

THE FINANCE ACT, 2006**No. 10 of 2006***Date of Assent: 30th December, 2006**Date of Commencement: See Section I***An Act of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto****ENACTED** by the Parliament of Kenya, as follows -**PART I – PRELIMINARY**

1. This Act may be cited as the Finance Act, 2006 and shall come into operation, or be deemed to have come into operation, as follows-

Short title and commencement.

(a) section 4(a) (i) and (iv), on the 15th June 2006;

(b) sections 3, 4(b), 5, 6, 7, 8, 9, 10, 11, 12(a), (b)(i), (c)(i); 14, 16, 17(a), 17(b), 17(c) paragraph (b) of the proviso, 18, 26(b)(i), 27, 28, 30(b) paragraph (a) of the proviso, 31(b)(i), 31(b) (ii)A, 33, 35, 38, 54, 55, 56, on the 16th June, 2006;

(c) sections 17(c) paragraph (a) of the proviso, 17(d), 22, 23, 26(a), 29, on the 1st July, 2006;

(d) sections 4(a)(iii), and 31(b)(ii)(B), on the 12th July, 2006;

(e) sections 4(a)(ii), 15, 12(b)(ii), c(ii), 26(b)(ii), 40 and 49, on the 9th November, 2006;

(f) sections 2, 13, 19, 20, 21, 24, 25, 26(c), 30(a), 30(b) paragraph (b) of the proviso, 31(a), 31(b)(iii), 31(b) (iv), 31(b)(v), 32, 34, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, on the 1st January, 2007;

PART II – CUSTOMS AND EXCISE

Insertion of section 136A in Cap.472.

2. The Customs and Excise Act is amended by inserting the following new section immediately after section 136 –

Excise stamps on wines and spirits.

136A. Every bottle or other container of wines or spirits manufactured in or imported into Kenya shall have affixed on it, in the prescribed manner, an excise stamp issued under the authority of the Commissioner.

Insertion of section 153A in Cap. 472.

3. The Customs and Excise Act is amended by inserting the following new section immediately after section 153 -

Penalty for fraudulent claims.

153A.(1) Any person who makes a fraudulent claim for refund or rebate of duty shall be guilty of an offence and liable to pay a penalty of an amount equal to two times the amount of the claim.

(2) The penalty under this section shall not be part of the fine imposed by a court in a trial for fraudulent claims under this Act.

Amendment of the Fifth Schedule to Cap. 472.

4. The Fifth Schedule to the Customs and Excise Act is amended -

(a) in the manner specified in -

(i) item 1 of the First Schedule; and

(ii) item 1A of the First Schedule;

(iii) item 1B of the First Schedule;

(iv) item 2 of the First Schedule to this Act;

(b) in Part III by inserting the words “and other beverages” immediately after the word “beer” appearing in paragraph 1.

PART III – VALUE ADDED TAX

5. Section 9 of the Value Added Tax Act is amended in subsection (2) by inserting the words “any excise duty chargeable under the Customs and Excise Act, where applicable, and” immediately after the word “including”, appearing in paragraph (c).

Amendment of section 9 of Cap. 476.

6. Section 12 of the Value Added Tax Act is amended in subsection (1) by inserting the words “or such longer period as the Commissioner may, in any particular case, allow” immediately after the words “within thirty days”.

Amendment of section 12 of Cap. 476.

7. The Value Added Tax Act is amended by inserting the following new section immediately after section 25-

Insertion of section 25A in Cap 476.

Fraud in relation to claims for tax refund. 25A. (1) Any person who fraudulently makes a claim for a refund of tax shall be liable to pay a penalty of an amount equal to two times the amount of the claim.

(2) The penalty provided for in subsection (1) shall not be part of any fine imposed under section 40.

No. 10

Amendment of
section 40 of
Cap. 476.

8. Section 40 of the Value Added Tax Act is amended in subsection (1) -

(a) by inserting the words “fraudulent claim for a refund” immediately after the words “false statement”;

(b) by inserting the words “or to imprisonment for a period not exceeding three years, or to both” immediately after the words “whichever is greater”.

Repeal and
replacement of
the First
Schedule to
Cap.476.

9. The Value Added Tax Act is amended by repealing the First Schedule and replacing it with the new First Schedule set out in the Second Schedule to this Act.

