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VALUE ADDED TAX ACT

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NO. 35 OF 2013

VALUE ADDED TAX ACT
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NO. 35 OF 2013

VALUE ADDED TAX ACT

[Date of assent: 14th August, 2013.]

[Date of commencement: 2nd September, 2013.]

An Act of Parliament to review and update the law relating to value added tax; to provide for the imposition of value added tax on supplies made in, or imported into Kenya, and for connected purposes

[Act No. 35 of 2013, L.N. 193/2013, Act No. 7 of 2014, Act No. 16 of 2014, Act No. 14 of 2015, Act No. 29 of 2015, Act No. 24 of 2016, Act No. 38 of 2016, Act No. 11 of 2017, Act No. 15 of 2017, Act No. 9 of 2018, Act No. 10 of 2018.]

[Consolidation of Act No. 9 of 2018 and Act No. 10 of 2018 Ongoing.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Value Added Tax Act, 2013.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**aircraft**” includes every description of conveyance for the transport by air of human beings or goods;

“**assessment**” means—

- (a) a self-assessment return submitted under section 45;
- (b) an assessment made by the Commissioner under section 45; or
- (c) an amended assessment under section 46;

“**Authority**” means the Kenya Revenue Authority established by the Kenya Revenue Authority Act (Cap. 469);

“**authorised officer**”, in relation to any provision of this Act, means any officer appointed under section 3 who has been authorised by the Commissioner to perform any functions under or in respect of that provision;

“**business**” means—

- (a) trade, commerce or manufacture, profession, vocation or occupation;
- (b) any other activity in the nature of trade, commerce or manufacture, profession, vocation or occupation;
- (c) any activity carried on by a person continuously or regularly, whether or not for gain or profit and which involves, in part or in whole, the supply of goods or services for consideration; or
- (d) a supply of property by way of lease, licence, or similar arrangement,

but does not include—

- (i) employment;
- (ii) a hobby or leisure activity of an individual; or

- (iii) an activity of a person, other than an individual, that if carried on by an individual would come within subparagraph (ii);

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“Commissioner” means the Commissioner-General appointed under the Kenya Revenue Authority Act (Cap. 469), or, with respect to powers or functions that have been delegated under that Act to another Commissioner, that other Commissioner;

“company” means a company as defined in the Companies Act (Cap. 486) or a corporate body formed under any other written law, including a foreign law, and includes any association, whether incorporated or not, formed outside Kenya which the Cabinet Secretary may, by order, declare to be a company for the purposes of this Act;

“duty-free shop” means a bonded warehouse licensed by the Commissioner of Customs for the deposit of dutiable goods on which duty has not been paid and which have been entered for sale to passengers departing to places outside Kenya;

“duty of customs” means import duty, excise duty, export duty, countervailing duty, levy, cess, tax or surtax charged under any law for the time being in force relating to customs or excise;

“electronic notice system” has the meaning assigned to it in section 39;

“exempt supplies” means supplies specified in the First Schedule which are not subject to tax;

“export” means to take or cause to be taken from Kenya to a foreign country, a special economic zone enterprise or to an export processing zone;

“export processing zone” means an export processing zone designated under the Export Processing Zones Act (Cap. 517);

“goods” means tangible movable and immovable property and includes electrical or thermal energy, gas and water, but does not include money;

“hotel” includes premises commonly referred to as "service flats", "service apartments", "beach cottages", "holiday cottages", "game lodges", "safari camps", "bandas" or "holiday villas" and other premises or establishments used for similar purposes, but does not include—

- (i) premises on which the only supply is under a lease or licence of not less than one month, unless the agreement relating thereto provides that by prior arrangement the occupier may, without penalty, terminate the lease or licence on less than one month's notice; or
- (ii) premises operated by an educational or training institution approved by the Cabinet Secretary for the time being responsible for education for the use of the staff and students of that institution; or
- (iii) premises operated by a medical institution approved by the Cabinet Secretary for the time being responsible for health, for the use of the staff and students of that institution;

“information technology” means any equipment or software for use in storing, retrieving, processing or disseminating information;

“importation” means to bring or cause to be brought into Kenya from a foreign country, a special economic zone enterprise or from an export processing zone;

“importer”, in relation to goods, means the person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods at the time of importation;

“input tax” means—

- (a) tax paid or payable on the supply to a registered person of any goods or services to be used by him for the purpose of his business; and
- (b) tax paid by a registered person on the importation of goods or services to be used by him for the purposes of his business;

“Islamic finance arrangement” has the meaning assigned to it in section 2 of the Income Tax Act;

“Islamic finance return” has the meaning assigned to it in section 2 of the Income Tax Act;

“money” means—

- (a) any coin or paper currency that is legal tender in Kenya;
- (b) a bill of exchange, promissory note, bank draft, or postal or money order;
- (c) any amount provided by way of payment using a debit or credit card or electronic payment system;

“non-resident person” *deleted by Act No. 38 of 2016, s. 26(c)*;

“official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency;

“output tax” means tax which is due on taxable supplies;

“person” means an individual, company, partnership, association of persons, trust, estate, the Government, a foreign government, or a political subdivision of the Government or foreign government;

“registered person” means any person registered under section 34, but does not include an export processing zone enterprise or a special economic zone;

“regulations” means any subsidiary legislation made under this Act;

“services” means anything that is not goods or money;

“service exported out of Kenya” means a service provided for use or consumption outside Kenya;

“ship stores” means goods for use in aircraft or vessels engaged in international transport for consumption by passengers and crew and includes goods for sale on board such aircraft or vessels;

“**special economic zones**” shall have the meaning assigned to it under the Special Economic Zones Act, No. 16 of 2015;

“**Sukuk**” has the meaning assigned to it in section 2 of the Public Finance Management Act, No. 18 of 2012;

“**supply**” means a supply of goods or services;

“**supply of goods**” means—

- (a) a sale, exchange, or other transfer of the right to dispose of the goods as owner; or
- (b) the provision of electrical or thermal energy, gas or water;

“**supply of services**” means anything done that is not a supply of goods or money, including—

- (a) the performance of services for another person;
- (b) the grant, assignment, or surrender of any right;
- (c) the making available of any facility or advantage; or
- (d) the toleration of any situation or the refraining from the doing of any act;

“**supply of imported services**” means a supply of services that satisfies the following conditions—

- (a) the supply is made by a person who is not a registered person to a person who is a registered person;
- (b) the supply would have been a taxable supply if it had been made in Kenya; and
- (c) the registered person would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply;

“**tax**” means the value added tax chargeable under this Act;

“**tax computerized system**” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to tax;

“**tax period**” means one calendar month or such other period as may be prescribed in the regulations;

“**tax registration certificate**” means a tax registration certificate issued by the Commissioner under section 34;

“**tax representative**” *deleted by Act No. 38 of 2016, s. 26(e)*;

“**taxable supply**” means a supply, other than an exempt supply, made in Kenya by a person in the course or furtherance of a business carried on by the person, including a supply made in connection with the commencement or termination of a business;

“**taxable value**” means the value determined in accordance with section 13 and 14;

“**vehicle**” includes every description of conveyance for the transport by land of human beings or goods;

“**zero-rated supply**” means a supply listed in the Second Schedule.

(2) For the purposes of this Act, goods shall be classified by reference to the tariff numbers set out in Annex 1 to the Protocol on the Establishment of the East African Community Customs Union and in interpreting that Annex, the general rules of interpretation set out therein shall, with the necessary modifications, apply.

(3) For the purposes of this Act—

- (a) Islamic finance return is treated as interest, whether received or paid on a financial arrangement; and
- (b) reference to "interest" includes a reference to Islamic finance return.

[Act No. 14 of 2015, s. 2, Act No. 38 of 2016, s. 26, Act No. 15 of 2017, s.7]

PART II – ADMINISTRATION

3. Deleted by Act No. 29 of 2015, Second Sch.

4. Deleted by Act No. 29 of 2015, Second Sch.

PART III – CHARGE TO TAX

5. Charge to tax

(1) A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on—

- (a) a taxable supply made by a registered person in Kenya;
- (b) the importation of taxable goods; and
- (c) a supply of imported taxable services.

(2) The rate of tax shall be—

- (a) in the case of a zero-rated supply, zero per cent; or
- (b) in any other case, sixteen per cent of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services.

(3) Tax on a taxable supply shall be a liability of the registered person making the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

(4) The amount of tax payable on a taxable supply, if any, shall be recoverable by the registered person from the receiver of the supply, in addition to the consideration.

(5) Tax on the importation of taxable goods shall be charged as if it were duty of customs and shall become due and payable by the importer at the time of importation.

