ACKNOWLEDGEMENTS

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INTRODUCTION

This guide is intended to help civil society organizations and the Kenyan public to understand finance bills and acts. It is part of IBP Kenya’s series on how to read the various budget documents at the national and county level.

SECTION 1: Before elaborating in the next section on the type of questions that help when reviewing the finance bills, we first look at several basic parameters: (1) why the finance bill is important; (2) timelines – when the bills are tabled and up for deliberation; (3) types of taxes; (4) how the courts are involved in the process; and (5) definition of key tax terms.

1. WHY IS THE FINANCE BILL IMPORTANT?

Through its tax policies the government generates revenue to guarantee public services. The finance bill lays out the ways in which the government plans to collect this revenue to meet its expenditure targets for the financial year. The measures described in the finance bill are mainly efforts to streamline or increase efficiency in the collection of certain taxes, levies or service charges. This is the reason why the finance bill often simply makes amendments to other tax bills and money laws.

In addition to assessing how realistic the revenue targets are at the national or county level, the measures highlighted in the finance bill allow for an examination on other issues such as equity. For example, the finance bill will show whether the raising of revenues takes into consideration the inequalities that exist in the country and the
degree to which the system is progressive. The projected revenue growth across the different measures should be based on previous collection trends. Once passed, the Act provides a roadmap for oversight of implementation of the revenue side of the budget.

2. WHEN ARE THE FINANCE BILLS PRODUCED AND APPROVED?

In Kenya, finance bills are tabled in the national assembly and in the county assemblies at different times. The Cabinet Secretary for the National Treasury is supposed to table the tax-raising measures on or before April 30. The finance bill at the national government now follows the same timeline as the budget estimates and must be approved by June 30th. At the county level, the county executive member in charge of county finances, presents the revenue-raising proposals for the coming financial year in mid-June of each year. This is when amendments to tax, service charges and levies and laws related to the financial sector are proposed. The finance bill is deliberated and must be approved not later than 90 days (latest September 30) after the approval of budget estimates for the upcoming year through the Appropriation Act (latest June 30).

Until 2018, the government did not have to wait for the finance bill to be approved before it could begin collecting revenue according to the proposals in the bill. Previously, at the national level, the Provisional Collection of Taxes and Duties Act empowered the Cabinet Secretary of the National Treasury to decide even before the bill was passed by Parliament, within legal limits, when the proposals could be implemented. The Nairobi City Provisional Collection of Revenue Act, 2013, is an example of one county-level act with a similar provision. In September 2018, however, the High Court of Kenya ruled that the National Provisional Collection of Taxes and Duties Act was unconstitutional as it usurped the role of Parliament in law making. Further, now the threshold of public participation must also be met before any law is enacted.

Once the finance bill is passed, it is referred to as the Finance Act. Unlike the Appropriation Act that applies to one financial year, Finance Acts may have provisions that apply beyond the financial year in which it was passed.

3. WHAT TYPES OF TAXES DO THE NATIONAL AND COUNTY GOVERNMENT CONTROL?

The Constitution of Kenya dictates the taxes that can be collected by the national and county governments. The scope of taxation is expounded in Acts of Parliament that provide information on the type, rate and administration of taxes. Table 1 presents the legal framework for some of these taxes:
Beyond taxes, the finance bills propose other revenue raising mechanisms such as charges, fees and levies (described below) as well as contributions to statutory funds.

### 4. WHAT IS THE ROLE OF THE COURTS IN DEFINING THE FINANCE BILLS IN KENYA?

1. **Public participation.** Like all other instruments of public finance in Kenya, there is a constitutional obligation by the government to involve the public before the enactment of law. The courts have made determinations in relation to county finance bills. For example, in 2014, the high court of Kenya nullified the Kiambu County Finance Act, 2013 on the grounds that there was no reasonable public participation.

2. **Tabling of finance bills.** The High Court of Kenya declared that finance bills must be presented in the National Assembly by the 30th April as stipulated under section 37 of the Public Finance Management Act.

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1. E.g. [Busia Rating Act, 2017](#)
2. E.g. [Elgeyo Marakwet County Finance Act 2018](#)
3. The two judgements on Kiambu Finance Acts can be found [here](#) and [here](#).
4. This was in [Okiya Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 others [2018] eKLR](#)
5. DEFINITION OF KEY TERMS

1. **Tax systems**
   a. **Progressive tax system**: where the relative obligation of tax increases with the increase in income. Low-income earners pay a lower percentage of their income in tax while higher earners pay a higher percentage rate. Therefore, people with lower incomes can spend a larger proportion of their income on improving their livelihoods.
   
   b. **Regressive tax system**: where higher-income individuals pay a smaller share of their income in tax than lower-income earners. An example is when a tax is applied uniformly across all income classes such as sales taxes. In Kenya this includes Value Added Tax (VAT), in some scenarios, and service charges. In this case, low-income households pay a larger proportion of their income in tax compared to high income households. For example, if Person A pays Ksh 100 for bread and Person B pays the same for bread, they both pay Ksh 16 in VAT. However, if Person A earns Ksh 500 per day and Person B earns Ksh 3,000, then Person A paid 3.2 percent of his income, while Person B paid 0.5 percent of their income in VAT.
   
   c. **Proportional tax system**: where the same proportion/rate of tax is applied across the board relative to the level of income.