Amendment of
the Second
Schedule to
Cap. 476.

10. The Second Schedule to the Value Added Tax Act is amended in the manner specified in the Third Schedule to this Act.

Amendment of
the Third
Schedule to
Cap. 476.

11. The Third Schedule to the Value Added Tax Act is amended -

(a) in paragraph 1 by inserting the words “provided by banks and financial institutions” immediately after the words “financial services”;

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

(2) Insurance and reinsurance services excluding the following -

(a) management and related insurance consultancy services;

(b) actuarial services; and

(c) services of insurance assessors and loss adjusters;

(c) in paragraph 17 -

(i) by inserting the following new subparagraph immediately after subparagraph (d)-

(e) entertainment performed wholly by artistes who are resident in Kenya.

(ii) by renumbering the existing paragraph as subparagraph (1) and inserting a new subparagraph as follows -

(2) For the purposes of this paragraph, "resident" means a person who -

(a) has a permanent home in Kenya; or

(b) has no permanent home in Kenya but -

(A) was present in Kenya for a period or periods amounting, in the aggregate, to 183 days or more in each calendar year; or

(B) was present in Kenya in the calendar year of performance and in each of the two immediately preceding calendar years, for periods amounting in the aggregate to more than 122 days in each calendar year.

Amendment of
the Fifth
Schedule to
Cap. 476.

12. The Fifth Schedule to the Value Added Tax Act is amended -

(a) in Part A, by inserting the following new items immediately after item 15 -

16. The treatment and supply of natural water, excluding bottled water, by a local authority or a person approved by the Minister for the time being responsible for water development, for domestic or for industrial use.

17. The supply of transportation services in respect of unprocessed agricultural and agro-forest produce.

(b) in Part B -

(i) in the manner specified in paragraph (a) of Part I of the Fourth Schedule to this Act;

(ii) in the manner specified in paragraph (b) Part I of the Fourth Schedule to this Act;

(c) in Part C -

(i) in the manner set out in paragraph (a) Part II of the Fourth Schedule to this Act;

(ii) in the manner set out in paragraph (b) Part II of the Fourth Schedule to this Act.

13. The Sixth Schedule to the Value Added Tax Act is amended -

Amendment of the Sixth Schedule to Cap. 476.

(a) in paragraph 1, by deleting subparagraph (a) and substituting therefor the following new subparagraph-

“(a) has supplied taxable goods or taxable services, or expects to supply taxable goods or taxable services or both, the value of which is Shs.5,000,000 or more in a period of twelve months; or”;

(b) by deleting paragraph 16 and substituting therefor the following new paragraph -

16. Where the value of taxable supplies made by a registered person in any period of twelve months is less than five million shillings, the registered person shall notify the Commissioner of the value of his supplies and shall be subject to the provisions of the turnover tax under section 12C of the Income Tax Act.

Cap. 470

Provided that this paragraph shall not apply to a person registered under subparagraph 1(c).

14. The Seventh Schedule to the Value Added Tax Act is amended in paragraph 6, by adding the following new proviso at the end of subparagraph (6)-

Amendment of the Seventh Schedule to Cap. 476.

“Provided that this subparagraph shall only apply to electronic tax registers acquired and installed on or before the 31st December, 2006”.

No. 10

Amendment of
the Eighth
Schedule to
Cap. 476.

15. The Eighth Schedule to the Value Added Tax Act is amended in Part B by inserting the words “and non-commercial” immediately after the word “commercial” appearing in subparagraph (1) of paragraph 7.

PART IV – INCOME TAX

Amendment of
section 2 of
Cap.470.

16. Section 2 of the Income Tax Act is amended in the definition of “management or professional fee”, by inserting the word “professional” immediately after the word “contractual”.

Amendment of
section 5 of
Cap.470.

17. Section 5 of the Income Tax Act is amended –

(a) in the proviso to subsection (2)(a), by inserting the following new subparagraph immediately after subparagraph (ii) -

(iii) 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;

(b) by deleting the proviso to subsection (2B)(a) and substituting therefor the following new proviso-

Provided that where such vehicle is hired or leased from a third party, the employee shall be deemed to have received a benefit in that year of income equal to the cost of hiring or leasing.