(6) Tax on the supply of imported taxable services shall be a liability of the registered person receiving the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

6. Cabinet Secretary may amend the rate of tax

(1) The Cabinet Secretary may, by order published in the *Gazette*, amend the rate of tax by increasing or decreasing any of the rates of tax by an amount not exceeding twenty-five per cent of the rate specified in section 5(2)(b).

(2) Every order made under subsection (1) shall be laid before the National Assembly without unreasonable delay, and shall cease to have effect if a resolution of the National Assembly disapproving the order is passed within twenty days of

the day on which the National Assembly next sits after the order is laid, but without prejudice to anything previously done thereunder.

7. Zero rating

(1) Where a registered person supplies goods or services and the supply is zero rated, no tax shall be charged on the supply, but it shall, in all other respects, be treated as a taxable supply.

(2) A supply or importation of goods or services shall be zero-rated under this section if the goods or services are of the description for the time being specified in the Second Schedule.

PART IV – PLACE AND TIME OF SUPPLY

8. Place of supply of services

(1) A supply of services is made in Kenya if the place of business of the supplier from which the services are supplied is in Kenya.

(2) If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person and—

- (a) the services are physically performed in Kenya by a person who is in Kenya at the time of supply;
- (b) the services are directly related to immovable property in Kenya;
- (c) the services are radio or television broadcasting services received at an address in Kenya;
- (d) the services are electronic services delivered to a person in Kenya at the time of supply; or
- (e) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in Kenya.

(3) In this section—

“electronic services” means any of the following services, when provided or delivered on or through a telecommunications network—

- (a) websites, web-hosting, or remote maintenance of programs and equipment;
- (b) software and the updating of software;
- (c) images, text, and information;
- (d) access to databases;
- (e) self-education packages;
- (f) music, films, and games, including games of chance; or
- (g) political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.

9. Deleted by Act No. 29 of 2015, Second Sch.

10. Treatment of imported services

(1) If a supply of imported taxable services is made to a registered person, the registered person shall be deemed to have made a taxable supply to himself.

(2) If a registered person referred to in subsection (1) is entitled to—

- (a) a credit for part of the amount of input tax payable, the value of the taxable supply under subsection (1) shall be reduced by an amount equal to the supply that is entitled for the input tax credit; or
- (b) a full input tax credit payable on the imported taxable services under subsection (1), the value of the taxable services shall be reduced to zero.

(3) The output tax in respect of a deemed taxable supply under subsection (1) shall be payable by the registered person at the time of the supply.

(4) For the purposes of this section, if a registered person carries on a business, both in and outside Kenya, the part of the business carried on outside Kenya shall be treated as if it were carried out by a person separate from the registered person.

11. Place of supply of goods

A supply of goods occurs in Kenya if—

- (a) the goods are delivered or made available in Kenya by the supplier;
- (b) the supply of the goods involves their installation or assembly at a place in Kenya; or
- (c) where the goods are delivered outside Kenya, the goods were in Kenya when their transportation commenced.

[Act No. 15 of 2017, s.8]

12. Time of supply of goods and services

(1) Subject to subsection (3), the time of supply, including a supply of imported services, shall be the earlier of—

- (a) the date on which the goods are delivered or services performed;
- (b) the date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity;
- (c) the date on which the invoice for the supply is issued; or
- (d) the date on which payment for the supply is received, in whole or in part.

(2) The time of supply of goods by means of a vending machine, meter, or other device operated by use of a coin, note, or token shall be on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(3) If—

- (a) goods are supplied under a rental agreement; or
- (b) goods or services are made by metered supplies, or under an agreement or law that provides for periodic payments,

the goods or services shall be treated as successively supplied for successive parts of the period of the lease or agreement, or as determined by law, and the time of each successive supply shall be the earlier of the date on which payment for the successive supply is due or received.

(4) The time of supply of imported goods shall be—

- (a) in the case of goods cleared for home use directly at the port of importation, or goods entered for removal to an inland station and there cleared for home use, at the time of customs clearance;

- (b) in the case of goods removed to a licensed warehouse subsequent to importation, at the time of final clearance from the warehouse for home use;
- (c) in the case of goods removed from an export processing zone, at the time of removal for home use;
- (d) in any other case, at the time the goods are brought into Kenya.

PART V – TAXABLE VALUE

13. Taxable value of supply

(1) Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be—

- (a) the consideration for the supply; or
- (b) if the supplier and recipient are related, the open market value of the supply.

(2) The taxable value of a supply of mobile cellular services shall be the value of the services as determined for the purposes of the duty imposed under the law relating to excise.

(3) Subject to subsections (4) to (6), the consideration for a supply, including a supply of imported services, shall be the total of—

- (a) the amount in money paid or payable, directly or indirectly, by any person, for the supply; or
- (b) the open market value at the time of the supply of an amount in kind paid or payable, directly or indirectly, by any person, for the supply; and
- (c) any taxes, duties, levies, fees, and charges (other than value added tax) paid or payable on, or by reason of the supply,

reduced by any discounts or rebates allowed and accounted for at the time of the supply.

(4) The consideration for a supply shall include the amount charged for—

- (a) any wrapper, package, box, bottle, or other container in which goods are supplied;
- (b) any other goods contained in or attached to the wrapper, package, box, bottle or other container referred to in paragraph (a); or
- (c) any liability that the purchaser has to pay to the vendor by reason of or in respect of the supply in addition to the amount charged as price.

(5) In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client:

Provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.

(6) The consideration for a supply shall not include—

- (a) in the case of a supply of goods under a hire purchase agreement, any financial charge payable in relation to a supply of credit under the agreement; or

- (b) any interest incurred for the late payment of the consideration for the supply.

(7) The consideration for a supply of accommodation or restaurant services shall not include the Tourism Levy imposed on the supply under the Tourism Act (Cap. 383), any service charge paid in lieu of tips:

Provided that this subsection shall only apply in respect of service charge where—

- (a) the service charge is distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employee; and
- (b) the service charge does not exceed ten per cent of the price of the service, excluding such service charge.
- (8) For the purposes of this Act, a person is related to another person if—
- (a) either person participates, directly or indirectly, in the management, control or the capital of the business of the other;
- (b) a third person participates, directly or indirectly, in the management, control or capital of the business of both; or
- (c) an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.

[Act No. 38 of 2016, s. 27.]

14. Taxable value of imported goods

(1) The taxable value of imported goods shall be the sum of—

- (a) the value of the goods ascertained for the purpose of customs duty, in accordance with the East African Community Custom Management Act, 2004, whether or not any duty of customs is payable on the goods;
- (b) to the extent not included under paragraph (a)—
- (i) the cost of insurance and freight incurred in bringing the goods to Kenya; and
- (ii) the cost of services treated as part of the imported goods under this section; and
- (c) the amount of duty of customs, if any, paid on those goods.

(2) Unless the context otherwise requires, a supply of services that is ancillary or incidental to the importation of goods shall be treated as part of the importation.

15. Deemed taxable supply

(1) An application of taxable supplies by a registered person for use outside his business shall be a taxable supply made by the person.

(2) A taxable supply under subsection (1) shall be deemed to have been made by the person on the date the supply is first used outside the business.

16. Debit and credit note

(1) Where goods are returned to the registered person or, for good and valid reason the registered person decides for business reasons, to reduce the value of a supply after the issue of a tax invoice, a credit note shall be issued for the amount of the reduction:

Provided that a credit note may be issued only within six months after the issue of the relevant tax invoice.

(2) A registered person who issues a credit note under this section shall reduce the amount of his output tax in the tax period in which the credit note was issued by an amount that bears the same proportion to the tax originally charged as the amount credited bears to the total amount originally charged and the amount of tax so credited shall be specified on the credit note.

(3) A registered person who receives a credit note for the supply in respect of which he has claimed deductible input tax, shall reduce the amount of deductible input tax in the month in which the credit note is received, by the amount of tax credited.

(4) Where a registered person has issued a tax invoice in respect of a taxable supply and subsequently makes a further charge in respect of that supply, or any transaction associated with that supply, the person shall, in respect of the further charge being made, issue a debit note, and shall show on it the details of the tax invoice issued at the time of the original supply.

(5) A registered person who receives a debit note issued in compliance with subsection (4) may, if the supply is eligible therefor and in so far as it has not previously been claimed, claim as deductible input tax such further amount of tax that is being charged, in the month in which the further charge was made, or in the next subsequent month.

(6) A credit or debit note issued under this section shall be serially numbered and shall include details of the name, address and personal identification number of the person to whom it is issued and sufficient details to identify the tax invoice on which the supply was made and the tax that was originally charged.

