



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
.....

...

REPORT ON:
THE CONSIDERATION OF
FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILLS NO. 19 OF 2025)

VOLUME VI

SUBMISSIONS

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2025

DDC



KENYA BANKERS
ASSOCIATION

23rd May 2025

Samuel Njoroge, CBS
financecommitteena@parliament.go.ke
Clerk of the National Assembly
Main Parliament Building
P. O. Box 41842-00100
NAIROBI.

Advance copy sent via email:

Dear Samuel,

SUBMISSIONS ON THE FINANCE BILL 2025 (NATIONAL ASSEMBLY BILL NO.19 OF 2025)

We refer to your public notice issued on 13th May 2025, inviting the public and stakeholders to submit memoranda on the Finance Bill, 2025 to the Departmental Committee on Finance and National Planning in compliance with Article 118(1)(b) of the Constitution of Kenya.

On behalf of the Banking Industry, we submit our proposals and comments on the Finance Bill, 2025 for your kind consideration.

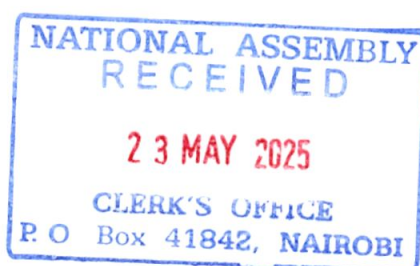
We would appreciate the opportunity to appear before the Departmental Committee on Finance and National Planning to further discuss and elaborate on our proposals.

Yours faithfully

Raimond Molenje
CHIEF EXECUTIVE OFFICER

1 | Page

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1. Contents

2. About the Banking Sector in Kenya.....	3
2.1 Total Tax Contribution of the Banking sector in 2023	3
2.2 Comments on the Finance Bill 2025	4
3. Proposals from the Banking Sector on Finance Bill,2025	1
Requirement to share private or personal data and trade secrets of customers.	1
Non-Deductibility of Sponsorship of Sports.....	3
Agency notices to be issued where a taxpayer has appealed against a TAT or Court decision.	4
Increase of the timeline (90 to 120 days) for the Commissioner to determine a refund or offset application of Overpaid Tax	5
Increase of the timeline (120 to 180 days) for the Commissioner to determine a refund or offset application of Overpaid Tax where the refund or offset application is subjected to an audit.	7
PAYE Tax Bands of 35% and 32.5%	7

2. About the Banking Sector in Kenya

According to the Central Bank of Kenya Bank Supervision Report, 2023¹, as at December 31st, 2023, the Kenyan banking sector comprised of 38 Commercial Banks, 1 Mortgage Finance Company, 1 Mortgage Refinance Company, 10 Representative Offices of foreign banks, 14 Microfinance Banks (MFBs), 3 Credit Reference Bureaus (CRBs), 23 Money Remittance Providers (MRPs), 8 non-operating bank holding companies, 32 Digital Credit Providers (DCPs) and 74 foreign exchange (forex) bureaus.

The banking sector staff levels increased by 1,826 (5.1 percent) from 36,107 in December 2022, to 37,933 in December 2023.

The report also indicates that as at 31st December 2023, the gross loans and advances by the Commercial Banks amounted to **KES 4.2 trillion**, an increase from KES 3.6 trillion as of 31st December 2022.

The largest proportion of the banking industry gross loans and advances as at 31st December 2023 were channeled to the Personal and Household (1.1 trillion), Trade (762.2 billion), Manufacturing (633.5 billion) and Real Estate (505.8 billion) Sectors. In total, these four economic sectors accounted for 71.30% of gross loans in December 2023.

The above statistics highlight, at a high level, the significant impact that the banking sector has to Kenya's economy. This means that the tax policy of this sector must be designed carefully to ensure that the sector continues to thrive and effectively play its role in facilitating other sectors through the advancement of credit.

2.1 Total Tax Contribution of the Banking sector in 2023

As per the 2023 Total Tax Contribution Study² undertaken by the Kenya Bankers Association in conjunction with PwC

- i) The Banking Sector has contributed a total of **KES 824.98 bn** in taxes to the exchequer from 2018 to 2023.
- ii) The 43 banks ((37 banks and 6 Microfinance) that participated in the study made a Total Tax Contribution of **KES 190.26 bn representing 8.78% of total taxes collected in Kenya**. This remains a significant contribution given that this contribution is made by 43 taxpayers

¹ https://www.centralbank.go.ke/uploads/banking_sector_annual_reports/1035327448_2023%20Annual%20Report.pdf

² <https://www.kba.co.ke/wp-content/uploads/2024/10/KBA-Total-Tax-Contribution-Report-2023.pdf>

against a background of approximately 8.1 million³ (as at 30th June 2024) active taxpayers in the country.

- iii) The 43 participating banks bore taxes⁴ /expensed taxes amounting to **KES 102.52 bn** in 2023.
- iv) Taxes collected⁵ on behalf of the Government by the 43 banks who participated in the study amounted to **KES 87.74 bn**. Banks generate the commercial activity that gives rise to the taxes and then collect and administer the taxes on behalf of the Kenya Revenue Authority ("KRA"). In the absence of the banks, these taxes would not have been collected. Therefore, taxes collected are a key indicator of the wider economic contribution by the sector.
- v) **28.59% of corporate taxes** in Kenya were paid by the banking sector in 2023.
- vi) **Value Distribution⁶**-For the 43 banks that participated in the study in 2023, for every KES 100 of profit they made, **they paid KES 57.17 to the government as taxes**, KES 27.80 in employee emoluments and KES 15.03 to shareholders in form of dividends.
- vii) The banking sector's contribution to taxes through PAYE collected amounted to **KES 28.93 bn** representing **7.79% of total PAYE collected in Kenya**.

The above highlights the critical role of the banking sector in contributing to the exchequer—not only through direct payment of taxes, but also as a key tax collection agent on behalf of the government. Given its dual role in revenue mobilization and its fundamental function in facilitating credit access across the economy, it is essential that tax policy affecting this sector be carefully designed. A balanced and supportive tax framework will ensure that the banking sector remains robust, continues to meet its fiscal obligations, and sustains its pivotal role in driving economic growth through efficient credit provision.

2.2 Comments on the Finance Bill 2025

The Banking Sector takes note of the welcome proposals in the Finance Bill 2025 that are aimed at bringing clarity to tax laws, easing tax administration, and supporting sustainable economic

³ <https://www.kra.go.ke/news-center/press-release/2122-kra-records-11-1-growth-in-revenue-collection>

⁴ are the bank's own contribution in taxes that impact their results, e.g., corporation tax, irrecoverable VAT, VAT on imported services, withholding taxes borne.

⁵ Taxes collected are those which are generated by a company's operations and are collected from others on behalf of the government, e.g., income tax deducted under PAYE, employee portion of Social Security such as NSSF, withholding taxes collected on payments to suppliers, withholding VAT and net VAT.

⁶ "Value distributed" consists of the sum of taxes paid, employee emoluments and incentives and dividends paid to shareholders

growth. These reforms reflect a progressive approach to policy-making and align with the sector's broader goal of fostering a predictable and conducive business environment.

Key proposals that the Sector welcomes and supports include:

- ✓ Introduction of Advance Pricing Agreements (Section 12 of the Bill to amend ITA by introducing Section 18G of ITA)
- ✓ Increase of the tax-exempt limit for per diems from Kes 2,000 to 10,000 (Section 3 of the Bill that amends Sections 5 (2) (a) (iii) of ITA)
- ✓ Mortgage interest deduction to be extended to cover interest on loans for construction of residential premises (Section 8 of the Bill that seeks to amend Section 15(3)(c) of the ITA)
- ✓ Repeal of 20% Penalty on underpayment of instalment taxes (Section 22 of the Bill that repeals Section 72C of ITA)
- ✓ Individual income tax rates not applicable to fringe benefits and qualifying interest.

Having regard to the above, we propose that the following changes to the Finance Bill, 2025 be adopted to provide a conducive environment that spurs growth of the sector and the economy.

3. Proposals from the Banking Sector on Finance Bill,2025

No	Issue	Current situation	Banking Industry Proposal	Justification
1.	Requirement to share private or personal data and trade secrets of customers. <i>*Section 52 of Finance Bill,2025 proposes to amend Section 59A of the Tax Procedures Act by deleting subsection (1B)</i>	Section 59A (1B) of the Tax Procedures Act provides that; <i>(1B) The Commissioner shall not require a person to integrate or share data relating to— (a) trade secrets; and (b) private or personal data held on behalf of customers or collected in the course of business.</i> This clause ensures confidentiality of personal or private data and trade secrets are safeguarded.	We propose to continue safeguarding and protecting customer personal data and trade secrets by: 1. Deleting Section 52 of the Finance Bill,2025	The banking business is fundamentally built on trust, security, and the confidentiality of customer information. The proposed amendment to delete Section 59A(1B) of the Tax Procedures Act, 2015(which currently protects businesses from mandatory system integrations that could expose trade secrets or personal customer data) poses significant risks to the financial services sector. If enacted, the proposed deletion of Section 59A(1B) of TPA will compel banks and financial institutions to share sensitive customer data and proprietary information with the Kenya Revenue Authority (KRA), with the following implications. Customer Trust Concerns The forced disclosure of personal data and trade secrets to KRA will be perceived by customers as a breach of privacy. This erosion of confidentiality undermines one of the core tenets of the banking relationship, trust. According to the <i>Kenya Bankers Association Customer Satisfaction Survey Report (2024)</i> ⁷ , 32.67% of bank

⁷ <https://www.kba.co.ke/wp-content/uploads/2025/02/KBA-Customer-Satisfaction-Survey-Report-2024.pdf>

No	Issue	Current situation	Banking Industry Proposal	Justification
				customers cited concerns over data security as a reason for switching banking services. This proposed amendment is expected to exacerbate those concerns, potentially leading to: ✓ Increased customer attrition. ✓ A shift from formal banking systems to informal financial mechanisms due to perceived risks around data exposure. ✓ A negative impact on financial inclusion efforts, as customers will opt to remain unbanked to safeguard their privacy. Risk of Non-Compliance with Data Protection Laws The amendment conflicts with existing provisions of the Data Protection Act, 2019, which mandates businesses to: • Obtain explicit consent before sharing personal data. • Protect individuals' data privacy with appropriate safeguards. • Maintain clear accountability for the use and disclosure of such data. Compliance with both the proposed sharing of private data and trade secrets regime with KRA and the Data Protection

No	Issue	Current situation	Banking Industry Proposal	Justification
				Act would place banks in a legal and operational dilemma. In response, banks would be forced to: • Undertake a comprehensive legal review of all existing customer contracts. • Update terms and conditions to include explicit clauses permitting data sharing with KRA. • Develop new frameworks for obtaining informed consent from customers, potentially at significant administrative and legal cost.
2.	Non-Deductibility of Sponsorship of Sports <i>* Section 8(a)(vi) of the Finance Bill, 2025</i>	Section 15(2)(z) of the ITA provides that; <i>(z)Expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports.</i> This section ensures that taxpayers who sponsor sports deducts such sponsorship when computing for a year of income the gains or profits chargeable to tax.	Businesses invest heavily through sponsorship to nurture talent and promote sporting activities in Kenya and this proposal will negatively affect investment in sponsorship of sports. To ensure businesses continue sponsoring sports, we propose; 1. Deletion of Section 8(a)(vi) of the Finance Bill, 2025 2. Amendment of section 15(2)(z) to read as follows.	The role of corporate sponsorship in the development of sports in Kenya cannot be overstated. Businesses have consistently invested substantial resources in identifying, nurturing, and promoting talent across various sporting disciplines. These sponsorships not only facilitate access to training, equipment, and exposure for athletes, but also contribute significantly to national unity, youth empowerment, and economic development through job creation and tourism. The proposed Section 8(a)(vi) of the Finance Bill, 2025, if enacted, would disincentivize corporate sponsorship of sports by removing or limiting the tax deductibility of such expenditures. This would place an additional tax burden on

No	Issue	Current situation	Banking Industry Proposal	Justification
		This incentivizes businesses to invest in sports through sponsorships to nurture talent.	<i>(z)Expenditure incurred in that year of income by a person sponsoring sports</i>	businesses and likely result in reduced or withdrawn support for sporting initiatives. To maintain and encourage private sector investment in sports, it is imperative that such expenditures remain tax-deductible.
3.	Agency notices to be issued where a taxpayer has appealed against a TAT or Court decision. *Section 47(v) of the Finance Bill,2025 that seeks to delete Section 42(14)(e) of the Tax Procedures Act.	Section 42 (14) of the Tax procedures Act states; <i>(14) The Commissioner shall not issue a notice under this section unless —</i> <i>(a)the taxpayer has defaulted in paying an instalment under section 33 (2);</i> <i>(b)the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;</i> <i>(c)the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;</i>	Delete Section 47(v) of the Finance Bill,2025	Section 42(14)(e) of the Tax Procedures Act plays a crucial role in upholding the principles of fairness, due process, and the right to appeal within Kenya's tax administration framework. This provision ensures that where a taxpayer has exercised their legal right to appeal an adverse decision by the Tax Appeals Tribunal (TAT) or a court within the prescribed statutory timelines, the Kenya Revenue Authority (KRA) is barred from prematurely enforcing the decision through the issuance of agency notices. The issuance of agency notices, especially during the pendency of an appeal, can lead to severe financial and reputational harm to taxpayers, including disruptions to cash flow, business operations, and banking relationships.

No	Issue	Current situation	Banking Industry Proposal	Justification
		<i>(d)the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or</i> <i>(e)the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.</i> Section 42(14)(e) of the Tax Procedures Act ensures that the Commissioner is barred from issuing an agency notice where a taxpayer has appealed against an adverse TAT or Court decision within the required statutory timelines.		It can also undermine confidence in the dispute resolution process, effectively rendering the right of appeal mute. By maintaining Section 42(14)(e), the law strikes a fair balance between the enforcement powers of the Commissioner and the taxpayer's constitutional right to a fair hearing. It ensures that legal processes are respected and that enforcement measures are only undertaken once all avenues for appeal have been exhausted or lapsed.
4.	Increase of the timeline (90 to 120 days) for the Commissioner to determine a refund or offset application of Overpaid Tax	Section 47(2) of the TPA provides that; <i>(2) The Commissioner shall ascertain and determine an application under subsection (1) within ninety days and where the Commissioner ascertains that there was an overpayment of tax—</i>	Delete Section 50 (b) of the Finance Bill that seeks to increase the timeline for the Commissioner to determine a refund or offset application of overpaid tax from the current 90 days to 120 days.	Section 47(2) of the Tax Procedures Act provides a clear, time-bound framework within which the Commissioner is required to ascertain and determine an application for a tax refund or application of offset of overpaid tax, specifically within 90 days. This provision is essential for promoting efficiency, certainty, and fairness in tax administration. Extending the determination period from 90 to 120 days would adversely affect taxpayers by delaying access to

No	Issue	Current situation	Banking Industry Proposal	Justification
	*Section 50(b) of the Finance Bill, 2025	<i>(a) in the case of an application under subsection (1)(a), apply the overpaid tax to such outstanding tax debts or future tax liability; and</i> <i>(b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of six months from the date of ascertainment and, if the Commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.</i> This section ensures that Commissioner makes a determination on an application within 90 days to ensure the taxpayer can utilize or get a refund for valid tax overpayments within the shortest time possible.		legitimate refunds or offset of overpaid tax against outstanding or future liabilities. Many businesses and individuals rely on timely refunds to manage cash flows. Retention of the 90-day period will; • Promote administrative efficiency within the Kenya Revenue Authority (KRA), ensuring that taxpayer claims are processed promptly and not subjected to unnecessary delays. • Supports taxpayer rights by upholding fair treatment and timely recourse in cases of overpayment. • Aligns with good international practices, where tax authorities are encouraged to resolve refund claims quickly to avoid unduly retaining taxpayer funds.

No	Issue	Current situation	Banking Industry Proposal	Justification
5	Increase of the timeline (120 to 180 days) for the Commissioner to determine a refund or offset application of Overpaid Tax where the refund or offset application is subjected to an audit. *Section 50(c) of the Finance Bill,2025	Section 47(4A) of the TPA provides that; <i>(4A) Where an application under subsection (1) has been subjected to an audit under subsection (4), the Commissioner shall ascertain and determine the application within one hundred- and twenty-days failure to which, the application shall be deemed to have been ascertained and approved.</i>	Delete Section 50 (C) of the Finance Bill,2025 that seeks to increase the timeline for the Commissioner to determine a refund or offset application of overpaid tax from the current 120 days to 180 days where the refund or offset application is subjected to an audit.	Justification same as above
6	PAYE Tax Bands of 35% and 32.5% *A request for the item to be	The Finance Act 2023 Introduced two PAYE tax bands to individual rates of tax by amending paragraph 1 of Head B of the Third schedule of the Income Tax Act. The current	We propose that the Third Schedule of the Income Tax Act be amended to ensure the highest PAYE tax Band is 30%.	Employees and experts engaged at this level are reverting to consultancy engagements instead of direct employment further denying revenue to the exchequer since the two PAYE

No	Issue	Current situation	Banking Industry Proposal	Justification																								
	<i>included in the bill.</i>	Individual rates of Tax for PAYE are as below; <table><tr><td>Annually</td><td>Rate in</td></tr><tr><td>On the first Ksh. 288,000</td><td>10%</td></tr><tr><td>On the next Ksh. 100,000</td><td>25%</td></tr><tr><td>On the next Ksh. 5,612,000</td><td>30%</td></tr><tr><td>On the next Ksh. 3,600,000</td><td>32.5%</td></tr><tr><td>On all income over Ksh. 9,600,000</td><td>35%</td></tr></table> Monthly <table><tr><td>On the first Ksh. 24,000</td><td>10%</td></tr><tr><td>On the next Ksh. 8,333</td><td>25%</td></tr></table>	Annually	Rate in	On the first Ksh. 288,000	10%	On the next Ksh. 100,000	25%	On the next Ksh. 5,612,000	30%	On the next Ksh. 3,600,000	32.5%	On all income over Ksh. 9,600,000	35%	On the first Ksh. 24,000	10%	On the next Ksh. 8,333	25%	Wording in the bill A new proviso be added in the Finance Bill ,2025 immediately after section 28 (e) of the bill and read as follows; <i>(f) by deleting paragraph 1(Under Head B-Rates of Tax) and substituting therefor the following new paragraph—</i> <i>1. The individual rates of tax shall be—</i> <table><tr><td>Rate in</td><td>each shilling</td></tr><tr><td>On the first Ksh. 288,000</td><td>10%</td></tr><tr><td>On the next Ksh. 100,000</td><td>25%</td></tr><tr><td>On the next Ksh. 5,612,000</td><td>30%</td></tr></table>	Rate in	each shilling	On the first Ksh. 288,000	10%	On the next Ksh. 100,000	25%	On the next Ksh. 5,612,000	30%	band of 32.5% & 35% are above the corporate tax rate of 30%. The upper earners in Kenya contribute significantly to employment creation through the numerous MSMEs owned by this category thus help to address the youth unemployment challenge. Increase in taxes would lead to collapse of these MSMEs financed model through salaries of high-income earners. The net take home of employees has already been significantly reduced in the recent past due to the increases in the National Social Security Fund, introduction of the Affordable Housing levy as well as Social Health Insurance Levy. Further, the reduction in the net take home of this category of employees has significantly reduced their ability to service bank loans and hence increased NPLs. The spending by upper-income consumers creates local employment in Kenya through personal household services, school fees, entertainment among others that employ low-wage workers. Taxing top earners more has resulted in
Annually	Rate in																											
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No	Issue	Current situation	Banking Industry Proposal	Justification
		On the next Ksh. 467,667 30% <i>On the next Ksh. 300,000 32.5%</i> <i>On all income over Ksh. 800,000 35%</i>		lower spending on these categories, and less local employment. Inequity and Public Backlash Perception of Unfairness: Citizens have perceived high personal taxes as unfair, especially when corporations enjoy lower tax rates, has led general to dissatisfaction. Tax Avoidance and Evasion: Further to this policy change, there is bound to be an increase of cases of Individuals seeking loopholes or resort to tax evasion strategies that may ultimately, undermine tax compliance and tax revenues. Shift in Employment Preferences: High personal taxes may discourage formal employment and lead to a rise in informal or gig economy work, which often lacks benefits (medical and pension) and protections. Global Competitiveness Attractiveness to Global Talent: High personal taxes make a country less attractive to international professionals, investors, and expatriates compared to nations with lower rates.



45

The Clerk of the National Assembly,
P.O. Box 41842-00100,
Nairobi, Kenya.

Sent via email to financecommitteena@parliament.go.ke and cna@parliament.go.ke

27 May 2025

Attention S. Njoroge

Subject: ATC Kenya Operations Limited - Submission of Tax Proposals

Pursuant to the Public Notice released by the Cabinet Secretary of the National Treasury and Planning on 13 May 2025, Article 118(1)(b) of the Constitution of Kenya, 2010, and the Standing Order 127(3) of the National Assembly Standing Orders, we, ATC Kenya Operations Limited ("ATC Kenya", "the company"), are pleased to submit the tax proposals for consideration in the Finance Act 2025.

ATC Kenya's tax proposals are for retention of the accelerated capital allowance of 100% and 150%, retention of the indefinite carry forward of tax losses or restriction of carry forward of tax losses to ten years, exemption from the withholding tax on rental income for immovable property where the cumulative value of investment in any two preceding years is at least two billion shillings, the term Real Estate Investment Vehicle ("REIV") to have the meaning assigned in the country of residence of the ultimate parent entity of the Multinational Entity (MNE) Group, and the subsidiaries of "excluded entities" including REIVs that meet the set criteria to be excluded from the application of Minimum Top-up Tax in line with the Global Anti-Base Erosion ("GloBE") Model Rules.

We would be grateful for an opportunity to engage the National Assembly to further deliberate on our proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact the undersigned on mark.lavi@americantower.com at your convenience.

Yours faithfully,

For and on behalf of ATC Kenya Operations Limited

Mark Lavi
Head of Legal

CC: Simeon Cheruiyot
Director
PricewaterhouseCoopers Limited



Business Address: 5th Floor, Delta Corner Annex, Ring Road, Westlands
P.O Box 66133, 00800 Nairobi, Kenya



ATC KENYA

1. Executive summary

Issue	Provision proposed to be amended	Proposed amendments by ATC Kenya	Justification for proposed amendment
Repeal of accelerated investment allowance of 100% and 150% previously available for significant capital investments made outside Nairobi and Mombasa counties	The Finance Bill 2025 proposes to repeal Paragraph 1A of the Second Schedule to the Income Tax Act which provides as follows: <i>“(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred percent where -</i> <i>(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least one billion shillings:</i> <i>Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty percent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative</i>	Consider retaining Paragraph 1A of the Second Schedule to the Income Tax Act as is.	The proposal ensures that Telecommunication Towers/Assets enjoy accelerated investment allowance upon meeting the conditions included under Paragraph 1A of the Second Schedule to the Income Tax Act. According to our benchmarking with other countries, the best practice is that the rate of investment allowance on telecommunication equipment including towers is higher than the rate provided in Kenya of 10% p.a. The proposed amendment will lead to a lower cost of construction and maintenance of telecommunication towers as well as spur capital investment in telecommunication towers. In turn, there will be massive penetration of telecommunication towers in rural and marginalized counties in the country. This will spur the growth of technology and innovation in rural areas as telecommunication companies will have the infrastructure to increase their network coverage thereby making Kenya a technology hub. The foregoing is also in line with the current Government's technological advancement agenda under the digital superhighway and creative



ATC KENYA

Issue	Provision proposed to be amended	Proposed amendments by ATC Kenya	Justification for proposed amendment
	<i>investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings;</i> <i>(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or [...]"</i>		economy pillar of the BETA and Vision 2030 which is keen on improving Information, Communication & Technology infrastructure in order to bridge the digital divide and lower the cost of communication in Kenya.
Restriction on carry forward of tax losses	The Finance Bill 2025 proposes to introduce a limit to the tax loss carry forward period by amending Section 15(4) of the Income Tax Act as follows: <i>"(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding five years of income."</i>	Consider retaining the provision of Section 15 (4) of the Income Tax Act as currently is as highlighted below: <i>"(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding years of income."</i> Alternatively, consider amending Section 15 (4) and (5) of the Income Tax Act as	The proposed restriction on carry-forward of tax losses to five years will significantly impact capital intensive investments in the country. In particular, crucial sectors such as the telecommunications, infrastructure and other capital-intensive sectors typically require significant upfront capital investments and may take a decade or more to become profitable. In addition, the investments are eligible for capital allowances which in turn results in tax losses arising from the capital allowances granted. The proposed five-year limit would result in the expiration of these losses before they can be fully utilized, thereby



ATC KENYA

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		follows: <i>"(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding ten years of income.</i> <i>(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period."</i>	increasing the effective tax burden for investors and discouraging long-term investment. For many investors, particularly those operating in capital-intensive such as ATC, this change could render projects financially unviable. It would also disproportionately affect businesses that are aligned with Kenya's long-term development goals, The change would also introduce cash flow constraints, potentially stifling ongoing and future infrastructure development critical to Kenya's digital economy. It also creates uncertainty for investors who already made investments in the belief that they would offset their losses indefinitely. Further, this proposal goes contrary to the Government's efforts aimed at attracting foreign direct investments into crucial sectors of the economy. ATC Kenya, a significant player in the telecommunications sector, will be greatly affected impeding further investment in crucial telecommunication infrastructure in Kenya.
Whereas withholding tax deducted at source on lease rental payments for the use of	Paragraph 5(ja) of the Third Schedule to the Income Tax Act which provides that <i>in respect of a rent, premium or similar consideration</i>	In Paragraph 5(ja) of the Third Schedule to the Income Tax Act, include a provision that; <i>provided that the withholding tax shall not apply to</i>	As per our benchmark with other countries, the best practice is that there is no withholding tax on rental income on leasing of the telecommunication towers in

Investment Deduction Incentive | Policy issue and our ask



Policy issue

The proposal encouraged major capital investments in areas outside **Nairobi and Mombasa**, which brought about significant economic growth to historically marginalized areas.

The repeal of this provision would discourage investment in these areas and slow down rural economic growth.

Proposed amendment

- Deletion of the proposal in the Finance Bill.
- Delete Clause 27 of the Finance Bill.



Investment Deduction Incentive | Linking incentives to local economic activity.

Section 27 of The Finance Bill – Paragraph 1 of The 2nd Schedule to the Income Tax Act.

by deleting paragraph (1A)

by deleting sub paragraph (1B)

The Bill proposes to repeal the above 100% and 150% investment allowances that are currently available to tax-payers investing outside Nairobi County and Mombasa County.

Investors will however still enjoy current rate of 50% Investment deduction in the first year of use and 25% per year in equal instalments.