2. **Principles of a good tax system**
   a. **Equity** – each person should pay a ‘fair’ share of the tax burden.
      i. **Horizontal equity** implies taxes are applied to taxpayers without any unfair distinction made across taxpayers.
      ii. **Vertical equity** is where taxpayers are paying at different levels of tax, taking into consideration their capacity.
   
   b. **Efficiency** – compliance and administration cost should be minimized.
   
   c. **Neutrality**: taxes should minimize interference with economic decisions
   
   d. **Certainty**: taxpayers are free from arbitrary impositions.
   
   e. **Simplicity**: tax system that is ‘easy to understand by an average taxpayer’

3. **Tax base**: the income, goods and services (assets) that are taxable. The provides one indication for government on how much money it can collect within its jurisdiction.

4. **Tax burden**: the measure of economic impact due to the tax structure.

5. **Tax incidence**: refers to how tax burden is distributed between firms and consumers.

6. **Tax administration**: the activities and costs that the government incurs to operationalize the tax system as stipulated in the law.

7. **Direct tax**: Tax imposed on income, capital gains, property and net worth.

8. **Indirect tax**: Tax imposed on certain transactions, goods or events. Examples include VAT, sales tax, excise duties, stamp duty, services tax, registration duty and transaction tax

9. **Examples of taxes in Kenya**
   a. **Income tax**: This is direct tax charged to all income that is earned within and partly within Kenya by residents and nonresidents.
   
   b. **Value Added Tax**: This is an indirect consumption tax charged on goods and services throughout the production chain up to the point of retail. The term “valued added” means VAT is the difference between what a producer pays for inputs and what they charge for the final product. VAT is also charged on goods and services that are imported and are taxable.
   
   c. **Excise duty**: This is tax that is levied selectively by the government on certain goods and services manufactured or supplied in Kenya. It is also charged on specified imported goods.
Also referred to as “sin” tax, excise tax goes beyond collection of revenue for the country and aims to change behavior or discourage consumption by charging high rates or tax on commodities considered harmful to users or the environment such as cigarettes and alcohol.

d. **Custom duty**: Tax imposed on goods imported into the country.

e. **Entertainment tax**: This is a tax imposed to certain forms of entertainment such as shows, film exhibitions etc.

f. **Property tax**: This is a tax levied by county government on land or land improvements such as buildings. The rate depends on the location and value of the property.

10. **Charges, levy, cess and fees**: These are revenue-collecting mechanisms that are usually related to regulations and use of services by the government. The definition of these terms varies between the national government and the counties, and sometimes entails contradictory meanings. Ideally, these revenue sources should be well described in the revenue laws establishing, imposing or regulating them as a revenue source. The common practice in the counties where Finance Acts impose these is as follows:

a. **Charges** – these are directly related to the provision of services by the government. For example, on visitation to a facility, or for documents supplied.

b. **Levy** – this takes definition according to various laws enacted through national and county legislation e.g. Standards Levy Order, 1990 imposed on manufacturers to Kenya Bureau of Standards (KEBS), Road Maintenance Levy Fund Act, 1993 imposed on petroleum fuels.

c. **Cess** – This refers to funds collected based on the volume of output for the provision of services.

d. **Fees** – examples include single business permits.

11. **Tax incentives**: This is preferential treatment to certain taxpayers or tax bases. It can be in the form of tax holidays/breaks, reduced tax rates, investment allowances, tax credits, accelerated depreciation, and subsidies. Tax incentives encourage the beneficiaries to engage in certain economic activities seen to be beneficial to the country. This is mostly done for specific economic benefits. Article 210 of the Constitution of Kenya prescribes that no tax or licensing fee may be waived or modified except as provided by legislation. Where the law permits the waiver of any tax or licensing fee:

a. a public record of each waiver shall be maintained together with the reason for the waiver;
and

b. each waiver, and the reason for it, shall be reported to the Auditor-General.

12. **Zero rating**: This refers to goods and services that are charged zero percent tax. This means that the retailers or producers do not pass a tax cost to the consumer in form of higher prices of goods and services. In addition, producers can claim tax refunds for any costs incurred if the inputs used are taxable.

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5 For more information on the definition of these terms with historical perspectives in Kenya, see [Constitutional and Legislative Policy Instructing the Drafting of County Revenue Laws in Kenya](#)
SECTION 2: In this part of the guide we look at the questions we might ask when reviewing the finance bills. We refer to the national government Finance Act, 2018 and various county Finance Acts, 2018 to elaborate on and answer these questions. Where suitable, we refer to older or more recent Finance Bills/Acts.6

1. WHAT ARE THE REVENUE TARGETS FOR THE CURRENT FINANCIAL YEAR AND HOW MUCH OF IT WILL BE RAISED THROUGH THE MEASURES IN THE FINANCE BILL?

The Finance Act draws a road map on how the government will raise revenue in the current financial year. Therefore, it should help explain the changes that were approved on the revenue side of the budget. The changes should touch on projected increases in the amount of revenue and also on the administrative changes, i.e. the financial and non-financial implication of the suggested change in revenue administration.

At the national level, the National Treasury publishes estimates of revenue grants and loans that provides details in anticipation of revenue growth and provides a summary of the distinct revenue streams with actual collection for the past three years and the projection in the upcoming years. The budget statement also highlights the revenue measures and how they correspond to the budget. One other key document that may assist in understanding the projected revenues at the national level and county level is the Budget Policy Statement (BPS) and the County Fiscal Strategy Paper (CFSP). The BPS sets the total revenues and expenditure in the upcoming year.7

At the county level, information on revenues projected may be found with considerable detail in the (approved) programme based budget. As you read the finance bill you should critically look at these preceding budget documents and critically judge whether the mechanisms in the finance bill match the ambition in revenue in the approved budget. It is only from this kind of information that one can start analyzing whether revenue targets are realistic. Therefore, start by looking at the total revenue projections for the financial years and how much of that revenue is expected to be generated due to the measures in the finance bills.