PART VI – DEDUCTION OF INPUT TAX

17. Credit for input tax against output tax

(1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.

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

(3) The documentation for the purposes of subsection (2) shall be—

- (a) an original tax invoice issued for the supply or a certified copy;
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction;

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- (d) a credit note in the case of input tax deducted under section 16(2); or
- (e) a debit note in the case of input tax deducted under section 16(5).

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition of—

- (a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or
- (b) entertainment, restaurant and accommodation services unless—
 - (i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or
 - (ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.

(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

Provided that any such excess shall be paid to the registered person by the Commissioner where—

- (a) the Commissioner is satisfied that such excess arises from making zero rated supplies; and
- (b) the registered person lodges the claim for the refund of the excess tax within twelve months from the date the tax becomes due and payable.

(6) Subject to this Act, if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows—

- (a) full deduction of all the input tax attributable to taxable supplies;
- (b) no deduction of any input tax which is directly attributable to other use; and
- (c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula:

$$\frac{A \times B}{C}$$

where—

A is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use;

B is the value of all taxable supplies made by the registered person during the period; and

C is the value of all supplies made by the registered person during the period in Kenya.

- (7) If the fraction of the formula in subsection (6) for a tax period—
- (a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component **A** of the formula; or
 - (b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component **A** of the formula.

[Act No. 14 of 2015, s. 3.]

18. Tax paid prior to registration

(1) Where—

- (a) on the date exempt supplies made by a registered person become taxable, and the person had incurred input tax on such supplies; or
- (b) on the date he is registered, a person has incurred tax on taxable supplies which are intended for use in making taxable supplies,

the person may, within three months from that date, claim relief from any tax shown to have been incurred on such supplies:

Provided that this subsection shall apply where such supplies are purchased, within the period of twenty-four months immediately preceding registration or the exempt supplies becoming taxable.

(2) Where the Commissioner is satisfied that the claim for relief is justified, he shall authorise the registered person to make an appropriate deduction of the relief claimed under subsection (1) from the tax payable on his next return.

(3) The claim for relief from tax under subsection (1) shall be made in the prescribed form.

PART VII – COLLECTION AND RECOVERY OF TAX

19. When tax is due

(1) Tax shall be due and payable at the time of supply.

(2) Notwithstanding the provision of subsection (1), a registered person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due.

20. Deleted by Act No. 29 of 2015, Second Sch.

21. Deleted by Act No. 29 of 2015, Second Sch.

22. Imported goods subject to customs control

(1) A person shall not be entitled to obtain delivery of imported taxable goods from the control of the customs unless the person has paid, in full, the correct amount of tax due.

(2) Notwithstanding the provisions of any other written law, any taxable goods which are imported by air, land or water shall be produced by the importer to a proper officer of customs at the customs station at or nearest to the place of entry, and any importer who fails to produce any such goods commits an offence and the goods in respect of which the offence was committed shall be liable to forfeiture.

(3) The Commissioner of Customs—

- (a) shall collect tax payable under this Act on imported goods at the time of importation and shall, at that time, obtain such information as may be prescribed in respect of the importation; and
- (b) may make arrangements for such functions to be performed on his behalf in respect of imported goods through the postal service.

(4) For the purposes of this section, the Commissioner of Customs may exercise any power conferred upon him by the East African Community Customs Management Act, 2004 (No. 8 of 2004) as if the reference to import duty in that Act includes a reference to tax payable on imported goods under this Act.

23. Deleted by Act No. 29 of 2015, Second Sch.

24. Deleted by Act No. 29 of 2015, Second Sch.

25. Deleted by Act No. 29 of 2015, Second Sch.

25A. Deleted by Act No. 29 of 2015, Second Sch.

26. Deleted by Act No. 29 of 2015, Second Sch.

27. Deleted by Act No. 29 of 2015, Second Sch.

28. Deleted by Act No. 29 of 2015, Second Sch.

29. Deleted by Act No. 29 of 2015, Second Sch.

PART VIII – REFUND OF TAX

30. Refund of tax paid in error

Where, in respect of any supply, tax has been paid in error, the Commissioner shall, except as otherwise provided by the regulations, refund such tax:

Provided that no refund shall be made under this section unless a claim in respect thereof is lodged within twelve months from the date the tax became due and payable under section 19.

31. Refund of tax on bad debts

(1) Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may refund the tax:

Provided that no application for a refund shall be made under this section after the expiry of five years from the date of the supply.

(2) Where the tax refunded under subsection (1) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within thirty days of the date of the recovery.

(3) If payment is not made within the time specified under subsection (2), an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable:

Provided that the interest payable shall not exceed one hundred per cent of the refunded amount.

32. Deleted by Act No. 29 of 2015, Second Sch.

33. Repealed by Act No. 38 of 2016, s. 28.

PART IX – REGISTRATION AND DEREGISTRATION

34. Application for registration

(1) A person who in the course of a business—

- (a) has made taxable supplies or expects to make taxable supplies, the value of which is five million shillings or more in any period of twelve months; or
- (b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months,

shall be liable for registration under this Act and shall, within thirty days of becoming so liable, apply to the Commissioner for registration in the prescribed form.

(2) In determining whether a person exceeds the registration threshold for a period, the value of the following taxable supplies shall be excluded—

- (a) a taxable supply of a capital asset of the person; and
- (b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's business or permanently ceasing to carry on the person's business.

(3) Notwithstanding subsection (1), a person who makes or intends to make taxable supplies may apply, in the prescribed form, to the Commissioner for voluntary registration.

(4) The Commissioner shall register a person who has applied for voluntary registration under subsection (3) if satisfied that—

- (a) the person is making, or shall make taxable supplies;
- (b) the person has a fixed place from which the person's business is conducted;
- (c) if the person has commenced carrying on a business, the person—
 - (i) has kept proper records of its business; and
 - (ii) has complied with its obligations under other revenue laws; and
- (d) there are reasonable grounds to believe that the person shall keep proper records and file regular and reliable tax returns.

(5) The Commissioner shall issue a registered person with a tax registration certificate in the prescribed form.

(6) If the Commissioner is satisfied that a person eligible to apply for registration has not done so within the time limit specified in subsection (1), the Commissioner shall register the person.

(7) The registration of a person under subsection (1) or (6) shall take effect from the beginning of the first tax period after the person is required to apply for registration, or such later period as may be specified in the person's tax registration certificate.

(8) The registration of a person under subsection (4) shall take effect from the date specified in the person's tax registration certificate.

(9) The Cabinet Secretary may, in regulations, provide for the registration of a group of companies as one registered person for the purposes of the Act.

35. Registered person to display certificate

(1) A registered person shall display in a conspicuous place—

- (a) the tax registration certificate at the principal place at which the person carries on business; and
- (b) a copy of the certificate at every other place at which the person carries on business.

(2) A registered person shall notify the Commissioner, in writing, of any change in the name (including the business name), address, place of business, or nature of the business of the person within twenty-one days of the change.

36. Cancellation of registration

(1) A registered person who ceases to make taxable supplies shall apply in writing to the Commissioner, for the cancellation of the person's registration, within thirty days of the date on which the person ceases to make taxable supplies.

(2) A registered person who continues to make taxable supplies whose annual value does not exceed the registration threshold may apply in writing to the Commissioner, for cancellation of the person's registration.

(3) The Commissioner shall, by notice in writing, cancel the registration of a person if—

- (a) the person has applied for cancellation under subsection (1) and the Commissioner is satisfied that the person has ceased to make taxable supplies; or
- (b) the person has not applied for cancellation but the Commissioner is satisfied that the person has ceased to make taxable supplies and is not otherwise required to be registered.

(4) Where a person applies for cancellation of registration under subsection (2) and the Commissioner is satisfied that the person is not required to be registered—

- (a) the Commissioner shall, if the person has been registered for a period of more than twelve months, by notice in writing, cancel the registration; or
- (b) the Commissioner may, if the person has been registered for a period of twelve months or less, by notice in writing, cancel the registration.

(5) The Commissioner may, by notice in writing, cancel the registration of a person who is no longer required to be registered, if the Commissioner is satisfied that the person has not—

- (a) kept proper tax records;
- (b) furnished regular and reliable returns; or
- (c) complied with obligations under other revenue laws, and there are reasonable grounds to believe that the person will not keep proper records or furnish regular and reliable returns.

(6) The cancellation of a person's registration shall take effect from the date specified in the notice of cancellation.

(7) Where a person's registration is cancelled under this section, the person shall—

- (a) immediately cease to hold out that the person is a registered person, including on any documentation used by the person;
- (b) submit a final return and pay all tax due, including the tax due under subsection (9), within fifteen days after the date of cancellation of the person's registration.