(c) in subsection (5), by deleting the proviso and substituting therefor the following new proviso-

Provided that -

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

(b) the Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.

(d) by inserting the following new subsection immediately after subsection (5) -

(6) For the purposes of subsection (5)-

(a) the benefits under the employee share ownership plan shall accrue only in cases where such plan is registered with the Commissioner as a collective investment scheme within the meaning of the Capital Markets Authority Act;

Cap.485A.

(b) “offer price” means the price at which an employer’s shares are initially offered to an employee under an employee share ownership plan;

(c) “market value”, in relation to a share, means –

(i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the shares were granted by the employer; or

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

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

(e) “vesting period” means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

18. Section 9 of the Income Tax Act is amended by deleting subsection (2) and substituting therefor the following new subsection -

Amendment of
Section 9 of
Cap. 470.

(2) Where a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication, then the gains and profits from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits shall be deemed to be income derived from Kenya.

19. Section 12A of the Income Tax Act is amended in subsection (1) by inserting the words “and, in the case of a vehicle used for the carriage of members of the public for hire or reward, in respect of every driver and conductor thereof” immediately after the words “commercial vehicle”.

Amendment of
section 12A of
Cap. 470.

20. The Income Tax Act is amended by inserting the following new section -

Insertion of
section 12C of
Cap. 470.

Imposition
of
turnover
tax.

12C. (1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable with effect from the 1st January, 2007, by any resident person whose income from business is accrued in or derived from Kenya, and does not exceed five million shillings during any year of income.

(2) The Minister may, by notice in the Gazette, prescribe rules for the better carrying out of the provisions of this section.

Amendment of
section 15 of
Cap.470.

21. Section 15 of the Income Tax Act is amended -

(a) in subsection (2)-

(i) by inserting the following new paragraphs immediately after paragraph (s) -

(ss) expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;

(ii) by inserting the following new paragraphs immediately after paragraph (v) -

(w) any cash donation in that year of income to a charitable organization registered or exempt from registration under the Societies Act or the Non-Governmental Organisations Co-ordination Act, 1990, and whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Minister for finance;

Cap.108

No.19 of
1990

(x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure;

(b) in subsection (3)(f), by deleting the expression “paragraph 4(2), or paragraph 16A”, appearing immediately after the words “in accordance with” and substituting therefor the expression “paragraph 5(2)”;

(c) by deleting subsection (8).

22. Section 16 of the Income Tax Act is amended in subsection (2) by deleting paragraph (i).

Amendment of section 16 of Cap.470.

23. Section 18 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (7) -

Amendment of section 18 of Cap.470.

(8) The Minister may, by rules published in the Gazette –

(a) issue guidelines for the determination of the arm’s length value of a transaction for purposes of this section; or

(b) specify such requirements as he may consider necessary for the better carrying out of the provisions of this section.

24. Section 22C of the Income Tax Act is amended by adding the following provision at the end of subsection (2)-

Amendment of section 22C of Cap.470.

Provided that for any year of income commencing on or after the 1st January 2007, any interest income earned by a depositor on deposits of upto a maximum of three million shillings shall be exempt from tax.

No. 10

Amendment of
section 31 of
Cap.470.

25. Section 31 of the Income Tax Act is amended in the proviso to subsection (1) by inserting the following new paragraphs immediately after paragraph (iv) -

(v) a health policy whose term commences on or after the 1st January, 2007 shall qualify for relief;

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

Amendment of
section 35 of
Cap.470.

26. Section 35 of the Income Tax Act is amended-

(a) in subsection (1), by inserting the words “fruits or vegetables” immediately after the word “flowers” appearing in paragraph (a);

(b) in subsection (3) –

(i) by deleting the words “consultancy, agency or contractual fee” appearing in paragraph (f) and substituting therefor the words “management or professional fee”;

(ii) by adding a new paragraph immediately after paragraph (g) as follows –

(h) rental payments in respect of assets leased under a finance lease as defined in the Income Tax (Leasing) Rules, 2002;

(c) in subsection (3A), by deleting the proviso.

27. Section 120 of the Income Tax Act is amended in subsection (1), by deleting the words “of the rank of Principal Revenue Officer or above”.

Amendment of section 120 of Cap. 470.