6 In other countries these kinds of legislation take different names e.g. in South Africa this would be referred to as the Rates and Monetary Amounts and Amendment of Revenue Laws Act.
7 Unless there are specific changes made in the budget estimates, the figures in the BPS provide a guideline on the projection of change in collection of revenue in the country.
The snippets below show the targeted revenue broken down to various categories in the budget estimates for 2018/19. For example, the national government projects to increase revenue from taxes on income, profits, and capital gains 16 percent, from Ksh. 728.8 billion to Ksh. 844 billion. We should compare this increase with actual growth over the years to gauge whether the measures in the finance bill are likely to lead to the growth estimated. The overall revenue growth includes other seasonal factors such as income growth that contributes to pay as you earn taxes.

**Figure 1. NATIONAL GOVERNMENT OF KENYA - ESTIMATES OF REVENUE GRANTS AND LOANS, 2018/19**

**ESTIMATES OF REVENUE AND GRANTS - OVERALL SUMMARY I**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Ksh</td>
<td>Ksh</td>
<td>Ksh</td>
<td>Ksh</td>
<td>Ksh</td>
<td>Ksh</td>
<td>Ksh</td>
</tr>
<tr>
<td></td>
<td>TOTAL REVENUE</td>
<td>1,264,907,027.82</td>
<td>1,418,923,704.27</td>
<td>1,761,329,556.04</td>
<td>1,702,586,809.82</td>
<td>1,997,687,836.34</td>
<td>2,100,207,908.97</td>
<td>2,676,103,255.75</td>
</tr>
<tr>
<td></td>
<td>TOTAL REVENUE</td>
<td>1,264,907,027.82</td>
<td>1,418,923,704.27</td>
<td>1,761,329,556.04</td>
<td>1,702,586,809.82</td>
<td>1,997,687,836.34</td>
<td>2,100,207,908.97</td>
<td>2,676,103,255.75</td>
</tr>
<tr>
<td>110</td>
<td>Taxes</td>
<td>1,113,806,751.01</td>
<td>1,257,373,137.70</td>
<td>1,515,262,375.06</td>
<td>1,493,228,678.82</td>
<td>1,701,675,213.84</td>
<td>1,832,253,964.97</td>
<td>2,178,708,723.58</td>
</tr>
<tr>
<td>111</td>
<td>Taxes on income, profits, and capital gains</td>
<td>984,972,132.00</td>
<td>1,127,640,611.74</td>
<td>1,408,127,179.61</td>
<td>1,368,109,814.67</td>
<td>1,444,905,480.30</td>
<td>1,641,223,590.10</td>
<td>2,067,502,043.40</td>
</tr>
<tr>
<td>112</td>
<td>Taxes on payroll and workforce</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>114</td>
<td>Taxes on goods and services</td>
<td>422,550,803.00</td>
<td>505,629,640.03</td>
<td>396,780,152.49</td>
<td>471,287,746.31</td>
<td>606,550,706.04</td>
<td>730,401,367.19</td>
<td>962,719,932.92</td>
</tr>
<tr>
<td>115</td>
<td>Taxes on international trade and transactions</td>
<td>104,395,086.04</td>
<td>122,808,147.23</td>
<td>135,450,348.79</td>
<td>120,369,757.39</td>
<td>119,131,541.37</td>
<td>145,790,865.01</td>
<td>167,786,958.05</td>
</tr>
<tr>
<td>116</td>
<td>Other taxes</td>
<td>10,345,340.00</td>
<td>11,068,759.00</td>
<td>15,368,156.40</td>
<td>12,001,512.18</td>
<td>12,982,734.04</td>
<td>14,013,686.12</td>
<td>15,203,876.57</td>
</tr>
</tbody>
</table>

Source: Estimates of revenue grants and loans of the government of Kenya 2018/19-page V

See below a snippet of the revenue projections in the approved budget of West Pokot county on how they expect to raise revenue in the FY 2018/19:
This information may also be drawn from the Budget Statement. Figure 3 shows a snippet from the budget statement presented by the National Treasury to the National Assembly in 2018. The Cabinet Secretary presents the government’s revenue projection based on the various measures in the finance bill.

Figure 3. TARGET ADDITIONAL REVENUE PROJECTED BY THE NATIONAL GOVERNMENT.
23. **Mr. Speaker**, to address the shortfalls in our own source revenue, several measures have been initiated with the major ones being the installation of an automated revenue management system and the amendment of the Revenue Administration Act, 2014. Further, we will continue to engage with our stakeholders in order to minimize litigations on our proposed fees and charges aimed at enhancing our own generated revenue.

24. **Mr. Speaker**, with the proposed revenue enhancement measures and fully involving all the county departments in revenue mobilization, we anticipate to raise our revenues by 20 percent to Kshs. 18 Billion in FY 2018/2019 from the estimated Kshs. 800m collected in the FY 2017/2018. We intend to achieve this target without significantly increasing the rates/fees/charges but through widening of the revenue base and also improving on efficiency while minimizing or fully eliminating any pilferages.

*Source: Nyeri County Government Budget Statement 2018/19 para 23 23*

### 2. DOES THE FINANCE BILL INDICATE WHEN THE PROPOSED REVENUE PROPOSAL WILL TAKE EFFECT?

**a. This may be pegged to a future date.**

The finance bill, like many Acts, has specific timelines when the provisions therein will come into operation. This has an implication on when to expect a reduction or increase in revenue for different streams in the current financial year and subsequent years. This date may be specific or depend on gazettement of the law. The Provisional Collection of Taxes and Duties Act allows the government to start collecting revenue based on proposals in the finance bill before the approval date. Therefore, it is important that the County and National finance bills provide details of when the different revenue measures will commence.