Finance Bill submissions -
aligned to the theme of
The Finance Bill 2025

Classified - Confidential

3A| Impact of System



The Coca-Cola system our purpose is to refresh the world and make a difference. We do this in Kenya by producing beverages that Kenyans love, in a sustainable way for a better shared future for the communities we call home.

In 2024, The Coca-Cola Company in Africa and its bottling partners including CCBA announced 'The Coca-Cola System's Africa Water Stewardship Initiative' a nearly USD 25 million investment to help address critical water-related challenges in local communities in 20 African countries, through 2030, including Kenya. This builds upon The Coca-Cola Foundation (TCCF)'s Replenish Africa Initiative (RAIN), a groundbreaking collaboration with key partners and co-funders which helped improve access to clean water, sanitation and hygiene for more than 600,000 people in Kenya

To promote restoration of water sheds and mitigate impact of climate change, CCBA in Kenya implemented a watershed restoration project in Aberdare and Mt Kenya areas.
Total Seedlings grown : 90,000 Indigenous Seedlings.
Size of land covered: 90 Hectares

The Coca-Cola system is a founding member of the Packaging Producer responsibility organization (PAKPRO) since 2018 which has collected over 25,000 metric tonnes of waste in partnership with all 47 counties and 2000 waste entrepreneurs

3A | Impact of the System on the supply chain



On the 21st of May 2024, during H.E. President Ruto's State visit to the United States of America, the system announced its intention to grow its investment in Kenya by up to **\$175 million over the next five years** should the business achieve its anticipated growth targets in the country.

The investment is aimed at accelerating the Coca-Cola system's capacity and capability expansion over the next five years.

3A | Impact of the System on the supply chain

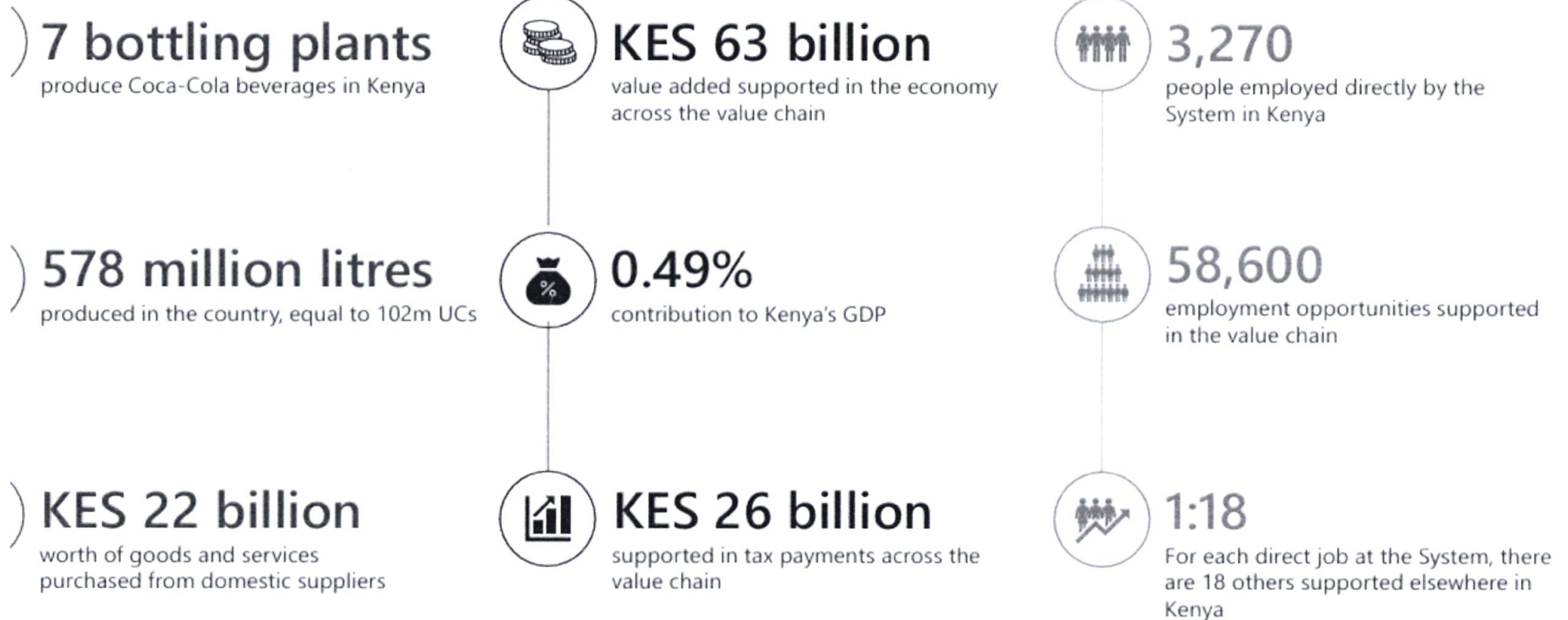


32% of the money spent on Coca-Cola ready-to-drink beverages in Kenya goes back into the economy. Every Kenyan shilling that people spend on Coca-Cola brand beverages in Kenya adds 0.82 Kenyan shillings in value back to the economy.

In 2023, the Coca-Cola system supported the creation of 63 billion Kenyan Shillings of value in the value chain. This is equivalent to 0.49% of contribution to GDP.

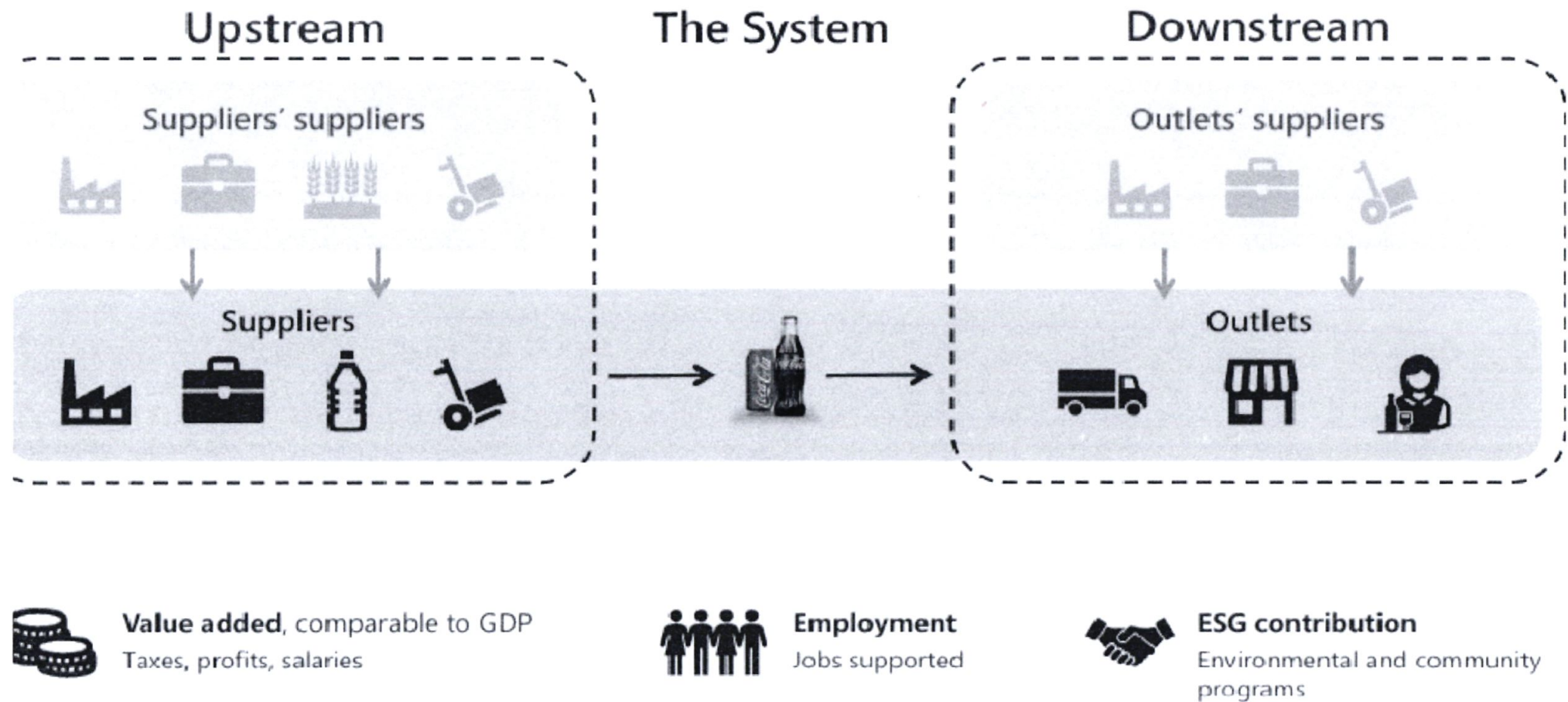
The system is also committed to sustainable local sourcing. In 2023, the system purchased over 22 billion Kenyan Shillings of goods and services from domestic suppliers in Kenya.

3A | Impact of the System



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BA | Direct and indirect impact of the Coca-Cola System across its value chain in Kenya



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Review of the focus areas of the Finance Bill 2025 | Theme for our submission



Enhancing tax revenue collection by improving tax-payer compliance and simplifying tax laws.

Reducing Tax Expenditure.

Aligning Kenya's Tax System with International Best Practice.

Linking tax reliefs and incentives to actual economic activity.

Targeted incentives to support priority areas and to attract foreign direct investment.

Advocating for predictability and certainty in the tax system.

Understanding the Coca-Cola System....

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9



Coca-Cola Beverages Africa

Memorandum of representation on the Finance Bill 2025

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As ATC Kenya is effectively an extension of the UPE based in the USA and serve the same purpose, consideration should be made for a subsidiary of a REIV to be excluded from the minimum top-up tax based on the GloBE rules.

By not aligning the country's legislation with the GloBE rules on subsidiary exclusions, the global minimum top up tax could be applied unevenly and disproportionately to certain entities within a corporate group. This will put ATC Kenya at a competitive disadvantage compared to other excluded entities, in different jurisdiction.

7. Conclusion

It is for the foregoing reasons that we request that you consider our proposals.



6.2.3. Malaysia

Malaysia adopted OECD Global Anti-Base Erosion (GloBE) Model Rules under Pillar Two and implemented a Domestic Top-Up Tax (DTT) starting from 1 January 2025. Part XI will apply to Malaysian Constituent Entities, including Labuan entities, that are members of a multinational enterprise (MNE) group with annual revenue of EUR 750 million or more in at least two of the four immediately preceding financial years. However, real estate investment vehicles (REIVs) that are ultimate parent entities (UPEs) and entities that are at least 95% owned by one or more excluded entities, other than a pension service entity, are exempt.

6.2.2. Canada

The Canadian legislative proposals relating to the Global Minimum Tax Act exclude real estate investment vehicle (REIV) ultimate parent entities (UPEs). Additionally, throughout the fiscal year, ownership interests in the entity must have a fair market value equal to at least 95% of the fair market value of all ownership interests in the entity. These interests must be held directly, or indirectly through one or more excluded entities, by one or more primary excluded entities (excluding pension funds that are pension service entities).

6.2.3. South Africa

Recent tax developments in South Africa state that Governmental Entities, International Organizations, Non-profit Organizations, Pension Funds, and Real Estate Investment Vehicles (REIVs) are excluded from the operative provisions of the GloBE Rules. An entity owned by an excluded entity also qualifies as an excluded entity if it meets the criteria relating to ownership, assets and income.

6.4. Justification

The Tax Law Amendment Act 2024 introduced a new section 12G to the Income Tax Act. The section introduced a Minimum Top-up Tax and excluded REIVs that are ultimate parent entities ("UPEs").

ATC Kenya proposal is that under Section 12G of the Income Tax Act on the ***term Real Estate Investment Vehicle "REIV", consideration should be given to the meaning assigned in the country of residence of the Ultimate Parent Entity ("UPE")***. In addition, to mitigate ambiguity in respect of application of minimum top up tax, ***consideration should be given to exempt a subsidiary of a REIV*** in line with the GloBE model rules.

ATC Kenya is eligible for tax deductions such as capital allowances which may result in the Effective Tax Rate (ETR) falling below 15%. When the ETR falls below 15%, the new section 12G on Minimum Top-up Tax will apply.

The ultimate parent entity (UPE) of ATC Kenya, a company domiciled in the USA, is identified as a Real Estate Investment Vehicle (REIV) in the US. However, the term "REIV" has not been defined in the current provision of Section 12G of the Income Tax Act leading to potential differences in interpretation.

Additionally, the provision specifically excludes REIVs that are UPEs but does not explicitly exclude REIV subsidiaries that are 95% or more owned by the UPE, as outlined in the GloBE Rules. This creates an inconsistency between the country's legislation and the international GloBE framework.



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However, the exclusion in the GloBE Pillar Two rules also applies to Entities with at least 95% of their value owned (directly or through a chain of Excluded Entities) by one or more Excluded Entities that meet the activity tests detailed in the Rules. The exclusion for the subsidiaries has however not been included under Section 12G of the Income Tax Act.

While Section 12G of the Income Tax Act has not defined a REIV, the GloBE rules define it as *"a widely held entity that holds predominantly immovable property and is subject to a tax system which is designed to achieve a single level of taxation on the income gains or profits being no more than one year from the end of the accounting period in which the income, profits or gains arise."*

The rules do not clarify that the UPE's jurisdiction should be used to determine whether the subsidiary is owned by a REIV. This ambiguity leads to confusion, a lack of certainty, and the possibility international inconsistent treatment because each jurisdiction may refer to their local definitions.

As per the above definition, the determination of whether an entity qualifies as a REIV depends on the interpretation of terms such as "predominantly" and "immovable property" which may be subject to different interpretations in various jurisdictions including Kenya. As such, one entity can be considered as a REIV in one country but not in another.

6.1.1. The issue

The provisions of Section 12G of the Income Tax Act do not clarify that the rules of the ultimate parent entity's (UPE's) jurisdiction should be used to determine whether the subsidiary in Kenya is owned by a REIV. This ambiguity leads to confusion, a lack of certainty, and the possibility of inconsistent international treatment, as each jurisdiction may refer to its local definitions.

Additionally, Section 12G of the Income Tax Act does not consider subsidiaries of entities that have been specifically excluded from this provision. The OECD GloBE Model rules exclude a subsidiary of a UPE that is a REIV if 95% of the subsidiary's value is owned by a UPE that is a REIV.

Ensuring the consistent interpretation of the REIV definition contained in the GloBE model rules across all jurisdictions provides certainty to both taxpayers and tax authorities and guarantees that the GloBE model rules are implemented as part of a common approach, as intended by the Rules.

ATC Kenya proposal is that Section 12G (4) (d) of the Income Tax Act should be amended as follows, ***to a real estate investment vehicle that is an ultimate parent company as per the meaning assigned in the ultimate parent company jurisdiction and the subsidiary of the real estate investment vehicle.***

6.2. Best practice

6.2.1. United Kingdom

The United Kingdom Finance (No. 2) Act 2023 (c.30), Part 4 - Domestic Top-up Tax, provides for a tax payable by qualifying entities located in the United Kingdom whose tax rate is less than 15%. However, the law exempts the Domestic Top-up Tax (DTT) for the ultimate parent of a multinational group, or would be but for the fact they do not produce consolidated financial statements that include the assets, liabilities, income, expenses, and cash flows of entities in which they have ownership interests, such as—

- A) An investment fund.
- B) A UK REIT
- C) An overseas REIT equivalent



payable.

This unlocked income can be utilised to spur the growth of the telecommunication sector as follows:

- Exemption from withholding tax or reduction of withholding tax rate on rent of immovable property is expected to incentivize investment, resulting in increased infrastructure development and subsequently boosting gross value added.
- Contrary to popular belief, an exemption/reduction in WHT does not result in a loss of revenue to the Government as this assumes that the investor is already present and paying taxes in Kenya. The incentive attracts investors to Kenya after which they become liable to all other taxes including, employment taxes, withholding taxes, value added taxes, import taxes etc.
- In addition, ATC Kenya will create employment to thousands of people in the country contributing to the growth of the Country's GDP.
- Exemption from withholding tax would incentivize infrastructure expansion, aiding in BETA by enhancing coverage and connectivity into rural areas.
- Exemption/reduction of withholding tax spur direct investments, expand telecommunications services, and indirectly boost related industries, fostering GDP growth through multi-faceted economic transmissions.

6. Proposal on the minimum top up tax in respect of definition of Real Estate Investment Vehicle ("REIV") and subsidiaries of a REIV

6.1. Background

The recently published Tax Law (Amendment) Act, 2024, introduced a Minimum Top-up Tax requirement under Section 12G of the Income Tax Act. This tax is payable by a covered person if their combined effective tax rate for a year of income is less than 15%. The tax applies to entities that are either resident in Kenya or have a permanent establishment in Kenya and are members of a multinational group with a consolidated annual turnover of at least EUR 750 million in at least two of the four years immediately preceding the tested year of income.

This proposal aligns with the OECD Global Anti-Base Erosion ("GloBE") Rules, which aim to ensure that large multinational enterprises pay a minimum level of tax on income generated in each jurisdiction where they operate. The GloBE Rules impose a top-up tax on profits in any jurisdiction where the effective tax rate falls below the minimum threshold. Published by the Inclusive Framework (IF) in 2021, the GloBE Rules do not mandate implementation by Inclusive Framework members. However, if a member chooses to adopt these rules, they must do so in accordance with the guidance agreed upon by the Inclusive Framework.

Section 12G of the Income Tax Act excludes Certain entities including a Real Estate Investment Vehicle ("REIV") that is an ultimate parent entity ("UPE") of an MNE group, from the application of the Minimum Top-up Tax. This exclusion is also provided for under the current GloBE model rules (Pillar Two), for which the provision is based on.



5.2.5 Ghana

In Ghana, payments with respect to leasing telecommunication towers are subject to WHT at the rate of 7.5%. However, under the Ghana tax laws, taxpayers can seek exemption from WHT on the revenue earned from leasing of telecommunication towers so that their customers do not withhold on payments to them. The taxpayer is required to write to the Commissioner General of the Ghana Revenue Authority ("GRA") and after the compliance record of the taxpayer is confirmed as satisfactory, the GRA issues a WHT exemption letter which is usually valid for about 6 months subject to renewal.

5.2.6 South Africa

The South Africa Income Tax Act does not provide for WHT on lease and rental payments on immovable property. Therefore, the leasing of telecommunication sites in South Africa is exempt from WHT.

5.3 International best practice

The following are some of the best practices internationally on the subject:

5.3.1 United Kingdom

The United Kingdom's Income Tax Act does not provide for WHT on lease of immovable property. Therefore, the leasing of telecommunication towers in the United Kingdom is exempt from WHT.

5.3.2 Ireland

In Ireland, rental income is not subject to WHT. The Irish tax system facilitates an efficient process to the players involved in the leasing of telecommunication towers and promotes investments in the telecommunication infrastructure. This relief encourages investment in telecommunication infrastructure, hence promoting access to high quality telecommunication services throughout the country.

5.3.3 United States

In the United States, rental income earned from the lease of telecommunication towers is not subject to WHT.

5.4 Justification

ATC Kenya is in significant tax loss position and is therefore unable to utilise the WHT credits arising from WHT deducted from the rental income for the use of its telecommunication towers. The process of obtaining a cash refund for the overpaid tax can be quite protracted resulting in ATC Kenya's cash being trapped in refunds. To mitigate the growing WHT credits and perennial requirement of obtaining a cash refund of the same, ATC Kenya proposal is that ***consideration should be given to exempt from withholding tax in respect of rent, premium or similar consideration for the use or occupation of immovable property persons whose cumulative value of investment in any two preceding years is at least two billion shillings*** Alternatively, the ***withholding tax under Paragraph 5(ja) of the Third Schedule to the Income Tax Act should be amended from 7.5% to 5% of the gross amount***



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5.2.4 Nigeria

In Nigeria, the WHT rate on rental income from the use of telecommunication towers is 2% effective 1 January 2025. This rate applies to co-location and telecommunication tower services, which is a reduction from the previous rate of 5%. The rate was reduced by the Government given the low margins made by the companies in the tower industry.



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To mitigate the growing WHT credits and perennial requirement of obtaining a cash refund of the same, ATC Kenya proposal is that Paragraph 5(ja) of the Third Schedule to the Income Tax Act should be amended to include a proviso that **persons whose cumulative value of investment in any two preceding years is at least two billion shillings should be exempted from WHT in respect of rent, premium or similar consideration for the use or occupation of immovable property**. Alternatively, the **withholding tax under Paragraph 5(ja) of the Third Schedule to the Income Tax Act should be amended from 7.5% to 5% of the gross amount payable**.

5.2 Regional best practice

We consider some of the regional best practices in connection with this subject below. The best practice from the below analysis is that there is no WHT on rental income on leasing of the telecommunication towers in most countries. In Uganda and Ghana, exemption from WHT is available upon application.

5.2.1 Uganda

In Uganda, exemptions from WHT are available under the Ugandan tax law, for resident telecommunication tower companies upon successfully making an application to the Uganda Revenue Authority to be included in the WHT exemption list.

The Uganda Income Tax Act provides for WHT at the rate of 6% on lease rental payments to a resident person for the use of telecommunication towers. The obligation to withhold the WHT on the lease rental payments is on customers who are designated WHT agents. This WHT is not a final tax and can be claimed by the lessor as a credit against its annual corporate income tax liability, with any excess refundable upon request. However, if the lessor is a non-resident, the lease repayments will be subject to 15% withholding tax. This is a final tax.

5.2.2 Rwanda

Where the telecommunication tower company is resident in Rwanda, its customers do not have an obligation to withhold tax provided that the tower company possesses an income tax declaration for the most recent tax year.

Article 60 of the Rwanda Income Tax Law imposes WHT at the rate of 15% on payments made by resident persons to persons not registered by the Rwanda Revenue Authority ("RRA") or to resident persons who do not have a recent income tax declaration.

5.2.3 Tanzania

There is no WHT on lease of telecommunication tower space as provided under the Tanzania Income Tax Act, 2004, Section 82(2)(c) which exempts from WHT rental payments to resident persons for the use of an asset other than aircraft, land, and buildings. Given the telecommunication tower space does not fall under the above-mentioned assets "aircraft, land and buildings", WHT does not apply. However, this is on understanding that the agreement for the use of the asset is a rental agreement.



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b) Increase the effective tax burden and discourage reinvestment

Limiting tax loss carry-forward to five years would significantly constrain businesses' ability to manage risk and recover from economic shocks. The indefinite carry-forward period introduced in 2021 acknowledged the diverse recovery timelines across sectors. Reinstating a time cap would disproportionately affect capital-intensive and long-gestation projects, where losses may not be fully utilized within five years. This change would elevate financial risk, discourage long-term investment, and shift business strategies toward short-term profitability at the expense of investment and sustainable growth. It would also introduce unnecessary tax planning complexity, forcing firms to prioritize tax timing over sound commercial decisions—ultimately weakening the resilience and competitiveness of Kenya's private sector. For companies like ATC Kenya, a key player in the telecommunications sector, it will introduce cash flow constraints, potentially stifling ongoing and future infrastructure development critical to Kenya's digital economy.

c) Discourage foreign direct investment ("FDI") in strategic sectors

The Finance Bill 2025 proposal contradicts the government's stated objectives under the Bottom-Up Economic Transformation Agenda ("BETA"). It introduces uncertainty into the tax system and raises concerns about policy consistency. For multinational corporations and institutional investors, such unpredictability increases the perceived risk of doing business in Kenya. Kenya's telecommunication sector may become less attractive to foreign investors compared to regional and global peers, including Tanzania, South Africa, U.K and France that allow longer or indefinite carry forward periods; potentially leading to capital flight or deterring new investment.

5. Tax proposal in respect of withholding tax rate on rent, premium or similar consideration for the use or occupation of immovable property

5.1 Background

Currently, the Income Tax Act ("ITA") provides for the deduction of withholding tax ("WHT") on rental payments to resident persons for the use or occupation of immovable property at the rate of 7.5%. The rental income payable to resident telecommunications tower companies ("TowerCos") such as ATC Kenya for the use of their telecommunications towers is therefore subject to WHT at the rate of 7.5%.

Once the WHT is deducted and remitted to the Kenya Revenue Authority, a withholding tax certificate is issued automatically to the TowerCos for purposes of claiming a tax credit to be offset against the corporate tax liability. However, due to the capital-intensive nature of the business operations of TowerCos and the capital allowances associated with their investments, often, the TowerCos end up in a tax loss position for which they are unable to utilize the WHT credits. The TowerCos are therefore only left with the option of seeking a cash refund of the overpaid tax which is an onerous process because of the protracted verification and approval processes by the revenue authority and delays in payment (upon approval being granted) due to constrained budgetary allocation for cash refunds by the National Treasury.



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against future profits from the same trade. This provision is part of a broader tax policy framework that supports entrepreneurship, innovation, and long-term investment. The UK's approach reflects a mature understanding of business cycles and the importance of policy stability. It ensures that businesses are not penalized for early-stage losses and can plan for the long term without fear of losing tax relief due to arbitrary time limits.

4.3.3 Australia

Under Australian tax law, companies are allowed to carry forward tax losses indefinitely under Section 36-15 of the Income Tax Assessment Act 1997 (ITAA 1997). This provision enables a company to deduct a prior year's tax loss from future assessable income, ensuring that businesses are not unfairly penalised for losses incurred in earlier income years. The law recognises the cyclical nature of business and allows legitimate losses to offset future profits, thereby promoting long-term commercial stability.

4.3.4 United States

Net Operating Loss ("NOL") is generated when business deductions exceed gross income in a particular tax year. NOLs generated in tax years ending before 1 January 2018 may be carried back to offset past income and possibly obtain a refund or carried forward to offset future income. Generally, a loss generated in tax years ending before 1 January 2018 may be carried back two years and, if not fully used, carried forward 20 years. NOLs generated in tax years ending after 31 December 2017 generally may not be carried back and must instead be carried forward indefinitely.

4.4. Justification

This proposal, if enacted, will have far-reaching consequences:

a) Undermine Investor confidence

The tax loss carry forward restriction will undermine investor confidence, particularly for those who made long-term investments under the assumption of indefinite tax loss relief. Long-term investments particularly in sectors such as telecommunication, infrastructure, , and technology often require substantial upfront capital and may take several years to generate taxable profits. These projects typically incur significant losses in their early years due to high development costs, regulatory compliance, and market entry challenges. The ability to carry forward these losses into future profitable years is a critical mechanism that ensures businesses are taxed on their true net income over time.

Reintroducing a five-year cap on the carry forward of tax losses would mean that any losses not utilized within that period would be forfeited. This artificially inflates taxable income in later years and increases the effective tax burden on businesses that take longer to break even. For many investors, particularly those operating in capital-intensive such as ATC, this change could render projects financially unviable. It would also disproportionately affect businesses that are aligned with Kenya's long-term development goals, such as those supporting internet penetration and other infrastructure. The result is a disincentive to invest in precisely the kinds of projects that Kenya needs to drive sustainable economic growth.