28. The Income Tax Act is amended by repealing section 124 and replacing it with the following new section-

Replacement of section 124 of Cap. 470.

Exercise of powers, etc

124. The Commissioner may, subject to such limitations as he may think fit, authorize an officer to exercise any of the powers conferred by this Act upon the Commissioner, other than the powers conferred by sections 114 and 123.

29. The First Schedule to the Income Tax Act is amended in Part 1, by inserting the following new items immediately after item 49 –

Amendment of the First Schedule to Cap.470.

50.(1) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner;

No.3/1997 (2) For the purposes of this paragraph, “pooled fund” has the meaning assigned to it under the Retirement Benefit Act, 1997.

51. Interest income accruing from all listed bonds used to raise funds for infrastructure and social services, provided that the bonds shall have a maturity of at least three years.

52. Interest income generated from cash flows passed to the investor in the form of asset-backed securities.

No. 10

Amendment of
the Second
Schedule to
Cap.470.

30. The Second Schedule to the Income Tax Act is amended-

(a) in Part 1-

(i) by inserting the following new subparagraph immediately after subparagraph 1(1)(c) -

“(d) in a case referred to in paragraph 5(1)(c) and 5(1)(e) for the year commencing on or after the 1st January, 2007, one-tenth”.

(ii) by inserting the following new subparagraph immediately after subparagraph 5(1)(d)-

(e) A building in use as a hostel or an educational building certified by the Commissioner for the purposes of this paragraph.

(b) in Part IV, by deleting the proviso to paragraph 22(1) and substituting therefor the following new proviso -

Provided that -

(a) where in any year of income commencing on or after the 1st January, 1985, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works, there shall be made, in computing his gains or profits for that year of income and the two following years of income, a deduction equal to one-third of that expenditure;

(b) where in any year of income commencing on or after the 1st January, 2007, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works, there shall be made, in computing his gains or profits for that year of income and the following year of income, a deduction equal to one-half of that expenditure.

31. The Third Schedule to the Income Tax Act is amended –

**Amendment of
Third Schedule
to Cap.470.**

✓ (a) in HEAD A (RESIDENT PERSONAL RELIEF) by deleting the expression “thirty six thousand shillings” appearing in item 2, and substituting therefor the expression “sixty thousand shillings”;

(b) in HEAD B (RATES OF TAX) –

(i) by inserting the following new paragraph in item 3 immediately after paragraph k-

(l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication, five per cent of the gross amount received.

(ii) in item 5 –

(A) by deleting the expression “consultancy or agency fee” appearing in subparagraph (f)(i) and substituting therefor the expression “management or professional fee, other than contractual fee”;

(B) by inserting a new subparagraph immediately after subparagraph (h) as follows –

(i) in respect of lease rentals paid under rule 3 of the Income Tax (Leasing) Rules, 2002, three per cent of the gross amount payable to the lessor;

(iii) in item 6, by deleting the existing item and substituting therefor the following new item –

(6)(1) The rate of deduction for a transaction chargeable to withholding tax under subsection (3A) of section 35 shall be three percent of the gross amount of the aggregate consideration of the transaction.

(2) The gains or profits arising from the transfer of property under the Eighth Schedule shall be taxed at a rate of ten per cent.

(iv) by inserting the following new subparagraph in item 8, immediately after paragraph (b) –

(c) for drivers; three thousand six hundred shillings and for conductors; one thousand two hundred shillings per year.

2006

(v) by inserting the following new item immediately after item 8 –

(9) The rate of tax in respect of turnover tax shall be three per cent of the gross receipts of the business of a taxable person under section 12C.

PART V – MISCELLANEOUS

32. The Penal Code is amended in section 367A, by inserting the words “and without lawful authority or excuse” immediately after the word “wilfully”.

Amendment of section 367A of Cap.63.

33. The Insurance (Motor Vehicles Third Party Risks) Act is amended in section 3, by inserting the following new definition in proper alphabetical sequence-

Amendment of section 3 of Cap.405.

“Minister” means the Minister for the time being responsible for matters relating to finance.

34. Section 5 of the Insurance (Motor Vehicles Third Party Risks) Act is amended in the proviso, by inserting the following new paragraph immediately after paragraph (iii) -

Amendment of section 5 of Cap.405.