(8) Notwithstanding the cancellation of registration of a person under this section, the person shall be liable for any act done or omitted to be done while registered.

(9) A person whose registration is cancelled shall be deemed to have made a taxable supply of any trading stock on hand at the time the registration is cancelled if the person was allowed an input tax credit for the acquisition or import of the stock, or in respect of the acquisition or import of goods that have been subsumed into that stock.

(10) The taxable supply under subsection (9) shall be deemed to have been made by the person immediately before the person's registration is cancelled and the person shall be liable for an amount of output tax in respect of the supply equal to the amount of the input tax credit allowed to the person on acquisition or import of the stock.

[Act No. 38 of 2016, s. 29.]

37. Offences relating to registration

A person who—

- (a) fails to apply for registration as required under this Act;
- (b) applies for cancellation of registration when still required to be registered;
- (c) fails to apply for cancellation of registration as required under this Act; or
- (d) fails to comply with section 35 or 36(7)(a),

commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

PART X – APPLICATION OF INFORMATION TECHNOLOGY

38. Deleted by Act No. 29 of 2015, Second Sch.

39. Deleted by Act No. 29 of 2015, Second Sch.

40. Unauthorized access to or improper use of tax computerized system

(1) A person who—

- (a) knowingly and without lawful authority, by any means, gains access to or attempts to gain access to any tax computerised system;
- (b) having lawful access to any tax computerized system, knowingly uses or discloses information obtained from such system for a purpose that is not authorised; or
- (c) knowing that he is not authorized to do so, receives information obtained from any tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information,

commits an offence.

- (2) A person convicted of an offence under subsection (1) shall be liable—
- (a) in the case of an individual, to imprisonment for a term not exceeding two years, or to a fine not exceeding four hundred thousand shillings, or to both; or
 - (b) in the case of a body corporate, to a fine not exceeding one million shillings.

41. Interference with tax computerized system

- (1) A person who knowingly—
- (a) falsifies any record or information stored in any tax computerised system;
 - (b) damages or impairs any tax computerised system; or
 - (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a tax computerised system is held or stored otherwise than with the permission of the Commissioner,

commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable, to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings, or to both.

PART XI – INVOICES, RECORDS, RETURNS AND ASSESSMENTS

42. Tax invoice

(1) Subject to subsection (2), a registered person who makes a taxable supply shall, at the time of the supply furnish the purchaser with the tax invoice containing the prescribed details for the supply.

(2) No invoice showing an amount which purports to be tax shall be issued on any supply—

- (a) which is not a taxable supply; or
- (b) by a person who is not registered.

(3) Any person who issues an invoice in contravention of this subsection commits an offence and any tax shown thereon shall become due and payable to the Commissioner within seven days of the date of the invoice.

(4) A registered person shall issue only one original tax invoice for a taxable supply, or one original credit note or debit note, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.

43. Keeping of records

(1) Every registered person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

- (2) The records to be kept under subsection (1) shall include—
- (a) copies of all tax invoices and simplified tax invoices issued in serial number order;
 - (b) copies of all credit and debit notes issued, in chronological order;

- (c) purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
- (d) details of the amounts of tax charged on each supply made or received and in relation to all services to which section 10 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;
- (e) tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
- (f) copies of stock records kept periodically as the Commissioner may determine;
- (g) details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and
- (h) such other accounts or records as may be specified, in writing, by the Commissioner.

(3) Every person required under subsection (1) to keep records shall, at all reasonable times, avail the records to an authorised officer for inspection and shall give the officer every facility necessary to inspect the records.

(4) For the purposes of this section, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register, of such type and description as may be prescribed, for the purpose of accessing information regarding any matter or transaction which may affect the tax liability of the person.

(5) A person who contravenes any of the provisions of this section commits an offence.

44. Submission of returns

(1) Every registered person shall submit a return, in the prescribed form and manner, in respect of each tax period not later than the twentieth day after the end of that period.

(2) A registered person may, in writing, apply to the Commissioner for an extension of time to submit a return.

(3) An application under subsection (2) shall be made before the due date for submission of the return.

(4) The Commissioner may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and shall serve notice of the decision on the applicant.

(5) A person who fails to submit a return as required under this section shall be liable to a penalty of ten thousand shillings or five per cent of the amount of tax payable under the return, whichever is higher.

45. Deleted by Act No. 29 of 2015, Second Sch.

46. Deleted by Act No. 29 of 2015, Second Sch.

PART XII – ENFORCEMENT

47. Deleted by Act No. 29 of 2015, Second Sch.

48. Deleted by Act No. 29 of 2015, Second Sch.

49. Deleted by Act No. 29 of 2015, Second Sch.

PART XIII – OBJECTIONS

50. Deleted by Act No. 29 of 2015, Second Sch.

PART XIV – FORFEITURE AND SEIZURE

51. Deleted by Act No. 29 of 2015, Second Sch.

PART XV – SETTLEMENT OF CASES
AND RULINGS BY THE COMMISSIONER

52. Deleted by Act No. 29 of 2015, Second Sch.

53. Deleted by Act No. 29 of 2015, Second Sch.

54. Deleted by Act No. 29 of 2015, Second Sch.

55. Deleted by Act No. 29 of 2015, Second Sch.

56. Deleted by Act No. 29 of 2015, Second Sch.

57. Deleted by Act No. 29 of 2015, Second Sch.

58. Deleted by Act No. 29 of 2015, Second Sch.

59. Deleted by Act No. 29 of 2015, Second Sch.

PART XVI – OFFENCES AND PENALTIES

60. Deleted by Act No. 29 of 2015, Second Sch.

61. Deleted by Act No. 29 of 2015, Second Sch.

62. Burden of proof

In any civil proceedings under this Act, the burden of proving that any tax has been paid or that any goods or services are exempt from payment of tax shall lie on the person liable to pay the tax or claiming that the tax has been paid or that the goods or services are exempt from payment of tax.

63. General penalty

A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

PART XVII – MISCELLANEOUS PROVISIONS

64. Effect on imposition or variation of tax

(1) If, after any agreement has been entered into for the supply of any taxable supply at a price that is expressly or implicitly inclusive of taxes or duties, and any alteration takes place in the amount of tax payable in respect of that supply before the tax becomes due, then, in the absence of express written provisions to the contrary between the parties to the agreement, and notwithstanding the provisions of any other written law, the agreement shall have effect as follows—

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- (a) in the case of the alteration being a new or increased tax, the registered person may, after payment of the tax, whether directly or indirectly, add the difference caused by the alteration to the agreed price;
 - (b) in the case of the alteration being the abolition or reduction of tax, the purchaser may, if the registered person has not, directly or indirectly, paid the tax or has paid the tax at a lower rate, deduct the difference caused by the alteration from the agreed price;
 - (c) any refund or payment of increased tax resulting from the alteration not being finally adopted shall be adjusted between the parties to the agreement as the case may require.

(2) If, under any law relating to the control of prices or charges, a price is fixed, or any variation in price is prohibited or regulated, in relation to any taxable supply then, notwithstanding any provision of that law, where tax in relation to that supply is imposed or altered the price may be varied strictly in accordance with that imposition or variation when the registered person has, directly or indirectly, been affected by that imposition or alteration.

65. Application of East African Community Customs Management Act, 2004

Subject to this Act, the East African Community Customs Management Act, 2004 and any rules made thereunder relating to customs generally, whether made before or after the commencement of this Act, shall have effect, with such exceptions and adaptations as may be prescribed, in relation to imported taxable goods, whether liable to any duty of customs or not, as if all such goods were liable to duties of customs and as if those duties included tax.

66. Tax avoidance schemes

(1) Notwithstanding anything in this Act, if the Commissioner is satisfied that—

- (a) a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit,

the Commissioner may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out.

(2) If a determination is made under subsection (1), the Commissioner shall issue an assessment giving effect to the determination.

(3) A determination under subsection (1) shall be made within five years from the last day of the tax period to which the determination relates.

(4) In this section—

“**scheme**” includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable; and

“**tax benefit**” means—

- (a) a reduction in the liability of a person to pay tax;

- (b) an increase in the entitlement of a person to a deduction for input tax;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of tax;
- (e) an acceleration of an entitlement to a deduction for input tax;
- (f) any other advantage arising because of a delay in payment of tax or an acceleration of the entitlement to a deduction for input tax;
- (g) anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import, as the case may be; or
- (h) anything that gives rise to a deduction for input tax for an acquisition or import that is used or is intended to be used other than in making taxable supplies.