*(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond **ten years** where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period."*

4.2. Regional best practices

4.2.1 Tanzania

Tanzania provides one of the most investor-friendly frameworks in the region by allowing indefinite carry-forward of business losses.⁹ This provision applies to all businesses, excluding partnerships and foreign permanent establishments. Losses can be offset against income from any business or investment in subsequent years, without restriction on the number of years or the percentage of income that can be offset. This policy is particularly advantageous for sectors such as energy, mining, and infrastructure, where projects often require significant upfront investment and may take a decade or more to become profitable. By allowing indefinite carry-forward, Tanzania sends a strong signal of policy stability and long-term support for private sector growth.

4.2.2 South Africa

Assessed losses may be carried forward indefinitely, provided the company continues to operate an active trade or business of a similar nature without interruption. For tax years ending on or after 31 March 2023, companies may offset carried-forward assessed losses against taxable income, but only up to the greater of ZAR 1 million or 80% of the taxable income for that year. However, for years of assessment ending on or after 31 December 2024, this limitation does not apply to companies that are in the process of liquidation, deregistration, or winding up. This policy provides certainty and consistency, enabling businesses to plan their tax strategies with a clear understanding of how losses can be utilized.

4.2.3 Uganda

Section 36(6) of the Income Tax Act, Cap. 338 provides that losses can be carried over in each year of income and a deduction of 100% of income is allowable for the first 7 years. After 7 years, losses can still be carried over. However, only a deduction of 50% of the income is allowed.

4.3. International best practices

4.3.1 France

In France, tax losses may be carried forward indefinitely (there is no statutory time limit). The utilization of the tax losses is capped at €1m plus 50 % of the taxable profit that exceeds this threshold in each financial year. Any unutilized balance can still be carried forward **without time limit**. A one-year carry-back (up to €1m) is also available.

4.3.2 United Kingdom

The United Kingdom offers one of the most flexible and business-friendly tax loss regimes globally. Under Section 83(1) of the Income Tax Act, 2007, trading losses can be carried forward indefinitely and offset



ATC KENYA

rural and marginalized counties in the country. This will spur the growth of technology and innovation in rural areas as telecommunication companies will have the infrastructure to increase their network coverage thereby making Kenya a technology hub.

The foregoing is also in line with the Government's technological advancement agenda under the digital superhighway and creative economy pillars of BETA that is keen on increasing the penetration of ICT in all parts of Kenya with the desire that Kenya becomes a leading state within the region in internet connectivity and mobile phone penetration.

4. Tax proposal on restriction of carry forward of tax losses

4.1. Background

Under the current provisions of the ITA, Kenyan businesses are permitted to carry forward tax losses **indefinitely**. This framework, introduced through the Finance Act 2021, replaced the previous 10-year limit (established in 2015). Prior to January 2016, the law restricted the carry forward of tax losses to a maximum of four years. This limitation posed challenges for businesses with long investment cycles or delayed profitability, particularly in sectors such as infrastructure, manufacturing, and agriculture. In response, the Finance Act 2015 extended the period to 10 years. A more significant shift occurred with the enactment of the Finance Act, 2021, which repealed the time limitation entirely. This was a deliberate policy shift aimed at enhancing Kenya's competitiveness and aligning with international best practices.

The rationale for this reform was clear, to provide tax certainty and flexibility for businesses, particularly those in capital-intensive sectors such as telecommunications, energy, infrastructure, and manufacturing. These sectors typically experience prolonged gestation periods before profitability, and the ability to carry forward tax losses indefinitely was a critical factor in investment planning and capital allocation.

The Finance Bill 2025 proposes to reverse this progress by introducing a **five-year cap** on the carry-forward of tax losses. Specifically, the proposed amendment to Section 15(4) of the ITA states:

*“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding **five** years of income.”*

ATC Kenya's proposal is for Section 15(4) of the ITA be retained in its current form, allowing for the indefinite carry-forward of tax losses. Maintaining the current provision is not merely a tax policy issue, it is a matter of economic strategy. It signals Kenya's commitment to a stable, predictable, and investment-friendly tax environment.

Alternatively, consider amending Section 15 (4) and (5) of the Income Tax Act as follows:

*“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding **ten years** of income.*



3.3.1 Ireland

In Ireland, accelerated tax allowance of 100% is applicable on expenditure incurred on qualifying Energy Efficient Equipment (“EEE”) including ICT equipment. Telecommunication equipment fall under this category as they utilise communication and optimisation solutions technology and as such enjoy a deduction of 100% of the costs incurred on the purchase and installation of the equipment.

3.3.2 United Kingdom

In the UK, businesses can deduct the full value of qualifying items, such as plant and machinery, from their profits before tax under the annual investment allowance subject to certain exceptions. This means that players in various sectors including the telecommunication sector can benefit from this tax incentive, thereby driving the economic growth of the country.

3.3.3 Malaysia

The Income Tax (Accelerated Capital Allowance) (Machinery and Equipment including Information and Communication Technology Equipment) Rules 2021 provide accelerated capital allowances for qualifying capital expenditure on machinery and equipment, including telecommunication equipment. The initial allowance is 20% and subsequently 40% annually.

3.4 Justification

The enhanced investment deductions have been a vital tool for encouraging businesses to expand beyond the traditional economic centres of Nairobi and Mombasa. By allowing accelerated capital recovery, these deductions help offset the higher costs and risks associated with operating in less developed regions, where infrastructure is limited, and market access can be challenging. Removing this incentive would significantly raise the financial barrier for investor companies considering regional expansion. As a result, businesses may deprioritize investments in other counties, weakening efforts to promote equitable economic development.

The telecommunications industry facilitates the production, processing, and exchange of information. This industry is capital-intensive requiring significant long-term investments in network infrastructure, service development, and other capital projects to deliver increasingly fast, reliable, and sophisticated communication services.

Given the importance of towers as a critical infrastructure in the telecommunications industry in the country, ATC Kenya's proposal is that ***consideration to be made to retain Paragraph 1A of the Second Schedule to Income Tax Act as currently is.*** The proposed repeal of Paragraph 1(A) of the Second Schedule to the ITA does not allow ATC Kenya and other telecommunication tower companies to claim the accelerated investment allowance on the capital expenditure incurred on telecommunication infrastructure hence negatively impacting capital investments in this critical sector.

Retention of Paragraph 1A of the Second Schedule to the ITA will result in a reduction in the cost of construction and maintenance of telecommunication towers and increased investment in telecommunication towers. In turn, there will be increased penetration of telecommunication towers in



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advanced networks) and remote working arrangements require greater cell phone tower densification than in the past. Mobile operators are required to make significant capital investment in cell phone towers so that they can densify their existing networks to meet this expected demand. The need for solid and well-developed telecommunication infrastructure is further highlighted by the Covid-19 pandemic, which has seen significant reliance being placed on existing ICT infrastructure to support remote working.

Given the importance of towers as a critical infrastructure in the country, ATC Kenya proposal is as follows: **Consider retaining Paragraph 1A of the Second Schedule to the Income Tax Act as currently is.**

3.2 Regional best practice

We consider some of the regional best practices in connection with this subject below. The best practice from the below analysis is that the rate of allowance on telecommunication equipment including towers is higher than the rate provided in Kenya of 10% p.a.

3.2.1 Nigeria

In Nigeria, an initial investment allowance of 50% is available in the first year of investment for tower companies. This is followed by an annual allowance of 25% on the remaining balance for the second to fourth years.

This structured approach to capital allowances is designed to encourage investment in infrastructure and equipment, thereby fostering economic growth and development across various sectors in Nigeria.

3.2.2 Rwanda

In Rwanda, the Investment Code provides for an accelerated capital allowance, allowing assets to be depreciated at a flat rate of 50% on telecommunication equipment. To qualify for the accelerated capital allowance, you must be a registered investor with the Rwanda Development Board (RDB), the government agency that promotes investments in Rwanda.

3.2.3 Other Africa Countries

Other Africa countries have a higher capital allowance rate in respect of telecommunication equipment compared to Kenya as indicated below:

- Uganda –20% p.a
- Zambia - 25% p.a
- Ghana - 20% p.a
- Tanzania - 25% p.a

3.3 International best practice



ATC KENYA

deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020;

(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or [...]

The use of the term "Notwithstanding" under Paragraph 1A meant that despite the investment allowance rates for qualifying capital expenditure provided under Paragraph 1, the investment allowance rates under Paragraph 1A would prevail provided the eligibility criteria contained therein were met.

Subsequently the Finance Act 2022, amended the proviso to Paragraph 1A of the Second Schedule to the ITA with an effective date of 1 July 2022 to include the following:

"or the investment deduction shall be **one hundred and fifty per cent** where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings"

Therefore, effective 01 July 2022, Paragraph 1A of the Second Schedule to the ITA read as follows:

"(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred percent where

(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings;

Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty percent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings;

(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or [...]"

The Finance Bill 2025 proposes to repeal Paragraph 1A of the Second Schedule to the ITA in essence doing away with the accelerated investment allowance of 100% and 150%. This will negatively impact all capital-intensive sectors including the telecommunication sector given that it will not be possible to recoup investment in the initial years. Thus, businesses will not benefit from improved cashflow that would allow them to reinvest money back into the business.

In the modern economy, Information and Communications Technology (ICT) infrastructure is a vital part of a country's basic infrastructure and necessary to stimulate economic growth. The increasing trend to work from home or remotely post Covid-19 in Kenya has resulted in an increased demand for seamless internet access and communication. In practice, access to the internet for poorer and rural communities is more likely through cell phone networks. Investment (notably international investment) into ICT infrastructure in Kenya is therefore key to economic recovery and future growth.

Demand for telecommunication services in Kenya has been on the increase. Kenya has approximately 64 million registered mobile connections. The increased use of data through cell phone networks (as opposed to traditional voice calls) together with the anticipated ramp up of data usage with 5G (and other



ATC KENYA

marginalized areas, fostering greater inclusivity. This would have the ripple effect of achieving the Vision 2030 social pillar that aspires to integrate information, communication, and technology in teaching and learning.

We also wish to highlight that digital superhighway (inclusivity and accessibility) is an enabler for delivering on the Government's commitment to support human ingenuity, talents, and creativity in the realm of arts, filmmaking, and music among others. Some of the measures proposed by the Government in achieving its objectives under the digital superhighway and creative economy pillars of the Bottom-Up Economic Transformation Agenda ("BETA") include expanding the broadband connectivity in the country by over 100,000 Kilometres, reduction of the cost of data and calls among others.

It is also noteworthy to state that these proposals do not inhibit revenue collection. The long-term effect of the proposals would be an increase in taxes arising from taxation of digital services and the ever-growing digital economy as the growth of the digital economy is embedded on digital accessibility and inclusivity. This will also enhance access to education, telemedicine, and e-governance services, particularly in underserved areas.

There is therefore little doubt that through improved connectivity the Government's aspiration of economic recovery as well as inclusive growth is achievable. It is for these reasons, that we submit this proposal that seeks to provide an incentive to accelerate the installation and construction of the telecommunication towers, which shall in turn facilitate in the implementation of the Government Development Agenda of digital accessibility and inclusivity.

3. Tax proposal on accelerated investment allowance of 100% or 150%

3.1 Background

Paragraph 1 of the Second Schedule to the ITA provides the rates of investment allowance applicable to capital expenditure incurred with respect to various qualifying assets including telecommunication equipment. Currently, telecommunication equipment is eligible to investment allowance at the rate of 10% per annum on a straight-line basis. This rate of 10% was introduced by the Tax Laws Amendment Act 2020, with an effective date of 25 April 2020. Prior to this date, telecommunication equipment qualified for investment allowance/wear and tear allowance at the rate of 20% per annum on the expenditure incurred.

Towards stimulating economic growth as part of the Post COVID-19 Economic Recovery Strategy, the Finance Act, 2021 introduced a new provision, Paragraph 1A (with an effective date of 01 January 2022), immediately after Paragraph 1 of the Second Schedule to the ITA which read as follows:

"(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent (100%) where —

(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings:

Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment



ATC KENYA

#	CSR Program Name	Brief description	Amount (in KES)	Beneficiaries	Year
	Maua Primary School				
	Zawadi Primary School				
	Ruiru Primary School				
	Kianjau Primary School				
	Kiambu Township Primary School				
	Park Road Primary School				

2.4 ATC Kenya's impact on the telecommunication sector

ATC Kenya has made significant contributions to the development of the Information Communication & Technology ("ICT") industry in Kenya. The company owns and operates telecommunication towers that relay electronic signals from one area to another. ATC Kenya's main customers are integrated telecommunication service providers such as Safaricom PLC ("Safaricom"), Airtel Kenya Limited ("Airtel"), and Telkom Kenya Limited ("Telkom").

The telecommunication service providers rent space on the telecommunication towers where they host devices for relaying electronic and communication signals. It is these rented platforms that enable telecommunication service providers such as Safaricom, Airtel and Telkom to offer their services to the end users ("Kenyans"). In essence, an increase in the number of telecommunication towers will have the ripple effect of increasing the telecommunication network connectivity for both cellular services and the internet for the benefit of the citizens of Kenya, spread across all corners of the Country.

It is therefore evident that ATC Kenya has played and continues to play a crucial role in the advancement of the ICT sector in Kenya and particularly, in the introduction of emerging technologies such as the fourth generation of broadband cellular network technology ("4G network") and in the promotion of the general connectivity and penetration of network in the entire Country.

2.5 Vision 2030, Bottom-Up Economic Transformation Agenda and Economic Recovery Strategy

The Kenyan Vision 2030 economic blueprint has identified economic and macro, social, and political pillars and sets specific goals for making Kenya a middle-income country by the year 2030. One of the key foundations in the economic pillar identified in Vision 2030 is the deployment of world-class infrastructure which includes installation and construction of the technological infrastructure.

By developing telecommunication infrastructure, supported by proposed tax incentives, Kenya can bridge the digital gap. This will accelerate access to the digital superhighway and mobile networks, particularly in



ATC KENYA

#	CSR Program Name	Brief description	Amount (in KES)	Beneficiaries	Year
	<i>honor of Mother's Day 2023)</i>			home in Kibera	
11	Kalapata Primary school in West Pokot County (<i>in honour of World Humanitarian Day 2023)</i>	Donation of dry foodstuff, clothes, shoes, sanitary towels and learning materials	73,000	Students, teachers, and community	2023
12	Tree planting	Tree planting for Kinale in partnership with KFS(20,000 seedlings planted in 2024)	1,000,000.00	Matathia & Kinale Community at large	2024
13	Digital Community program #3	Creation of digitally connected spaces equipped with Information and communication technology (ICT), to bridge the digital divide in the communities around us.	670,800	Taveta Tvet	2024
14	Digital Community program #4			Mraru Tvet	2024
15	Digital Community program #5			Maunguja Tvet	2024
16	Digital Community program #6			Mamba Tvet	2024
17	Digital Community program #7			Vitengeni Tvet	2024
18	Digital Community program #8			Kakuyuni Tvet	2024
19	Digital Community program #9			Marafa Tvet	2024
20	Digital Community program #10			Kisauni Tvet	2024
21	Digital Community program #11			Kinango Tvet	2024
22	Digital Community program #12			Matuga Tvet	2024
23	Airtel Connecting Schools DC Mihango Primary school	Connectivity to the internet for various schools across the country	4,410,000		2024

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ATC KENYA

#	CSR Program Name	Brief description	Amount (in KES)	Beneficiaries	Year
		Information and communication technology (ICT), to bridge the digital divide in the communities around us.			
3	Digital Community program #2	Creation of digitally connected spaces equipped with Information and communication technology (ICT), to bridge the digital divide in the communities around us.	5,252,070	Community in Busho, Kwale County	2023
4	Tree planting	Tree planting for Maragoli Hills in partnership with KFS	724, 930	Community at large	2021
		Tree planting for Port Victoria in partnership with KFS			2022
		Tree planting for Nyasoko Hills in partnership with KFS			2023
5	Lewa Marathon	Wildlife conservancy	4,573,173	Conservancy and community at large	2023
6	Fairmile Primary school	Donations of recycled office equipment, toys to mark December festivities	46,000	Students and caregivers at Fairmile Primary school	2021
7	Covid 19 Relief food initiative to flooded areas and AMREF in partnership with Team Pankaj	Donations of relief food hampers, PPE	3,008,000	Community in flooded areas during the pandemic	2021
8	Kagira Primary school (<i>in honor of World Humanitarian Day 2022</i>)	Donations of learning materials, clothes, foodstuff, sanitary towels	45,200	Students at Kagira Primary school	2022
9	Busho Kwale County (<i>Season of Service 2022</i>)	Donations of foodstuff	40,000	Community in Busho, Kwale county	2023
10	Paradise Children's home in Kibera (<i>in</i>	Donations of Dry foodstuff, clothes, shoes, sanitary towels	46,000	Children and caregivers at Paradise Childrens	2023

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Tax head/Leavy type	Amount paid (in KES)
Income Tax	3,607,497,868
Customs Duty	7,047,189,794
PAYE and other deductions	1,326,009,134
Value Added Tax	12,150,754,395
Withholding Tax	
Withholding VAT	
Capital Gains Tax	7,666,509
Levies & permits	375,568,682
Regulatory Fees	795,715,974
Operating Fees	1,688,395
Total	25,312,090,751

ATC Kenya is therefore committed to continue making its fair contribution of tax revenue to the exchequer.

2.2.2 Income generation for landlords

ATC Kenya has over 4,000 sites spread across the country. These sites host the telecommunication towers. The pieces of land on which the sites are situated are leased from various landlords thereby providing a stable source of income to these landlords. Over the last four years, ATC has paid the landlords approximately KES 39 billion in lease rental income.

2.2.3 Employment

ATC Kenya has sustained a workforce of an average of 87 employees each year since 2021. Notably, the company employs specialists mostly in the telecommunication sector. The company has also created a significant number of jobs indirectly as most of the services such as maintenance of the telecommunication towers are outsourced to specialist companies and individuals, the majority of whom are youths.

2.3 ATC Kenya's impact on the community

Beyond the contributions to the economy as set out above, ATC Kenya has gone out of its way to conduct several Corporate Social Responsibility ("CSR") activities across the country. Some of the notable CSR initiatives undertaken since ATC Kenya's inception in October 2018 are summarised below:

#	CSR Program Name	Brief description	Amount (in KES)	Beneficiaries	Year
1	Kagira Primary	Donations of chairs, desks, books and computer literacy	289,400	Students and teachers at Kagira primary school	2018
2	Digital Community program #1	Creation of digitally connected spaces equipped with	5,252,070	Community at Akiriamet, West Pokot	2022

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2. Background

2.1 ATC Kenya Operations Limited

ATC Kenya Operations Limited ("ATC Kenya" or "the company") is a leading operator of wireless and broadcast communications infrastructure in Kenya with more than 4,000 telecommunication towers nationwide. The company holds a Network Facilities Provider Tier 2 Licence ("NFP Licence") issued by the Communication Authority of Kenya ("CAK").

The principal activity of ATC Kenya includes acquiring, managing, developing, constructing, maintaining, leasing, and operating communication sites and related business in Kenya. The principal source of its revenue is therefore the rental income generated from leasing the telecommunication infrastructure (towers) to telecommunication service providers (Safaricom, Airtel and Telkom Kenya). The land/property on which the towers are constructed is leased from various landowners in Kenya.

Telecommunication towers are an integral part of our critical telecommunication infrastructure. Under Gazette Notice No. 1043 dated 31 January 2022, the telecommunication towers were designated as Critical National Infrastructure due to the critical role they play within the telecommunications ecosystem as a driver of economic growth and development in supporting the Government of Kenya's fulfilment of its Digital Economy Blueprint and Vision 2030; to the extent that without the towers, the entire technological connectivity cannot stand. It is therefore apparent that the telecommunication towers play a pivotal role in the telecommunication ecosystem.

ATC Kenya has been making significant contributions to the Kenyan economy since its incorporation in 2018. Over and above being a major taxpayer, the company is a direct employer for a significant number of Kenyan technology experts and has created jobs through using local suppliers for provisions of materials and subcontracting various aspects of its operations to local vendors. Further to the above, ATC has been integral in enabling universal service access in unserved and underserved areas through the deployment of its telecommunications infrastructure in those areas across all parts of Kenya with the aim of assisting the Government of Kenya scale the Digital Superhighway. To mitigate the adverse effect of climate change, ATC Kenya has heavily invested in environmentally friendly technologies and as part of its Corporate Social Responsibility ("CSR") activities through its digital communities' program, has heavily invested in providing a platform that can be leveraged by communities for community education, healthcare access, financial inclusion, and career development with an aim to improve quality of life through connectivity.

2.2 ATC Kenya's contribution to the economy

2.2.1 Taxes

The company has been a major taxpayer having contributed a total of KES 25.31 billion in taxes and other levies since it was set up in Kenya in October 2018. We provide the breakdown of the KES 25.31 billion in the table below which is supported by the filed tax returns for the period 2018 to date and invoices from various regulatory bodies such as the Communication Authority of Kenya ("CAK"), National Environment Management Authority ("NEMA") just to name a few for the various permits and licenses:

**ATC KENYA**

Issue	Provision proposed to be amended	Proposed amendments by ATC Kenya	Justification for proposed amendment
not clarify that the Ultimate Parent Entity's jurisdiction should be used to determine whether the subsidiary is owned by a <i>real estate investment vehicle</i> (REIV).		<i>ultimate parent company jurisdiction and the subsidiary of the real estate investment vehicle.</i>	provision. The OECD GloBE Model rules exclude a subsidiary of a UPE that is a REIV if 95% of the subsidiary's value is owned by a UPE that is a REIV. The Ultimate Parent Entity ("UPE") of ATC Kenya, which is domiciled in the United States of America ("USA"), is a REIV and thus this provision would apply to ATC Kenya as a subsidiary of a REIV.



ATC KENYA

Issue	Provision proposed to be amended	Proposed amendments by ATC Kenya	Justification for proposed amendment
			Kenya is in a significant tax loss position and has been unable to utilize the withholding tax credits which currently stands at approximately KES 2.5 billion. ATC Kenya is therefore left with only the option of seeking a cash refund of the overpaid tax which is an onerous process considering the protracted verification and approval processes by the Kenya Revenue Authority and delays in payment (upon approval being granted), due to constrained budgetary allocations for cash refunds by the National Treasury. The proposed amendment will promote growth in the telecommunication industry as ATC Kenya and other telecommunication tower companies in a similar predicament will have more funds available for reinvestment in the telecommunication infrastructure. A reduction of the withholding tax rate would also serve as a catalyst in attracting and promoting foreign direct investment into the country and impacting the GDP positively.
Whereas Section 12G of the Income Tax Act contains provisions on the Minimum Top-up Tax, the section as currently worded does	Section 12G (4) (d) of the Income Tax Act	Amend Section 12G (4) (d) of the Income Tax Act as follows, <i>to a real estate investment vehicle that is an ultimate parent company as per the meaning assigned in the</i>	The proposals are in line with the Global Anti-Base Erosion ("GloBE") Model Rules and will mitigate ambiguity in the meaning of the term REIV. Additionally, Section 12 G of the Income Tax Act does not consider subsidiaries of entities that have been specifically excluded from this



ATC KENYA

Issue	Provision proposed to be amended	Proposed amendments by ATC Kenya	Justification for proposed amendment
telecommunication towers can be claimed as a tax credit, telecommunication tower companies in a tax loss position are unable to utilise the withholding tax credits and have to seek a cash refund of the tax overpayment which is often an onerous process.	<i>for the use or occupation of immovable property, seven point five per cent of the gross amount payable</i>	<i>persons whose cumulative value of investment in any two preceding years is at least two billion shillings.</i> Alternatively, consider reducing the withholding tax rate of 7.5% to 5% which aligns to the withholding tax rate on management, professional fees or royalties. Thus, in Paragraph 5(ja) of the Third Schedule to the Income Tax Act, <i>consider amending this rate from 7.5% to 5% of the gross amount payable.</i>	most countries. In Uganda and Ghana, exemption from WHT is available upon application. Nigeria, noting the importance of telecommunication towers reduced the rate of withholding tax from 5% to 2% effective 01 January 2025. ATC Kenya is a leading operator of wireless and broadcast communications infrastructure in Kenya with more than 4,000 telecommunication towers. The company is in the business of leasing space on its telecommunication towers to mobile telecommunication operators (Safaricom, Airtel, and Telkom) with the lease rental income being its main source of income. Currently, the Income Tax Act provides for withholding tax at the rate of 7.5% on lease rental payments to resident persons for the use or occupation of immovable property and therefore the lease rental income payable to ATC Kenya for the use of its telecommunication towers is subject to withholding tax at the rate of 7.5%. The withholding tax suffered is an advance tax payment that can be utilised to offset the corporate tax liability. However, due to the capital-intensive nature of the business operations of ATC Kenya and the capital allowances associated with its investments, often, ATC

			citizens who earn 70% of the total wage bill, and engage in specified sectors such as agro-processing, manufacturing, information technology, logistics, or vocational training. This incentive also applies to existing businesses that make additional qualifying investments meeting the same thresholds and conditions.
2.	Malawi	Paragraph 4, Part 1 of the Second Schedule of the Malawi Taxation Act	Provides a 100% investment allowance on qualifying capital expenditures, such as new and unused industrial buildings, plants, and machinery, made by businesses in manufacturing and related sectors. In addition to this, the law provides an extra 15% investment allowance for projects located in designated areas, which are underdeveloped or prioritized regions identified by the Minister of Finance

3.3.4. The proposed amendment

We propose that the Finance Bill 2025 be amended to retain the investment allowance currently provided under Paragraph 1A and 1B of the Second Schedule to the Income Tax Act for capital expenditures incurred in SEZs and areas outside Nairobi and Mombasa Counties. Any amendment that weakens this framework would not only undermine investor confidence but also place Kenya at a competitive disadvantage regionally and globally.

3.3.5. Justification

The investment allowance for capital expenditures incurred in SEZs and areas outside Nairobi and Mombasa has been instrumental in driving infrastructure development in underserved regions. For the telecommunications sector, this incentive has enabled the rollout of critical network infrastructure in counties that would otherwise remain commercially unviable due to high capital costs and lower immediate returns. Retaining this allowance is therefore not just a fiscal matter—it is a strategic enabler of national connectivity, digital inclusion, and equitable access to communication services.

Telecommunications infrastructure is foundational to economic development, supporting everything from mobile banking and e-commerce to education and emergency services. Removing the investment allowance would significantly increase the cost of network expansion into rural and peri-urban areas, slowing down progress toward universal access and undermining the government's own digital transformation agenda. The private sector, particularly telecom operators, relies on predictable and supportive tax frameworks to make long-term investment decisions in high-risk, capital-intensive projects.