(iv) liability of any sum in excess of three million shillings, arising out of a claim by one person.

35. Section 6 of the Insurance (Motor Vehicles Third Party Risks) Act is amended by deleting subsection (4).

Amendment of section 6 of Cap.405.

36. Section 16(1) of the Kenya Revenue Authority Act is amended -

Amendment of section 16 of Cap.469.

(a) in paragraph (a) -

(i) by deleting the words “one and one-half percent” and substituting therefor the words “such amount, not exceeding two percent”;

(ii) by adding the words “as may be determined by the Minister in each financial year” at the end thereof;

(b) by deleting the proviso to paragraph (b).

**Amendment of
the First
Schedule to
Cap.469.**

37. The First Schedule to the Kenya Revenue Authority Act is amended in PART III -

(a) by inserting the following new item immediately after item 10 -

11. The Government Lands Act (Cap. 280).

(b) by inserting the following new item immediately after item 11 -

12. The Sugar (Imposition of Levy) Order, 2002 (L.N. 385/2002).

**Amendment of
section 117 of
Cap.480.**

38. Section 117 of the Stamp Duty Act is amended in subsection (1) by inserting the following new subparagraph immediately after paragraph (h)-

(hh) instruments for the sale or transfer of land for the construction or expansion of educational institutions:

Provided that stamp duty shall become payable if such land reverts to any other use.

**Amendment of
section 18 of
Cap.485A.**

39. Section 18 of the Capital Markets Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (e) -

2006

“(ee) unclaimed dividends outstanding in listed companies for more than seven years;”.

40. Section 2 of the Banking Act is amended in the definition of “branch” by inserting the words “or outside” immediately after the word “in”.

Amendment of section 2 of Cap.488.

41. Section 3 of the Banking Act is amended by deleting the proviso and substituting therefor the following -

Amendment of section 3 of Cap.488.

Provided that-

Cap.485A. (a) the provisions of paragraphs (b) and (c) of this subsection shall not apply to investment banks licensed under section 11(3) of the Capital Markets Act; and

(b) a person granted consent by the Minister under paragraphs (b) or (c) and who does not obtain a licence within twelve months of such grant shall forthwith cease the use of those words.

42. The Banking Act is amended by repealing section 8A and replacing it with the following new section -

Repeal and replacement of section 8A of Cap.488.

Branches and subsidiaries. **8A.(1)** No institution shall open a branch or establish a subsidiary outside Kenya, except with the prior approval of the Minister.

(2) An institution seeking approval under subsection (1) shall apply, in writing, to the Minister through the Central Bank.

(3) Before granting approval under subsection (1), the Minister may require to be satisfied as to-

(a) the history and financial condition of the institution;

(b) the adequacy of the institution's capital structure;

(c) the viability and earning prospects of the proposed branch or subsidiary; and

(d) such other matter as may have a bearing on the institution or proposed branch or subsidiary as the Central Bank may require.

(4) An institution intending to close any of its branches or subsidiaries outside Kenya shall give notice in writing to the Minister, through the Central Bank of its intention, at least six months before the date of the intended closure, or within such shorter period as the Minister may, in any particular case, allow.

Amendment of
section 12 of
Cap.488.

43. Section 12 of the Banking Act is amended in paragraph (c) by deleting the proviso and substituting therefor the following new proviso-

Provided that –

(i) this paragraph does not prevent an institution from-

(A) letting part of any building which is used for the purpose of conducting its business; or

(B) securing a debt on land and, in the event of default in payment of the debt, holding the land for so long as, in the opinion of the

Central Bank, is needed for the realization of the debt; or

(C) acquiring land for the purpose of its own development; and

(ii) an institution that had purchased or acquired land or any interest or right therein prior to the commencement of this paragraph, shall endeavour to bring its holding or interest in that land within the prescribed limits as soon as reasonably practicable after such commencement, and in any event, not later than the 31st December, 2010.

44. Section 31 of the Banking Act is amended in subsection (3) - Amendment of Section 31 of Cap.488.

(a) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) institutions licensed under this Act shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such information on non-performing loans as may, from time, to time, be specified by the Central Bank in guidelines under section 33(4);

(b) by adding the following new paragraph immediately after paragraph (b) -

(c) the Central Bank and institutions licensed under this Act may, in the ordinary course of business, in such manner and to such extent as the Minister may, in regulations prescribe, exchange such other information as is reasonably required for the proper discharge of their functions.

