REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY
P O BOX 30007 – 00100
NAIROBI
KENYA

When Replying Please Quote

Ref. ZZ/TS/GP/30(31)

August 4, 2021

(2) Hon, Take Note. Come February to regret the proposal to amend the Committee & circulate receipt proposals (1) DLSP. 30/8/21

PARLIAMENT OF KENYA LIBRARY

19/8/21

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Building
NAIROBI

Dear Sialai,

RE: LEGAL NOTICE NO. 115 OF 2021- INCOME TAX EXEMPTION ON THE SEND-OFF PACKAGE PAID TO EMPLOYEES OF THE KENYA AIRWAYS LIMITED

The above-mentioned Legal Notice was published on 30th July, 2021.

In compliance with Section 11 of the Statutory Instruments Act, 2013, I hereby submit the Legal Notice No.115 of 2021 on exemption of income tax on the send-off package paid to the employees of Kenya Airways Limited and Explanatory Memorandum for the same, for your necessary action.

Yours Sincerely,

HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/THE NATIONAL TREASURY AND PLANNING

THE NATIONAL ASSEMBLY
DATE: 01 SEP 2021
DAY
MEB
TABLED BY: LOMP
CLERK-AT THE-TABLE: S. Kadima

Encl.

Copy to: **Justice (Rtd) P. Kihara Kariuki, EGH**
The Attorney General
State Law Office
NAIROBI

NATIONAL ASSEMBLY RECEIVED 19 AUG 2021 CLERK'S OFFICE P. O. Box 41842, NAIROBI

EXPLANATORY MEMORANDUM TO THE LEGAL NOTICE ON THE INCOME TAX EXEMPTION

LEGAL NOTICE NO. 115 of 2021

PART I

Name of Statutory Instrument	:	The Income Tax Exemption
Name of Parent Act	:	Income Tax Act, Cap 470
Enacted Pursuant to	:	Section 13(2) of the Income Tax Act
Name of the Ministry	:	The National Treasury and Planning
Gazetted on	:	30th July 2021

PART II

1. Purpose of the Statutory Instrument

The objective of the Legal Notice is to exempt from income tax the send-off package of 187 employees of Kenya Airways PLC who exited the service between January and March 2021.

2. Legislative Context

The Legal Notice seeks to exempt from income tax the send-off package, which is three months' salary paid in lieu of notice, severance pay and pay for accumulated leave days, paid to the 187 retrenched employees of Kenya Airways PLC in accordance with the provisions of Section 13(2) of the Income Tax Act.

3. Policy Background

3.1 Kenya Airways PLC has been implementing a turn-around program since 2019. As you may be aware, the company has been making losses in the recent years due to various factors and this has financially constrained the operations of the Airline. To mitigate the problem, the Board in 2016 approved the implementation of a turn-around program, which among others includes the rationalization of staff to reduce the cost of operations. The rationalization of staff started in 2019. Due to the impact of COVID-19 on the aviation industry since 2020, where

most of the international travels were suspended, fast-tracking the rationalization of staff became absolutely necessary.

3.2 Considering that the retrenchment is voluntary, the tax exemption and especially during the COVID-19 pandemic will encourage staff to take the offer and also provide reasonable income to start off some activities to sustain themselves.

4. Public Participation

Internationally, the effects of COVID-19 pandemic have been worse on airlines to the extent that some airlines may not re-open operations after the pandemic hence job losses. Kenya Airways PLC has been reporting losses for a long period and now the situation is worse, this has led to the retrenchment of some staff under a turn-around program to sustain the airline. However, the representatives of the affected staff requested for improvement of the send-off package that was agreed through the Collective Bargaining Agreement (CBA).

In view of the above, the Kenya Airways PLC sought the intervention of the National Treasury to exempt the staff from income tax on the send-off package as one of the ways to improve the send-off package.

5. Impact

The exemption is expected to facilitate the Kenya Airways Limited reduce the cost of sustaining redundant staff following the reduced business occasioned by the COVID-19 pandemic among other factors.

6. Monitoring and review

The implementation of the exemption will be monitored by the Kenya Revenue Authority.

7. Request to the National Assembly

The National Assembly is invited to:

a) note the contents of this Memorandum and

b) accede to the Legal Notice No. 115 of 2021.

8. Contact

Cabinet Secretary,
National Treasury & Planning,
NAIROBI

CORRIGENDUM

On Page 708—

In the first column of the sixth row, *delete* the expression "LA99FRV62MILAT002" and *insert* the expression "LA99FRW62MILAT002".

LEGAL NOTICE NO. 115

THE INCOME TAX ACT

(Cap. 470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Planning directs that three-months salary paid in lieu of notice, the severance pay and payments for the accumulated leave days to the one hundred and eighty-seven employees of Kenya Airways Limited who were retrenched and left services between January, 2021 and March, 2021, shall be exempt from the provisions of the Act.

Provided that—

(a) The exemption shall not apply to other pension benefits paid to the employees;

(b) The retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;

(c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner; and

(d) Kenya Airways Limited shall furnish the Commissioner with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter to the employees confirming the retrenchment.

Dated the 7th July, 2021.

UKUR YATANI,

Cabinet Secretary for the National Treasury and Planning.

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