arising from tax avoidance	The TPA has not clearly demonstrated what is deemed to be tax avoidance and as such may be prone to subjectivity and unfair treatment of tax payers. To avoid the complexity, we recommend deletion of the phrase ***'except a penalty imposed under Section 85'***	Enhance Equality and simplicity
Timelines for the Commissioner	Various Sections of the TPA including 10(7), 31 (3) (b), 33(3), 42(7), 51(11), 65(3), among others have set timelines where the Commissioner is required to provide a response to a tax payer. This should set pace/ be replicated in all areas that require the Commissioner to respond for better administration of tax laws.	Sections: 8(8) 20(5), 24A, 26(2), 30(4) (d), 42, 45 (6), 59, 66(2), should state the timeline within which the Commissioner should respond or the recourse for non-responsiveness.	Enhances certainty in administration of tax laws.

4. PROPOSAL TO AMEND TAX APPEALS TRIBUNAL ACT, 2013

The Tribunal has been in effect for quite a few years now. The core objective for formation of the Tribunal was to engender public confidence, assist in tax administration of tax systems and circumvent delays associated with hearing cases in a court. The promulgation was aimed at necessitating adjudication of tax matters by focused group of knowledgeable professionals.

Whilst it has aided in the dispensation of numerous cases that would otherwise have been decided in our law courts, the process and conduct of the tribunal is too legal. During the hearings for instance, the mode in which oaths are administered and evidence is admitted is quite legalistic, making the respective taxpayers and tax agents who have never practiced law wary and uncomfortable during normal sessions at the tribunal. Taxpayers too have no room to represent themselves unless they are sworn in as witnesses.

In our opinion, the tribunal being a quasi-judicial body, the procedures should be simple, flexible and adaptable to allow speedy dispensation of cases and also improve on transparency.

In light of the above, we recommend a review of the whole act aimed at development of simple tax appeal processes. This will return lead to reduction in administrative cost, increased revenue collection and also enhance confidence in the Tribunal

Area of intervention	Specific Issue affecting industry/nature of problem	Recommendation	Expected Impact
Section 2: Interpretation	**Definition of Tax Agent** The Act defines a Tax Agent as "a person acting on behalf of another person on matters relating to tax and is registered as such by the Commissioner"	Deletion of the definition of the Tax Agent For purposes of harmonization, adopt provisions of Section 3 of the Tax Procedures Act. The same defines a Tax Agent in verbatim to mean, "A person licensed as a tax agent under Section 20"	Enhances Clarity of Law due to harmonization.
	No clear definition of period during which a ruling must be made	Define period upon which the TAT should give rulings/judgements on cases that have already been heard. Where the TAT foresees delay in delivering ruling/judgements then this (together with reasons) should be communicated to the litigants.	1. Any aggrieved party will have an opportunity to file an appeal to a superior court; 2. This will reduce the backlog of undecided cases currently pending at the TAT; 3. The decided cases will cause and enhance certainty in the tax regime. 4. Retrospective discovery that a widespread practice was wrong for years can have a significant effect on

Area of intervention	Specific Issue affecting industry/nature of problem	Recommendation	Expected Impact
			taxpayers' businesses either as back-taxes or repayments.
Section 2: Interpretation	**Definition of Tax Law** The Act defines a Tax law to mean tax law" means— (a) the Income Tax Act (Cap 470); (b) the Customs and Excise Act (Cap 472); or (c) the Value Added Tax (Cap. 476); (d) the East African Community Customs Management Act, 2004; (e) any other tax legislation administered by the Commissioner;	Deletion of the definition of the Tax Law, For purposes of harmonization, adopt the definition provided by Section 3 of the Tax Procedures Act The same states thus in verbatim: ""tax law" means— (a) this Act; (b) the Income Tax Act, Value Added Tax Act, and Excise Duty Act; and (c) any Regulations or other subsidiary legislation made under this Act or the Income Tax Act, Value Added Tax Act, and Excise Duty Act;	Enhances Clarity of Law due to harmonization.
Section 4(3)	The Section states thus in verbatim, "A person shall not be appointed a Chairperson or a member of the Tribunal under this section unless that person— (a) in case of the Chairperson, is qualified to be appointed as a Judge of the High Court; …"	The qualification of the Chairman of the tribunal has been put at par with that of a High Court Judge. The tribunal, being quasi-judicial nature, should relax this particular stipulation. This is because the nature of tax is multidisciplinary as it integrates law, accounting, finance, insurance, economics, among other disciplines. This qualification bars a qualified person from chairing a case. Amend section 4 (3) (a) to have the qualifications of the Chairman of the tribunal to be the same as those of a member of the tribunal.	Enhance fairness & optimal rulings of cases referred to the Tribunal