Moreover, in a region where neighbouring countries continue to offer targeted tax incentives to attract infrastructure investment, Kenya risks losing its competitive edge. Investors are highly sensitive to fiscal policy shifts, and any move that diminishes the attractiveness of investing outside major urban centres could redirect capital to more favourable jurisdictions. Retaining the current investment allowance sends a strong signal of policy stability and commitment to inclusive growth, which is essential for sustaining investor confidence and accelerating national development goals.

at a time when Kenya is positioning itself as a regional hub for finance, logistics, and innovation. A stable and investor-friendly tax regime is essential to realizing that vision.

3.3 Tax proposal on the removal of 100% investment deduction that encourages companies to expand in special economic zones and outside major urban centres

3.3.1. Background

Historically, the allowance has been structured to provide 100% or 150% capital deductions for qualifying investments, depending on the scale and timing of the investment. For instance, businesses that invested at least KES 2 billion cumulatively over a three-year period outside Nairobi and Mombasa were eligible for a 150% capital deduction, provided the investment was made before 25 April 2020. For investments made after this date, the allowance was adjusted to 100%, with the 150% rate preserved only for those who had already met the threshold.¹⁹

Additionally, the law provides that a 100% capital deduction applies where a business incurs capital expenditure of at least KES 250 million in a single year of income outside Nairobi and Mombasa, or where the investment is in a Special Economic Zone (SEZ). This provision has been particularly important for attracting large-scale manufacturing, hospitality, and infrastructure projects to SEZs and less developed counties, thereby supporting the objectives of devolution and inclusive economic growth. The impact of this tax incentive on project viability, investor confidence, and sectoral growth is profound, particularly when examined through the lens of large-scale infrastructural development projects by Airtel Kenya.

3.3.2. Issue- Removal of Paragraph 1A and 1B of the Second Schedule

The Finance Bill 2025 proposes to delete the investment allowance currently granted under Paragraph 1A and 1B of the Second Schedule to the Income Tax Act for capital expenditures incurred in special economic zones, and outside Nairobi and Mombasa Counties.

3.3.3. Regional best practices

We consider some of the regional practices in connection with this subject are summarized in the table below:

Table 6: Regional Practices in connection with this subject

No	Country	Provision	Details
1.	Uganda	Section 21(1)(ae) of the Income Tax Act, CAP 338	Uganda grants a 10-year income tax exemption to operators in industrial parks or free zones, as well as to other qualifying businesses outside these zones, provided they invest at least USD 10 million (foreigners), USD 300,000 (citizens), or USD 150,000 (citizens investing upcountry) over a 10-year period. To qualify, businesses must use at least 70% locally sourced raw materials (where available), employ at least 70% Ugandan

investments

Long-term investments particularly in sectors such as agriculture, infrastructure, manufacturing, and telecommunications often require substantial upfront capital and may take several years to generate taxable profits. These projects typically incur significant losses in their early years due to high development costs, regulatory compliance, and market entry challenges. The ability to carry forward these losses into future profitable years is a critical mechanism that ensures businesses are taxed on their true net income over time.

Reintroducing a five-year cap on the carry forward of tax losses would mean that any losses not utilized within that period would be forfeited. This artificially inflates taxable income in later years and increases the effective tax burden on businesses that take longer to break even. For many investors, particularly those operating in capital-intensive or innovation-driven sectors, this change could render projects financially unviable. It would also disproportionately affect businesses that are aligned with Kenya's long-term development goals, such as those supporting industrialization, infrastructure development, and digital superhighway and creative economy. The result is a disincentive to invest in precisely the kinds of projects that Kenya needs to drive sustainable economic growth.

b. Reduces business resilience and discourages reinvestment

Tax loss carry-forward provisions are essential tools for managing business risk. They allow companies to smooth out tax liabilities over time, recover from economic shocks, and reinvest in growth. The indefinite carry-forward period introduced in 2021 recognized that recovery timelines vary significantly across sectors and that businesses need flexibility to maintain sustainable.

The proposed five-year limit would significantly reduce this flexibility. Businesses that experience prolonged recovery periods due to external shocks, regulatory delays, or market fluctuations would be unable to fully utilize their accumulated losses. This increases financial risk and discourages reinvestment. Firms may become more conservative in their growth strategies, prioritizing short-term profitability over long-term expansion. This shift in behaviour could slow innovation, reduce job creation, and limit the development of high-value sectors. Moreover, the policy would introduce unnecessary complexity into tax planning, forcing businesses to make decisions based on tax timing rather than sound commercial strategy. In the long run, this undermines the resilience and dynamism of Kenya's private sector management systems

c. It weakens Kenya's competitiveness as an investment destination

In a globalized economy, tax policy is a key factor in investment decision-making. Investors seek jurisdictions that offer stability, predictability, and fairness in their tax regimes.¹⁸ The 2021 reform that allowed for indefinite carry forward of tax losses was a strong signal that Kenya was committed to creating a supportive environment for business growth. It aligned the country with international best practices and enhanced its appeal to both domestic and foreign investors.

The proposed amendment in the Finance Bill 2025 sends a conflicting message. It introduces uncertainty into the tax system and raises concerns about policy consistency. For multinational corporations and institutional investors, such unpredictability increases the perceived risk of doing business in Kenya. Moreover, many of Kenya's regional and global peers, including Tanzania, Uganda and South Africa allow longer, or indefinite carry forward periods. Reintroducing a five-year cap would make Kenya less competitive by comparison, potentially leading to capital flight or deterring new investment. This is particularly concerning

2.	Tanzania	Section 19 (1) of the Income Tax Act, 2004	Losses can be carried forward indefinitely.
3.	South Africa	Section 20 (a)(1), Income Tax Act, 1962	Losses can be carried forward indefinitely. However, there is a stringent limitation the usage of this "benefit": Companies may only set off assessed losses against the higher of ZAR 1 million or 80% of taxable income in a given year.

3.2.4. International best practices

We consider some of the international practices in connection with this subject are summarized in the table below:

Table 5: International Practices in connection with this subject

No	Country	Provision	Details
1.	United Kingdom	Section 83(1) of the Income Tax Act, 2007	Losses can be carried forward indefinitely.
2.	Australia	Section 36 (15) of the Income Tax Assessment Act 1997	The section explicitly states that a company or entity may carry forward a tax loss indefinitely, provided it meets certain continuity of ownership and business tests.

3.2.5. Proposed amendment

Airtel's proposal is for Section 15(4) of the ITA be retained in its current form, allowing for the indefinite carry-forward of tax losses. Maintaining the current provision is not merely a tax policy issue, it is a matter of economic strategy. It signals Kenya's commitment to a stable, predictable, and investment-friendly tax environment.

Alternatively, consider amending Section 15 (4) and (5) of the Income Tax Act as follows:

"(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding nine years of income.

(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period."

3.2.6. Justification for the proposal to carry forward tax losses for a period of ten years with an option for extension under section 15(4) of the Income Tax Act

- a. It undermines the financial viability of long-Term and capital-Intensive

“(m) In the case of the spectrum license purchased or acquired prior to 1 July 2025, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license”.

For spectrum licenses that have already been acquired, we propose that the remaining unamortized cost be deductible over the balance of the license's useful life.

3.2 Tax proposal to limit the carry-forward period of tax losses to five years, effective 1 July 2025

3.2.1. Background

Prior to January 2016, the law restricted the carry forward of tax losses to a maximum of four years. This limitation posed challenges for businesses with long investment cycles or delayed profitability, particularly in sectors such as agriculture, infrastructure, manufacturing, and telecommunications. In response, the Finance Act 2015 extended the carry forward period to nine years, a reform that was widely regarded as a positive step towards improving the investment climate. A more significant shift occurred with the enactment of the Finance Act, 2021, which repealed the time limitation entirely. The revised provision allowed businesses to carry forward tax losses indefinitely, thereby offering greater flexibility in long-term financial planning and recovery. However, the Finance Bill 2025 proposes to reintroduce a five-year cap on the carry forward of tax losses.

The proposed amendment risks undermining the progress made in recent years. Reinstating a rigid time limit disproportionately affects businesses with longer recovery periods, reduces Kenya's attractiveness as an investment destination, and introduces uncertainty into the tax system.

3.2.2. Issue

The Finance Bill 2025 proposes to limit the carry-forward period for tax losses to five years, effective 1 July 2025. This change would significantly alter the current tax treatment, which allows businesses to carry forward losses indefinitely.

3.2.3. Regional best practices

We consider some of the regional practices in connection with this subject are summarized in the table below:

Table 4: Regional Practices in connection with this subject

No	Country	Provision	Details
1.	Uganda	Section 36(6) of the Income Tax Act, Cap. 338	Losses can be carried over in each year of income and a deduction of 100% of income is allowable for the first 7 years. After 7 years, losses can still be carried over. However, only a deduction of 50% of the income is allowed. This appears to be possible indefinitely if the company is in loss.

No	Country	Provision	Details
			of the right's validity.
2.	Canada	Schedule II to the Income Tax Act	Schedule II of Canada's Income Tax Act designates various categories of capital expenditures that qualify for Capital Cost Allowance (CCA). Under Class 14, expenditures related to the acquisition of patents, franchises, concessions, or licenses with a defined term are eligible for CCA treatment. According to Regulation 945 issued by the Canada Revenue Agency, the capital cost associated with such licenses should be depreciated for tax purposes over the duration of the license's useful life.

3.1.5. Justification

In recent years, digital innovation and mobile connectivity have become increasingly central to socio-economic development. Projections indicated that by the close of 2022, approximately one-third of the population in Sub-Saharan Africa would be using mobile internet, with this figure expected to approach 40% by 2025.¹¹ Additionally, smartphones are anticipated to represent nearly two-thirds of all mobile connections in the region by that time. Kenya is poised to be a leading market, with GSMA Intelligence forecasting around 52 million smartphone connections.

The rollout of 5G technology in Kenya marks a transformative phase, unlocking potential across sectors such as healthcare, e-commerce, industrial automation, and smart urban infrastructure. This advancement is expected to drive innovation and technological growth, particularly in rural communities, by reducing the cost barriers associated with expanding network infrastructure. As a result, Kenya is well-positioned to emerge as a regional technology leader.

Moreover, the proposed policy changes would reduce the operational costs of delivering telecommunication services, thereby enhancing affordability for consumers across all income levels. This aligns with the Government of Kenya's broader digital transformation agenda, as outlined in the digital superhighway and creative economy pillar of Vision 2030. The overarching goal is to deepen ICT integration nationwide and establish Kenya as a frontrunner in internet connectivity within the region.

3.1.6. Proposed amendment

Consistent with global best practices, as outlined in sections 3.1.3 and 3.1.4 above, we recommend the insertion of the words "or spectrum license" immediately after "fibre optic cable" under paragraph 1 (i)(c) of the Second Schedule, to read as follows:

*(c) "Purchase or an acquisition of an indefeasible right to use fibre optic cable or **spectrum license by a telecommunication operator.**"*

Furthermore, insert the following words in the proviso to Paragraph 1, immediately after (I):

¹¹ https://www.gsma.com/mobileeconomy/wp-content/uploads/2021/09/GSMA_ME_SSA_2021_English_Web_Singles.pdf

3.1.3. Regional practice

We consider some of the regional practices in connection with this subject in the table below:

Table 2: Regional Practices in connection with this subject

No	Country	Provision	Details
1.	Uganda	Section 30 of the Income Tax Act	Under Section 30 of Uganda's Income Tax Act, capital expenditure on spectrum licenses qualifies for capital allowances. These licenses are treated as intangible assets for tax purposes. In practice, the tax treatment of spectrum license costs aligns with financial accounting principles. The Act permits taxpayers to deduct the cost of these licenses over their useful life using the straight-line method, thereby allowing for a systematic recovery of the investment through annual tax deductions.
2.	Tanzania	The Income Tax Act, Chapter 332, and the Third Schedule to the Income Tax Act	Tanzania's Income Tax Act, under Chapter 332 and the Third Schedule, classifies depreciable assets into eight distinct categories. Spectrum license fees fall under Class Seven (7), which pertains to intangible assets. Telecommunication companies that incur capital expenditure on acquiring spectrum licenses are permitted to amortize these costs for tax purposes. The amortization is applied on a straight-line basis over the license's useful life, enabling a gradual deduction of the investment from taxable income.

3.1.4. International practice

We consider some of the international practices in connection with this subject in the table below:

Table 3: International Practices in connection with this subject

No	Country	Provision	Details
1.	India	Section 35 ABA of India's Income Tax Act	According to Section 35ABA of India's Income Tax Act, capital expenditure incurred for acquiring the "right to use spectrum" for telecommunications purposes is eligible for tax depreciation. This cost is amortized evenly over the duration of the license, allowing deductions in equal annual instalments throughout the period

emergency or disaster-related communications, are mandated to obtain frequency spectrum licenses from the Communications Authority of Kenya ("CA"). These licenses are issued upon payment of spectrum fees as determined by the CA, with the fee amounts varying based on the nature of the services provided by each operator.

In pursuit of delivering high quality telecommunication services, Airtel Kenya has made substantial investments in enhancing its network infrastructure. This commitment is reflected in its extensive national coverage, with over 4,200 network sites established across Kenya.⁹ Following the introduction of 5G technology in October 2023, Airtel has accelerated its deployment efforts, having rolled out 688 5G sites to date. This positions the company at the forefront of Kenya's digital evolution.¹⁰

A major operational expense for Airtel Kenya is the payment of frequency spectrum fees to the CA, which are essential for maintaining its network and radio communication infrastructure. Over the years, Airtel has acquired telecommunication and spectrum licenses valued at USD 77 million.

Despite these licenses being directly tied to income-generating activities, the current provisions of the Income Tax Act ("ITA") do not permit the deduction of frequency spectrum fees for tax purposes. Consequently, Airtel Kenya is unable to claim capital allowances on the costs associated with acquiring or renewing these licenses, thereby increasing the overall cost of delivering telecommunication services in Kenya.

3.1.2. The issue - Expenditure incurred on the acquisition and renewal of frequency spectrum licences is not eligible for investment allowance

Currently, the ITA does not allow any tax deduction on the frequency spectrum fees and therefore Airtel Kenya is not able to claim capital allowances on the costs of acquiring and renewing the frequency spectrum licenses.

The Finance Bill, 2024

The Finance Bill, 2024 had proposed an amendment to the Second Schedule of the Income Tax Act (ITA) to permit telecommunications operators to claim a tax deduction of 10% annually on capital expenditures related to the acquisition of spectrum licenses. However, this proposal was nullified following the withdrawal of the Finance Bill by President William Ruto on 26 June 2024.

Had it been enacted, this amendment would have reduced the financial burden associated with delivering telecommunication services, particularly in the deployment of 5G and other emerging technologies. It would have also incentivized broader network expansion, especially in underserved rural regions, thereby fostering technological innovation and positioning Kenya as a regional leader in digital infrastructure. This initiative aligned closely with the Government of Kenya's broader digital transformation strategy, particularly under the digital superhighway and creative economy pillar, and would have significantly contributed to enhancing the country's status as a hub for internet connectivity and technological advancement.

⁹ <https://www.africaoutlookmag.com/technology/airtel-kenya-transforming-lives-through-connectivity#:~:text=%E2%80%9CLast%20year%2C%20we%20rolled%20out,across%20major%20cities%20and%20towns>

¹⁰ <https://www.africaoutlookmag.com/technology/airtel-kenya-transforming-lives-through-connectivity#:~:text=%E2%80%9CLast%20year%2C%20we%20rolled%20out,across%20major%20cities%20and%20towns>

the internet. These initiatives are part of a broader effort to bridge the digital divide and empower students with access to digital learning.³

Airtel's commitment to education dates back to earlier efforts, such as its 2019/2020 partnership with Longhorn Publishers to provide free access to the Longhorn e-learning platform during the COVID-19 pandemic. The company also participated in the Junior Achievement Job Shadow Program, mentoring high school students and exposing them to career opportunities in telecommunications.⁴

In response to the devastating drought that affected 23 counties in Kenya in 2022, Airtel Kenya donated KES 50 million through the Kenya Red Cross Society to support the government's relief efforts. The funds were used to provide food and water to affected communities, demonstrating Airtel's commitment to supporting those most in need.⁵

2.2.3. Airtel's Impact on the Financial Sector

Airtel Money continues to transform Kenya's financial landscape by offering accessible, affordable, and secure digital financial services. As of March 2024, mobile money penetration among Airtel customers stood at 24.9%, with an average transaction value of \$262 per customer per month. The total transaction value across Airtel Africa reached \$112 billion during the year.⁶

Airtel Money supports a wide range of services, including microloans, savings, insurance, and international remittances. Its integration with national payment systems and interoperability with banks enhances financial inclusion and provides customers with a seamless digital experience. The agent network supporting Airtel Money grew by 53.1% to 1.4 million agents, many of whom are women and youth in rural areas. These agents not only facilitate transactions but also serve as financial educators and community connectors.⁷

During the COVID-19 pandemic, Airtel Kenya waived transaction fees on Airtel Money to support small businesses and households. The company also revised transaction limits and provided toll-free lines for health information, reinforcing its role as a responsive and socially responsible financial services provider.⁸

Through these efforts, Airtel Kenya continues to play a pivotal role in advancing Kenya's digital economy and financial inclusion agenda, contributing to broader national development goals.

3 Detailed Submissions on Tax Proposals

3.1 Introduction of a provision in the Income Tax Act to allow telecommunication companies to claim investment allowances on the cost incurred in acquiring spectrum licenses.

3.1.1. Background

Under the Kenya Information and Communications Act, 1998 ("KICA"), entities involved in telecommunications, including television and FM radio broadcasting, mobile cellular services, satellite communications, aeronautical and maritime radio operations, and

³ Airtel Kenya, About Us.

⁴ Airtel Networks Kenya, Communication on Progress Report Year: 2019/2020, UN Global Compact.

⁵ Airtel Kenya, About Us.

⁶ Airtel Kenya, About Us.

⁷ Airtel Africa PLC, Sustainability Report 2024: Transforming Lives.

⁸ Airtel Kenya, About Us.

2 Background

2.1 Airtel Networks (Kenya) Limited

Airtel is a prominent provider of telecommunications and mobile money services, operating across 14 African countries. The company delivers a comprehensive suite of telecommunications solutions, including mobile voice and data services, as well as mobile money services, both domestically and internationally.

In Kenya, Airtel operates through three distinct entities: Airtel Networks Kenya Limited (ANKL), which provides communications services; Airtel Money Kenya Limited (AMKL), which offers mobile financial services locally; and Airtel Money Transfer Limited (AMTL), which facilitates cross-border mobile financial services. Collectively referred to as Airtel Kenya, these entities have been part of Airtel Africa's operations since November 2010, following the acquisition of Zain by Bharti Airtel.

Airtel Kenya supports the National ICT Vision of transforming Kenya into a competitive, knowledge-based economy. The company is dedicated to contributing meaningfully to this vision through strategic investments aligned with its growth agenda in the country.

To date, Airtel Kenya has invested nearly USD 1 billion, with a significant portion of this investment occurring within the past three years. As of 30th September 2024, Airtel was the second-largest mobile operator in Kenya, serving 20.7 million subscribers, which represents approximately 29.6% of the market share, according to the latest report by the Communications Authority (CA). By January 2025, the company had expanded its network to approximately 4,200 coverage sites with 688 being 5G sites. Airtel Kenya continues to invest in expanding its distribution network, supported by advancements in technology and network infrastructure.

2.2. Airtel's Contribution to the Economy

2.2.1. Digital transformation

The company's robust network infrastructure ensures seamless connectivity, enabling customers to stay in touch with loved ones, access information, and explore new opportunities. Airtel Kenya's network now covers over 90% of the population, with ongoing efforts to expand coverage to even the most remote areas. From the outset, Airtel has been committed to making communication more affordable, introducing value-for-money products and services that have helped foster healthy competition in the Kenyan telecommunications market.¹

2.2.2. Airtel's Impact to the Community

Airtel Kenya's community engagement is guided by its sustainability pillar, "Our Community," which focuses on improving access to education, promoting digital inclusion, and supporting vulnerable populations.²

In education, Airtel Kenya has made significant strides. The company has provided free internet access to over 47,000 students across the country. Since 2022, it has connected more than 65 schools with unrestricted internet bundles through a \$57 million partnership between Airtel Africa and UNICEF. In February 2024, Airtel Kenya entered a three-year partnership with American Towers Corporation (ATC) to connect an additional 50 schools to

¹ Airtel Kenya, About Us.

² Airtel Kenya, About Us.

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
	Mombasa counties, and for investments in special economic zones.		Schedule to the ITA be retained.	financially unviable for telecommunication companies to expand into special economic zones and areas with low commercial returns, undermining efforts to bridge the digital divide and promote inclusive development. 2. Supporting National Digital Transformation Goals Telecommunications is foundational to Kenya's digital economy. Without this tax incentive, the cost of expanding networks will rise, slowing progress on national priorities such as e-learning, e-health, and mobile financial services. This risks stalling the momentum of Kenya's digital transformation agenda. 3. Preserving Kenya's Regional Competitiveness In a region where peer countries continue to offer targeted tax incentives for infrastructure investment, removing Kenya's allowance would weaken its attractiveness to investors. Policy instability could deter long-term capital commitments, especially in capital-intensive sectors like agriculture, manufacturing and telecommunications.

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
		follows: <i>Notwithstanding subsection (4), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.</i>	follows: <i>“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding nine years of income.</i> <i>(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.”</i>	based on the prevailing legal and fiscal framework. The abrupt imposition of a five-year limit on tax loss carry-forwards, without transitional provisions, creates retroactive uncertainty. This undermines investor confidence, particularly among foreign direct investors who prioritize jurisdictions with stable and transparent tax regimes. 3. Contradiction of national investment and industrialization Goals Kenya’s development agenda, including Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA), emphasizes industrialization, infrastructure development, and energy expansion. These goals require substantial private sector participation and long-term capital inflows. The proposed tax amendment runs counter to these objectives by increasing the effective cost of doing business in strategic sectors. It also dilutes the impact of existing investment incentives such as capital allowances and Special Economic Zones (SEZs). The inconsistency between tax policy and industrial policy could hinder the realization of national development targets.
3.	Proposal to remove the enhanced 100% and 150% investment deductions previously available for significant capital investments made outside Nairobi and	Section 27 of the Bill proposes to delete paragraph 1A and 1B of the Second Schedule of the ITA.	We propose that this proposal be removed, and the enhanced investment deductions currently provided under Paragraph 1A and 1B of the Second	1. Enabling Equitable Infrastructure Development The investment allowance has been a key driver in extending telecommunications infrastructure to underserved regions. Removing it would make it

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
				life. These approaches enhance competitiveness and reduce barriers to network expansion. 4. Global Best Practices Internationally, jurisdictions such as India and Canada offer tax relief on spectrum license costs. India permits depreciation over the license period, and Canada includes such costs under Capital Cost Allowances (CCA) for intangible assets. These models demonstrate the feasibility and benefits of such reforms.
2.	Proposal to limit the carry-forward period of tax losses to five years, effective 1 July 2025.	Section 8(c) of Bill proposes to amend Section 15(4) of the Income Tax Act, CAP 470 (ITA) to read as follows: <i>(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding five years of income</i> Furthermore, Section 8(d) of the Bill proposes to amend Section 15(5) of the ITA to delete subsection (5) which reads as	Consider retaining the provision of Section 15 (4) of the Income Tax Act as currently is as highlighted below: <i>"(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding years of income."</i> Alternatively, consider amending Section 15 (4) and (5) of the Income Tax Act as	1. Erosion of investment viability in capital-intensive sectors Capital-intensive projects typically involve long periods before profitability is realized. The current indefinite carry-forward of tax losses allows investors to offset these early-stage losses against future profits, thereby improving project viability. Capping this period at five years would result in the expiration of unutilized tax losses, effectively increasing the tax burden and reducing the internal rate of return on such investments. This change would disincentivize long-term capital deployment in sectors that are critical to Kenya's economic transformation. 2. Undermining investor confidence and predictability A fundamental principle of sound tax policy is predictability. Investors make long-term decisions

1 Executive Summary

Table 1: Executive summary

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
1.	Telecommunication companies invest substantial capital in securing spectrum licenses, yet they are currently ineligible to claim investment allowances on these expenditures under existing tax provisions.	Type of proposal: Insertion. Paragraph 1 of the Second Schedule to the Income Tax Act ("ITA")	We recommend the insertion of the words "or spectrum license" immediately after "fibre optic cable" under paragraph 1 (i)(c) of the Second Schedule, to read as follows: (c) <i>"Purchase or an acquisition of an indefeasible right to use fibre optic cable or spectrum license by a telecommunication operator.</i> Furthermore, insert the following words in the proviso to Paragraph 1, immediately after (l): <i>"(m) In the case of the spectrum license purchased or acquired prior to 1 July 2025, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license".</i>	1. Driving National Digital Transformation Kenya is on track to reach 52 million smartphone connections by 2025, signalling rapid digital growth. Reducing the financial burden of spectrum licenses would accelerate the rollout of digital infrastructure, particularly in underserved regions. This would support advancements in healthcare, e-commerce, smart cities, and rural connectivity—key pillars of Kenya's Vision 2030 and the digital superhighway initiative. 2. Need for Policy Reform Despite the critical role of spectrum licenses in enabling telecommunications, current tax laws do not permit operators to claim investment allowances on these costs. As a result, companies like Airtel Kenya face elevated operational expenses, which in turn increase the cost of providing services to consumers. 3. Regional Precedents Neighbouring countries have already adopted more supportive tax frameworks. Uganda treats spectrum licenses as intangible assets eligible for investment allowances, while Tanzania allows straight-line amortization over the license's useful



AIRTEL NETWORKS KENYA LIMITED

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The Clerk of the National
Assembly
Departmental Committee on Finance and National Planning
Parliament
Parliament Road
P.O BOX 41842-00100 Nairobi
Nairobi, Kenya

Sent via email to cna@parliament.go.ke

28 May 2025

Dear Sirs,

Subject: The Finance Bill 2025
Submission of Tax Proposals on behalf of Airtel Networks (Kenya) Limited

Pursuant to the Public Notice released by the National Assembly Committee on Finance and National Planning on 13 May 2025 and Article 201 of the Constitution of Kenya, 2010, we, Airtel Networks (Kenya) Limited ("Airtel Kenya"), are glad to submit tax proposals on the Finance Bill, 2025.

We have provided an executive summary of the legislative proposals in the attached document which also provides detailed analyses of the issues, impact, and recommendations. We are happy to provide any additional information on the proposals should you require us to.

We would be grateful for an opportunity to engage the National Assembly Committee on Finance and National Planning ("Committee") to further deliberate on Airtel Kenya's proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact the undersigned on shailendra.singh@ke.airtel.com or our tax consultants on joyce.wamai@pwc.com at your convenience.