The snippet below shows an example from the National Government Finance Act 2018 showing actual dates when each section of the bill will come into effect.
b. **This may be pegged on formulation of suitable regulations for the provisions to come to effect**

When the finance bill is tabled in the assembly there may be accompanying regulations required. It is imperative to look out for this as they have an impact on how current years revenue are collected and especially when to expect the actual collection of the revenue. See Question 5 for more information on this.

For example, section 86(6) of the Finance Act, 2018 provides for the National Housing Development Fund which will draw its funds from employer and employee contributions by salaried workers on a monthly basis. The Finance Act provides that the provisions on these contributions shall be effective upon the gazettement of regulations under the Employment Act, 2007 prescribing the requirements for qualification to the scheme.
3. OFTEN, FINANCE BILLS AMEND OTHER ACTS. ARE YOU ABLE TO TRACE AND REFER TO THESE ‘BASE ACTS’?

Ideally finance bills are passed to modify pre-existing laws on raising revenue. At the national level most of the laws are available on the [Kenya Law Reports](https://kenyalawreports.com) website. Counties are now beginning to formulate such revenue raising acts, e.g. county entertainment tax acts, county rating tax. See examples from [The Mandera County Revenue Administration Act, 2016](https://www.legislation.gov.ke/) and [The Mombasa County Rating Act 2014](https://www.legislation.gov.ke/). These laws set the revenue raising measures and then finance bills amend part of these laws each year to improve efficiency in revenue collection, among other purposes. To make sense of the proposals in the finance bills one has to ensure that they have perused the relevant acts for modification. The implication of the modification can only be measured by the provisions in the main money acts such as the income tax.

Section 28 of the Kiambu County Finance Act 2018 refers to modification of the Kiambu County Trade License Act, 2016. The Finance Act prescribes for the replacement of the third schedule of the Kiambu County Trade License Act, 2016 with the ninth schedule to Kiambu County Finance Act 2018. Through this, some revenue stream charges are increased while others are reduced. For example, under registration fees (Change of Business Ownership) charges were 3,000 Ksh, however through the modification this was reduced to 1,500. On the other hand, application and issuance for duplicate license are increased to Ksh. 1000 from Ksh. 600 Ksh.

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8 The [Kiambu County Trade License Act, 2016](https://www.legislation.gov.ke/) is on the Kenya law website.
Below are snippets from the two laws.

**KIAMBU TRADE LICENSE ACT, 2016**

**KIAMBU FINANCE ACT, 2018**

<table>
<thead>
<tr>
<th>S/No</th>
<th>Item Description</th>
<th>Charges (KSh.)</th>
<th>Modified Charges (KSh.) as per Kiambu County Finance Act 2018</th>
<th>% Change in fees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Registration fees</td>
<td>300</td>
<td>500</td>
<td>67%</td>
</tr>
<tr>
<td>a)</td>
<td>Annual license Registration Fee</td>
<td>600</td>
<td>500</td>
<td>-17%</td>
</tr>
<tr>
<td>b)</td>
<td>Change of Business Ownership</td>
<td>3,000</td>
<td>1,500</td>
<td>-50%</td>
</tr>
<tr>
<td>d)</td>
<td>Transfer of a license</td>
<td>1,000</td>
<td>1,000</td>
<td>0%</td>
</tr>
<tr>
<td>e)</td>
<td>Application and issuance for duplicate license</td>
<td>600</td>
<td>1,000</td>
<td>67%</td>
</tr>
<tr>
<td></td>
<td>Change of Business Location</td>
<td>2,000</td>
<td>1,000</td>
<td>-50%</td>
</tr>
<tr>
<td>g)</td>
<td>Change of Business Name on a permit/license</td>
<td>1,000</td>
<td>1,000</td>
<td>0%</td>
</tr>
</tbody>
</table>

Source: Kiambu County Trade License Act, 2016 and Kiambu County Finance Act, 2018

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**Figure 7. PERCENTAGE CHANGE IN REGISTRATION FEES, KIAMBU COUNTY.**
4. WHAT ARE KEY REVENUE-RAISING PROPOSALS PER REVENUE STREAM OR PER SECTOR, AND HOW DIFFERENT ARE THEY FROM PREVIOUS LEVELS?

The bill and related documents should provide details on whether the proposed revenue raising measures are new or they are revised versions of existing revenue streams. In cases where the revenue streams are not new, then the previous rates should be provided for comparison. This is crucial especially at the county level where there are substantial amounts of service charges in their Finance Bills. This classification also enables the public and county assemblies to effectively undertake their oversight role equipped with disaggregated information on the changes introduced by the government.

The national finance bill does not elaborate on the previous provisions, but this can be traced in previous tax laws. It is possible to tell how the revenue streams and the modifications relate to, say income tax, value added taxes, etc. See below on the historical developments of income tax to small and micro enterprises.