67. Regulations

(1) The Cabinet Secretary may make regulations for the better carrying of the provisions of this Act, and without prejudice to the generality of the foregoing, the regulations may—

- (a) prescribe conditions and procedures for the registration of registered persons;
- (b) provide for the submission of returns and the place at which returns are to be submitted and tax is to be paid;
- (c) prescribe the form of notices, returns or other forms required for the purposes of this Act;
- (d) prescribe offence and penalties thereto;
- (e) prescribe rules for particular types of supplies and in relation to input tax credits; or
- (f) prescribe any other thing required to be prescribed for the purposes of any provision of this Act.

(2) Regulations made under this section shall be tabled before the National Assembly for approval before they take effect.

68. Repeal of Cap. 476, transitional and savings provisions

(1) The Value Added Tax Act (Cap. 476) is repealed.

(2) Notwithstanding the repeal of the Value Added Tax Act, the provisions of that Act shall remain in full force and effect for the purposes of the assessment and collection of any tax and the recovery of any penalty, payable under the Act and outstanding at the date upon which such repeal becomes effective.

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

(4) Where a remission of tax was granted under the repealed Act on any taxable goods or services, such remission shall continue to remain in force for a period of five years from the date of commencement of this Act.

(4A) For the avoidance of doubt and despite any other provision of this Act or other written law for the time being in force, the expression "remission of tax" in subsection (4) shall, in the case of an official aid-funded project, be deemed to include express provision in the agreement in respect of that project for the

remission of tax on any taxable goods or services supplied for the implementation of the project, where the agreement was concluded before the commencement of this Act:

Provided that a remission to which this subsection applies shall remain in force for a period of five years with effect from the commencement of this subsection.

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

(6) Unless a contrary intention appears, the commencement of this Act shall not—

- (a) revive anything not in force or existing at the time at which the commencement take effect;
- (b) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the repealed Act in force at the commencement of this Act;
- (c) affect an investigation, legal proceedings or remedy in respect of a right, privilege, obligations, liability, penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and such penalty forfeiture or punishment may be imposed as if this Act has not been passed; or
- (d) affect the employment or appointment of any person to the services of the Authority subsisting at the commencement of this Act.

[Act No. 16 of 2014, s. 27.]

FIRST SCHEDULE

[Section 2(1), Act No. 7 of 2014, s. 2, Act No. 16 of 2014, s. 28, Act No. 14 of 2015, s. 5, Act No. 24 of 2016, s. 2, Act No. 38 of 2016, s. 30, Act No. 11 of 2017, Act No. 15 of 2017, s.9, Act No. 9 of 2018, Sch.]

PART I – GOODS

EXEMPT SUPPLIES

SECTION A

The supply or importation of the following goods shall be exempt supplies

1. Bovine semen of tariff No. 0511.10.00.
2. Fish eggs and roes of tariff No. 0511.91.10.
3. Animal semen other than bovine of tariff No. 0511.99.10.
4. Soya beans, whether or not broken of tariff Nos. 1201.10.00 and 1201.90.00
5. Groundnuts, not roasted or otherwise cooked, in shell of tariff No. 1202.41.00.
6. Groundnuts, not roasted or otherwise cooked, shelled, whether or not broken of tariff No. 1202.42.00.
7. Copra of tariff No. 1203.00.00.
8. Linseed, whether or not broken of tariff No. 1204.00.00
9. Low erucic acid rape or colza seeds of tariff No. 1205.10.00.

10. Other rape or colza seeds of tariff No. 1205.90.00.
11. Sunflower seeds, whether or not broken of tariff No. 1206.00.00.
12. Cotton seeds, whether or not broken of tariff Nos. 1207.21.00 and 1207.29.00.
13. Sesamum seeds, whether or not broken of tariff No. 1207.40.00.
14. Mustard seeds, whether or not broken of tariff No. 1207.50.00.
15. Safflower seeds, whether or not broken of tariff No. 1207.60.00.
16. Other oil seeds and oleaginous fruits, whether or not broken of tariff No. 1207.99.00.
17. Pyrethrum flower of tariff No. 1211.90.20.
- 17A. Sugarcane of tariff No. 1212.93.00.
[Act No. 7 of 2014, s. 2(a)(ii).]
- 17B. Unprocessed produce of plant species *camellia sinensis*.
[Act No. 7 of 2014, s. 2(a)(ii).]
18. Live Animals of Chapter 1.
19. Meat and edible meat offals of chapter 2 excluding those of tariff heading 0209 and 0210.
20. Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307.
21. Unprocessed milk.
22. Fresh birds eggs in shell.
23. Edible Vegetables and certain roots and tubers of Chapter 7, excluding those of tariff heading 0711.
24. Edible fruits and nuts, peel of citrus fruits or melon of Chapter 8 excluding, those of tariff heading 0811, 0812, 0813 and 0814.
25. Cereals of Chapter 10, excluding seeds of tariff heading 1001, 1002 and 1003.
26. Fertilisers of Chapter 31.
27. Plants and machinery of Chapter 84 and 85.
28. Maize (corn) seed of tariff no. 1005.10.00.
29. Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy.
30. Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (Cap. 314A), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be.

[Act No. 7 of 2014, s. 2(a)(iii).]

30A. Taxable supplies, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.

[Act No. 11 of 2017, Sch.]

31. *deleted by Act No. 15 of 2017, s. 9*

32. *Repealed by Act No. 40 of 2013.*

33. Disposable plastic syringes of tariff No. 9018.31.10.

34. Other syringes with or without needles of tariff No. 9018.31.90.

35. Tubular metal needles and needles for sutures of tariff No. 9018.32.00.

36. Catheters, cannulae and the like of tariff No. 9018.39.00.

37. Blood bags.

38. Blood and fluid infusion sets.

39. (1) Subject to paragraphs (2) and (3), materials, articles and equipment, including motor vehicles, which—

- (a) are specially designed for the sole use by disabled, blind and physically handicapped persons;
- (b) are intended for the educational, scientific or cultural advancement of the disabled for the use of an organisation approved by the national Government for purposes of exemption.

(2) The exemption under paragraph (1) shall only apply—

- (a) once in every four years in respect of motor vehicles; and
- (b) to a person who has not enjoyed another exemption under the provisions of this Act.

(3) Paragraph (1)(b) does not apply to motor vehicles.

2941.20.00	Streptomycins and their derivatives; salts thereof.
2941.30.00	Tetracyclines and their derivatives; salts thereof.
2941.40.00	Chloramphenicol and its derivatives; salts thereof.
2941.50.00	Erythromycin and its derivatives; salts thereof.
2941.90.00	Other antibiotics.
3001.20.00	Extracts of glands or other organs or of their secretions
3001.90.10	Heparin and its salts.
3001.90.90	Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
3002.10.00	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.

Value Added Tax

3003.20.00	Medicaments containing other antibiotics not put up in measured doses or in forms or packings for retail sale.
3003.31.00	Medicaments containing insulin, not put up in measured doses or in forms or packings for retail sale.
3004.31.00	Medicaments containing insulin put up in measured doses or in forms or packings for retail sale.
3005.10.00	Adhesive dressings and other articles having an adhesive layer impregnated or coated with pharmaceutical substances or put in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3005.90.10	White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3005.90.90	Other wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3006.10.00	Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure, sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics.
3006.20.00.	Blood-grouping reagents.
3006.30.00	Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient.
3006.40.00	Dental cements and other dental fillings; bone reconstruction cements.
3006.50.00	First-aid boxes and kits.
3006.60.00	Chemical contraceptive preparations based on hormones or spermicides.
3006.70.00	Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments.
3006.91.00	Appliances identifiable for ostomy use.
3006.92.00	Waste pharmaceuticals.
8309.90.90	Alluminium pilfer proof caps with EPE liner.
8407.10.00	
8409.10.00	

Value Added Tax

8802.11.00	Helicopters of an unladen weight not exceeding 2,000 kg.
8802.12.00	Helicopters of an unladen weight exceeding 2,000 kg.
8802.20.00	Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg. [Act No. 7 of 2014, s. 2(a)(iv).]
8802.30.00	Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg. [Act No. 16 of 2014, s. 28(a)(i).]
8802.40.00	Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs. [Act No. 16 of 2014, s. 28(a)(i).]
8803.30.00	Other parts of aeroplanes helicopters. [Act No. 16 of 2014, s. 28(a)(i).]
8802.60.00	Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.
8805.21.0.	Air combat simulators and parts thereof.
8805.10.00	Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof.
8805.29.00	Other ground flying trainers and parts thereof.
9619.00.10	Sanitary towels (pads) and tampons.
1101.00.00	<i>deleted by Act No. 15 of 2017, s. 19(iv)</i>
0402.99.10	Milk, specially prepared for infants.
0402.91.10	Milk, specially prepared for infants.
0402.29.10	Milk, specially prepared for infants.
0402.21.10	Milk, specially prepared for infants.
2106.90.20	<i>deleted by Act No. 7 of 2014, s. 2(a)(i).</i>
1102.20.00	<i>deleted by Act No. 15 of of 2017, s. 9(iv).</i>
1006.30.00	Semi-milled or wholly milled rice, whether or not polished or glazed.
Ordinary bread.	
Gluten bread.	
Unleavened bread.	[Act No. 15 of 2017, s.9]
40. Made-up fishing nets of man-made textile material of tariff No. 5608.11.00.	[Act No. 7 of 2014, s. 2(a)(v).]
41. Mosquito nets of tariff No. 6304.91.10.	[Act No. 7 of 2014, s. 2(a)(v)]
42. <i>deleted by Act No. 15 of 2017, s.9</i>	

43. Materials, waste, residues and by-products, whether or not in the form of pellets, and preparations of a kind used in animal feeding of tariff numbers 2308.00.00, 2309.10.00, 2309.90.10, 2309.90.90, 2302.10.00, 2302.30.00, 2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00.