Yours faithfully

For: Airtel Networks (Kenya) Limited

Shailendra Singh

Finance Director



No.	CLAUSE (as it is in the Bill)	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
				<u>Recommendation</u> Uber thus recommends that section 23A (4) of the TPA be amended to exempt ride-hailing invoices from the ETIMS requirements such that customers are able to expense rides from ride-hailing platforms without the invoices being ETIMS compliant. The following language may be considered: <i>“The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing, ride-hailing transport services, payment of withholding tax and similar payments”</i> We further recommend that a corresponding amendment be included in the Tax Procedures (Electronic Tax Invoice) Regulations, 2024.

No.	CLAUSE <i>(as it is in the Bill)</i>	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
				2. The mechanisms and thresholds for establishing a significant economic presence in Kenya; 3. How the income which is subject to SEPT will be determined; and 4. If paragraph 12E(3)(d) of the ITA is retained, a clear definition of the term “turnover” should be provided, including the methodology for its calculation.
6.	New proposal	N/A	Section 16(1)(c) of the ITA stipulates that any expenditure or loss where the invoices for the transactions are not generated from an electronic tax invoice management system (ETIMS) shall not be deductible, save where the transactions have been exempted from the application of the ETIMS requirements. Additionally, Section 23(3A) of the Tax Procedures Act, (the TPA) for purposes of ascertaining tax liability, imposes a reverse-invoicing obligation on purchasers who receive supplies from small businesses which do not exceed turnover of five million shillings. This presents a challenge for Uber App users, who are now required by law to reverse-invoice for transportation services provided by Driver Partners who fall within the five million threshold for ETIMS exemption.	As previously noted, Section 23A(3A) of the TPA imposes a reverse-invoicing obligation on taxpayers to self-invoice for trips received from Driver Partners, by virtue of the fact that most Driver Partners constitute small business owners and thus are exempted from the requirements of issuing ETIMS compliant invoices as this responsibility has been passed to the App users (Riders). Uber notes that the requirement to self-invoice for riders imposes an undue compliance burden on riders, most of whom are unsophisticated and are not able to self-invoice for trips. In this respect, Uber proposes that an exemption be introduced to Section 23 (4) of the TPA, exempting ride-hailing applications’ invoices from ETIMS requirements. This will reduce the compliance burden on App users, who are now required by the TPA to self-invoice for transportation provided by the Driver Partners.

No.	CLAUSE (as it is in the Bill)	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
				the ITA to provide clarity on the specific items captured under Section 10(4) of the ITA.
5.	New Proposal	N/A	The Bill seeks to further amend Section 12E of the ITA, yet no regulations have been issued to guide the governance and implementation of the SEPT regime.	Section 12E (6) of the ITA mandates the Cabinet Secretary for the National Treasury to issue regulations for the effective implementation of the SEPT regime. Although the SEPT regime has been operational for approximately five months, the absence of implementing regulations has created compliance gaps. As such, non-resident persons who are subject to the SEPT regime are currently operating in a legal vacuum, making it difficult for them to fully comply with the regime. In contrast, countries such as Nigeria that have implemented a SEPT regime have detailed provisions clarifying the nature of services that give rise to a significant economic presence and the mechanisms through which such a presence is established. <u>Recommendation</u> Uber therefore recommends that the Cabinet Secretary issues SEPT regulations to govern the implementation of the SEPT regime. The regulations should clarify various key issues including the following: 1. The scope of services that when performed by a non-resident person, constitute services capable of creating a significant economic presence for purposes of the SEPT;

No.	CLAUSE (as it is in the Bill)	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
				Furthermore, it should be noted that the WHT obligation under Section 10(4) imposes an undue administrative burden on platform owners who are already remitting other taxes in Kenya. <u>Recommendation</u> In this regard, Uber recommends that the WHT obligation under Section 10(4) be limited to non-resident platform owners. This would help reduce the compliance burden on resident platform owners who are already within the Kenyan tax net.
4.	New Proposal	Amendment to section 10(4) of the ITA.	Section 10(4) of the ITA imposes a WHT obligation on an owner or operator of a digital marketplace or platform, whether resident or non-resident, who either makes or facilitates payment in respect of services or property offered over the digital marketplace or platform. We note that the term “property” is not defined under the ITA and thus taxpayers are unclear on what items are captured under this section 10(4) of the ITA and thus subject to WHT.	Uber proposes that the term “<i>property</i>” as used under Section 10(4) of the ITA be clearly defined to provide taxpayers with clarity on the items captured under this WHT regime. Currently, taxpayers are compelled to rely on the definition of “<i>property</i>” as provided under Section 2 of the Interpretation and General Provisions Act (CAP 2), which includes items such as money, land, easements and every description of estate, interest, and profit. This broad definition leads to absurd outcomes, as it may result in the imposition of WHT on items that were never intended to be subject to WHT in the course of trade. <u>Recommendation</u> In this regard, Uber recommends that the term “<i>property</i>” be expressly defined under Section 2 of

No.	CLAUSe (as it is in the Bill)	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSe	ISSUE	RECOMMENDATION AND JUSTIFICATION
				Uber proposes that an amendment is included in section 35 of the ITA clarifying that the WHT imposed is in respect of net payments from the payer to the payee. To achieve this, a proviso can be added immediately after section 35(3) and before section 35(3A) of the ITA with the following wording: <i>“Provided that, in the case of tax withheld pursuant to section 10(4) of this Act, the withholding tax shall be applied on the net amount payable, after deduction of platform service fees and other such other fees and commissions.”</i>
3.	New Proposal	Amendment to section 10(4) of the ITA.	Section 10(4) of the ITA imposes a WHT obligation on an owner or operator of a digital marketplace or platform, whether resident or non-resident, who either makes or facilitates payment in respect of services or property offered over the digital marketplace or platform. The imposition of this WHT on resident platform operators and owners imposes a high administrative burden on resident platform owners and operators.	The withholding tax regime imposed under Section 10(4) of the ITA was intended to ensure that the KRA has visibility over payments made to resident persons by non-residents, as such payments would ordinarily not be within the KRA's purview. However, Section 10(4) was drafted as a catch-all provision, which inadvertently captures both resident and non-resident platform owners and operators. Given that the KRA already has visibility over payments made by resident persons to other resident persons, since such payments are made against eTIMS-compliant invoices and the recipients are already subject to tax obligations in Kenya, there is no need to impose a WHT obligation on resident platform owners.

No.	CLAUSE (as it is in the Bill)	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
2.	New Proposal	Amendment to section 35 of the ITA.	Section 10 (4) of the ITA imposes a WHT obligations on an owner or operator of a digital marketplace or platform, whether resident or non-resident, who either makes or facilitates payment in respect of services or property offered over the digital marketplace or platform. However, the provision is silent on the revenue base on which the WHT is imposed and in particular whether the WHT under this section 10(4) is imposed on the net payment or gross payment from the non-resident or resident person to the payee resident in Kenya.	Section 15 of the ITA allows taxpayers to deduct expenses that have been incurred in the production of income. In this regard and in the context of Uber, Driver Partners are permitted under section 15 of the ITA to deduct all the expenses that have been incurred in the production of income, which include the services and commission fees charged by Uber in respect of using the Uber platform. In this respect, Uber proposes that the WHT in respect of the payments to Driver Partners be imposed on the net pay to the Driver Partners (having deducted Uber's commission) and not on the gross pay (Fare collected on behalf of the drivers). Importantly, this proposal enhances Driver's cashflows and would not result in a loss of revenue for the Government as the Driver Partners will in any event deduct the commissions charged as they compute their tax liability. <u>Recommendation</u>

No.	CLAUSE <i>(as it is in the Bill)</i>	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
1.	New Proposal	Amendment to section 35 of the Income Tax Act (the ITA).	Under Section 35 (5) of the ITA, withholding tax (WHT) deducted is required to be remitted to the KRA within five working days from the date the deduction is made. Due to the large volume of transactions and the global nature of Uber's business operations, this requirement to remit WHT to the KRA within 5 business days imposes an undue compliance burden which is costly for Uber and other businesses with similar business models. We note that non-residents (such as Uber) with SEPT, WHT and value added tax (VAT) obligations are currently facing compliance challenges given that the compliance date for the WHT imposed pursuant to section 10(4) of the ITA is different from the compliance date for SEPT and VAT obligations (which are due on the 20th day of the subsequent month).	Uber B.V. (Uber) proposes that the WHT obligations timelines under section 10(4) of the ITA be harmonised with compliance timelines relating to their VAT and SEPT obligations, such that WHT is remitted to the KRA on the same due date as SEPT and VAT. <u>Recommendation</u> In this regard, Uber recommends that the below proviso be added immediately after section 35 (5) of the ITA and before section 35(5A) of the ITA with the following wording: <i>"Provided that, in the case of tax withheld pursuant to section 10(4) of this Act, the tax withheld shall be remitted to the Commissioner no later than the 20th day</i>



Uber B.V.

58

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Amsterdam, The Netherlands
Registration No 56317441

27 May 2025

The Clerk of the National Assembly
Office of the Clerk
Main Parliament Buildings
P.O. Box 41842 – 00100
Nairobi, Kenya

Attn: Samuel Njoroge, CBS

Dear Sirs,

RE: SUBMISSIONS ON THE 2025 FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 19 OF 2025) (the Bill)

We refer to the above matter, which proposes several changes that impact Uber B.V.'s business in Kenya, as outlined in the submissions document.

Pursuant to the call to stakeholders and the general public to submit comments on the Bill, we set out below our comments and proposals for your kind consideration.

Our submissions detail recommendations regarding various aspects of the Bill, including proposals for amendments to the Income Tax Act (ITA) and the Tax Procedures Act (TPA). Key areas addressed in our submission include:

1. Harmonization of Withholding Tax (WHT) remittance timelines.
2. Clarification on the WHT base under Section 10(4) of the ITA, the scope of the WHT obligation for digital marketplace owners.
3. The definition of "property" under Section 10(4) of ITA.
4. The need for Significant Economic Presence Tax (SEPT) regulations, and
5. Exemptions from Electronic Tax Invoice Management System (ETIMS) requirements for ride-hailing services.

Yours faithfully,

Blair Radford

Blair Radford
Director
For and on behalf of Uber B.V



Review of the tax regime on packaging | Justification



The current model risks increasing consumer prices, undermining supply chain efficiency, and potentially conflicting with Kenya's regional and international trade commitments.

Moreover, the lack of clarity on existing tax laws and levies may lead to inconsistent interpretation and application, creating regulatory uncertainty and increasing the cost of doing business in Kenya.

By keeping taxes and levies manageable on plastics, the government can help support the growth of the domestic manufacturing sector while ensuring that packaging remains affordable for businesses and consumers.

Review of the tax regime on packaging | Justification



There is a large and vibrant packaging manufacturing industry in Kenya that makes products for use by consumers and for use by other manufacturers to package their products as well as for export.

The current tax regime on plastics consists of multiple taxes and levies including, excise tax, import duty (on raw materials) and the recently introduced EPR levy. This increases the cost of production and thus increases the costs of goods that require the use of plastic packaging.

The imposition of 35% excise tax on imported glass bottles, makes alternatives to plastics un-economical.



view of the tax regime on packaging | Our Ask

We propose a review of the current tax regime on packaging.

This will align with the intent of the Finance Bill 2025 to simplify and streamline the tax system in order to enhance revenue collection and protect business environment to foster growth and investment.



view of the tax regime on packaging material

Excise Duty

The Finance Act 2021 introduced an excise tax on plastics, which was later amended by the Finance Act 2022 to apply solely to imports. However, a further amendment through the Tax Laws (Amendment) Act, 2024, extended the excise tax to cover both locally produced and imported plastics.

FIRST SCHEDULE LIST OF PRODUCTS AND PACKAGING SUBJECT TO EXTENDED PRODUCER RESPONSIBILITY COMPLIANCE SCHEME

[rr. 4(1)(c), 6(1), (2), (7), 7(5), 14(1)]

NO.	PRODUCT	AMOUNT (KShs) <i>Per item</i>
1.	Packaging for non-hazardous products (plastics, aluminium, composite, paper and its corrugates, glass, cardboard and carton).	150
2.	Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood and agricultural films.	150
3.	Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators.	150
4.	End of life motor vehicles, automobiles, aircrafts, locomotives.	150
5.	Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers and sanitary towels.	150

Excise Tax on packaging material | Justification



Kenya's waste management strategy is fundamentally predicated on fostering a circular economy. The expansion of the recycling sector is crucial for facilitating the collection and transformation of waste materials into new products, thereby preventing environmental degradation.

The realization of a circular economy holds enormous potential for Kenya with benefits including, reduced carbon emissions, environmental conservation, job creation and the creation of new industries.

Amendment of section 14 of the Excise Act will accord taxpayers a relief of excise tax paid on packaging materials with the impact of accelerating investment and economic recovery both in the manufacturing and recycling sector.

ductibility of excise tax paid on packaging material | Our



Proposed Amendment in law:

Revise section 14 of the Excise Act to read as follows:

*Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as **raw materials** and **packaging materials** in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.*

deductibility of excise tax paid on packaging material | Legislative Division



ction 14 of the Excise Act provides that:

*“where duty has been paid in respect to excisable goods imported into or manufactured in Kenya by a licensed manufacturer and which have been used as **raw materials** in the manufacture of other excisable goods, the raw materials shall be offset against the excise duty payable on the finished goods.”*

The provision should be revised to include **offset of excise tax** paid on both raw materials and **packaging material** in order to provide a relief to industry participants of the excise paid on packaging materials.

The input–output mechanism aligns with international best practice for consumption taxes.



ductibility of excise tax on packaging material | Legislative provision

Legislative Provision

The Government in March 2020 through the Business Laws Amendment Act introduced excise tax of 25% on imported glass bottles. The Finance Act 2023 further increased the rate of excise tax to 35%.

The Finance Act 2021 introduced an excise tax on plastics, which was later amended by the Finance Act 2022 to apply solely to imports. However, a further amendment through the Tax Laws (Amendment) Act, 2024, extended the excise tax to cover both locally produced and imported plastics.

ta Management System | Justification



This proposal could undermine tax-payer trust, potentially triggering resistance and non-compliance, ultimately counteracting the Revenue Authority's intended goals.

The proposal would allow unrestricted access to sensitive data contrary to international best practices and key GDPR principles of purpose limitation, data minimization and protection of personal information.

The proposal will discourage Multinational Enterprises from expanding operations into Kenya given the heightened data risks with respect to information relating to other jurisdictions.

The proposal would further compromise business confidentiality, a fundamental pillar of professional ethics. Departing from this principle could weaken the trust between professionals and their clients, while also having widespread negative impacts on businesses.

ta Management System | Policy issue and our ask



Policy issue

This proposal presents significant data protection and security risks for both individuals and businesses, conflicting with Article 31 of the constitution. It would compel businesses to reveal trade secrets essential to their competitive edge, and once disclosed, these advantages could be permanently lost.

Proposed amendment

- Deletion of Clause 52 of the Finance Bill.



Electronic Tax Management System | Improving tax compliance and simplifying tax laws

Clause 52 of The Finance Bill – Deletion of Section 59 (1) (a) of the Tax Administration Act.

Currently, Section 59A(1B) restricts the Commissioner from requiring a person to integrate or share data relating to trade secrets and private or personal data held on behalf of customers or collected in the course of business.

The Bill proposes to remove the restriction, thereby allowing the Commissioner to access trade secrets and personal data information for integration into the electronic tax management system.

Agency Notices | Justification



The proposed provision undermines the right to appeal and the right to fair trial as enshrined in Article 50 of the Constitution, by diminishing the practical utility of the appeal process.

Enforcement of agency notices will tie up working capital of companies hence affecting cashflows.

The taxpayer, even if they end up succeeding in the appeal, will likely face difficulties in recovering the funds seized from third parties.

This provision may be used by the Revenue Authority to raise assessments motivated by need to reach aggressive revenue targets.

Policy Notices | Policy issue and our ask



Policy issue

This provision, if assented to will deny the taxpayer the right to fair administrative action contrary to Article 47 of the Constitution, as the Commissioner will be empowered to enforce their assessment on a tax-payer who has a right to appeal.

Proposed amendment

- Deletion of Clause 47 of the Finance Bill.



Agency Notices | Improving tax-payer compliance

Clause 47 of The Finance Bill – Proposal to delete Section (14) (e) of the Tax Procedures Act (TPA)

The deletion will empower the Commissioner to issue notices in recovery of taxes, despite a taxpayer's right to appeal.

The Bill also proposes to expand the powers of the Commissioner to collect taxes from non-resident persons who are subject to tax in Kenya.

Limitation of carry forward of losses | Justification



The proposal would make Kenya an **unattractive investment destination** potentially missing the country significant development opportunities.

This proposal would disadvantage start-ups and high growth firms, which typically incur losses in their early years of operation. This would deny them the resources needed to scale past the start-up stage and limit their growth compared to established firms.

This provision would severely reduce business' resilience during periods of economic downturn or recession, as companies may take longer than the 5 year limit to recover from the economic shocks that affect them. The current provision which allows for indefinite carry forward of losses, provides a cushion for the businesses to absorb the shocks, thereby allowing for wider economic stability in the long run.

Limitation of carry forward of losses | Policy issue and our



Policy issue

This proposal, would penalize long-term and capital-intensive investments and disadvantage startups by preventing companies from fully offsetting against future profits, early-stage losses resulting from capital incentives or resulting from normal business operations.

Proposed amendment

- Deletion of clause 8 (c) of the Finance Bill.

Limitation of carry forward of losses | Attraction of Foreign Direct Investment



Clause (8) (c) of The Finance Bill – Section 15(4) of the Income Tax Act

Sub-section (4), by inserting the word “five” immediately after the word succeeding

The Bill proposes to amend Section 15(4) introducing a 5-year cap on the deductibility of tax losses.

This will limit the utilization of tax losses in subsequent years of income.

Investment Deduction Incentive | Justification



The investment allowances outside Nairobi and Mombasa provides a significant incentive to invest outside the major cities, encouraging regional development.

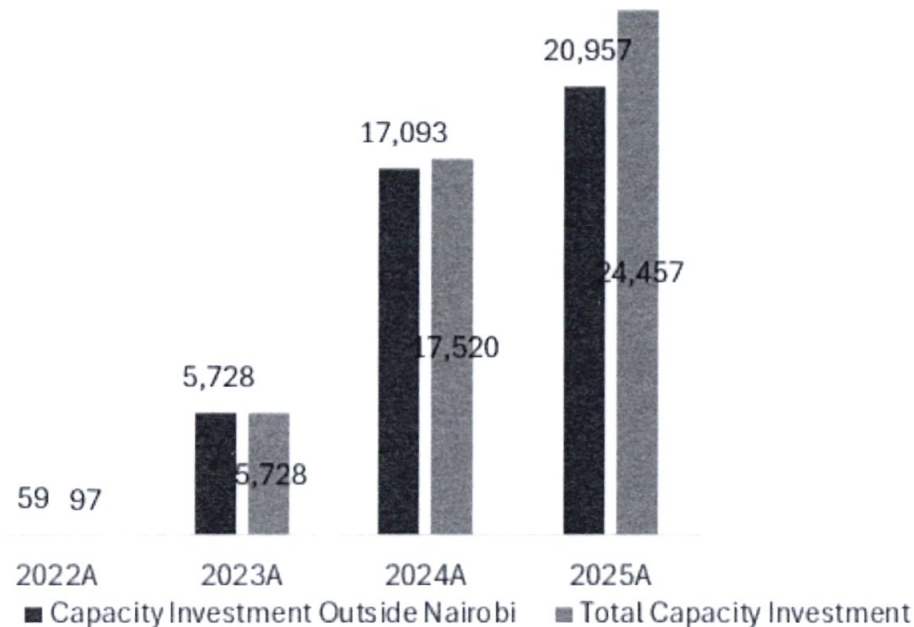
Investment deductions offer a tax incentive on capital expenditures, easing cashflow pressures typically faced by manufacturing companies due to their working capital needs.

Investors may consider alternative jurisdictions that offer incentives aimed at the manufacturing sector, given the sectors strong multiplier effect on the broader economy.

Investment Deduction Incentive | CCBA's Investment



KE Capital Investment 2022 - 2027 (\$000)



- The business invests heavily in plant and machinery outside Nairobi.
- These new plants take time to run optimally representing minimal return on investors capital.
- Significant increase in operational costs, increased tax pressures and the relentless depreciation of the Kenyan shilling have a direct impact on cashflows.
- The current investment allowances enable businesses to run and optimize on assets during tough economic times

Airtel Networks (Kenya) Limited

**Oral Submissions to the National Treasury
Committee on Finance and National Planning**

Finance Bill, 2025

29 May 2025



Proposal 1: Investment allowances on Spectrum licences



Issue

Telecommunication companies invest substantial capital in securing spectrum licenses, yet they are currently ineligible to claim investment allowances on these expenditures under existing tax provisions.



Proposal

Insertion of the words “or spectrum license” immediately after “fibre optic cable” under paragraph 1 (i)(c) of the Second Schedule of the ITA.

Furthermore, insert the following words in the proviso to Paragraph 1, immediately after (l):

“(m) In the case of the spectrum license purchased or acquired prior to 1 July 2025, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license”.



Justification

- ✓ Driving National Digital Transformation
- ✓ Need for policy reform
- ✓ Regional precedents such as in Uganda and Tanzania

Proposal 2: Carry Forward of Tax Losses



Issue

Clause 8(c) of the Finance Bill, 2025

Section 15(4) of the Income Tax Act

Proposal to limit the carry-forward period of tax losses to five years, effective 1 July 2025.



Proposal

Retain Section 15 (4) of the ITA as is;

OR amend as below:

*“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding **nine years** of income.*

*(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond **ten years** where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.”*



Justification

- ✓ Erosion of investment viability in capital intensive sectors
- ✓ Undermining investor confidence and predictability
- ✓ Contradiction of national investment and industrialization goals

Proposal 3: Enhanced Investment Deductions



Issue

Clause 27 of the Finance Bill, 2025

Paragraph 1A and 1B of the Second Schedule to the Income Tax Act

Proposal to remove the enhanced 100% and 150% investment deductions previously available for significant capital investments made outside Nairobi and Mombasa counties, and for investments in special economic zones.



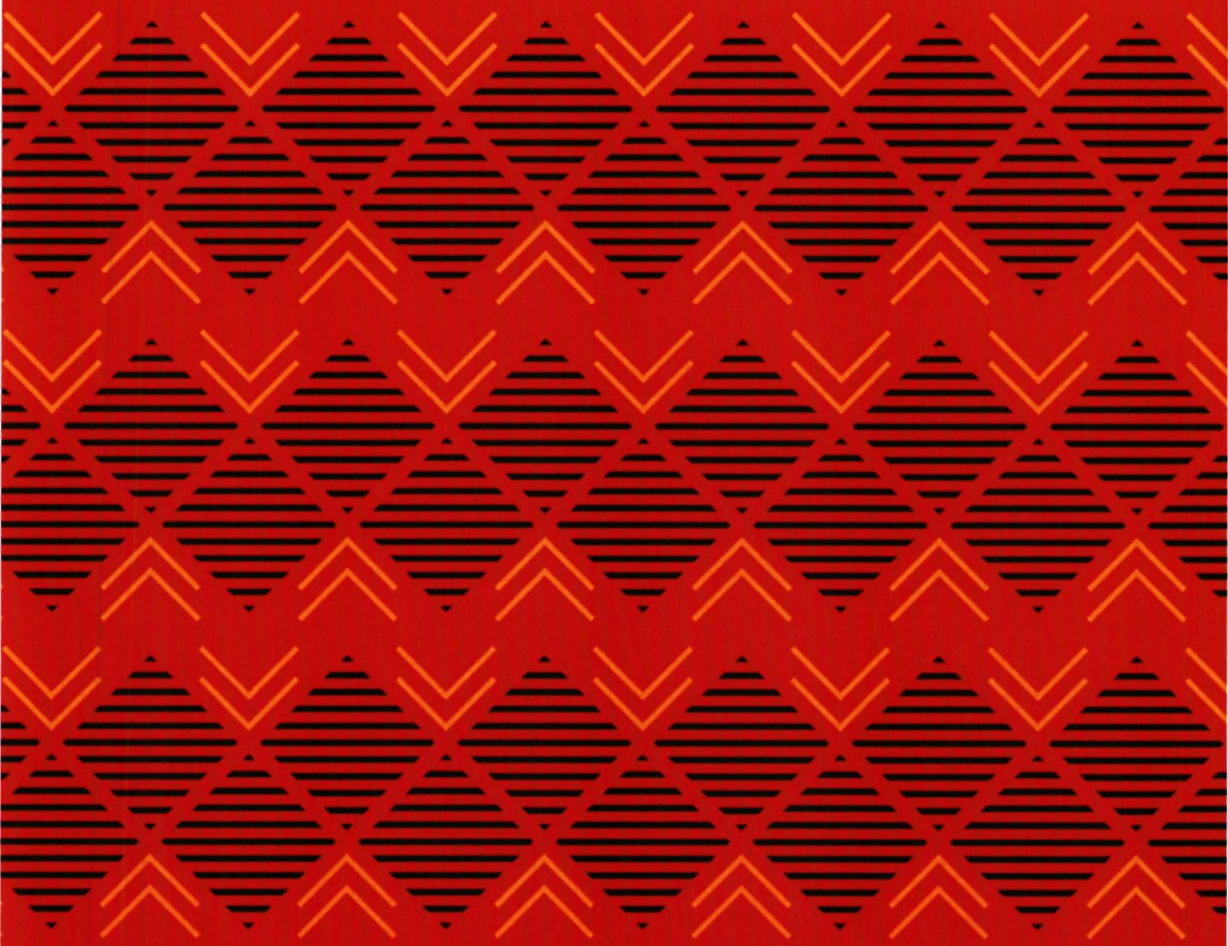
Proposal

We propose that this proposal be removed, and the enhanced investment deductions currently provided under Paragraph 1A and 1B of the Second Schedule to the ITA be retained.



Justification

- ✓ Enabling Equitable infrastructure development
- ✓ Supporting National Digital Transformation Goals
- ✓ Preserving Kenya's Regional Competitiveness



Q&A Session

Thank you!



AIRTEL NETWORKS KENYA LIMITED

Parkside Towers, Mombasa Road, Nairobi
Kenya

The Clerk of the National
Assembly
Departmental Committee on Finance and National Planning
Parliament
Parliament Road
P.O BOX 41842-00100 Nairobi
Nairobi, Kenya

Sent via email to cna@parliament.go.ke

28 May 2025

Dear Sirs,

**Subject: The Finance Bill 2025
Submission of Tax Proposals on behalf of Airtel Networks (Kenya) Limited**

Pursuant to the Public Notice released by the National Assembly Committee on Finance and National Planning on 13 May 2025 and Article 201 of the Constitution of Kenya, 2010, we, Airtel Networks (Kenya) Limited ("Airtel Kenya"), are glad to submit tax proposals on the Finance Bill, 2025.

We have provided an executive summary of the legislative proposals in the attached document which also provides detailed analyses of the issues, impact, and recommendations. We are happy to provide any additional information on the proposals should you require us to.