(c) by inserting a new subsection immediately after subsection (4) as follows -

(5) No duty, to which an institution or its officers may be subject, shall be breached by reason of the disclosure, in good faith, of any information under subsection (2), to –

(a) the Central Bank or to another institution; or

(b) a credit reference bureau established under subsection (4),

in the course of the performance of their duties and no action shall lie against the institution or any of its officers on account of such disclosure.

45. The Banking Act is amended by inserting a new section immediately after section 32 as follows-

32A. (1) Notwithstanding any other provision of this Act, the Central Bank may, from time to time, where it deems it necessary to do so, carry out an assessment of the professional and moral suitability of the persons managing or controlling institutions.

(2) An assessment under subsection (1) shall be in accordance with the criteria set in the First Schedule.

(3) Where, upon an assessment under this section, the Central Bank is satisfied as to the professional and moral suitability of the persons managing or controlling an institution, it shall so certify in writing to the institution.

Insertion of section 32A in Cap.488.

Vetting of officials

2006

(4) A person who, upon an assessment under this section, is not certified by the Central Bank as fit and proper to manage or control an institution, shall be deemed to be disqualified from holding office under section 48.

46. Section 48 of the Banking Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b) –

Amendment of
section 48 of
Cap. 488.

“(bb) is disqualified from holding office under section 32A; or”.

47. Section 53 of the Banking Act is amended in subsection (1), by inserting the expression “12,” immediately after the word “section”.

Amendment of
section 53 of
Cap. 488.

48. The First Schedule to the Banking Act is amended-

Amendment to
the First
Schedule of
Cap 488.

(a) by deleting the heading and substituting therefor the following new heading –

FIRST SCHEDULE

(ss.4 and 32A)

CRITERIA FOR DETERMINING
PROFESSIONAL AND MORAL SUITABILITY

(b) in paragraph (a), by inserting the following immediately after the words “an institution” -

“under section 4, or managing or controlling institutions under section 32A”~~4~~

49. Section 11 of the Central Bank of Kenya Act is amended in subsection (1)(c) by inserting the words “or his representative” immediately before the words “who shall be a non-voting member”.

Amendment of
section 11 of
Cap.491.

No. 10

Insertion of
new section 13B
in Cap.491.

50. The Central Bank of Kenya Act is amended by inserting a new section immediately after section 13A –

Deputy
Governor.

13B There shall be a Deputy Governor who shall be appointed by the President on the recommendation of the Minister and who shall hold office for a term of four years, but shall be eligible for reappointment for one further term.

Amendment of
section 27 of
Cap.491.

51. Section 27 of the Central Bank of Kenya Act is amended in subsection (2), by deleting the words “short-term”.

Amendment of
section 3 of cap.
531.

52. Section 3 of the Accountants Act is amended in subsection (2), by inserting the following new paragraph immediately after paragraph (c) -

(cc) may, with the prior approval of the Minister, borrow or otherwise raise money in such manner, including by way of executing securities and guarantees, as it may, from time to time, determine.

Amendment of
section 9 of
No. 5 of 2004.

53. Section 9 of the Government Financial Management Act, 2004 is amended -

(a) in subsection (1)(c), by deleting the words “all of whom shall be qualified registered accountants”;

(b) by inserting the following new subsection immediately after subsection (1) –

(1A) A person shall be qualified for appointment -

(a) under subsection (1)(a) or (c) if such a person is registered as an accountant under the Accountants Act; or

Cap.531.

(b) under subsection (1)(b) if such a person has an advanced degree and professional experience in –

- (a) economics;
- (b) public finance;
- (c) public policy;
- (d) management, or
- (e) accounting.

54. Section 11 of the Government Financial Management Act, 2004 is amended by inserting at the beginning thereof, the words “Except as provided under section 46 of the Central Bank of Kenya Act”.

Cap.
491.

Amendment of
section 11 of
No.5 of 2004

55. The Government Financial Management Act, 2004 is amended in section 13 -

Amendment of
section 13 of
No.5 of 2004.