[Act No. 7 of 2014, s.2(a)(v), Act No. 38 of 2016, s. 30 (a)(i).]

44. Unprocessed green tea.

[Act No. 7 of 2014, s.2(a)(v)]

45. Specialised solar equipment and accessories, including solar water heaters and deep cycle-sealed batteries which exclusively use or store solar power.

[Act No. 7 of 2014, s.2(a)(v)]

46. Deleted by Act No. 14 of 2015, s. 5.

47. Tractors.

48. Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum.

49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801.

50. Goods of tariff No. 4011.30.00.

51. Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury.

[Act No. 38 of 2016, s. 30 (a)(ii).]

52. Plastic bag biogas digesters.

52A. Biogas.

52B. Leasing of biogas producing equipment.

53. Parts imported or purchased locally for the assembly of primary school laptop tablets, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology.

54. Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury.

[Act No. 38 of 2016, s. 30 (a)(iii).]

55. Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.

[Act No. 38 of 2016, s. 30 (a)(iv).]

56. Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization.

57. All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service.

[Act No. 38 of 2016, s. 30 (a)(v).]

58. Direction-finding compasses, instruments and appliances for aircraft.

[Act No. 38 of 2016, s. 30 (a)(vi).]

59. Wheat seeds of tariff number 1001.11.00 and 1001.91.00.

[Act No. 38 of 2016, s. 30 (a)(vi).]

60. Museum and natural history exhibits and specimens and scientific equipment for public museums.

[Act No. 38 of 2016, s. 30 (a)(vi).]

61. Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.

[Act No. 38 of 2016, s. 30 (a)(vi).]

62. Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills.

[Act No. 38 of 2016, s. 30 (a)(vi).]

63. Taxable goods, equipment and apparatus for the direct and exclusive use for construction of specialized hospitals with a minimum bed capacity of fifty with accommodation facilities upon the recommendation by the Cabinet Secretary responsible for health who shall issue guidelines for the criteria to be used to determine eligibility for the exemption.

[Act No. 38 of 2016, s. 30 (a)(vi)., Act No. 15 of 2017, s.9]

64. Garments and leather footwear, manufactured in an Export Processing Zone at the point of importation.

[Act No. 38 of 2016, s. 30 (a)(vi).]

65. Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy.

[Act No. 38 of 2016, s. 30 (a)(vi).]

66. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy. Clean cook stoves" includes clean and energy saving cook stoves with tariff number 7321, as well as their parts and raw materials that are either imported or sourced locally, provided

that the stoves meet ISO/IWA 11:2012 standards of tier 2-4 for fuel efficiency, as determined by the Kenya Bureau of Standards.

[Act No. 38 of 2016, s. 30 (a)(vi), Act No. 15 of 2017, s.9.]

67. Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, or iron or steel of tariff numbers 7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00.

[Act No. 38 of 2016, s. 30 (a)(vi).]

68. Super absorbent polymer (SAP) of tariff number 39.06.90.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

69. Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00.

[Act No. 38 of 2016, s. 30 (a)(vi).]

70. IP super soft fluff pulp — fr-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

71. Perforated PE film 15-22 gsm of tariff number 3921.190.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

72. Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8.

[Act No. 38 of 2016, s. 30 (a)(vi).]

73. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

74. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

75. Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

76. Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

77. Pressure sensitive adhesive of tariff number 3506.91.90.

[Act No. 38 of 2016, s. 30 (a)(vi).]

78. Plain polythene film/LPDE of tariff number 39.21.190.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

79. Plain polythene film/PE of tariff number 39.21.190.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

80. PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.

[Act No. 38 of 2016, s. 30 (a)(vi).]

81. ADL — 25-40gsm of tariff number 56.03.1190.8.

[Act No. 38 of 2016, s. 30 (a)(vi).]

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82. Elasticized side tape of tariff number 5402.4410.

[Act No. 38 of 2016, s. 30 (a)(vi).]

83. 12-16 gsm spunbound piyropnonwoven coverstock/12gsm spunbound PP non-woven SMS hydrophobic leg cuffs of tariff number 56.03.1190.8.

[Act No. 38 of 2016, s. 30 (a)(vi).]

84. Polymetric elastic 2/3 strands of tariff number 3919.90.90.10.

[Act No. 38 of 2016, s. 30 (a)(vi).]

85. Plain polythene film/PE of tariff number 39.20.10.10.

[Act No. 38 of 2016, s. 30 (a)(vi).]

86. PE white 25-40gsm/release paper of tariff number 48.10.99.00.

[Act No. 38 of 2016, s. 30 (a)(vi).]

87. 12-16 gsm spunbound piyropnonwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.

[Act No. 38 of 2016, s. 30 (a)(vi).]

88. Goods falling under tariff number 4907.00.90.

[Act No. 15 of 2017, s.9]

89. Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

[Act No. 15 of 2017, s.9]

90. Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.

[Act No. 15 of 2017, s.9]

91. Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions—

- (i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime;
- (ii) the vehicles shall be used exclusively for the transportation of tourists;
- (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and
- (iv) any other condition the Commissioner may impose:

Provided that tax shall become payable upon change of use or disposal of the vehicle for other use.

[Act No. 15 of 2017, s.9]

92. Transportation of cargo to destinations outside Kenya.

[Act No. 15 of 2017, s.9]

93. Materials for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.

[Act No. 15 of 2017, s.9]

94. The transfer of a business as a going concern by a registered person to another registered person.

[Act No. 9 of 2018, Sch.]

95. The supply of natural water, excluding bottled water, by a National Government, County Government, any political sub-division thereof or a person approved by the Cabinet Secretary for the time being responsible for water development, for domestic or for industrial use.

[Act No. 9 of 2018, Sch.]

96. Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in firefighting.

[Act No. 9 of 2018, Sch.]

97. Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department.

[Act No. 9 of 2018, Sch.]

98. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight.

[Act No. 9 of 2018, Sch.]

99. Goods imported by passengers arriving from places outside Kenya, subject to the limitations and conditions specified as follows —

- (a) the goods shall be —
 - (i) the property of and accompanying the passenger;
 - (ii) for the personal or household use of the passenger in Kenya; and
 - (iii) of such kinds and in such quantities as the proper officer may allow;
- (b) notwithstanding subparagraph (c), the following goods shall not be exempt under this item —
 - (i) alcoholic beverages of all kinds, perfumed spirits and tobacco and manufactures thereof, except as provided in subparagraphs (f) and (g);
 - (ii) fabrics in the piece;
 - (iii) motor vehicles except, as provided in subparagraphs (c) and (d); and
 - (iv) any trade goods, or goods for supply or disposal to other persons;
- (c) subject to subparagraphs (a) and (b), the following goods may be exempted under this item when imported as baggage by a person on first arrival or by a returning resident of Kenya whom the proper officer is satisfied is *bona fide* changing residence from a place outside Kenya to a place within Kenya —
 - (i) wearing apparel;
 - (ii) personal and household effects of any kind which were in his personal or household use in his former place of residence; and

- (iii) one motor vehicle, (excluding buses and minibuses of a seating capacity of more than 13 passengers and load-carrying vehicles of a load carrying capacity exceeding two tones) which the passenger has personally owned and used outside Kenya for at least twelve months (excluding the period of the voyage in the case of shipment):