Area of intervention	Specific Issue affecting industry/nature of problem	Recommendation	Expected Impact
		Amend the practice of the tribunal during hearings to allow the most qualified member of the tribunal based on the subject matter of the case before the tribunal to chair each case as determined by the member's educational background and experience in the various distinctive sectors.	
Section 13 (7)	Under Section 13 (7), the Tribunal are supposed to hear and determine an appeal within ninety days from the date the appeal is filed with the tribunal. However, it is seldom that appeal cases are heard and determined within the stated nintey days.	There should be either a strict enforcement of the ninety days period or an extension from the ninety days period should be introduced such that the hearing and determination of the appeal is done within a a maximum of six months (i.e. 180 days)	The taxpayers will not be exasperated that the hearing and determination of cases are not made within the set ninety days while the Tribunal are provided under law sufficient due time to make proper decisions.
Section 17- Witnesses	The Act states thus in verbatim, "The Tribunal may call any person to attend at a hearing and give evidence including production of any document if the Tribunal believes such evidence shall assist in its deliberations." This section tends to give the tribunal overwhelming power in the course of the trial. In Practice, the appellant is granted leave to call in his witnesses. The Act should capture the nature of Practice and give further directions as to the procedure of introducing witnesses during the hearing.	Amend Section 17 by adding the following paragraph: "Either party is allowed to call witnesses during the hearing to give evidence of whichever nature in support of their case." Add section 17 (a) as thus "Parties to the tribunal may serve either party with supplementary documents to amend their original grounds, add additional grounds and/or supplementary evidence to the grounds pleaded in the case to their case. (b) The parties must serve these supplementary documents at least 7 days in advance of any	Promote certainty in terms of procedure, administration and execution of the Law. Further, it also enhances fairness and transparency during the proceedings.

Area of intervention	Specific Issue affecting industry/nature of problem	Recommendation	Expected Impact
	The Act is also silent on the procedure for adducing additional grounds/ supporting evidence on the current grounds so pleaded by both parties to the hearing. In practice, either party is allowed to add supplementary documents to their case, serve the opposing party with the supplementary documents and copy the tribunal in the various correspondences. The law should be amended to capture this practice. Further, the law is silent on timelines. The law should be amended to capture the time within which each party is allowed to introduce the various grounds.	hearing date. When either party is served with these documents, they must respond within 30 days to the other party, with copies of all correspondences furnished to the tribunal.	
Section 25 Representation before the Tribunal	Section 25 (1) of the Act provides that; "For the hearing of proceedings before the Tribunal, the appellant may appear in person or be represented by a tax agent or by an advocate" In the event that the Appellant is not an advocate, or does not have an agent's license; the appellant is not allowed to address the tribunal except through being sworn in as a witness by his tax agent or advocate. This is prejudicial since the	Amendment made to section 25 to add the following paragraph: "The appellant, an employee or a representative of a licensed tax agent, or any other person as the appellant may wish, who is neither a tax agent nor an advocate, may address the tribunal in support of the appellant's case.	Enhances fairness and transparency during the proceedings.