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

(2) Notwithstanding subsection (1)-

- (a) a receiver of revenue may deduct amounts required for drawbacks, repayments or discounts before paying the gross revenues into the exchequer account;

(b) the Treasury may, from time to time, authorize receivers of revenue who are accounting officers to defray in the first instance, from revenue collected by them, expenditure for which they are accountable, and the amount of the revenue so expended shall be subsequently paid to the exchequer account from the moneys provided for such expenditure.

(b) by inserting a new subsection immediately after subsection (2) as follows –

(2A) Where the Treasury directs that any revenue, shall be applied as an appropriation in aid of money provided by Parliament for any purpose, such revenue shall be deemed to be money provided by Parliament for that purpose, and shall be applied, audited and dealt with accordingly, and where it is not so used shall be paid into the exchequer account, and, where the revenue to be applied as appropriations-in-aid of money provided by Parliament for any purpose exceeds in a financial year, the amount sanctioned by Parliament to be applied to such purpose, the excess so realized shall be paid into the exchequer account.

(c) in subsection (3), by deleting the expression “subsection (2)” and substituting therefor the words “the foregoing provisions of this section”.

**Amendment of
section 40 of
No.5 of 2004.**

Cap.
491.

56. Section 30 of the Government Financial Management Act, 2004 is amended in subsection (3) by inserting at the beginning thereof the words “Except as provided under section 46 of the Central Bank of Kenya Act”.

FIRST SCHEDULE

Amendments to the Fifth Schedule to the Customs and Excise Act, Cap 472.

(S.4)

2006

FIFTH SCHEDULE EXCISE DUTY

1. Delete the existing rates of duty in respect of the Tariff Numbers specified in the first column and insert the rates of duty specified in the third column hereunder:-

PART I

| TARIFF NO. | GOODS DESCRIPTION | NEW RATE OF EXCISE DUTY |
|------------|---|-----------------------------------|
| 2203.00.90 | Other beer made from malt | Shs.48 per litre |
| 2204.10.00 | Sparkling wine | Shs.54 Per litre or 65% |
| 2205.10.00 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances,in containers of 2 litres or less | Shs.54 Per litre or 65% |
| 2205.90.00 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances,in containers of more than 2 litres. | Shs.54 Per litre or 65% |
| 2208.20.00 | Spirits obtained by distilling grape wine or grape marc. | Per proof litre Shs.120 or 65% |
| 2208.30.00 | Whiskies. | Per proof litre Shs.120 or 65% |
| 2208.40.00 | Rum and Tafia. | Per proof litre Shs.120 or 65% |
| 2208.50.00 | Gin and Geneva | Per proof litre Shs.120 or 65% |

Finance

275

No. 10

| TARIFF NO. | GOODS DESCRIPTION | NEW RATE OF EXCISE DUTY |
|-------------------|---|-----------------------------------|
| 2208.60.00 | Vodka. | Per proof litre Shs.120 or 65% |
| 2208.70.00 | Liqueurs and cordials | Per proof litre Shs.120 or 65% |
| 2208.90.10 | Distilled spirits (e.g. Konyagi, Uganda Waragi) | Per proof litre Shs.120 or 65% |
| 2208.90.90 | Other spirits and other spirituous beverages | Per proof litre Shs.120 or 65% |

1A. Delete the existing rate of duty in respect of the Tariff Number specified in the first column and insert the rate of duty specified in the third column hereunder –

| TARIFF NO. | GOODS DESCRIPTION | NEW RATE OF EXCISE DUTY |
|-------------------|--|--------------------------------|
| 2204.21.00 | Other wine, grape must with fermentation or arrested by the addition of alcohol, in containers of 2 litres or less | 45%. |

1B. Insert the following tariff number, description and rate of excise duty in proper numerical sequence –

| TARIFF NO. | GOODS DESCRIPTION | NEW RATE OF EXCISE DUTY |
|-------------------|---|------------------------------------|
| 2207.10.00 | Undenatured ethyl alcohol of an alcohol strength by volume of 80% vol. or higher. | Per proof litre Kshs.120 or 65% |