**NATIONAL FINANCE ACT 2018**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td>Turnover Tax (introduced 2007/2008) • This applied to business with an annual turnover of less than 5 million • The tax was at the rate of 3 percent of the turnover tax</td>
<td>Presumptive tax (introduced 2018/19) • This applies to resident person whose turnover from business does not exceed 5 million and who is liable to be issued with a business permit or trade license by a county government. • The tax it is at a rate of 15 percent of the amount payable for a business permit or trade license issued</td>
<td>Presumptive and Turnover tax</td>
</tr>
</tbody>
</table>

Makueni County Finance Act, 2018 has a good presentation on the proposed changes. With clear indication of revenue stream in the previous year and the proposed changes in 2018. See below a snippet on property and entertainment tax.
Table:

<table>
<thead>
<tr>
<th>Item description</th>
<th>Unit of measure</th>
<th>Approved 2017 URBAN</th>
<th>Proposed charges 2018 URBAN</th>
<th>PERI-URBAN</th>
<th>RURAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART 1 PROPERTY RATES</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plot rent/ground rent (per ft/frontage)</td>
<td>Per plot</td>
<td>25.00 per ft.</td>
<td>25.00 per ft (charges to be based on site value from valuation Roll)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land rates</td>
<td>Per plot</td>
<td>2,000.00</td>
<td>2,000.00 (charges to be based on site value from valuation Roll)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CILOR (Contribution in lieu of rates)</td>
<td>Per Acre</td>
<td>25,000.00</td>
<td>25,000.00 (charges to be based on site value from valuation Roll)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Agricultural farms (more than 100 acres)</td>
<td>Per acre</td>
<td>New</td>
<td>200.00 per acre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PART 2 ENTERTAINMENT TAX/PUBLIC ENTERTAINMENT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Casinos (per month)</td>
<td>per year</td>
<td>30,000.00</td>
<td>50,000.00</td>
<td>40,000.00</td>
<td>30,000.00</td>
</tr>
<tr>
<td>slot machines (per machine)</td>
<td>Per year</td>
<td>10,000.00</td>
<td>30,000.00</td>
<td>20,000.00</td>
<td>15,000.00</td>
</tr>
</tbody>
</table>

*Source: Makueni Finance Act, 2018*

The Nyeri Finance Act, 2018 classifies service charges per sector/department. See charges below in the Education and gender departments.
5. ARE THERE NEW LAWS OR REGULATIONS PROPOSED IN THE FINANCE BILL AS CONDITIONS TO ACTIVATE SOME OF THE REVENUE RAISING MECHANISMS IN THE BILL?

Finance bills are usually published with other draft laws or require approval of other laws to allow for the collection or streamlining of the collection of taxes and levies. For example, this may come in the form of regulations or amendments to other non-tax laws. This means certain revenue will not be collected before prescribed policies are formulated or approved. Noncompliance with such requirements may present enforcement challenges that will eventually affect projected cash flow.
National Finance Act, 2018 amended the Employment Act, 2007 to introduce a new obligation to employees to contribute to the National Housing Development Fund. The new provision provided that employers pay a contribution of 1.5 percent of the employee’s monthly basic salary and the employee’s contribution at 1.5 per cent of the employee’s monthly basic salary provided that the sum of the employer and employee contributions shall not exceed five thousand shillings monthly to the fund. This provision was to take effect upon the gazettation of regulations by the ministry responsible for housing in consultation with the Cabinet Secretary responsible for finance.

Figure 8. SNIPPET OF SECTION 86 OF THE NATIONAL FINANCE ACT, 2018

(6) This section shall become effective upon the gazettation of regulations prescribing the requirements for qualification to the scheme by the Cabinet Secretary responsible for housing in consultation with the Cabinet Secretary responsible for finance.

Source: The National Finance Act, 2018

The housing fund regulations were Gazetted in December 2018. As at the time of publishing this guide the matter on enforcement was still in the High Court of Kenya which issued a ruling suspending the implementation of the Levy.

6. DOES THE BILL OR ANY OF ITS SUPPORTING DOCUMENTS PROVIDE DETAILS OF HOW THE PROPOSED TAX REVENUE MEASURES ARE EQUITABLE?

The finance bill and related documents should provide information on the main beneficiaries of proposed tax measures. The PFM Act, section 40(5) and section 132(3), provides that revenue raising mechanisms should take into consideration principles of equity. Finance bills should also clearly highlight how the measures are distributed equitably and that the burden does not unfairly affect some section of the population compared to others. While approving and implementing Finance Acts, there should be

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9 The Housing Fund Regulations, 2018
cognizance that there are apparent inequalities that exist demographically, geographically, etc. This spans from the ability to pay for different taxpayers to the consequences of compliance and payment by various taxpayers. Finance bills should also come with some explanation on the potential impact of the bill. For example, if the law proposes to increase taxes on certain forms of petroleum products how will that affect different cadres of the population especially the poor?

The finance bill in 2018 amended the Income Tax to introduce a presumptive tax that will be paid by businesses with a turnover that is lower than Ksh 5 million. Initially, such businesses paid a turnover tax. This tax may have a serious impact on Small and Medium Sized Enterprises (SMEs) as the tax is based on the businesses licenceses they get rather than based on their level of income. There is a risk that even businesses that do not make any profits will be charged a tax in the same bracket as those that run profitable enterprises.

**Figure 9. THE PRESumptive TAX**

<table>
<thead>
<tr>
<th>6. The Income Tax Act is amended by repealing section 12C and replacing it with following new section -</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presumptive tax.</td>
</tr>
<tr>
<td>12C. (1) Notwithstanding any other provision of this Act, a tax to be known as presumptive tax shall be payable by a resident person whose turnover from business does not exceed five million shillings during a year of income.</td>
</tr>
<tr>
<td>(2) The presumptive tax shall apply to persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.</td>
</tr>
<tr>
<td>(3) A person liable to pay tax under subsection (1) may, by notice in writing, addressed to the Commissioner, elect not to be subject to the provisions of this section in which case the other provisions of this Act shall apply to such person.</td>
</tr>
<tr>
<td>(4) The due date for payment of tax under subsection (1) shall be at the time of payment for the business permit or trade license or renewal of the same.</td>
</tr>
<tr>
<td>(5) Notwithstanding subsection (1), presumptive tax shall not apply to income derived from—</td>
</tr>
<tr>
<td>(a) management and professional services; or</td>
</tr>
<tr>
<td>(b) rental business; or</td>
</tr>
<tr>
<td>(c) incorporated companies.</td>
</tr>
</tbody>
</table>

Counties considered the capacity of different geographical zones within their borders to pay taxes and have graded their imposition accordingly. Kiambu’s finance Act, 2018 has revenue collection separated in categories of Zones and for areas within and outside town.
Figure 10. ZONING RELEVANT FOR REVENUE COLLECTION

“Zone A” means the area comprising of Thika, Kiambu and Ruiru Sub-Counties;

“Zone B” means the area comprising of Juja, Kabete, Kiambaa, Kikuyu, Limuru and Githunguri Sub-Counties;

“Zone C” means the area comprising of Lari, Gatundu North and Gatundu South Sub-Counties.