Area of intervention	Specific Issue affecting industry/nature of problem	Recommendation	Expected Impact
	appellant is not accorded to present his case as the best knows it.		

5. PROPOSALS ON GOVERNMENT'S BIG- FOUR AGENDA

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	Manufacturing		
1.	Cost of Power	Lower the cost of power used in factories. This can be done by licensing more players in renewable power sources and opening power distribution to competition.	The cost of power will reduce. KPLC will no longer be a monopoly on power distribution.
		Ensure reliable power to factories i.e. minimal power interruptions	Operational efficiency will be improved in our manufacturing factories.
2.	Empirical evidence shows that financial constraints are important in Kenya and affect mostly young and small listed firms in the manufacturing sector. Moreover, there is inadequate or no legal and institutional framework for invoice discounting and protection of equity market	a) Broaden the scope of assets that can be used as collateral and protecting investors from losses arising from bankruptcy. For companies that offer trade credit to its customers, an introduction of invoice discounting or debt factoring will give access to immediate cash against book debt or accounts payable. In this case, book debt pledged as security provide relief against financial constraints. In addition, investor protection funds provide	Increased liquidity and ease financial constraints among young and small listed firms. With additional cash savings firms will be able to undertake additional investments, hence improving productive capacity of the manufacturing sector, which in turn, boost the value addition of the sector.

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	investors,	assurance to investors that they are protected in case of bankruptcy. b) Introduce credit rating to drive firms to better their financial management and reward well managed companies with ease of access to external funds. Credit agencies will also act as source of information for potential investors and creditors c) Provide age-based and size-based tax incentives, tax credits and tax holidays to relieve financially constrained firms from financial constraints by reducing the tax burden and hence improving liquidity.	
	Food security and nutrition		
3.		The government should provide incentives/implements to farmers so that they do not rely on rain-fed agriculture. The use of drip irrigation can go a long way in ensuring food security.	The harvests will not only be reliable but bumper. Farmers will be able to arrive at accurate forecast of their harvests. This will ensure food security to all Kenyans.
4.	Research has shown that post-harvest losses is estimated at about 30% of the harvested crop. Eliminating post-harvest losses implies that we can feed 30% more Kenyans	• Remove import duties (import duty, excise duty and VAT on imports) on irrigation equipment (such as pipes, drip lines, overhead sprinklers, etc.). • Encourage value addition of agricultural produce especially immediately after harvest.	This will improve uptake of irrigation and reduce reliance on rain fed agriculture given the erratic weather patterns due to climate change. This will further lead to improved food security and nutrition for all, the government should

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	even with the current level of production.		
	Universal Health Coverage		
5.		Monthly NHIF fee for the self-employed to be reduced to kes.300 from the previous kes.500	To enhance quality and affordable medication to all Kenyans,
6.		The 1st KES. 300,000.00 paid as gratuity should not be taxed.	To make Kenyans working in informal sector and in firms which are still paying gratuity to also enyoy life after retire,
	Housing		
7.	Kenya is currently experiencing a shortage of housing units hence leading to the growth of slums. The price of the housing units that are available are quite expensive. Notwithstanding the incentives that were introduced through the Finance Act 2017, it would make a lot of sense for residential housing units to also be included as expenditure that should qualify for investment deduction.	Paragraph 24 of the Second Schedule to the Income Tax Act should be amended to include capital expenditure on the construction of residential housing units ad qualifying for investment deduction.	This will lower the price of residential housing units and curb the growth of slums.