We would be grateful for an opportunity to engage the National Assembly Committee on Finance and National Planning ("Committee") to further deliberate on Airtel Kenya's proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact the undersigned on shailendra.singh@ke.airtel.com or our tax consultants on joyce.wamai@pwc.com at your convenience.

Yours faithfully

For: Airtel Networks (Kenya) Limited

Shailendra Singh

Finance Director

1 Executive Summary

Table 1: Executive summary

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
1.	Telecommunication companies invest substantial capital in securing spectrum licenses, yet they are currently ineligible to claim investment allowances on these expenditures under existing tax provisions.	Type of proposal: Insertion. Paragraph 1 of the Second Schedule to the Income Tax Act (“ITA”)	We recommend the insertion of the words “or spectrum license” immediately after “fibre optic cable” under paragraph 1 (i)(c) of the Second Schedule, to read as follows: (c) <i>“Purchase or an acquisition of an indefeasible right to use fibre optic cable or spectrum license by a telecommunication operator.</i> Furthermore, insert the following words in the proviso to Paragraph 1, immediately after (l): <i>“(m) In the case of the spectrum license purchased or acquired prior to 1 July 2025, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license”.</i>	1. Driving National Digital Transformation Kenya is on track to reach 52 million smartphone connections by 2025, signalling rapid digital growth. Reducing the financial burden of spectrum licenses would accelerate the rollout of digital infrastructure, particularly in underserved regions. This would support advancements in healthcare, e-commerce, smart cities, and rural connectivity—key pillars of Kenya’s Vision 2030 and the digital superhighway initiative. 2. Need for Policy Reform Despite the critical role of spectrum licenses in enabling telecommunications, current tax laws do not permit operators to claim investment allowances on these costs. As a result, companies like Airtel Kenya face elevated operational expenses, which in turn increase the cost of providing services to consumers. 3. Regional Precedents Neighbouring countries have already adopted more supportive tax frameworks. Uganda treats spectrum licenses as intangible assets eligible for investment allowances, while Tanzania allows straight-line amortization over the license’s useful

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
				life. These approaches enhance competitiveness and reduce barriers to network expansion. 4. Global Best Practices Internationally, jurisdictions such as India and Canada offer tax relief on spectrum license costs. India permits depreciation over the license period, and Canada includes such costs under Capital Cost Allowances (CCA) for intangible assets. These models demonstrate the feasibility and benefits of such reforms.
2.	Proposal to limit the carry-forward period of tax losses to five years, effective 1 July 2025.	Section 8(c) of Bill proposes to amend Section 15(4) of the Income Tax Act, CAP 470 (ITA) to read as follows: <i>(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding five years of income</i> Furthermore, Section 8(d) of the Bill proposes to amend Section 15(5) of the ITA to delete subsection (5) which reads as	Consider retaining the provision of Section 15 (4) of the Income Tax Act as currently is as highlighted below: <i>“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding years of income.”</i> Alternatively, consider amending Section 15 (4) and (5) of the Income Tax Act as	1. Erosion of investment viability in capital-intensive sectors Capital-intensive projects typically involve long periods before profitability is realized. The current indefinite carry-forward of tax losses allows investors to offset these early-stage losses against future profits, thereby improving project viability. Capping this period at five years would result in the expiration of unutilized tax losses, effectively increasing the tax burden and reducing the internal rate of return on such investments. This change would disincentivize long-term capital deployment in sectors that are critical to Kenya’s economic transformation. 2. Undermining investor confidence and predictability A fundamental principle of sound tax policy is predictability. Investors make long-term decisions

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
		follows: <i>Notwithstanding subsection (4), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.</i>	follows: <i>“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding nine years of income.</i> <i>(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.”</i>	based on the prevailing legal and fiscal framework. The abrupt imposition of a five-year limit on tax loss carry-forwards, without transitional provisions, creates retroactive uncertainty. This undermines investor confidence, particularly among foreign direct investors who prioritize jurisdictions with stable and transparent tax regimes. 3. Contradiction of national investment and industrialization Goals Kenya’s development agenda, including Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA), emphasizes industrialization, infrastructure development, and energy expansion. These goals require substantial private sector participation and long-term capital inflows. The proposed tax amendment runs counter to these objectives by increasing the effective cost of doing business in strategic sectors. It also dilutes the impact of existing investment incentives such as capital allowances and Special Economic Zones (SEZs). The inconsistency between tax policy and industrial policy could hinder the realization of national development targets.
3.	Proposal to remove the enhanced 100% and 150% investment deductions previously available for significant capital investments made outside Nairobi and	Section 27 of the Bill proposes to delete paragraph 1A and 1B of the Second Schedule of the ITA.	We propose that this proposal be removed, and the enhanced investment deductions currently provided under Paragraph 1A and 1B of the Second	1. Enabling Equitable Infrastructure Development The investment allowance has been a key driver in extending telecommunications infrastructure to underserved regions. Removing it would make it

No	Issue	Provision proposed to be amended in the Act	Proposed amendment	Justification for proposed amendment
	Mombasa counties, and for investments in special economic zones.		Schedule to the ITA be retained.	financially unviable for telecommunication companies to expand into special economic zones and areas with low commercial returns, undermining efforts to bridge the digital divide and promote inclusive development. 2. Supporting National Digital Transformation Goals Telecommunications is foundational to Kenya's digital economy. Without this tax incentive, the cost of expanding networks will rise, slowing progress on national priorities such as e-learning, e-health, and mobile financial services. This risks stalling the momentum of Kenya's digital transformation agenda. 3. Preserving Kenya's Regional Competitiveness In a region where peer countries continue to offer targeted tax incentives for infrastructure investment, removing Kenya's allowance would weaken its attractiveness to investors. Policy instability could deter long-term capital commitments, especially in capital-intensive sectors like agriculture, manufacturing and telecommunications.

2 Background

2.1 Airtel Networks (Kenya) Limited

Airtel is a prominent provider of telecommunications and mobile money services, operating across 14 African countries. The company delivers a comprehensive suite of telecommunications solutions, including mobile voice and data services, as well as mobile money services, both domestically and internationally.

In Kenya, Airtel operates through three distinct entities: Airtel Networks Kenya Limited (ANKL), which provides communications services; Airtel Money Kenya Limited (AMKL), which offers mobile financial services locally; and Airtel Money Transfer Limited (AMTL), which facilitates cross-border mobile financial services. Collectively referred to as Airtel Kenya, these entities have been part of Airtel Africa's operations since November 2010, following the acquisition of Zain by Bharti Airtel.

Airtel Kenya supports the National ICT Vision of transforming Kenya into a competitive, knowledge-based economy. The company is dedicated to contributing meaningfully to this vision through strategic investments aligned with its growth agenda in the country.

To date, Airtel Kenya has invested nearly USD 1 billion, with a significant portion of this investment occurring within the past three years. As of 30th September 2024, Airtel was the second-largest mobile operator in Kenya, serving 20.7 million subscribers, which represents approximately 29.6% of the market share, according to the latest report by the Communications Authority (CA). By January 2025, the company had expanded its network to approximately 4,200 coverage sites with 688 being 5G sites. Airtel Kenya continues to invest in expanding its distribution network, supported by advancements in technology and network infrastructure.

2.2. Airtel's Contribution to the Economy

2.2.1. Digital transformation

The company's robust network infrastructure ensures seamless connectivity, enabling customers to stay in touch with loved ones, access information, and explore new opportunities. Airtel Kenya's network now covers over 90% of the population, with ongoing efforts to expand coverage to even the most remote areas. From the outset, Airtel has been committed to making communication more affordable, introducing value-for-money products and services that have helped foster healthy competition in the Kenyan telecommunications market.¹

2.2.2. Airtel's Impact to the Community

Airtel Kenya's community engagement is guided by its sustainability pillar, "Our Community," which focuses on improving access to education, promoting digital inclusion, and supporting vulnerable populations.²

In education, Airtel Kenya has made significant strides. The company has provided free internet access to over 47,000 students across the country. Since 2022, it has connected more than 65 schools with unrestricted internet bundles through a \$57 million partnership between Airtel Africa and UNICEF. In February 2024, Airtel Kenya entered a three-year partnership with American Towers Corporation (ATC) to connect an additional 50 schools to

¹ Airtel Kenya, About Us.

² Airtel Kenya, About Us.

the internet. These initiatives are part of a broader effort to bridge the digital divide and empower students with access to digital learning.³

Airtel's commitment to education dates back to earlier efforts, such as its 2019/2020 partnership with Longhorn Publishers to provide free access to the Longhorn e-learning platform during the COVID-19 pandemic. The company also participated in the Junior Achievement Job Shadow Program, mentoring high school students and exposing them to career opportunities in telecommunications.⁴

In response to the devastating drought that affected 23 counties in Kenya in 2022, Airtel Kenya donated KES 50 million through the Kenya Red Cross Society to support the government's relief efforts. The funds were used to provide food and water to affected communities, demonstrating Airtel's commitment to supporting those most in need.⁵

2.2.3. Airtel's Impact on the Financial Sector

Airtel Money continues to transform Kenya's financial landscape by offering accessible, affordable, and secure digital financial services. As of March 2024, mobile money penetration among Airtel customers stood at 24.9%, with an average transaction value of \$262 per customer per month. The total transaction value across Airtel Africa reached \$112 billion during the year.⁶

Airtel Money supports a wide range of services, including microloans, savings, insurance, and international remittances. Its integration with national payment systems and interoperability with banks enhances financial inclusion and provides customers with a seamless digital experience. The agent network supporting Airtel Money grew by 53.1% to 1.4 million agents, many of whom are women and youth in rural areas. These agents not only facilitate transactions but also serve as financial educators and community connectors.⁷

During the COVID-19 pandemic, Airtel Kenya waived transaction fees on Airtel Money to support small businesses and households. The company also revised transaction limits and provided toll-free lines for health information, reinforcing its role as a responsive and socially responsible financial services provider.⁸

Through these efforts, Airtel Kenya continues to play a pivotal role in advancing Kenya's digital economy and financial inclusion agenda, contributing to broader national development goals.

3 Detailed Submissions on Tax Proposals

3.1 Introduction of a provision in the Income Tax Act to allow telecommunication companies to claim investment allowances on the cost incurred in acquiring spectrum licenses.

3.1.1. Background

Under the Kenya Information and Communications Act, 1998 ("KICA"), entities involved in telecommunications, including television and FM radio broadcasting, mobile cellular services, satellite communications, aeronautical and maritime radio operations, and

³ Airtel Kenya, About Us.

⁴ Airtel Networks Kenya, Communication on Progress Report Year: 2019/2020, UN Global Compact.

⁵ Airtel Kenya, About Us.

⁶ Airtel Kenya, About Us.

⁷ Airtel Africa PLC, Sustainability Report 2024: Transforming Lives.

⁸ Airtel Kenya, About Us.

emergency or disaster-related communications, are mandated to obtain frequency spectrum licenses from the Communications Authority of Kenya ("CA"). These licenses are issued upon payment of spectrum fees as determined by the CA, with the fee amounts varying based on the nature of the services provided by each operator.

In pursuit of delivering high quality telecommunication services, Airtel Kenya has made substantial investments in enhancing its network infrastructure. This commitment is reflected in its extensive national coverage, with over 4,200 network sites established across Kenya.⁹ Following the introduction of 5G technology in October 2023, Airtel has accelerated its deployment efforts, having rolled out 688 5G sites to date. This positions the company at the forefront of Kenya's digital evolution.¹⁰

A major operational expense for Airtel Kenya is the payment of frequency spectrum fees to the CA, which are essential for maintaining its network and radio communication infrastructure. Over the years, Airtel has acquired telecommunication and spectrum licenses valued at USD 77 million.

Despite these licenses being directly tied to income-generating activities, the current provisions of the Income Tax Act ("ITA") do not permit the deduction of frequency spectrum fees for tax purposes. Consequently, Airtel Kenya is unable to claim capital allowances on the costs associated with acquiring or renewing these licenses, thereby increasing the overall cost of delivering telecommunication services in Kenya.

3.1.2. The issue - Expenditure incurred on the acquisition and renewal of frequency spectrum licences is not eligible for investment allowance

Currently, the ITA does not allow any tax deduction on the frequency spectrum fees and therefore Airtel Kenya is not able to claim capital allowances on the costs of acquiring and renewing the frequency spectrum licenses.

The Finance Bill, 2024

The Finance Bill, 2024 had proposed an amendment to the Second Schedule of the Income Tax Act (ITA) to permit telecommunications operators to claim a tax deduction of 10% annually on capital expenditures related to the acquisition of spectrum licenses. However, this proposal was nullified following the withdrawal of the Finance Bill by President William Ruto on 26 June 2024.

Had it been enacted, this amendment would have reduced the financial burden associated with delivering telecommunication services, particularly in the deployment of 5G and other emerging technologies. It would have also incentivized broader network expansion, especially in underserved rural regions, thereby fostering technological innovation and positioning Kenya as a regional leader in digital infrastructure. This initiative aligned closely with the Government of Kenya's broader digital transformation strategy, particularly under the digital superhighway and creative economy pillar, and would have significantly contributed to enhancing the country's status as a hub for internet connectivity and technological advancement.

⁹ <https://www.africaoutlookmag.com/technology/airtel-kenya-transforming-lives-through-connectivity#:~:text=%E2%80%9CLast%20year%2C%20we%20rolled%20out,across%20major%20cities%20and%20towns>

¹⁰ <https://www.africaoutlookmag.com/technology/airtel-kenya-transforming-lives-through-connectivity#:~:text=%E2%80%9CLast%20year%2C%20we%20rolled%20out,across%20major%20cities%20and%20towns>

3.1.3. Regional practice

We consider some of the regional practices in connection with this subject in the table below:

Table 2: Regional Practices in connection with this subject

No	Country	Provision	Details
1.	Uganda	Section 30 of the Income Tax Act	Under Section 30 of Uganda's Income Tax Act, capital expenditure on spectrum licenses qualifies for capital allowances. These licenses are treated as intangible assets for tax purposes. In practice, the tax treatment of spectrum license costs aligns with financial accounting principles. The Act permits taxpayers to deduct the cost of these licenses over their useful life using the straight-line method, thereby allowing for a systematic recovery of the investment through annual tax deductions.
2.	Tanzania	The Income Tax Act, Chapter 332, and the Third Schedule to the Income Tax Act	Tanzania's Income Tax Act, under Chapter 332 and the Third Schedule, classifies depreciable assets into eight distinct categories. Spectrum license fees fall under Class Seven (7), which pertains to intangible assets. Telecommunication companies that incur capital expenditure on acquiring spectrum licenses are permitted to amortize these costs for tax purposes. The amortization is applied on a straight-line basis over the license's useful life, enabling a gradual deduction of the investment from taxable income.

3.1.4. International practice

We consider some of the international practices in connection with this subject in the table below:

Table 3: International Practices in connection with this subject

No	Country	Provision	Details
1.	India	Section 35 ABA of India's Income Tax Act	According to Section 35ABA of India's Income Tax Act, capital expenditure incurred for acquiring the "right to use spectrum" for telecommunications purposes is eligible for tax depreciation. This cost is amortized evenly over the duration of the license, allowing deductions in equal annual instalments throughout the period

No	Country	Provision	Details
			of the right's validity.
2.	Canada	Schedule II to the Income Tax Act	Schedule II of Canada's Income Tax Act designates various categories of capital expenditures that qualify for Capital Cost Allowance (CCA). Under Class 14, expenditures related to the acquisition of patents, franchises, concessions, or licenses with a defined term are eligible for CCA treatment. According to Regulation 945 issued by the Canada Revenue Agency, the capital cost associated with such licenses should be depreciated for tax purposes over the duration of the license's useful life.

3.1.5. Justification

In recent years, digital innovation and mobile connectivity have become increasingly central to socio-economic development. Projections indicated that by the close of 2022, approximately one-third of the population in Sub-Saharan Africa would be using mobile internet, with this figure expected to approach 40% by 2025.¹¹ Additionally, smartphones are anticipated to represent nearly two-thirds of all mobile connections in the region by that time. Kenya is poised to be a leading market, with GSMA Intelligence forecasting around 52 million smartphone connections.

The rollout of 5G technology in Kenya marks a transformative phase, unlocking potential across sectors such as healthcare, e-commerce, industrial automation, and smart urban infrastructure. This advancement is expected to drive innovation and technological growth, particularly in rural communities, by reducing the cost barriers associated with expanding network infrastructure. As a result, Kenya is well-positioned to emerge as a regional technology leader.

Moreover, the proposed policy changes would reduce the operational costs of delivering telecommunication services, thereby enhancing affordability for consumers across all income levels. This aligns with the Government of Kenya's broader digital transformation agenda, as outlined in the digital superhighway and creative economy pillar of Vision 2030. The overarching goal is to deepen ICT integration nationwide and establish Kenya as a frontrunner in internet connectivity within the region.

3.1.6. Proposed amendment

Consistent with global best practices, as outlined in sections 3.1.3 and 3.1.4 above, we recommend the insertion of the words "or spectrum license" immediately after "fibre optic cable" under paragraph 1 (i)(c) of the Second Schedule, to read as follows:

(c) *"Purchase or an acquisition of an indefeasible right to use fibre optic cable or **spectrum license by a telecommunication operator**."*

Furthermore, insert the following words in the proviso to Paragraph 1, immediately after (I):

¹¹ https://www.gsma.com/mobileeconomy/wp-content/uploads/2021/09/GSMA_ME_SSA_2021_English_Web_Singles.pdf

“(m) In the case of the spectrum license purchased or acquired prior to 1 July 2025, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license”.

For spectrum licenses that have already been acquired, we propose that the remaining unamortized cost be deductible over the balance of the license’s useful life.

3.2 Tax proposal to limit the carry-forward period of tax losses to five years, effective 1 July 2025

3.2.1. Background

Prior to January 2016, the law restricted the carry forward of tax losses to a maximum of four years. This limitation posed challenges for businesses with long investment cycles or delayed profitability, particularly in sectors such as agriculture, infrastructure, manufacturing, and telecommunications. In response, the Finance Act 2015 extended the carry forward period to nine years, a reform that was widely regarded as a positive step towards improving the investment climate. A more significant shift occurred with the enactment of the Finance Act, 2021, which repealed the time limitation entirely. The revised provision allowed businesses to carry forward tax losses indefinitely, thereby offering greater flexibility in long-term financial planning and recovery. However, the Finance Bill 2025 proposes to reintroduce a five-year cap on the carry forward of tax losses.

The proposed amendment risks undermining the progress made in recent years. Reinstating a rigid time limit disproportionately affects businesses with longer recovery periods, reduces Kenya’s attractiveness as an investment destination, and introduces uncertainty into the tax system.

3.2.2. Issue

The Finance Bill 2025 proposes to limit the carry-forward period for tax losses to five years, effective 1 July 2025. This change would significantly alter the current tax treatment, which allows businesses to carry forward losses indefinitely.

3.2.3. Regional best practices

We consider some of the regional practices in connection with this subject are summarized in the table below:

Table 4: Regional Practices in connection with this subject

No	Country	Provision	Details
1.	Uganda	Section 36(6) of the Income Tax Act, Cap. 338	Losses can be carried over in each year of income and a deduction of 100% of income is allowable for the first 7 years. After 7 years, losses can still be carried over. However, only a deduction of 50% of the income is allowed. This appears to be possible indefinitely if the company is in loss.

2.	Tanzania	Section 19 (1) of the Income Tax Act, 2004	Losses can be carried forward indefinitely.
3.	South Africa	Section 20 (a)(1), Income Tax Act, 1962	Losses can be carried forward indefinitely. However, there is a stringent limitation the usage of this “benefit”: Companies may only set off assessed losses against the higher of ZAR 1 million or 80% of taxable income in a given year.

3.2.4. International best practices

We consider some of the international practices in connection with this subject are summarized in the table below:

Table 5: International Practices in connection with this subject

No	Country	Provision	Details
1.	United Kingdom	Section 83(1) of the Income Tax Act, 2007	Losses can be carried forward indefinitely.
2.	Australia	Section 36 (15) of the Income Tax Assessment Act 1997	The section explicitly states that a company or entity may carry forward a tax loss indefinitely, provided it meets certain continuity of ownership and business tests.

3.2.5. Proposed amendment

Airtel’s proposal is for Section 15(4) of the ITA be retained in its current form, allowing for the indefinite carry-forward of tax losses. Maintaining the current provision is not merely a tax policy issue, it is a matter of economic strategy. It signals Kenya’s commitment to a stable, predictable, and investment-friendly tax environment.

Alternatively, consider amending Section 15 (4) and (5) of the Income Tax Act as follows:

“(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding nine years of income.

(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.”

3.2.6. Justification for the proposal to carry forward tax losses for a period of ten years with an option for extension under section 15(4) of the Income Tax Act

a. It undermines the financial viability of long-Term and capital-Intensive

investments

Long-term investments particularly in sectors such as agriculture, infrastructure, manufacturing, and telecommunications often require substantial upfront capital and may take several years to generate taxable profits. These projects typically incur significant losses in their early years due to high development costs, regulatory compliance, and market entry challenges. The ability to carry forward these losses into future profitable years is a critical mechanism that ensures businesses are taxed on their true net income over time.

Reintroducing a five-year cap on the carry forward of tax losses would mean that any losses not utilized within that period would be forfeited. This artificially inflates taxable income in later years and increases the effective tax burden on businesses that take longer to break even. For many investors, particularly those operating in capital-intensive or innovation-driven sectors, this change could render projects financially unviable. It would also disproportionately affect businesses that are aligned with Kenya's long-term development goals, such as those supporting industrialization, infrastructure development, and digital superhighway and creative economy. The result is a disincentive to invest in precisely the kinds of projects that Kenya needs to drive sustainable economic growth.

b. Reduces business resilience and discourages reinvestment

Tax loss carry-forward provisions are essential tools for managing business risk. They allow companies to smooth out tax liabilities over time, recover from economic shocks, and reinvest in growth. The indefinite carry-forward period introduced in 2021 recognized that recovery timelines vary significantly across sectors and that businesses need flexibility to maintain sustainable.

The proposed five-year limit would significantly reduce this flexibility. Businesses that experience prolonged recovery periods due to external shocks, regulatory delays, or market fluctuations would be unable to fully utilize their accumulated losses. This increases financial risk and discourages reinvestment. Firms may become more conservative in their growth strategies, prioritizing short-term profitability over long-term expansion. This shift in behaviour could slow innovation, reduce job creation, and limit the development of high-value sectors. Moreover, the policy would introduce unnecessary complexity into tax planning, forcing businesses to make decisions based on tax timing rather than sound commercial strategy. In the long run, this undermines the resilience and dynamism of Kenya's private sector management systems

c. It weakens Kenya's competitiveness as an investment destination

In a globalized economy, tax policy is a key factor in investment decision-making. Investors seek jurisdictions that offer stability, predictability, and fairness in their tax regimes.¹⁸ The 2021 reform that allowed for indefinite carry forward of tax losses was a strong signal that Kenya was committed to creating a supportive environment for business growth. It aligned the country with international best practices and enhanced its appeal to both domestic and foreign investors.

The proposed amendment in the Finance Bill 2025 sends a conflicting message. It introduces uncertainty into the tax system and raises concerns about policy consistency. For multinational corporations and institutional investors, such unpredictability increases the perceived risk of doing business in Kenya. Moreover, many of Kenya's regional and global peers, including Tanzania, Uganda and South Africa allow longer, or indefinite carry forward periods. Reintroducing a five-year cap would make Kenya less competitive by comparison, potentially leading to capital flight or deterring new investment. This is particularly concerning

at a time when Kenya is positioning itself as a regional hub for finance, logistics, and innovation. A stable and investor-friendly tax regime is essential to realizing that vision.

3.3 Tax proposal on the removal of 100% investment deduction that encourages companies to expand in special economic zones and outside major urban centres

3.3.1. Background

Historically, the allowance has been structured to provide 100% or 150% capital deductions for qualifying investments, depending on the scale and timing of the investment. For instance, businesses that invested at least KES 2 billion cumulatively over a three-year period outside Nairobi and Mombasa were eligible for a 150% capital deduction, provided the investment was made before 25 April 2020. For investments made after this date, the allowance was adjusted to 100%, with the 150% rate preserved only for those who had already met the threshold.¹⁹

Additionally, the law provides that a 100% capital deduction applies where a business incurs capital expenditure of at least KES 250 million in a single year of income outside Nairobi and Mombasa, or where the investment is in a Special Economic Zone (SEZ). This provision has been particularly important for attracting large-scale manufacturing, hospitality, and infrastructure projects to SEZs and less developed counties, thereby supporting the objectives of devolution and inclusive economic growth. The impact of this tax incentive on project viability, investor confidence, and sectoral growth is profound, particularly when examined through the lens of large-scale infrastructural development projects by Airtel Kenya.

3.3.2. Issue- Removal of Paragraph 1A and 1B of the Second Schedule

The Finance Bill 2025 proposes to delete the investment allowance currently granted under Paragraph 1A and 1B of the Second Schedule to the Income Tax Act for capital expenditures incurred in special economic zones, and outside Nairobi and Mombasa Counties.

3.3.3. Regional best practices

We consider some of the regional practices in connection with this subject are summarized in the table below:

Table 6: Regional Practices in connection with this subject

No	Country	Provision	Details
1.	Uganda	Section 21(1)(ae) of the Income Tax Act, CAP 338	Uganda grants a 10-year income tax exemption to operators in industrial parks or free zones, as well as to other qualifying businesses outside these zones, provided they invest at least USD 10 million (foreigners), USD 300,000 (citizens), or USD 150,000 (citizens investing upcountry) over a 10-year period. To qualify, businesses must use at least 70% locally sourced raw materials (where available), employ at least 70% Ugandan

			citizens who earn 70% of the total wage bill, and engage in specified sectors such as agro-processing, manufacturing, information technology, logistics, or vocational training. This incentive also applies to existing businesses that make additional qualifying investments meeting the same thresholds and conditions.
2.	Malawi	Paragraph 4, Part 1 of the Second Schedule of the Malawi Taxation Act	Provides a 100% investment allowance on qualifying capital expenditures, such as new and unused industrial buildings, plants, and machinery, made by businesses in manufacturing and related sectors. In addition to this, the law provides an extra 15% investment allowance for projects located in designated areas, which are underdeveloped or prioritized regions identified by the Minister of Finance

3.3.4. The proposed amendment

We propose that the Finance Bill 2025 be amended to retain the investment allowance currently provided under Paragraph 1A and 1B of the Second Schedule to the Income Tax Act for capital expenditures incurred in SEZs and areas outside Nairobi and Mombasa Counties. Any amendment that weakens this framework would not only undermine investor confidence but also place Kenya at a competitive disadvantage regionally and globally.

3.3.5. Justification

The investment allowance for capital expenditures incurred in SEZs and areas outside Nairobi and Mombasa has been instrumental in driving infrastructure development in underserved regions. For the telecommunications sector, this incentive has enabled the rollout of critical network infrastructure in counties that would otherwise remain commercially unviable due to high capital costs and lower immediate returns. Retaining this allowance is therefore not just a fiscal matter—it is a strategic enabler of national connectivity, digital inclusion, and equitable access to communication services.