Provided —

- (i) the person has attained the age of eighteen years; and
- (ii) where the person has previously been granted exemption under this paragraph, any subsequent exemption shall not apply unless such person has used the motor vehicle so imported into Kenya for a period of not less than four years, and tax has been paid for the motor vehicle upon which exemption had previously been granted;
- (iii) where the returning resident has owned and used a left-hand drive vehicle for at least twelve months the person may sell the vehicle and import a right hand drive vehicle of whose current retail selling price does not exceed that of the previously owned left-hand-drive vehicle, subject to the following conditions —
 - (A) the person shall provide proof of ownership and use of the previously owned left-hand-drive vehicle in the country of former residence for a period of at least one year prior to the return;
 - (B) the person shall provide proof of disposal of the previously owned left-hand-drive vehicle before changing residence; and
- (iv) subparagraph (iii) shall only apply to residents returning from countries that operate Left Hand Drive motor vehicles;
- (d) subject to subparagraphs (a) and (b) the following goods may be exempted under this item when imported as baggage by a person whom the proper office is satisfied is making a temporary visit not exceeding three months to Kenya —
 - (i) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;
 - (ii) consumable provisions and nonalcoholic beverages, in such quantities and of such kinds as are, in the opinion of the proper officer, consistent with his visit; and
 - (iii) goods imported by a returning resident, being an employee of an international organization the headquarters of which are in Kenya, and who has been recalled for consultations at the organization's headquarters;
- (e) subject to subparagraphs (a) and (b), the following goods may be exempted under this item imported as baggage by a person who the proper officer is satisfied is a resident of Kenya returning from a visit outside Kenya and who is not changing residence in accordance with subparagraphs (c) and (d) —
 - (i) wearing apparel;
 - (ii) personal and household effects which have been in his personal or household use.

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- (f) subject to subparagraph (a) and (b), tax shall not be levied on the following goods imported by, and in the possession of a passenger —
- (i) spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
 - (ii) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume; and
 - (iii) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grams in weight:

Provided that the tax free allowance under this subparagraph shall be granted only to passengers who have attained the age of eighteen years;

- (g) subject to subparagraphs (a) and (b) —
- (i) the exemption granted in accordance with subparagraphs (c), (d) and (e) may be allowed in respect of baggage imported within ninety days of the date, of arrival of the passenger or such further period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow; and
 - (ii) the tax free allowances granted in accordance with subparagraph (f) shall not be allowed in respect of goods specified in the paragraph imported in unaccompanied baggage;
- (h) where any person who has been granted exemption under subparagraphs (c) or (d) changes his residence to a place outside Kenya within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period, not exceeding sixty days from the date he changes such residence to a place outside Kenya, as the Commissioner may allow, otherwise tax shall become due and payable from the date of importation; and
- (i) subject to paragraphs (1) and (2), goods up to the value of three hundred United States Dollars for each traveller in respect of goods, other than goods referred to in paragraph (9), shall be exempted when imported by the traveller in his or her accompanied baggage, or upon his or her person and declared by him or her to an officer, provided that the person has been outside Kenya for a period in excess of twenty-four hours.

100. Taxable goods for emergency relief purposes for use in specific areas and within a specified period, supplied to or imported by the Government or its approved agent, a nongovernmental organization or a relief agency authorized by the Cabinet Secretary responsible for disaster management, where —

- (a) the goods are for use in areas where a natural disaster or calamity has occurred in Kenya; or
- (b) the goods are intended for use in officially recognized refugee camps in Kenya;
- (c) the goods are household utensils, food stuffs, materials for provision of shelter or equipment and materials for health, sanitary or educational purposes; and

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- (d) the case of a natural disaster or calamity, the importation or purchase locally is made within six months or such further period, not exceeding twelve months, as the Commissioner may permit in each case.

[Act No. 9 of 2018, Sch.]

SECTION B - EXEMPT GOODS ON TRANSITION

(1) The following goods shall be exempt supplies for a period of three years from the commencement of this Act unless the exempt status of the supplies is earlier revoked—

2709.00.00	Petroleum oils and oils obtained from bituminous minerals, crude.
2710.12.10	Motor spirit (gasoline) regular.
2710.12.20	Motor spirit (gasoline), premium
2710.12.30	Aviation spirit
2710.12.40	Spirit type jet fuel.
2710.12.50	Special boiling point spirit and white spirit.
2710.12.90	Other light oils and preparations.
2710.19.10	Partly refined (including topped crudes).
2710.19.21	Kerosene type jet fuel.
2710.19.22	Illuminating kerosene (IK)
2710.19.29	Other medium petroleum oils and preparations.
2710.19.31	Gas oil (automotive, light, amber, for high speed engines).
2710.19.39	Other gas oils.
2711.21.00	Natural gas in gaseous state
2711.29.00	Other natural gas in gaseous state.

(1) The following goods shall be exempt supplies for a period of three years from the commencement of this Act unless the exempt status of the supplies is earlier revoked—

2709.00.00	Petroleum oils and oils obtained from bituminous minerals, crude.
2710.12.10	Motor spirit (gasoline) regular.
2710.12.20	Motor spirit (gasoline), premium
2710.12.30	Aviation spirit
2710.12.40	Spirit type jet fuel.
2710.12.50	Special boiling point spirit and white spirit.
2710.12.90	Other light oils and preparations.
2710.19.10	Partly refined (including topped crudes).
2710.19.21	Kerosene type jet fuel.
2710.19.22	Illuminating kerosene (IK)
2710.19.29	Other medium petroleum oils and preparations.
2710.19.31	Gas oil (automotive, light, amber, for high speed engines).
2710.19.39	Other gas oils.
2711.21.00	Natural gas in gaseous state
2711.29.00	Other natural gas in gaseous state.

(2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1st September, 2016.

[Act No. 38 of 2016, s. 30 (c)(ii).]

PART II – SERVICES

The supply of the following services shall be exempt supplies—

1. The following financial services—

- (a) the operation of current, deposit or savings accounts, including the provision of account statements;
- (b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;
- (c) issuing of credit and debit cards;
- (d) automated teller machine transactions, excluding the supply of automated teller machines and the software to run it;
- (e) telegraphic money transfer services;
- (f) foreign exchange transactions, including the supply of foreign drafts and international money orders;
- (g) cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques;

- (h) the making of any advances or the granting of any credit;
- (i) issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- (j) the provision of guarantees, letters of credit and acceptance and other forms of documentary credit;
- (k) the issue, transfer, receipt or any other dealing with bonds, *Sukuk* debentures, treasury bills, shares and stocks and other forms of security or secondary security;

[Act No. 15 of 2017, s.9]

- (l) the assignment of a debt for consideration;
- (m) The provision of the above financial services on behalf of another on a commission basis.
- (n) asset transfers and other transactions related to the transfer of assets into Real Estates Investment Trusts and Asset Backed Securities.

[Act No. 15 of 2017, s.9]

- (o) any services set out in items (a) to (n) that are structured in conformity with Islamic finance.

[Act No. 15 of 2017, s.9]

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.

3. The supply of education services

For the purposes of this paragraph, education services means education provided by—

- (a) a pre-primary, primary, or secondary school;
- (b) a technical college or university;
- (c) an institution established for the promotion of adult education, vocational training or, technical education but shall not apply in respect of business or user training and other consultancy services designed to improve work practices and efficiency of an organization.

4. Medical, veterinary, dental and nursing services.

5. Agricultural, animal husbandry and horticultural services.

6. Burial and cremation services.

7. Transportation of passengers by any means of conveyance excluding international air transport or where the means of conveyance is hired or chartered.

8. Supply by way of sale, renting, leasing, hiring, letting of land or residential premises;

“residential premises” means land or a building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation;

Provided that this paragraph shall not apply where such services are supplied in respect of—

- (a) car park services; or

- (b) conference or exhibition services, except where such services are provided for educational institutions as part of learning.
- 9.** Community, social and welfare services provided by National Government, County Government or any political sub-division thereof.
- 10.** Insurance agency, insurance brokerage, stock exchange brokerage and tea and coffee brokerage services.
- 11.** The supply of—
- (a) services rendered by educational, political, religious, welfare and other philanthropic associations to their members, or
 - (b) social welfare services provided by charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act (Cap. 108), or by the Non- Governmental Organizations Co-ordination Board under section 10 of the Non Governmental Organization Co-ordination Act (Cap. 134) and whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act (Cap. 470), and approved by the Commissioner of Social Services:
- Provided that this paragraph shall not apply where any such services are rendered by way of business.
- 12.** The following entertainment services—
- (a) stage plays and performances which are conducted by educational institutions, approved by the Cabinet Secretary for the time being responsible for education as part of learning;
 - (b) sports, games or cultural performances conducted under the auspices of the Ministry for the time being responsible for culture and social services.
- 13.** Accommodation and restaurant services provided within the following premises by the proprietors thereof—
- (a) establishments operated by an educational training institutions approved by the Cabinet Secretary for the time being responsible for education for the use of the staff and students by that institution; or
 - (b) establishments operated by a medical institution approved by the Cabinet Secretary for the time being responsible for health for the use by the staff and patients of such institutions; or
 - (c) canteens and cafeterias operated by an employer for the benefit of his employees.
- 14.** Conference services conducted for educational institutions as part of learning where such institutions are approved by the Ministry for the time being responsible for Education.
- 15.** Car park services provided by National Government, County Government, any political subdivision therefore by an employer to his employees on the premises of the employer.
- 16.** The supply of airtime by any person other than by a provider of cellular mobile telephone services or wireless telephone services.
- 17.** Betting, gaming and lotteries services.