No. 12

SECOND SCHEDULE (S.10)
PART I - Solid Waste Management Service

The fees charged for services in the third column shall be as prescribed in the relevant zone specified in the fourth to ninth column

<table>
<thead>
<tr>
<th>Fee Code</th>
<th>Fee Description</th>
<th>Zone A (Within Town)</th>
<th>Zone A (Outside Town)</th>
<th>Zone B (Within Town)</th>
<th>Zone B (Outside Town)</th>
<th>Zone C (Within Town)</th>
<th>Zone C (Outside Town)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 100</td>
<td>Distributors, traders, wholesalers, hypermarkets, department stores, supermarkets, show rooms, boutiques, retail shops and stores, chemists, take-away butchers, personal service providers, kiosks per annum.</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
</tr>
<tr>
<td>a) 102</td>
<td>Hyper supermarket premises, construction over an area of 625 m2</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
</tr>
<tr>
<td>b) 103</td>
<td>Mega Store, Large multi-department store, premises area from 100 m2 to 624 m2</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
<td>9,600</td>
</tr>
<tr>
<td>c) 104</td>
<td>Medium supermarket from 100m2 to 625m2</td>
<td>2,400</td>
<td>1,200</td>
<td>1,200</td>
<td>-</td>
<td>1,200</td>
<td>-</td>
</tr>
<tr>
<td>d) 105</td>
<td>Large Trader, Shop, Retail Store or Personal Service: From 50m2 to 99m2</td>
<td>2,400</td>
<td>1,200</td>
<td>1,200</td>
<td>-</td>
<td>1,200</td>
<td>-</td>
</tr>
</tbody>
</table>
7. DOES THE FINANCE BILL PROPOSE SETTING UP OF FUNDS OR EARMARKING CERTAIN TAXES?

Sometimes, the finance bill will propose that revenues collected from various sources be used for specific purposes. This may also be in the form of the creation of a statutory fund where revenues are ringfenced for a certain purpose and further explained in regulations. It is recommended that earmarking of taxes be done in other legislative instruments other than the finance bill except for amendments. Where revenue collection is a charge on a service provided or a specific sector such as ‘cess’, the finance bill should be clear on the proportion of the revenue that will be ploughed back to the specific sector and on the proportion to be used by government for other expenditures. It is also possible that the finance bill prescribes where proceeds of penalties and fines will be applied to.

For example, the Cabinet S National Treasury in his budget statement in 2018 introduced a tax on winnings from betting that would directly go to funding Universal Health Care, Arts and Sports.

Mr. Speaker, in the Tax Laws Amendment Bill, 2018, I have proposed to introduce withholding tax on winnings. However, the proposal did not provide how the revenue realized from this measure will be applied. I propose to amend the Income Tax Act to clarify that the revenue realized from the tax on winnings shall be used for the development of sports, arts and cultural activities for the youth, as well as critical social development initiatives including Universal Health Care.

This was subsequently passed in the National Finance Act, 2018 and regulations passed on the same. See snippets below.
Section 36 of the Excise Duty Act, 2015 is amended by inserting the following new subsection immediately after subsection (4)—

(5) The Commissioner shall pay into the Sports, Arts and Social Development Fund established under the Public Finance Management Act, 2012 to support social development including universal health care sixteen percent of the excise duty paid in respect of money transfer by cellular phone service providers.

Source: The Finance Act, 2018

The Cabinet Secretary for the National Treasury and Planning gazetted the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 that defined how the excise tax collected including other monies will be utilized with most of the proceeds going to social development including universal health care.

Figure 11. REGULATION 4 OF THE PUBLIC FINANCE CITATION. MANAGEMENT (SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND) REGULATIONS, 2018

(2) The proceeds of the Fund shall be apportioned as follows—

(a) thirty five percent to the promotion and development of sports;

(b) forty percent to social development including universal health care;

(c) twenty percent to the promotion and development of arts; and

(d) five percent to government strategic interventions whose expenditure shall be subject to approval by Cabinet.
8. DOES THE FINANCE BILL REFLECT THE PRIORITIES PASSED IN THE APPROVED PROGRAMME BASED BUDGET?

It may not be easy to make this connection, but it important to critically evaluate the finance bill looking at the numbers in the program-based budgets. For example, do the tax incentives and tax breaks proposed support certain sectors or economic activities? Priorities may be spelt out earlier in the budget policy statements for the national government or county fiscal strategy papers for the county government; for example, focusing on the access to services in specific sectors. The program-based budget reveals priorities at a programme and sub programme level; for example, the national government may indicate that they are focusing on four areas, one of them being access to health. The programme based budget may indicate that the program of focus is in on curative healthcare. The taxes and levies in the finance bill may, one, subsidize taxes on medical commodities or earmark certain revenue to meet the extra cost of ensuring access to health.

