To
Hon (Amb) Ukur Tatani,EGH,
Cabinet Secretary
National Treasury and Planning
Treasury Building, Harambee Avenue
P.O Box 30007-00100
NAIROBI

15TH NOVEMBER 2020

Dear Hon Yatani,

RE: SUBMISSION OF TAX PROPOSALS TO BE INCLUDED IN 2021/2022 FINANCE BILL

The National Taxpayers Association hereby submits its proposals for consideration of the FY2021/22 Finance Bill. National Taxpayers Association advocates for improved collection and effective use of taxes across the country.

The National Taxpayers Association notes that according to the 2020 Budget Review and Outlook Paper (BROP), the expenditure and net lending budget estimates for FY2021/22 is expected at KES 2.964Tn. This is higher than the KES 2.790Tn estimates that was approved in the current FY2020/21. This means that more taxes will be squeezed out of the existing taxpayer base to meet this expanding budget. To be specific, National Taxpayers Association notes that revenue from the four tax streams – income tax, import duty, excise duty and Value Added Tax – is expected to increase by KES 227.3Bn to KES 1.705Tn.It is our humble plea that the FY2021/22 expenditure estimates be revised lower so as not to further strain the taxpayer. This is achievable as we note that the actual expenditure and net lending in FY2018/19 and FY2019/20 fell short of the estimated targets by KES 149.2Bn and KES 252.4Bn, respectively.

As an organization that advocates for improved collection of taxes, we are equally bound to point out areas where increased tax is not justifiable or unwarranted. At the onset, we do not agree with the minimum tax (Section 12D of Income Tax (Cap 470)) that will be effective from 1st January, 2021. We note that some of the sectors in the economy will take a long time to/may not fully recover from the impact of Covid-19 pandemic and the minimum tax risks jeopardizing their operations.

We implore National Treasury to

- Fast track the long-overdue overhaul of the current Income Tax Act (Cap 470) to a more simplified tax code. Kenya Revenue Authority has made strides in modernizing its tax system (iTax) yet the income tax code is archaic

- Apply equity as it normalizes the tax expenditure to ensure that the existing tax base is not overburdened. This is in light of the tax incentives that includes preferential rates of tax, enhanced investment deductions, zero rating for VAT purposes, remission of taxes and exemptions that cumulatively are estimated to have amounted to KES 535.9Bn in 2018
- Explore avenues of implementing the green bond program which we applaud as more direct and effective financing tool

Our specific tax considerations for Finance Bill 2021:

	Item	Specific proposal	Rationale
1	Paragraph 5 in the First Schedule, Excise Duty Act, 2015	Re-introduce Excise duty on betting shall be 20.0% of the amount wagered or staked	The repeal of this proposal was at the Finance Committee recommendation on the Finance Act 2020 and did not have public participation input. National Taxpayers note that the repeal of the law risks creating negative externalities from betting. Furthermore, the government stands to lose on revenue from betting which has been estimated at KES 15.0Bn in FY2021/22.
2	Section 10 of Excise Duty Act, 2015	Repeal paragraphs 2, 3 & 4 under Section 10 of the Excise Duty Act, 2015	We are cognizant that the formula for adjusting the inflation rate for excise is straight-forward as stipulated in paragraph 2 of Part I of the First Schedule, Excise Duty Act, 2015. We further note that the proposal contained in Section 16 of Finance Act 2020 will introduce delay in implementing the annual rate of inflation adjustment to excisable goods and introduce uncertainty. To be exact, we estimate a maximum 35 days of uncertainty before the National Assembly approves or reject Section 10 of the Excise Duty Act, 2015 as passed in the Finance Act 2020

3	Section 12D of the Income Tax Act (Cap 470)	Repeal Section 12D of the Income Tax Act (Cap 470)	We do not see any justification of the minimum tax to be introduced in Kenya as it will overburden corporate entities. Loss making by corporates are not for entirely their doing and the minimum tax intends to punish them for a worse business environment. We point out that a number of listed companies have issued profit warning, which is mainly occasioned by the current pandemic. Many more non-listed entities are in a precarious state as seen in auction announcements in newspapers and minimum tax will further burden the entities. Furthermore, Section 12D (2) of the Income Tax Act (Cap 470) that stipulates quarterly instalment payments during the year of income further complicates adherence to the law
4	**Digital Service Tax**	The Finance Bill 2020 seeks to introduce a tax referred to as digital services tax to charges at one-point five percent of the total income accrued from the provision of a digital service.	The introduction of a digital service tax is a welcome move by the treasury to widen the tax base however, in 2019 a digital market place tax was introduced and is VAT tax. However, there is need to clarify the difference between these two taxes and how they will be administered to avoid confusion. DST has a role in taxing MNEs that would otherwise escape income taxation. For this reason, we suggest advising the government that the Kenyan

National Taxpayers Association pesa zetu, haki yetu

The Institute for Social Accountability

			DST should be lodged solely against large foreign MNEs without a PE in Kenya or those with a PE but reporting only a nominal amount of income relative to the scope of their business with local customers. It should be viewed as a substitute for an income tax that they would otherwise pay on the profits derived from local customers. Even then, the tax may raise serious trade tax discrimination issues under the "national treatment" provisions in the General Agreement on Trade in Services (GATS)[1]. To avoid an effective GATS challenge, the tax needs to be shown to impose no greater a burden on foreign MNEs than the roughly equivalent Kenyan income tax imposes on local businesses. NTA advises against the enactment of a broad-based DST formulated along the lines of a sales tax. The base for such a tax would duplicate the base subject to VAT and tariffs and likely cause an unwanted cascading of taxes (VAT being imposed on the price of goods already increased due to a broad-based DST). A tax of this nature can borrow from the legislation employed in other countries and

			from their early experience with such a tax
5	**VAT on LPG Gas**	**Proposal to subject LPG to VAT at 14% which are currently VAT exempt (Amendments under the First schedule of the Value Added Tax Act; Section A, Part 1)**	The introduction of VAT on LPG will increase the cost of living as LPG is used as the main energy source for many urban homes. It will make LPG which is a recommended source of energy for home use less accessible to many Kenyans who are already facing financial distress in light of the harsh economic effects of the COVID-19 pandemic. This also negates government efforts to shift consumers from use of wood fuel to LPG in order to conserve forests.