Telecommunications infrastructure is foundational to economic development, supporting everything from mobile banking and e-commerce to education and emergency services. Removing the investment allowance would significantly increase the cost of network expansion into rural and peri-urban areas, slowing down progress toward universal access and undermining the government's own digital transformation agenda. The private sector, particularly telecom operators, relies on predictable and supportive tax frameworks to make long-term investment decisions in high-risk, capital-intensive projects.

Moreover, in a region where neighbouring countries continue to offer targeted tax incentives to attract infrastructure investment, Kenya risks losing its competitive edge. Investors are highly sensitive to fiscal policy shifts, and any move that diminishes the attractiveness of investing outside major urban centres could redirect capital to more favourable jurisdictions. Retaining the current investment allowance sends a strong signal of policy stability and commitment to inclusive growth, which is essential for sustaining investor confidence and accelerating national development goals.



Telkom

18

May 27, 2025

Departmental Committee on Finance and National Planning
Office of the Clerk of the National Assembly,
1st Floor, Main Parliament Buildings,
Nairobi.

cna@parliament.go.ke

Dear Sir,

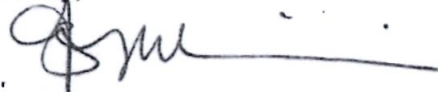
RE: Memorandum on The Finance Bill, 2025 (National Assembly Bills 2025).

We submit this memorandum in response to the request for contributions and call for public participation of the Finance Bill, 2025 which contains proposals relating to revenue-raising measures, including liability and collection of taxes.

We have included herein a matrix presentation that captures our concerns and highlights our proposals on relevant provisions of the Finance Bill, 2025 for your review and consideration.

We look forward to seeing our suggestions and recommendations considered and taken into account in the final Finance Bill.

Sincerely,



Allan Wainaina



TELKOM KENYA LIMITED (TKL) - MEMORANDUM TO THE FINANCE BILL 2025 / 2026.

No.	Tax Law	Bill proposals	Telkom's comments and proposals
1.	Income Tax – Corporation Tax	Tax Losses Carry forward. The Bill proposes to amend Section 15(4) by introducing a five year cap on the deductibility or limiting the carry forward period for tax losses. Currently, the law permits taxpayers to carry forward tax losses indefinitely. The Cabinet Secretary (National Treasury) may, on the recommendation of the Commissioner General (CG) Kenya Revenue Authority (KRA), extend the period of deduction beyond ten years where a person applies for such extension, giving evidence of inability to extinguish the deficit within that period.	The proposed amendment would be detrimental to and pose a significant threat to the company's survival by potentially undermining the successful onboarding of a new investor. The company has accumulated significant losses on account of the capital intensive nature of the business coupled with the long return on investment horizon. The availability of accumulated tax losses to off-set against future profits is a key consideration for investors <i>currently looking to take shareholding in</i> the company and the five year limitation for utilization of tax losses would potentially jeopardise this process. The proposed provision granting the Cabinet Secretary (National Treasury) discretion to extend the tax loss utilization period beyond ten years lacks clearly defined criteria, raising concerns over potential misuse or arbitrary application. Our request therefore is that the proposal to limit tax losses carry forward to five years or beyond ten years upon the approval of the Cabinet Secretary be dropped.
2.	Tax Procedures Act	Enforcement of Agency Notices. The Bill proposes to delete Section 42(14) (e), which prohibits the Commissioner General (CG) Kenya Revenue Authority (KRA) from issuing a notice of enforcement unless the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court. The deletion of this section will empower the CG to issue agency notices to recover taxes from third parties who owe a taxpayer, despite a taxpayer having appealed against an	The proposed amendment goes against well-established legal tenets and it would be detrimental to a taxpayer for KRA to issue agency notices on matters that are before a competent court of law for adjudication. The concern is that such drastic and punitive revenue-generating measures proposed by KRA would:

		assessment and the tax dispute being heard in a court of competent jurisdiction. While this broadens KRA's enforcement toolkit by enabling earlier intervention in tax debt recovery, it may adversely affect taxpayers whose matters are still pending determination before a court.	(i) prejudice the litigants challenging a tax assessment by negatively impacting on cash flows and operations, before a matter is judiciously determined. (ii) contradict court directives. (iii) potentially compromise matters before the courts. (iv) render the proceedings before a court nugatory. The proposal also conflicts with the taxpayer's right of appeal, which ensures the ability to challenge a tax assessment through a fair and structured procedural and substantive process. Our request therefore is that the proposal to give the CG powers to issue agency notices to enforce collection of a disputed tax which has been appealed or before a court of law be dropped.
3.	Value Added Tax (VAT) – Refunds	VAT Refund on Bad Debts The Bill proposes to amend Section 31 (1)(a) by reducing the period within which a taxpayer can make an application to the Commissioner for refund of VAT on bad debts from three years to two years. Currently, 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 on that supply, he may, after a period of three years from the date of the supply, apply to the Commissioner for refund of the tax involved.	This is a welcome proposal that will significantly support affected businesses' cash flows by unlocking cash tied up in debts that have remained uncollected, over a shorter period.

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1.0 BACKGROUND AND INTRODUCTION

The Civil Society Parliamentary Engagement Network (CSPEN) is a forum for Non-state Actors, bringing together civil society organizations, professional associations, think tanks and research institutions whose programme areas involve working with the legislature. The network was established in 2019 as a joint initiative of the Westminster Foundation for Democracy and Mzalendo Trust to provide a coordinated engagement with the Kenyan legislature, its committees and members in their oversight, legislation, and representation roles. Broadly, CSPEN seeks to engage with the legislature to ensure that legislative output meets the constitutional requirements of leadership, accountability, and integrity and is reflective of and aligns with the broader public interest. Currently, CSPEN has a Membership of Thirty-Four National Civil Society Organizations, and the priority areas are guided by the design and architectural framework of the parliamentary committees of the 13th Parliament ranging from, Public Finance Management (PFM) and Devolution; Inclusion and Representation; Leadership and Integrity; Human Rights and Access to Justice; Public Participation & Service Delivery; Climate Justice and Environmental democracy.

Recognizing that Parliament derives its legislative authority from the people, Parliament has put in place measures to comply with the principle of public participation as enlisted under Article 10 of the Constitution of Kenya, 2010. This includes convening public forums, submitting calls for memoranda through print and electronic media, and inviting members of the public, including representatives of civil society organizations to present their views. As a key tenet of entrenching good governance, CSPEN has therefore collectively submits this memorandum on the Finance Bill, 2025 and prays that it be considered.

The Finance Bill, 2025 (National Assembly Bills No. 19 of 2025) was published as the Kenya Gazette Supplement No 63 on 6th May 2025. The Bill submitted to the National Assembly by the Cabinet Secretary for the National Treasury and Economic Planning formulates proposals relating to revenue-raising measures, including the collection of taxes in Kenya. The Finance Bill, 2025 proposes to amend the Income Tax Act (Cap.470), the Value Added Tax Act (Cap. 476), the Excise Duty Act (Cap.472), the Tax Procedures Act (Cap. 469B) and the Miscellaneous Fees and Levies Act (Cap. 469C).

Signed by:

Mr. Gitungo Wamere

Programme Coordinator

For: Caroline Gaita, Executive Director

Mzalendo Trust, 2nd Floor, ACK Garden House, 1st Ngong Avenue, Upper Hill

P. O. Box 21765 - 00505



NAIROBI.

Email: caroline@mzalendo.com

Introduction

Section 39A of the Public Finance Management Act, CAP 412 provides for the. Submission, consideration and passing of Finance Bill

1. The Cabinet Secretary shall submit to the National Assembly, on or before 30th April, the Finance Bill setting out the revenue-raising measures for the National Government.
2. Following the submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly.
3. The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be presented for assent by 30th June each year.
4. Any recommendations made by the relevant committee of the National Assembly or a resolution passed by the National Assembly on revenue matters shall—
 - a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework;
 - b) take into account the principles of equity, certainty and ease of collection;
 - c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;
 - d) consider domestic, regional and international tax trends;
 - e) consider the impact on development, investment, employment and economic growth;
 - f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
 - g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the African Community Treaty.

Finance Bill, 2025	Description	Analysis/Implication	Justification
Income Tax Act (Cap 470)			
Clause 5	The Bill proposes to amend Section 10 of the Act to include income derived from supply of goods to public entities and sale of scrap as taxable income.	The National Assembly to remove the new Section 10 ((1)(m) on income derived from scrap metals and substantively and comprehensively relook at the Scrap Metal Act separately to deal decisively with the issue.	The income tax proposal, especially the proposed new Section 10 ((1)(m) on income derived from scrap metals may formalize the scrap metal menace especially vandalism public infrastructure including road and rails guards. Further the amendment may impose a new tax burdens on low-income especially women.
Clause 5 amends Section 5 (2)(a) iii	The proposed amendment affects income from employment: The amendment proposes the minimum taxable allowance to employees at ten thousand (10,000), up from two thousand (2,000).	Though it reduces tax burden on low income earners with a per-diem below of up to 10,000; its implication negates the principles of equity, inclusivity, pro-poor taxation, and the progressivity of the tax regime. Also noting that public	Section 5 (2)(a) (iii) should be expanded by further amending the Income Tax to also expose Public servants earning more than KShs. 10,000 to taxation. This could bring parity between the Public and Private sector, while ensuring revenue from the many travels by government officials. Section 5 (2)(a) item iii should not be amended

Finance Bill, 2025	Description	Analysis/Implication	Justification
Clause 6 amends Section 12E Subsection (1); and Subsection (3)	The proposed amendment affects Significant economic presence tax payable by a non-resident whose income is accrued/derived from Kenya through a business carried out over a digital marketplace. The amendment is to include the internet <i>or an electronic network</i> , hence expanding the meaning of application of a digital marketplace. The deletion of Subsection (3) in the Act applies to the removal of the annual turnover threshold of five million for administration of the Significant Presence Tax.	servants earning more than Ksh 10 000 per diem are not subjected to taxation; the proposal further exacerbates inequality. (Does this exclude government officers - income tax act)	The National Assembly should reconsider this proposal and seek to reform the regulation of foreign companies with no permanent establishment, simplify the costs of compliance and encourage their provision of the much needed skills, technology transfer, employment opportunities, and income.

Finance Bill, 2025	Description	Analysis/Implication	Justification
		limiting the pro-poor access to digital services. The proposed deletion of Subsection (3) removes the tax exemption on annual turnover below five million. This is a disincentive to non-resident digital service providers and online business operations.	
Clause 7 amends Section 12 G	The proposed new subsection provides that a minimum top-up tax shall be payable by the end of the fourth month after the end of the year of income. tax has been capped at four months after the end of an year of income. This applies only to persons whose annual combined effective tax is less than fifteen percent.	While this measure will likely strengthen tax compliance and enhance revenue; the proposal threatens the existence and operations of small and medium enterprises without established cashflow abilities. This proposal would set a huge setback to the businesses and the economic sectors	The National Assembly should reconsider this proposal as it is linked to the already worsening cash flow challenges which affect the small and medium-term enterprises.

Finance Bill, 2025	Description	Analysis/Implication	Justification
Clause 10 Amends Section 10 Subsection (1)	The Bill proposes to amend Section 10 of the Act and include income derived from supply of goods to public entities and sale of scrap as taxable income. Therefore, the scope has been expanded to include: (l) supply of goods to a public entity; and (m) sale of scrap.	owned by the youth and women. Though amendment to subsection (1) through the inclusion of tax to the supply of scrap to public entities appears to expand the streams of income taxable under this category; this proposal will formalise this informal sector and impose tax burdens to low income earners in this sector while exposing the country to the risk of formalizing the sale of scrap. Therefore, this is likely to worsen the menace where public transport utilities such as railway infrastructure and road guardrails have been subjects of vandalism. Also, accepting the taxation of income	The amendment is regressive and therefore should be removed. Instead, the National Assembly should ensure full control of business activities involving the sale of scrap metals.

Finance Bill, 2025	Description	Analysis/Implication	Justification
Clause 26 Deletes Paragraph 63 of the First Schedule.	The bill proposes the deletion of paragraph 63 which exempts compensating tax accruing to a resident company dealing with the manufacture of human vaccines in Kenya. The income under this category is exempt	The removal of this provision denies the resident companies involved with the manufacture of human vaccines in Kenya to the accruable tax incentives, which will in turn lead to increased cost of production of healthcare vaccines in Kenya, raising the overall cost of Healthcare services. This will deter the aspirations for access to Universal Health from the sale of scrap will not only lead to high costs of access to public infrastructure and services but also water down the efforts and regulatory measures that have been undertaken before.	This proposal should The National Assembly should not delete paragraph 63 of the income tax Act to protect the resident companies involved with the manufacture of human vaccines. Instead, the National Assembly should ensure full implementation of Section 7A of the Act to ensure efficiency in tracking the movements of taxes and dividends and to enhance satisfactory taxation on gains. This will ensure that the exempt tax dividends accrued from these companies are entirely re-invested to encourage the expansion and growth of these industry.

Finance Bill, 2025	Description	Analysis/Implication	Justification
		Care (UHC)	
Clause 26 First schedule inserts a new paragraph 75	The Bill 2025 proposes a new paragraph that exempts dividends paid by a company certified by Nairobi International Financial Centre Authority (NIFCA) where the company reinvests at least 250 million in Kenya within an year of income.	This proposal aims to encourage investment and economic growth by motivating certified entities under NIFCA to reinvest part of their returns into the local economy therefore the threshold should be lowered further to increase tax revenue accrued from exemptions	The National Assembly should lower this threshold further. Whereas the Nairobi International Financial Centre Authority is premised on the need to promote the ease of doing business that encourages foreign investments into Kenya and to improve the country's market competitiveness; the tax incentives and privileges accorded under NIFCA to these companies create loopholes for the entry of Illicit Financial Flows due to their perpetuation of tax avoidance and evasion. Therefore tax incentive frameworks applicable to these categories should be reviewed downwards to ensure that the NIFC operating frameworks are more effective.
Value Added Tax Act			
Clause 35	The Bill proposes to delete paragraph (c) in subsection (5) of Section 17 to prevent the carrying forward of excess input tax to be deductible in the next tax period.	Retain Section 17 (5)(c) as currently enacted.	The deletion of this paragraph implies that the refunds on excess input tax refunds on the tax withheld cannot be applied to offset other payable VAT obligation categories. The deletion of this provision negates the intention to improve the efficiency of tax administration, as the taxpayers seeking to offset the overpaid tax will only be limited to the application for tax refunds, which can lengthen the refund processes.
Clause 36	The Bill has proposed to amend the First Schedule by moving items 63, 109, 113, 129, 155, 156, 160, 161, 162,	Maintain the zero-rated status of paragraphs 63, 109,	The proposed amendment implies that these categories of goods classified as exempt supplies will now be subjected to the standard rate of 16% VAT. The cumulative impact of this

Finance Bill, 2025	Description	Analysis/Implication	Justification
	and 163 from zero-rated to standard rated.	113, 129, 155, 156, 160, 161, 162, and 163 in the First Schedule.	will be increased tax burden to the end consumers. To prevent a recurrence of this challenge of reclassification, the National Assembly should consider putting in place a policy framework that establishes a clear sunset clause for such incentives with high revenue impact.
Clause 36	The Bill proposes to delete provisions of paragraph 49 of the First Schedule on Exempt Supplies of Goods of Chapter 88 (Aircraft, spacecraft, and parts thereof)	Amend Paragraph 49 on Supplies of Goods of Chapter 88 to limit the exemption to registered Humanitarian Support Aircraft, spacecraft, and parts thereof.	The proposed deletion will make these goods attract the standard VAT rate of 16 percent. The proposal is commendable since it does not directly target low-income households, but consideration should be given to partially retain VAT exemptions for humanitarian and donor-supported projects.
Clause 36	The Bill proposes to delete provisions of paragraph 143 on specialized equipment for generation of solar and wind energy and paragraph 144 on locally manufactured passenger motor vehicles.	Withdraw Clause 36 (m) and (n) to preserve the VAT exemptions under paragraphs 143 and 144. Additionally, move specialized equipment for renewable energy to the Second Schedule and zero-rate them.	The deletion is counterproductive to government policy on clean energy, climate change, and promotion of local manufacturing. To meet targets under the Kenya National Climate Change Action Plan (NCCAP) 2018–2022 and the Kenya National Electrification Strategy (KNES), VAT exemptions should be retained, and renewable energy equipment should be zero-rated.
Clause 37	The Bill proposes to delete provisions in the Second Schedule on Zero Rating (Part A – Zero Rated Supplies) particularly paragraph 21	Withdraw Clause 37(b), (c), (e), and (f) and retain zero-rated status for the affected	The deletions contradict government policies on climate change and promotion of local manufacturing. For instance, the Kenya Energy Transition & Investment Plan and the Kenya National Energy Efficiency & Conservation Strategy (2020)

Finance Bill, 2025	Description	Analysis/Implication	Justification
	on transport of sugarcane to milling factories, paragraph 29 on locally assembled and manufactured mobile phones, paragraph 31 on electric bicycles, paragraph 32 on solar and lithium-ion batteries, and paragraph 33 on electric buses.	items.	target 5% EV share in new vehicle registrations annually by 2025. Removing zero-rated status from these items will hinder these targets.
Excise Duty Act (Cap 472)			
Clause 42	The Bill proposes to delete provisions of the First Schedule on rates of excise duty for Excisable Goods but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	Delete provisions of Clause 42 vi on corresponding rate of Excise Duty and retain <i>"25% of excisable value of Kshs 150 per Kg whichever is higher"</i> .	The proposed exclusion from Excise Duty of certain goods originating from East African Community Partner States that meet the East African Community Rules of Origin is a good step. However, the Country must ensure that the other East African Community Partner States reciprocate to promote fair trade. Further the increase in rates of Excise on gummed paper and paperboard of tariff number 4811.49.00 from Kshs. 150 per kg to Kshs. 200 per kg may increasing cost of packaging and branding as these materials are eco-friendly and extensively used in Kenya
Tax Procedures Act (Cap 469B)			
Clause 47 deletes Section 42(14)(e)	The bill proposed to delete this section of the TPA, the commissioner will now be allowed to issue agency notices and collect tax from third parties even if the taxpayer has lodged an appeal against an assessment that was upheld by a tribunal or court	The deletion of this section should be reconsidered, by providing a minimum timeframe upon which a taxpayer should make an appeal.	This expands the commissioners enforcement power and can collect taxes from third parties regardless of whether the taxpayer has appealed the ruling. While this enhances revenue collection, it impacts access to legal recourse and hints at lack of fairness. Taxpayers may feel discouraged in the legal process as enforcement is likely to proceed undermining and weakening the appeal process

Finance Bill, 2025	Description	Analysis/Implication	Justification
	decision.		reducing access to justice.
Clause 50 (a) amends Section 47(1)(a)(i)	This section is amended by deleting the words 'and input value added tax'. Currently if a taxpayer has overpaid tax in one area, they may apply to have that tax offset against other liabilities in another tax category. This means that input VAT will no longer be eligible for offsetting against other types of overpaid tax.	This amendment should be deleted.	This goes against the Bill's objective of strengthening tax administration as it implies a greater administrative burden, slow bureaucratic process and higher compliance costs inadvertently discouraging voluntary compliance. Sectors that incur substantial input VAT due to inputs such as the manufacturing and healthcare will now have limited output VAT to offset.
Clause 50 (b)	The bill proposes to increase the timeframe to review and determine an application for a tax refund or overpaid tax from 90 days to 120 days.	We propose the retention of the current provision (90 days) and recommend the deletion of the proposed amendment increasing the period to 120 days.	This amendment will result in delays in the refund processing slowing down cash recovery for taxpayers especially for those operating in sectors with high refund volumes. Tax morale is impacted as businesses are less motivated to report overpayments accurately. Businesses are unable to properly plan around refund receipts due to the delay in processing.
Clause 50 (c)	The bill proposes to amend the section by increasing the timeframe to review an application for refund of overpaid taxes subject to an audit by the Commissioner from 120 days to 180 days	We propose the retention of the current provision (120 days) and recommend the deletion of the proposed amendment increasing the period to	Where an application for a tax refund is subject to audit by a commissioner, the deadline for review has been extended by an additional 60 days. This will negatively impact sectors that accumulate large VAT credits such as healthcare and manufacturing. Cash flow unpredictability as delay leads to longer refund timelines. This goes against the objective of the bill to strengthen tax administration

Finance Bill, 2025	Description	Analysis/Implication	Justification
		180 days.	
Clause 52	The Bill proposes to delete the exclusion of trade secrets and private or personal data held on behalf of customers or collected in the course of business, from data or information which businesses may integrate into the data management and reporting system established under Section 59A of the Tax Procedure Act	Delete provisions of Clause 52 and retain Section 59A of the Tax Procedure Act (CAP 469B). This is to ensure actions by KRA respect the privacy including private or personal data as per Article 31 of the Constitution and the provisions of the Data Protection Act 2019	The proposed deletion of this provision will allow KRA to integrate its systems with various institutions, thereby giving KRA access to private or personal data held on behalf of the customers or collected in the course of business.
Clause 52, amending Section 59A	The bill proposes to delete this section that states that the commissioner shall not require a person to integrate or share data relating to trade secrets and private or personal data held on behalf of customers or collected in the course of business.	We propose deletion of this provision.	This will allow the commissioner to request or access sensitive information including data that is not tax specific. Businesses that tend to handle highly sensitive data like insurance companies and banks will face challenges on client confidentiality and data protection.
Miscellaneous Fees and Levies Act			
Second Schedule	The Bill proposed to narrow the current exemptions from Import Declaration Fee and Railway Development Levy under chapter 88	Only HS Code 8802.30.00 and HS Code 8802.40.00 and certain parts are	This is regressive as it maintains exemptions for larger aircraft thus protecting large airline carriers but negatively impacts small scale operating aircraft who are now subjected to RDL and IDF.

Finance Bill, 2025	Description	Analysis/Implication	Justification
	of the Harmonised System Code that pertains to aircraft, spacecraft and related parts.	exempt, all other goods under chapter 88 are now subject to IDF (2.5% of the customs value of imported goods) and RDL (2% of the customs value to support railway infrastructure development). Total import cost of goods under chapter 88 goes up by 5.5%.	



41

May 27, 2025

Mr. Samuel Njoroge

Clerk of the National Assembly

P. O. Box 41482-00100

Dear Sir,

MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE FINANCE BILL 2025

Greetings from the Okoa Uchumi Coalition (OUC).

The Okoa Uchumi Coalition (OUC), established in 2019, is a civil society platform with over 60 members committed to addressing Kenya's public debt crisis through stakeholder collaboration and advocacy for fiscal accountability. Kenya faces escalating public debt driven by excessive borrowing for recurrent expenditure, unrealistic revenue targets, and misallocated spending priorities. Current debt levels and pending bills threaten fiscal sustainability and economic stability.

OUC advocates for expenditure consolidation rather than increased taxation, as Kenya's fiscal challenges stem primarily from poor expenditure management. Responding to your invitation for Finance Bill 2025 submissions, we present comprehensive analysis and recommendations aligned with the Constitution of Kenya 2010, Public Finance Management Act 2012, National Tax Policy, and Data Protection Act 2019. Our submission promotes equitable, sustainable fiscal policies supporting pro-poor development and constitutional governance principles for FY 2025/26 and beyond.

We appreciate your consideration and remain available for further engagement.

Yours faithfully,

Diana Gichengo,

The Convener,

Okoa Uchumi Coalition

Email: diana.gichengo@tisa.or.ke





Introduction

As Kenya moves closer to one year since the June 2024 protests against the Finance Bill 2024, a new fiscal proposal is here with us. The Finance Bill 2025 gazetted on May 6, 2025 details the proposed tax and revenue measures set to anchor the government's fiscal policy for FY 2025/26. Unlike its predecessor, the 2025 bill treads cautiously on matters of increasing burdensome taxes on the common '*muunanchi*' who are already weary. On the surface, the bill appears modest with the Government promising to focus on efficiency and simplification of tax laws, and the reduction of tax expenditure by cutting subsidies through reduced refund requests and the number of items covered as zero-rated and VAAAT exempt.

The Finance Bill 2025 has focused on changes that widen the current tax base to meet the estimated ordinary revenue of KSh.2.76 trillion as well as to enhance revenue mobilization to support the country's fiscal consolidation efforts and economic growth under the Bottom-Up Economic Transformation Agenda (BETA). The Bill purports that its primary objective is to alleviate the cost of living and to restore public trust. Yet, a closer and in-depth analysis and scrutiny of the Bill suggests that it may fall short of these reforms, instead of improving and delivering any economic progress will deepen inequality.

New Taxation Measures and their Impacts

A. Value-Added Tax (VAT)

The government has proposed shifting various zero-rated inputs and goods to VAT-exempt. This includes raw materials for medicines, sugarcane transport, mobile phones assembled locally, solar panels, batteries, and animal feed inputs. The shift means that the firms cannot reclaim VAT on inputs. The following key sectors are bound to be affected by this shift

- i. Health – The health sector is paramount to the growth of an economy. The shift of raw materials for medicine from zero-rated to tax-exempt will increase the production cost for drugs, consequently, the distribution prices. This affects raw materials that are by themselves intermediate goods, a good example being packaging materials for medicine. By having these items as VAT exempt this means that the input VAT on these intermediate goods will not be recovered. The net effect therefore will be patients will be required to pay more for their health which might affect those with chronic conditions that require lifetime medication.
- ii. Agriculture – The backbone of the Kenyan Economy might be hit negatively if the VAT exemptions target intermediate goods that are inputs in animal feed production. The same effect replicates when exemptions are on spare parts and fuel. When the precedence holds, the impacts shall spread to livestock and sugarcane farmers who might pay more for feeds and cane transportation to mills.

Such changes would affect rural income and prices for agricultural inputs because suppliers and manufacturers would likely shift the burden to the final consumer.

- iii. The bill has proposed to apply 16 percent VAT on construction materials for affordable housing projects. The bill has also set its sights on the expansive digital lending space when provided by foreigners, with the Bill proposing to expand the scope of excise duty charged on digital platforms to include services offered by non-resident persons over the internet, an electronic network, or through a digital marketplace. Additionally, the Bill introduces the definition of non-resident person to mean a person who is outside Kenya. This will increase the cost of access to short-term credit for those who rely on digital loans for business capital, school fees, rent payments, and emergency expenses.