For example, the National government articulates its focus on the Big 4 in the Budget Policy Statement, 2018. One of the pillars is the achievement of universal health coverage (UHC). The finance Act 2018 went to build a fund where funds for UHC would be drawn. It is important to note that the next step must ensure implementation of the provisions so that the earmarked funds are utilized to achieve the purpose. See question 7 above for an example on this.

At the county level, the Nyeri PBB 2018/19 planned was to acquire 3 soil testing kits as part of its Food Security programs that are mobile and shall be deployed to farmers across the county. According to the Nyeri Fourth Quarter Implementation Report 2018/19, the Dept of Agriculture, Livestock and Fisheries did acquire the 3 soil testing kits but can only be operationalized once the proposed sample charges are approved through the Nyeri Finance Bill 2019.

10 Where tax incentives are proposed there ought to be accompanied by any analysis on the benefits and loss accrued and policy justifications for them.
9. DOES THE FINANCE BILL PROVIDE DETAILS OF HOW TAXES AND LEVIES WILL BE COLLECTED AND THE ADMINISTRATION COST OF THE PROPOSED REVENUE RAISING MEASURES?

While the Kenya Revenue Authority (KRA) is the official tax collector, there are cases where getting to KRA is a process that may involve multiple actors. This is true in the case of indirect taxes. We ought to ask, ‘who are the collectors and third parties involved in revenue collection?’ This should also include the costs of any new tax administration including scenarios of electronic tax collection systems. At the county level, the revenue administration is not always specifically stipulated in another law that is the ‘County Revenue Administration Act.’ Finance Acts will in most cases explicitly give direction on who is responsible for assessment collection and accounting for all county revenues. Under section 160 of the PFM Act, the CEC finance may authorize KRA or a collection agent to be a collector of county government revenue. The finance bill will propose amendments on the revenue authority/administration acts.

The National Finance Act, 2018 amends the Kenya Revenue Authority Act, 1995 by adding that one of the laws that will guide the assessment, collection and accounting by the Authority is the Public Finance Management Act, 2012.

71. The First Schedule to the Kenya Revenue Authority Act, 1995 is amended in Part II by adding the following new paragraph immediately after paragraph 13—

Sometimes administration of taxes and levies may not be very clear at the point of approval of the finance bills until regulations are passed. For example, the National Housing Development Fund created in 2018 comes with additional administrative steps. The Housing Fund Regulations, 2018 stipulates that employees and employers must register with the National Housing Fund and that contributions will be paid directly to the Housing Fund Account.

At the county government, the Finance Acts provide information on how and to whom payments will be made. For West Pokot, the Finance Act indicates that payments are made to a collector who has an identification card that is worn visibly by the enforcement officers.

Figure 13. SNIPPETS FROM THE WEST POKOT FINANCE ACT 2018 ON PAYMENTS

PART III - PAYMENTS
17. (1) All payments to the County shall be paid through an authorized channel.

(2) A County Revenue Collector or enforcement officer enforcing this Act shall have an identification card issued by the County.

(3) The identification card issued under subsection (2) shall be worn visibly by the officer when carrying out any of the functions under this Act.

(4) An official receipt shall be issued for all payments made to the County.

(5) Any payment made to the County shall be evidenced by an official receipt.

(6) A person shall not receive or collect any money on behalf of the County unless he has been authorized to do so.

(7) A person who contravenes the provisions of this Section commits an offence.

10. WITH REGARDS TO THE NATIONAL GOVERNMENT FINANCE ACT, ARE THERE PROPOSALS THAT HAVE IMPLICATIONS FOR COUNTY GOVERNMENTS?

Most taxes, whether levied on individual income or business income, are collected by the national government. While the national government collects the direct income taxes, counties may also levy some
Charges to business such as a single business permit. In peculiar instances, taxes are attached to the county revenue raising process. This is true when licensing is undertaken by the county government.

A good example is the presumptive tax that was introduced on small business holders by the Finance Act, 2018 (section 6). This applies to business holders that are issued with a business permit or trade license by a county government. By extension, this indicates that there must be some coordination with the county revenue collecting body. It also raises questions of fairness because county governments levy varied business permit rates to their residents.

**Figure 14. PROVISION ON THE RATE OF PRESUMPTIVE TAX AS IN THE FINANCE ACT, 2018**

(c) by deleting paragraph 9 and substituting therefor the following new paragraph—

9. The rate of presumptive tax shall be an amount equal to fifteen percent of the amount payable for a business permit or trade licence issued by a County Government:

Provided that the tax charged shall be final.”

**11. FOR THE COUNTY GOVERNMENT, HOW DO THE CURRENT CHARGES AND LEVIES RELATE TO THE BY-LAWS OF THE DEFUNCT LOCAL GOVERNMENT?**

Because county governments have not been able to legislate on all the revenue streams that were previously collected by the local authorities, there is a need for the Finance Act to clarify whether or not the changes and levies still currently apply. This is because taxes and charges are only imposed, modified or waived through legislation. Many counties have then added a provision in their Finance Act that indicates that the bylaws of the defunct local authorities continue to apply until repealed or replaced by statute.
PART V— MISCELLANEOUS

35. (1) Any charges, permit fees, license fees, rent, infrastructure maintenance fee and such other fees payable to the County Government at the commencement of this Act but which are not included in any of the Schedules to this Act, shall continue to apply under the existing by-laws of the defunct local authority until such by-laws are specifically repealed or replaced by County legislation.

12. IS IT POSSIBLE TO MAKE A LINK BETWEEN THE REVENUE MEASURES AND THE MONTHLY/QUARTERLY REVENUE PROJECTIONS IN THE CASH FLOW?