2. In paragraph (2) of Part II, delete the existing rates of excise duty in respect of the category shown in the first column and insert the rate shown in the third column of the schedule hereunder:-

| CATEGORY | RETAIL SELLING PRICE PER MILLE | RATE OF EXCISE DUTY PER MILLE(KSHS) |
|-----------------|---------------------------------------|--|
| A | Upto Shs.1,500 | 495 |
| B | Shs.1,501 to Shs.2,500 | 715 |
| C | Shs.2,501 to Shs.3,500 | 990 |
| D | More than Shs.3,500 | 1,690 |

SECOND SCHEDULE

(S. (9)

(Replacement of the First Schedule to the Value Added Tax Act, Cap 476)

Delete the First Schedule and insert the following -

S(6)

FIRST SCHEDULE

RATES OF TAX

Subject to Parts B and C of the Fifth Schedule, the rate of tax referred to in Section 6 shall be 16 per cent of the taxable value.

THIRD SCHEDULE

(Amendments of the Second Schedule to the Value Added Tax Act, Cap.476)

SECOND SCHEDULE

EXEMPT GOODS

PART I

1. Delete the following item-

| <i>Tariff No.</i> | <i>Tariff Description</i> |
|-------------------|---------------------------|
| 1101.00.00 | Wheat or meslin flour. |

PART II

2. (a)Delete the following item-

(vi) The treatment and supply of natural water by a local authority or a person approved by the Minister for the time being responsible for water development for domestic or for industrial use.

(b)Insert the following item-

(vi) Meslin Flour

FOURTH SCHEDULE

(S.12)

No. 10

(Amendments of the Fifth Schedule to the Value Added Tax Act, Cap. 476.)

PART I

FIFTH SCHEDULE

ZERO-RATING

(S.2(1))

PART B – ZERO RATED GOODS

- (a) Insert in their numerical order the following tariff numbers and the descriptions thereof-

| <i>Tariff No.</i> | <i>Tariff Description</i> |
|-------------------|---|
| 8471.10.00 | Analogue or hybrid automatic data processing machines. |
| 8471.30.00 | Portable digital automatic data processing machines, weighing not more than 10Kg, consisting of at least a central processing unit, a keyboard and a display. |
| 8471.41.00 | Other digital automatic data processing machines comprising in the same housing at least a central processing unit and input and output unit, whether or not combined. |
| 8471.49.00 | Other digital automatic data processing machines presented in the form of systems. |
| 8471.50.00 | Other digital processing units other than those of sub-heading 8471.41 or 8471.49 whether or not containing in the same housing one or two of the following types of units: storage units, input units, output units. |

Finance

280

2006

Fourth Schedule (Contd.)

| <i>Tariff No.</i> | <i>Tariff Description</i> |
|-------------------|---|
| 8471.60.00 | Input or output units whether or not containing storage units in the same housing |
| 8471.70.00 | Storage units. |
| 8471.80.00 | Other units of automatic data processing machines. |
| 8471.90.00 | Other automatic data processing machines and units not elsewhere specified as included. |
| 8473.30.00 | Parts and accessories of the machines of heading 84.71. |

- (b) Insert the following new tariff numbers and their corresponding descriptions in proper numerical sequence.

| <i>Tariff. No.</i> | <i>Goods Description</i> |
|--------------------|--|
| 3926.90.10 | Floats for fishing nets. |
| 8418.69.10 | Other refrigerating or freezing equipment for dairying or fishing. |
| 8515.21.00 | Fully or partly automatic machines and apparatus for resistance welding of metal. |
| 8515.29.00 | Other machines and apparatus for resistance welding of metal. |
| 8515.31.00 | Fully or partly automatic machines and apparatus for arc (including plasma arc) welding of metals. |
| 8515.39.00 | Other machines and apparatus for arc (including plasma arc) welding of metals. |
| 9507.10.00 | Fishing rods. |
| 9507.20.00 | Fish-hooks whether or not snelled. |
| 9507.90.00 | Other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 92.08 or 97.05 and similar hunting or shooting requisites. |

PART II

PART C-ZERO RATED GOODS

(a) Insert the following new items immediately after item 16-

18. Napkins and napkin liners for babies.

19. Feeding bottles for babies.

20. Wheat flour

(b) insert the following items in proper numerical sequence -

17. Agricultural tractors, semi-trailers for agricultural tractors and agricultural tractor tyres;

21. Locally assembled water pumps.