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
8.	According to vision 2030, Kenya needs 200,000 housing units annually. The current supply is 50,000 units annually creating a deficit of over 2Million housing units. Over 61% of Kenya's urban population dwell in slums according to World Bank report 2017	**Current tax Incentives** Contributions to registered home ownership schemes are exempt up to Kshs 4000 per month.	This incentive has not attracted depositors as it was expected, only housing finance Corporation offers such products and for over 15 years the up take has been extremely poor so to say insignificant in bridging the housing deficit
		Low tax rate at 15% to housing developers, offered for the first time in 2015 to developers selling more than 1000 housing units, subsequently lowered to 400 units and further to the current level of 100 units per year. This is intended to reduce the costs to the developers who are in turn expected to pass on the benefit to home owners	Challenge: Even if this was to reduce developers' costs, their model is beyond reach for common mwananchi
9.	**Mortgage status in Kenya** The number of mortgages in the banking sector has grown from 13,800 to 24,500 from 2010 to 2015. Notwithstanding the growth, uptake of mortgages in the country is low. The average mortgage loan in Kenya stands at Shs 8.3 Million requiring repayment of over	***Extend mortgage incentive to construction loans*** Construction loans prove to be more attractive to home owners than mortgages due to the following (i) Home owners can tailor their houses to fit their budgets and tastes (ii) No margins passed on by developers (iii) Can utilize pre- acquired land e.g	(i) Possible solution to housing challenge (ii) Will increase loans portfolio to the now struggling financial sector (iii) Can be extended to rural areas where majority have chosen to settle given the improved infrastructure and devolution

#	ISSUE OF CONCERN	RECOMMENDATION	LIKELY IMPACT
	Shs 100,000 per month for 20 years at an interest rate of 15%. This pushes mortgages beyond reach for many. **Reality check** The way mortgages are in Kenya structured, they are unaffordable especially to those who lack housing. They are also unattractive in the sense it's the developer who decides the location, the size, the plan and so on, in other words home buyers get "ready-made outfits".	inherited – further reducing costs	

6. OTHER PROPOSALS

#	ISSUE OF CONCERN	RECOMMENDATION.	LIKELY IMPACT

#	ISSUE OF CONCERN	RECOMMENDATION.	LIKELY IMPACT
	Fiscal incentive for Social Impact & Green Bonds		
1.	The Constitution recognizes clean and healthy environment as a basic human right and provides for sustainable exploitation, utilization, management and conservation of the environment and natural resources. On the other hand, Kenya Vision 2030 aims at achieving an annual growth of 10 percent per annum and transforming Kenya into a globally competitive and prosperous country with a high quality of life by 2030. The Government is developing a green economy strategy to support development efforts towards addressing key challenges such as poverty, unemployment, inequality, clean water, environmental degradation, climate change and variability, infrastructure gaps and food insecurity. The Capital Market will play a key role in mobilizing international and domestic finance to drive this national green strategy.	Insert the following definition into Part I, Section 2 of the Capital Markets Act: "Green Bond" means a debt security listed on a securities exchange and independently certified by a recognized verifier. The instrument can be issued either by the National Government, County Government or a Company to enable capital-raising and investment for new and existing projects with environmental and social benefits. ***"Social Impact Bond" means a debt security issued either by the National Government, County Government or a Company to enable capital-raising and investment for new and existing projects with environmental and social benefits."*** ***"Verifier" means an independent person approved by the Climate Standards Board.***	*A Social Impact Bond, also known as a Pay for Success Bond or a Social Benefit Bond is a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings.* *Green Bonds enable capital-raising and investment for new and existing projects with environmental benefits. In 2014 alone, over USD 36 billion was raised through green bonds in the United States and Europe alone.*
2.		Amend Section 51 in Part I of the First Schedule of the Income Tax Act to read as follows:	

#	ISSUE OF CONCERN	RECOMMENDATION.	LIKELY IMPACT
		"Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, green economy and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years."	
3.		Insert the following definition into Part I, Section 2 (1) of the Income Tax Act: "Green Economy" is one in which the production of goods (and services), is optimized to ensure minimum negative impact on the environment and maximum socio-economic benefits for the population.	