18. Hiring, leasing and chartering of aircrafts.

18A. Transportation of sugarcane from farms to milling factories.

[Act No. 24 of 2016, s. 2.]

19. Deleted by Act No. 14 of 2015, s. 5.

20. Taxable services for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary to the National Treasury.

21. Services imported or procured locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury.

[Act No. 38 of 2016, s. 30 (b)(i).]

22. Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.

[Act No. 38 of 2016, s. 30 (b)(ii).]

23. Supply of sewerage' services by the national government, a county government, any political subdivision thereof or a person approved by the Cabinet Secretary for the time being responsible for water development.

24. Entry fees into the national parks and national reserves.

[Act No. 38 of 2016, s. 30 (b)(iii).]

25. The services of tour operators, excluding in-house supplies.

[Act No. 38 of 2016, s. 30 (b)(iv).]

26. Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

[Act No. 38 of 2016, s. 30 (b)(iv).]

27. Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption.

[Act No. 38 of 2016, s. 30 (b)(iv).]

28. Taxable services, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.

[Act No. 11 of 2017, Sch.]

SECOND SCHEDULE

[Section 7(2), Act No. 14 of 2015, s. 6, Act No. 38 of 2016,
s. 31, Act No. 15 of 2017, s.10, Act No. 9 of 2018, Sch.]

ZERO-RATING

PART A – ZERO RATED SUPPLIES

Where the following supplies, excluding hotel accommodation, restaurant or entertainment services where applicable, take place in the course of a registered person's business, they shall be zero rated in accordance with the provisions of section 7—

1. The exportation of goods or taxable services.
2. The supply of goods or taxable services to an export processing zone business as specified in the Export Processing Zones Act (Cap. 517), as being eligible for duty and tax free importation.
3. Shipstores supplied to international sea or air carriers on international voyage or flight.
4. The supply of coffee and tea for export to coffee or tea auction centers.
5. Transportation of passengers by air carriers on international flight.
6. The supply of taxable services to international sea or air carriers on international voyage or flight.
7. *Deleted by Act No. 9 of 2018, Sch.*
8. *Deleted by Act No. 9 of 2018, Sch.*
9. Goods purchased from duty free shops by passengers departing to places outside Kenya.
10. Supply of taxable services in respect of goods in transit.
11. Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.
12. The supply of goods or taxable services to a special economic zone enterprise.
[Act No. 38 of 2016, s. 31(a).]
13. The supply of maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight.
[Act No. 15 of 2017, s.10]
- 13A. The supply of ordinary bread.
[Act No. 15 of 2017, s. 10, Act No. 9 of 2018, Sch.]
14. *Deleted by Act No. 9 of 2018, Sch.*

15. Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers—

0401.10.00—of a fat content, by weight, not exceeding 1%;

0401.20.00—of a fat content, by weight, exceeding 1% but not exceeding 6%;

0401.40.00—of a fat content, by weight, exceeding 6% but not exceeding 10%;

0401.50.00—of a fat content, by weight, exceeding 10%.

[Act No. 15 of 2017, s.10]

16. All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.

[Act No. 15 of 2017, s. 10]

17. Deleted by Act No. 9 of 2018, Sch.

18. Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya.

[Act No. 9 of 2018, Sch.]

PART B

ZERO RATED SUPPLIES TO PUBLIC BODIES, PRIVILEGED PERSONS AND INSTITUTIONS

The following taxable supplies shall be zero-rated when supplied by a registered person before the imposition of tax or imported before clearance through the customs by or on behalf of the following persons subject to the limitations specified in this Schedule—

1. Supply to Commonwealth and other Governments

- (a) Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth Government for their personal use or for consumption on board such vessel.
- (b) Goods for the use of any of the Armed Forces of any allied power.

2. Supply to Diplomat or First Arrivals Persons

(1) Household and personal effects of any kind imported by entitled personnel or their dependants including one motor vehicle imported or supplied to them prior to clearance through customs within ninety days of their first arrival in Kenya or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the Commissioner of Customs in specific cases where the entitled personnel have not been granted zero rating status in any other section of this Schedule.

Provided that the zero rating shall apply to entitled personnel who may have arrived for a new contract notwithstanding their previous residential status in Kenya while in execution of another assignment, provided further that each contract is for a term not less than two years.

(2) One motor vehicle which the ministry responsible for foreign affairs is satisfied as having been supplied or imported as a replacement

for a motor vehicle originally imported or supplied under paragraph (1) which has been written off due to accident, fire or theft:

Provided that tax shall be payable at the appropriate rate if the written off motor vehicle is disposed of locally.

(3) Taxable supplies for the official use of the United Nations or its specialized agencies or any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission in Kenya.

(4) Taxable supplies for the use of a high official of the United Nations or its specialized agencies, or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such zero rating status is made by the Cabinet Secretary responsible for foreign affairs.

(5) Taxable supplies Goods for the United Nations or any of its specialized agencies for the support of a project in Kenya.

(6) On first arrival in Kenya or within three months of that date, the household and personal effects, including one motor vehicle, of an employee of the United Nations, or of its specialized agencies, of any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission, where the employee—

- (a) is not engaged in any other business or profession in Kenya; and
- (b) has not been granted any other zero rating status under this schedule.

(7) Any motor vehicle acquired under zero rating status pursuant to the provisions of this paragraph shall on re-sale or upon other disposition, whether or not for any material consideration, be liable to tax.

3. Supply to donor agencies with bilateral or multilateral agreements

(1) Household and personal effects of any kind, including one motor vehicle imported by or supplied prior to clearance through Customs to the entitled personnel or their dependants, within ninety days of their first arrival in Kenya or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the relevant authority in specific cases where the entitled personnel have not been granted any zero rated status under this schedule.

Provided that the zero rated status under this paragraph shall apply—

- (i) to entitled personnel who may have arrived for a new contract for a term of not less than two years, notwithstanding their previous residential status in Kenya while in execution of another assignment;
- (ii) only once every four years where there is an on going project; and
- (iii) to an additional motor vehicle where there is a bilateral agreement between the Government and aid agency.

(2) One motor vehicle, which the Commissioner is satisfied, is supplied or is imported as a replacement of another motor vehicle originally supplied or imported under paragraph (1) and which has been written off due to accident, fire or theft:

Provided that any motor vehicle acquired free of tax pursuant to the provisions of this item shall on resale or upon other disposition whether or not for any material consideration be liable for tax.

4. Supply to international and regional organizations

Goods and equipment imported by or supplied to donor agencies, international and regional organisations with Diplomatic accreditation or bilateral or multilateral agreements with Kenya for their official use.

5. Supply to the War Graves Commission

Taxable supplies including official vehicles, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission, but excluding office supplies and equipment and the property of the Commission's staff.

6. *Deleted by Act No. 9 of 2018, Sch.*

7. *Deleted by Act No. 9 of 2018, Sch.*

8. Supply to National Red Cross Society and St. John Ambulance

Taxable goods and services supplied or imported for official use in the provision of relief service.

[Act No. 15 of 2017, s.10]

9. Supply of protective apparel, clothing accessories and equipment

Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in fire fighting.

Value Added Tax

PART C

Medicaments of the following HS Codes shall be zero rated—

3002.20.0	Vaccines for human medicine.
3002.30.0	Vaccines for veterinary medicine
3003.10.00	Medicaments Containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycins or their derivatives.
3003.20.00	
3003.39.00	Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.90.00	Other.
3003.90.10	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
3003.90.90	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
3004.10.00	Medicaments containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives, put up in measured doses or in forms or packings for retail sale.
3004.20.00	Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.32.00	Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.
3004.39.00	Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 29.37 or antibiotics, put up in measured doses or in forms or packings for retail sale.

Value Added Tax

3004.50.00	Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.
3004.90.00	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
3004.90.90	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale. [Act No. 14 of 2015, s. 6(c), Act No. 38 of 2016, s. 31(b), Act No. 15 of 2017, s. 10(c).]