The key objective of the finance bill is to increase revenue collection either through improving efficiency or by introduction of new revenue raising mechanisms. Therefore, we would expect to see growth in revenue projections compared to historical collections. In addition, the projections for the year in focus as captured in the cash flow should reflect any expected changes in flow of revenue. Lastly the PFM regulations guiding the national and county budget process require both the county treasuries and the national treasury to publish and publicize the government’s quarterly liquidity position reports reflecting the impact of revenue collection efforts, spending and public debt operations on the cash position of government. These reports should also be read, together with the Finance Act, as implementation progresses throughout the year at the county. To get information on historical flow of funds, we can look at quarterly implementation report and financial statements, published by the national and county governments.

A look at the county budget implementation reports can show the flow of county revenues. For example, in Baringo county, the fourth quarter implementation reports show the actual flow of each revenue stream per quarter. We see that in 2018/19 and 2017/18 revenue from business permits come in the third and fourth quarter of the year.
13. HAVE JUSTIFICATIONS OR REASONS BEEN GIVEN ON THE PROPOSALS IN THE FINANCE BILL?

The National and County Treasury should give details on why certain amendments or new revenue measures are proposed in the finance bill. This is critical input that will help the public to understand why they must pay higher rates or why the government has to forgo some revenues. In addition, that will help the County and National Assembly in the process of approving the revenue measures in the bill. It is good to also note that the citizens in every county should be given opportunity to give their opinions on the proposed County Finance Bill through public participation. This information may be available in the memorandum of objects and reasons that are published together with the bill when it is tabled in the legislature. In addition, the reasons for the proposal given in the finance bill can be found in the budget statement that is presented by the Minister of Finance during the presentation of the budget to the assembly.
The finance bill should have a section that explains why certain changes are being made through it. The example below shows the Memorandum of objects and reasons in the Finance Bill, 2018. The bill proposed to do away with interest caps that were introduced in 2016. The main reason given for that proposal was to reduce the negative impact the caps were having on access to credit for small businesses across the country.

The Makueni Finance Bill, 2018 provides some justifications, though scanty in the memorandum of objects and reasons. This, however, doesn’t elaborate the reasoning behind the provisions in the act. See snippet below.

MEMORANDUM OF OBJECTS AND REASONS
This Bill is prepared pursuant to section 133 of the Public Finance Management Act, 2012 and Standing Order 218 of the County Assembly Standing Orders which requires the County Finance Bill to be presented to the Assembly as a legislative proposal.

The Bill seeks to provide for the various taxes, fees and other service charges that are payable to the Makueni County Government. These are set out in the Schedule. This is to enhance the revenue payable to the County Government for enhanced service delivery and to enable the County Government perform the increased functions bestowed on it by the Fourth Schedule of the Constitution.

Statement on delegated powers to legislate
The Executive Committee Member responsible for Finance is empowered to bring into operation the various provisions of the Act or certain sections of the Schedule. This is to enable the putting in place of the necessary physical, administrative and personnel infrastructure that would aid in the operationalization of the collection of the proposed taxes, fees and charges.

The operationalization of certain provisions of the proposed law shall entail an expenditure of public funds. The funds will be provided for in the estimates.

Dated.................................................................2018

HON. JULIUS MUTULA MATHEKA
CHAIRPERSON, FINANCE AND SOCIOECONOMIC PLANNING COMMITTEE.
MEMORANDUM OF OBJECTS AND REASONS

The Bill formulates the proposals announced in the Budget for 2018/2019 relating to liability, and collection of taxes and matters incidental thereto.

The Bill also seeks to amend the following laws—

The Betting, Lotteries and Gaming Act (Cap. 131)

The Betting, Lotteries and Gaming Act (Cap. 131). The Bill seeks to amend the Betting, Lotteries and Gaming Act to require that the tax collected under sections 29A, 44A, 55A and 59B of the Act be paid into the Sports, Arts and Social Development Fund.

The Marine Insurance Act (Cap. 390)

The Bill seeks to amend the Marine Insurance Act to define the term “Commissioner” being referred to in the Act for clarity.

The Air Passengers Service Charge Act (Cap. 475)

The Bill seeks to make necessary amendment to the Air Passengers Service Charge Act to include the Tourism Promotion Fund as one of the institutions to benefit from the proceeds of air charge imposed under section 3(1) of the Act.

The Stamp Duty Act (Cap. 480)

The Bill seeks to amend the Stamp Duty Act to exempt from duty all instruments executed for purposes of collection and recovery of tax.

The Banking Act (Cap. 488)

The Bill seeks to amend the Banking Act to review the capping of interest rate to ensure access to credit facilities across the economy, especially among the lower income retail consumers and small and medium enterprises. This is aimed at minimizing the adverse impact on credit growth, financial access and monetary policy effectiveness.
long electioneering period. In addition, Mr. Speaker, Strategies to be applied to ensure we meet our target include:

- Expanding the revenue base by rationalizing the fees and charges in harmony with those of neighbouring counties as proposed in the Finance Bill, 2018 I submitted to the county assembly today and fully automating the revenue management system. In line with the proposal, I have reduced the branded vehicle annual permit from Kshs. 10,000 to Kshs. 5,000 to promote business and net more revenue for the county.
- Further, the Government has reduced the license fee for the post-secondary institutions in effort to encourage and support investors.
- Giving waiver on land rate penalties, where possible, to encourage settlement of arrears and thus generate more revenue. Towards this end, His Excellency The Governor Hon. Edward Mutahi Kahiga has approved a 30 day waiver on land rate penalties which ends on 25th June, 2018.

Source: Nyeri Budget statement, 2018