7. AMENDMENTS TO THE ACCOUNTANTS ACT (2008)

The Institute proposes the incorporation of the following amendments to the Accountants Act:

No	*Topic/ Marginal Note*	*Section to be Amended*	*CURRENT WORDING*	*PROPOSED WORDING/ AMENDMENTS*	*JUSTIFICATION*
1.	Interpretations	2. (1)	None	This section is amended to include: (a) **"Accountancy"** means practice in accounting, financial reporting, control systems, systems auditing, auditing, assurance, forensic accounting and auditing, finance, financial management, taxation, financial risk management, management accounting and advisory services related thereto.	This will enhance and consolidate the regulation of accountancy profession as well as to ensure compliance with international best practices.
2.	Interpretations	2. (1)	"Annual license" means an annual licence issued pursuant to section 22	The principal Act is amended to read: **"Annual licence"** means member or firm annual licence to practice accountancy issued pursuant to section 22 of the Act	The proposal is in line with the existing practise globally on the regulation of professional accountants.
3.	Interpretations	2. (1)	"Minister" means the minister for the time being responsible for matters relating to finance	The principal Act is amended: (a) by deleting the word "Minister" and substituting therefore with the words "**Cabinet Secretary**". (b) by deleting the word "Minister" and substituting therefore with the words "Cabinet Secretary" wherever it appears in the Act.	The amendment aligns and harmonises the Act with the Constitution".
4.	Interpretations	2. (1)	"firm" means a sole proprietorship or partnership established by members in practice	The principal Act is amended to read: "**Firm**" means an entity, whether or not a legal person, that is not a natural person; and includes a body corporate, sole proprietorship, partnership or	This will align the Act with the Partnership Act, Company's Act and the requirements of an auditor under the standards as issued by IFAC

No	*Topic/ Marginal Note*	*Section to be Amended*	*CURRENT WORDING*	*PROPOSED WORDING/ AMENDMENTS*	*JUSTIFICATION*
				other unincorporated association established by members in practice and licensed under section 22	and the Institute.
5.	Interpretations	2. (1)	None	The principal Act is amended to include: " Accountant" is a person with expertise achieved through formal education and practical experience, and (a) demonstrates and maintains competence; and (b) complies with Institute's code of ethics; and (c) is held to a high professional standard; and (d) is a member of the Institute (e) is subject to enforcement of the rules and regulations of the Institute and; (f) are members as defined in section 4 (2) (a) and (b)	This is to provide clarity on who is a practising accountant and prohibit the use of the word Accountant by persons who are either not fully qualified or not members of the Institute or both.
6.	Interpretations	None	None	The principal Act is amended to include: "Company" has the meaning assigned to it by Section 3 of the Companies Act.	This aligns to the Companies Act.

No	*Topic/ Marginal Note*	*Section to be Amended*	*CURRENT WORDING*	*PROPOSED WORDING/ AMENDMENTS*	*JUSTIFICATION*
7.	Interpretations	2. (1)	None	Principal Act is amended to Include: " Trainee Accountant" a person registered by the Examination Board and who has commenced a professional accountancy education and training and is practising accountancy as per Section 19 (2) (a) as part of Initial Professional Development and upon qualification becomes eligible for admission into the membership of the Institute."	This is in compliance with the International Education Standards on accountancy and Requirements of IFAC on the mentorship and guidance of student trainees.
8.	Functions of the Institute	8. (f)-(g)	none	Principal Act is amended to Insert in between (f) and (g) provision for the Institute to: (a) register such categories of practice in the accountancy profession (b) Prescribe and recommend the remuneration order for accountancy profession in consultation with and approval of the cabinet secretary (c) Prescribe, gazette and issue any relevant regulations rules, guidelines and by laws governing the accountancy profession and its operations (d) Prescribe accountancy and auditing Standards for national application and use (e) Prescribe disciplinary action on accountancy matters and (f) Prescribe compliance standards in accountancy	The proposed amendment empowers the Institute to register accountants to practice in various fields in the accountancy profession. The proposal will also enable members and the Institute to tame quacks operating as accountants and encourage the use of whistle blowing in regulating the accountancy profession.