B. Personal Income Tax (PAYE)

The Finance Bill 2025 requires that employers automatically apply for eligible tax reliefs and exemptions in the computation of PAYE. This change ends the need for employees to file refund claims for omitted claims. This change aims to ensure that employees receive their entitled tax benefits directly through their monthly payroll, eliminating the need for them to file for refunds with the Kenya Revenue Authority. Under the current system, many employers do not factor in available tax relief such as personal relief, insurance relief, mortgage interest relief, and disability relief—when computing PAYE. As a result, employees often have to individually claim these reliefs from the KRA, leading to administrative burdens and delays. With the proposed change, employers will be legally obligated to incorporate all applicable deductions, reliefs, and exemptions into the PAYE calculations before deducting taxes from employees' salaries. This ensures that employees benefit from reduced tax liabilities upfront, improving their take-home pay.

Eligible businesses can deduct the full cost of qualifying tools and utensils from their taxable income in the same year they are acquired, rather than spreading the deduction over several years through depreciation. The 100% deduction applies to implements, utensils, and similar articles used in business operations, excluding plant and machinery. This includes items like hand tools, kitchenware for food businesses, and other small equipment essential for daily operations. The amendment aims to reduce administrative tasks for the Commissioner and to improve compliance by taxpayers, as well as to promote certainty.

C. Corporate Tax

There is no increase in the headline corporate rate proposed. The bill introduces incentives and base-broadening: 100% expensing for small business tools and equipment at the year of purchase. The move lowers the tax burden for small firms purchasing work-related gear.

The Export and Investment Promotion Levy (EIPL) on certain construction materials, such as iron and steel inputs, has been proposed to be cut significantly from 17.5% to 10%. The cut is set to encourage manufacturing. This policy shift aims to alleviate the high costs associated with importing essential construction inputs, thereby stimulating the manufacturing sector and revitalizing the construction industry. The EIPL, introduced in the Finance Act of 2023, was initially designed to support local manufacturing, boost exports, create jobs, and promote investment. However, it inadvertently led to increased input costs, particularly in sectors reliant on imported materials. The proposed reduction specifically targets: Semi-finished products of iron or non-alloy steel and Bars and rods of iron or non-alloy steel. This, however, should not be lost on the political interests in the steel industry. Nevertheless, by lowering the levy on these materials, there will be reduced construction costs, encouraging investment in infrastructure projects, and enhancing the competitiveness of local manufacturers who depend on these imports.

The surrogate parent test for related-party loans has been replaced by country-by-country reporting. The Kenya Finance Bill 2025 introduces a significant change in the taxation framework for multinational enterprises (MNEs) operating within the country. Specifically, it replaces the "surrogate parent test" with a requirement for Country-by-Country (CBC) reporting concerning related-party loans. Previously, Kenya relied on the surrogate parent test to determine the reporting obligations of MNEs. Under this approach, if the ultimate parent entity of a multinational group was not obligated to file a CBC report in its jurisdiction, a surrogate parent entity within the group could be designated to fulfill this requirement on behalf of the entire group. Country-by-Country Reporting in the new provision mandates that MNEs provide detailed CBC reports directly to the Kenya Revenue Authority (KRA). These reports should include comprehensive information on the global allocation of income, taxes paid, and other economic indicators for each jurisdiction in which the MNE operates. Implications for this test is that MNEs are now required to disclose detailed financial and operational data for each country of operation, increasing transparency in their global activities, the shift eliminates reliance on surrogate parent entities, ensuring that the KRA receives information directly, which may improve the accuracy and timeliness of data and that MNEs must adapt their internal reporting systems to comply with the new CBC reporting standards, which may involve additional administrative efforts.

D. Tax Procedure and Administration

The prohibition on requiring businesses to integrate their IT system with the Kenya Revenue Authority (KRA) under the Tax Procedure Act has been proposed to be deleted. In effect, KRA will be empowered to access real-time customer data, including bank and mobile money records, from firms without prior warrant. This move to expand the audit powers of KRA is unconstitutional and contravenes the Data

Protection Act. It proposes to amend the Tax Procedures Act, 2024, by deleting the provision that prohibits the KRA from accessing sensitive information when integrating with businesses to give it real-time transactional data. With this amendment, KRA is to circumvent the constitutional requirement for the government to seek court orders before accessing sensitive information from taxpayers.

The bill extends the VAT refund timeline from 90 to 120 days for the verification and audit period from 4 to 6 months. This will compound an already existing challenge that businesses are already grappling with.

The Treasury CS authority waive penalties or interest tax liabilities emanating from system errors have been reinstated. These powers have previously been exercised with prejudice for personal and political interests. The system should be enhanced to be accurate with minimal human intervention. Whereas the moves aim to seal revenue leaks and speed enforcement, they raise cash-flow and fairness concerns among taxpayers.

PROPOSED AMENDMENTS ON THE INCOME TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
1.	Clause 3 amends Section (5) (2)(a) (iii)	The proposed amendment affects income from employment: The amendment proposes the minimum taxable allowance to employees at ten thousand (10,000), up from two thousand (2,000)	Though it reduces tax burden on low income earners with a per-diem of up to 10,000; its implication negates the principles of equity, inclusivity, pro-poor taxation, and the progressivity of the tax regime.	Section 5 (2)(a) (iii) should be expanded by further amending the Income Tax to also expose Public servants earning more than KShs. 10,000 to taxation. While the current approach could widen the already existing disparity between Public and Private sector employees with regards to DSA compensation, reviewing the PAYE tax band as proposed in the MTRS is the most ideal approach for increasing the disposable income.
2.	Section 12 G	The proposed new subsection provides that a minimum top-up tax shall be	Adopt the proposed amendment; it enhances compliance, however,	The proposal aligns with the current CIT timelines therefore should be adopted

PROPOSED AMENDMENTS ON THE INCOME TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
		payable by the end of the fourth month after the end of the year of income.	precaution during implementation is vital to curb potential cash flow challenges for SMEs..	

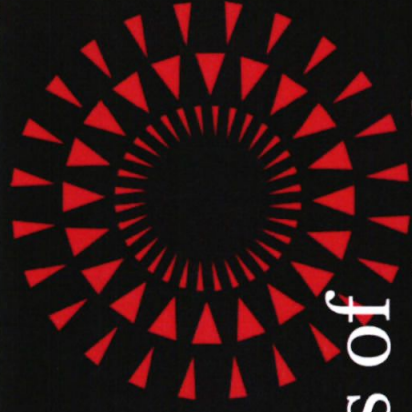
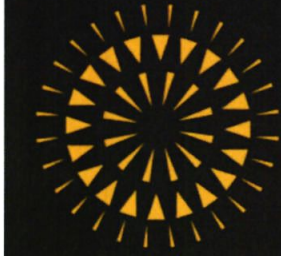
PROPOSED AMENDMENTS ON THE VALUE ADDED TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
1.	Section 17 (5) (c)	The Bill proposes the deletion of paragraph (c) in subsection (5)	The deletion of this paragraph implies that the refunds on excess input tax refunds on the tax withheld cannot be applied to offset other payable VAT obligations.	Section 17 (5) (c) should not be deleted
2.	Clause 12 – Advance Pricing Agreements (APA)	Introduces APA regime.	Develop regulations early and train KRA officers. The regulations should also take into account the time taken to negotiate these APAs which can stretch up to 18 months which may make the 5 years period insignificant unless rolled back to recover the negotiation period.	APA helps resolve transfer pricing disputes proactively. For transparency accountability, APAs should be published.
3.	Clause 27 & 28 – Special economic zones and Nairobi Financial Centre tax rates	Introduces reduced tax rates for qualifying investments.	This sets a dangerous precedence that does not reveal the beneficiaries and company owners. It could concentrate economic power to only few thus increasing the widening gap between the poor and rich.	The tax rates should be the same to all players. This proposal could result in tax evasion and unnecessary revenue loss.

PROPOSED AMENDMENTS ON THE VALUE ADDED TAX ACT

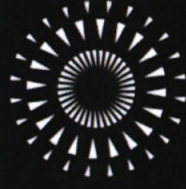
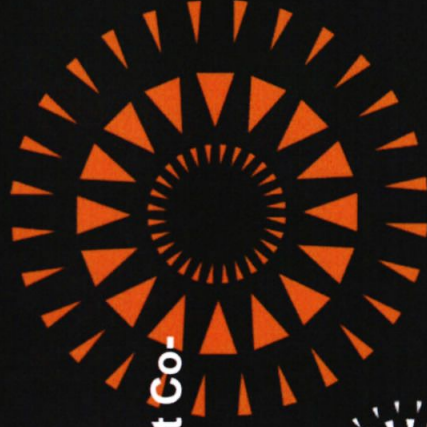
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
4.	Clause 30–35 – VAT amendments	Introduces anti-abuse measures and expands supply taxability. Removes some exemptions and increases timelines for refund claim	Monitor inflation impact and ensure compliance readiness.	Aims at improving VAT efficiency and reducing refund abuse.
5.	Clause 36 - VAT First Schedule Changes	The Bill proposes the deletion of paragraphs: 63, 109, 113, 129, 155, 156, 160, 161, 162, and 163	Object the saving clause that proposes mega government construction projects of fifty acres or more. The proposed amendment implies that these categories of goods are classified as exempt. These goods will now be subjected to 16%VAT, thus potentially resulting in cumulative increased tax burden.	The saving proposal is inconsistent with the government policy on reducing the tax expenditure thus risks depleting resources for providing services to citizens. In solving the unpredictability and annual amendments, OUC recommends the need for a clear policy framework determining the threshold for introducing and removing incentives with a clear background on the revenue impacts.

PROPOSED AMENDMENTS ON THE VALUE ADDED TAX ACT

No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
6.	Clauses 37 – amends VAT Second Schedule in part A	The Bill proposes to move a number of products from Zero-rating to VAT Exempt. The Bill proposes the deletion of some paragraphs from Part A in the Second Schedule: 11, 21, 29, 30, 31, 32, 33, 34, and 35. ● Raw materials for pharmaceutical manufacturing ● Raw materials for animal feed production ● Transportation of sugarcane from farms to milling factories ● Locally assembled or manufactured mobile phones ● Motorcycles under tariff heading 8711.60.00 ● Electric bicycles ● Solar and lithium-ion batteries ● Electric buses under tariff heading 87.02 ● Bioethanol vapour (BEV) stoves (HS Code 7321.12.00) ● Packaging materials for tea and coffee	The proposed amendment implies that the goods classified as zero-rated will move to VAT exempt. These goods will no longer allow suppliers to reclaim input VAT, potentially increasing production costs where intermediate goods and inputs are involved.	The deletions may raise costs where intermediate goods or inputs are targeted, by passing the burden to consumers. Therefore, these will have negative impacts on consumers. With Solar being under the category of VAT exempt will further hinder the promotion of green energy solutions due to increased costs.



Oral submissions of Proposals to the National Assembly Committee on Finance and National Planning



Kenya Union of Savings and Credit Co-
operatives Limited

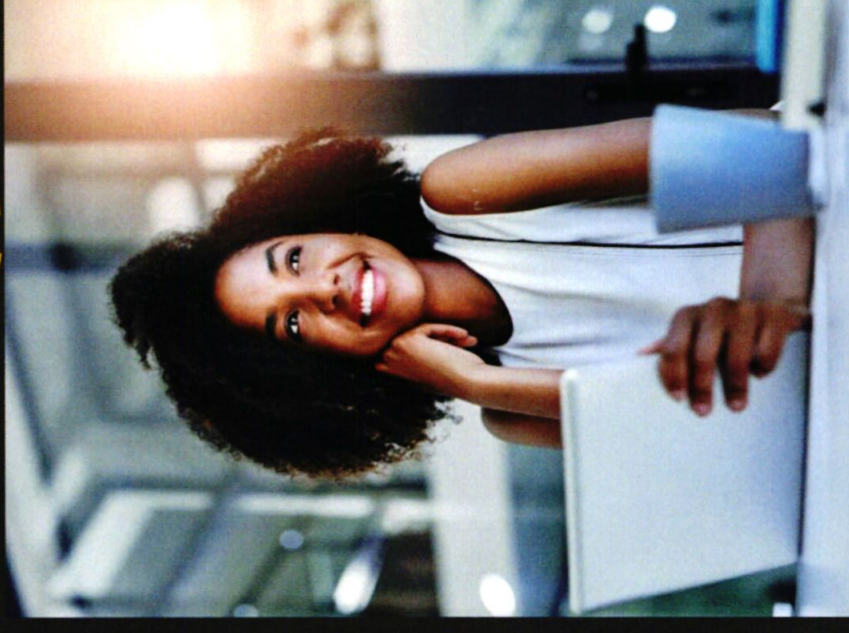
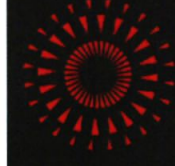
May 2025



Agenda



- 1 Amendment of Definition of a Primary Designated Society
- 2 Differing rate of WHT on Dividends and Interest
- 3 Increasing the tax-exempt threshold and income tax bands for individuals
- 4 Harmonization of personal and corporate income tax rates
- 5 Questions and comments



◆ Introduction to KUSCCO

KUSCCO stands as the apex organization for Savings and Credit Cooperatives in Kenya, championing the formation and growth of robust SACCOs.

It was registered under the **Corporative Societies Act ("CSA")** in 1973.

Its primary mandate is to advocate for and represent SACCOs.

Its focus on empowering middle and low- income earners in both rural and urban areas, a demographic that forms the backbone of Kenya's economy through the Small and Medium Enterprises (SME) sector

KUSCCO LTD.
Kenya Union of Savings & Credit Co-operatives Ltd



— The SACCO Family Union —

Amendment of Definition of a primary designated society

01



◆ Background

Governance of Cooperative Societies in Kenya

Cooperative Societies Act (CAP 490)

- Governs formation, operation, and regulation of cooperative societies.

Taxation of Cooperative Societies

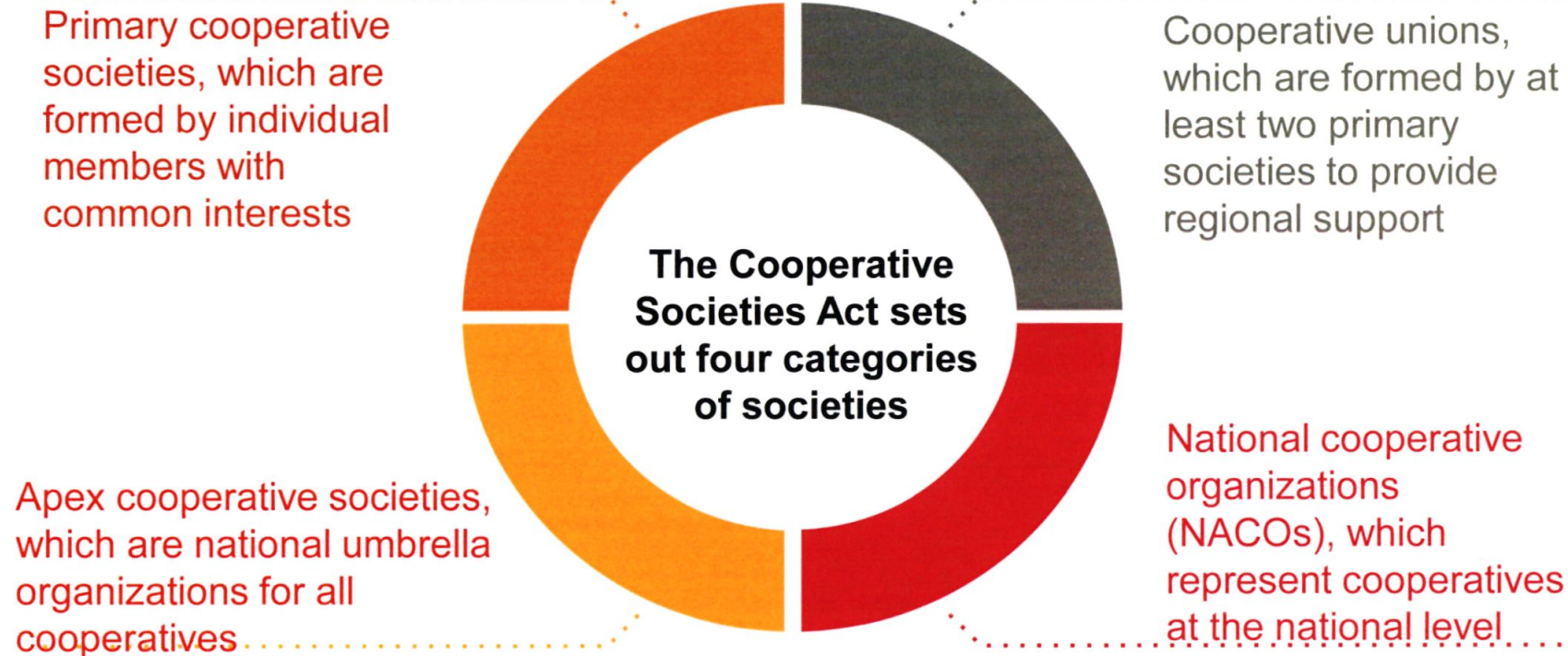
- Income Tax Act (ITA) addresses taxation of cooperative societies

Objective of the Presentation

- Propose Amendment to Section 19A(7) of ITA to include non-individual persons in the definition of primary societies.



Categories of cooperative societies under CSA



Proposal to change the definition of a Primary Designated Society under Section 19A(7) of the ITA

- ❖ 19A (7) Co-operative societies defines.
 - "designated co-operative society" means a co-operative society registered under the Co-operative Societies Act;
 - "primary society" means a co-operative society registered under the Co-operative Societies Act the membership of which is restricted to individual persons.



Proposal to change the definition of a Primary Designated Society under Section 19A(7) of the ITA

Issue

- The Cooperatives Act does not adequately pronounce itself on the category applicable to a class of cooperative societies which have both individual persons and non-individual persons.

Proposal

- Expand the term “designated primary societies” under Section 19A(7) of the ITA to individual persons and non-individual persons.
- Align the tax treatment of SACCOs whose membership include non individual persons to ensure fairness and equity.
- Ensure that the tax provisions do not disincentivize the formation and operation of any type of cooperative society, including SACCOs whose membership includes both individual persons and non-individual persons.

Justification

- Promote Equity and Growth to the Cooperative Sector.
- Promote fairness and neutrality among Cooperative societies.
- Promoting economic participation, community cohesion, and social welfare.
- Increase engagement and empowerment of women, youth and marginalized groups.

◆ Best Practices



In Uganda SACCOs have been exempted from paying taxes on their income from 1 July 2017 to 30 June 2027 .



In India Cooperative societies are allowed to benefit from various deductions based on the activities they engage in rather than their membership



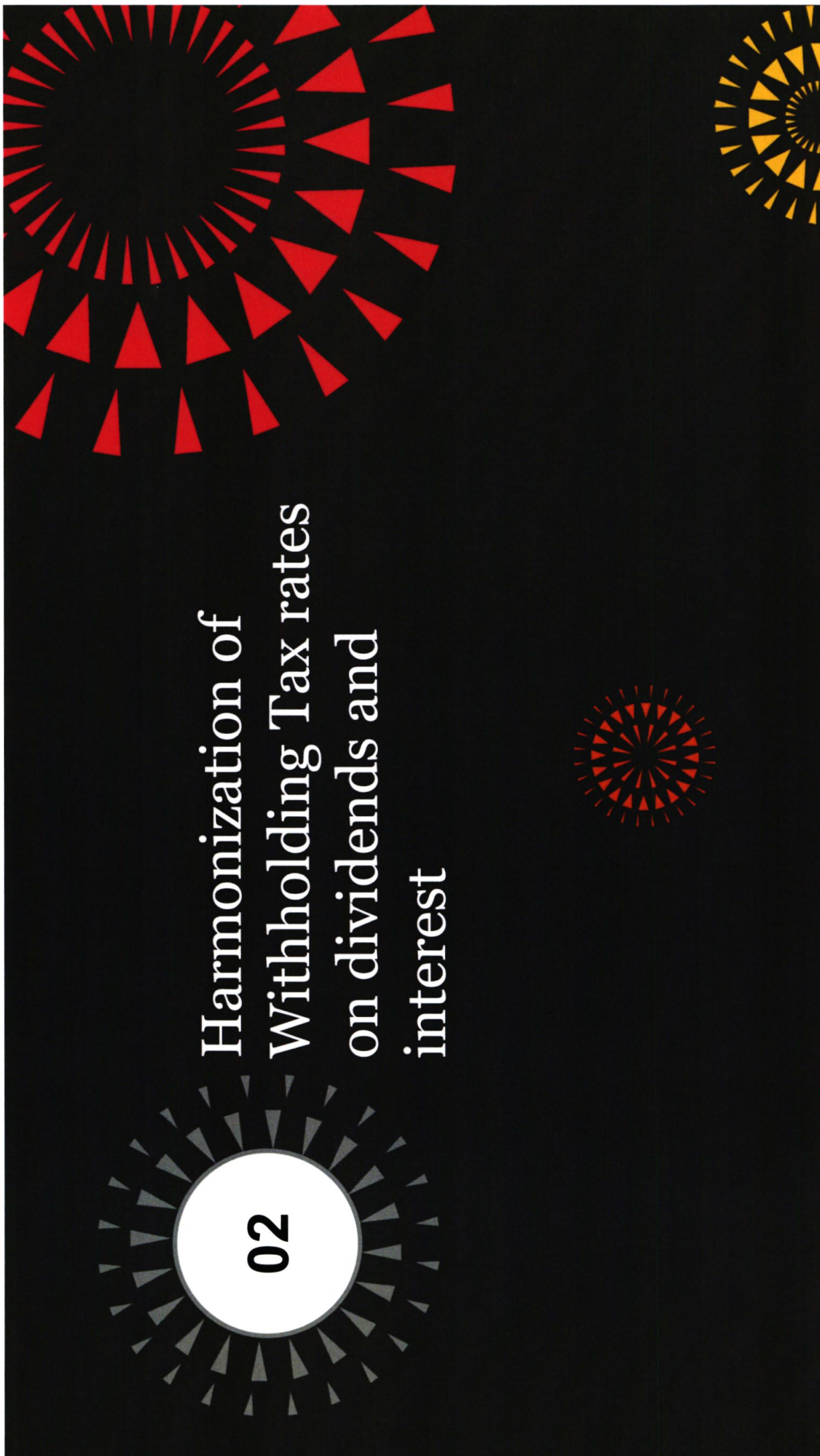
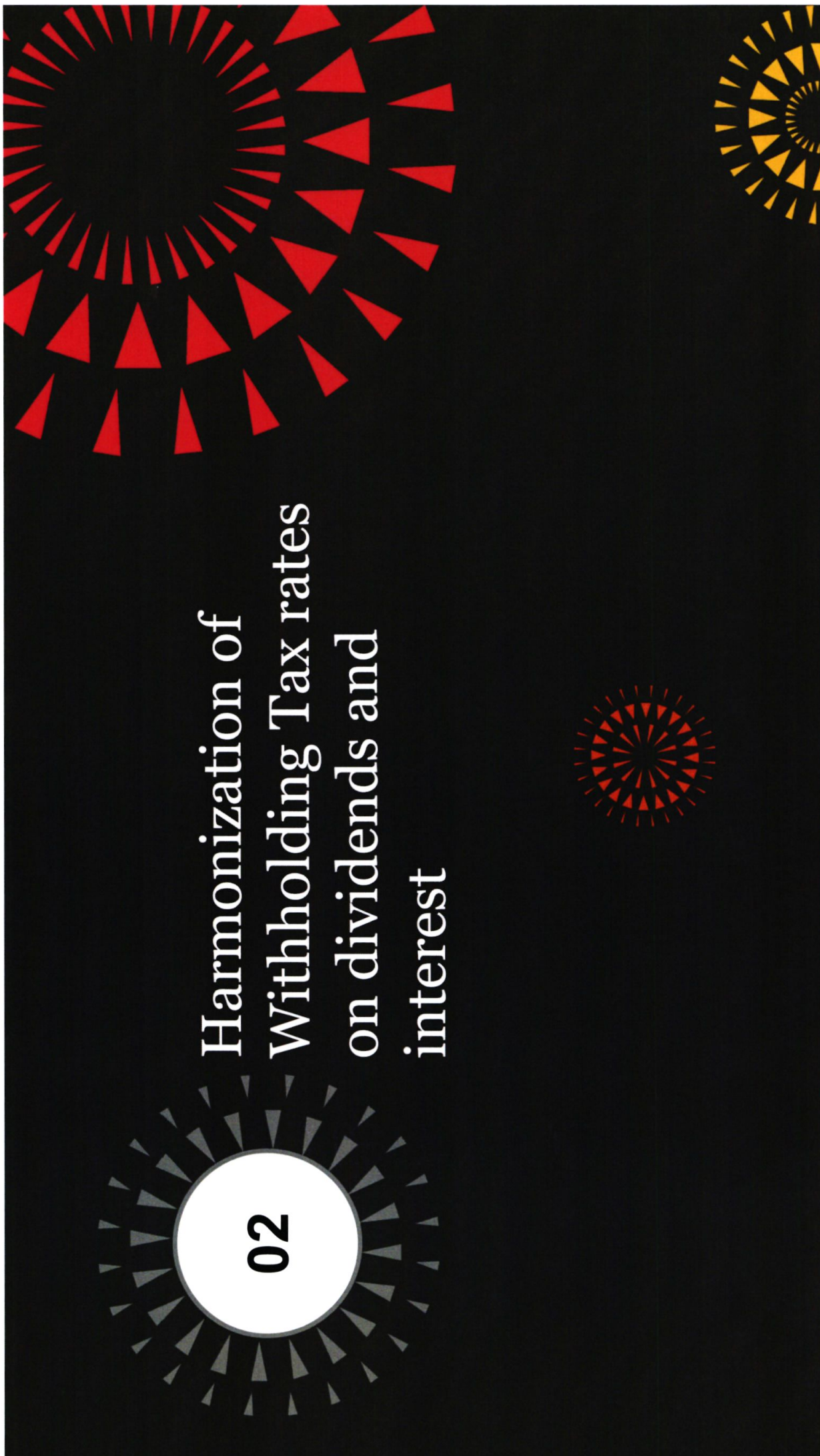
In Philippines the tax treatment of SACCOs is determined by their relationship with the public and financial status rather than their membership





02

Harmonization of Withholding Tax rates on dividends and interest





Clarification on tax on distributions paid out to members of savings and credit cooperations



Issue

- There is an ambiguity in the law on the rate for withholding tax on distributions paid out to members by Saccos.
- Due to differing interpretations, there is a discrepancy between the industry's stance and the Revenue Authority's position on the taxation of rebates from SACCOs.

Proposal

- It is proposed that the law clarifies that the withholding tax rate for all distributions paid by Sacco's be 5%.
- This would simplify the administrative process, reduce compliance risks, and provide clarity fairness to members, ultimately enhancing the overall efficiency and effectiveness of SACCO operations.

Justification

- Unique business structure of Saccos.
- Ensure Safeguarding of the investment of Members.
- Enhancing compliance through simplification of tax administration.
- Promoting access to credit and financial inclusion of marginalized groups.

Best practices

Tanzania

- The withholding tax on both dividends and interest has been harmonised. This applies to all payments made by SACCOs to their members.

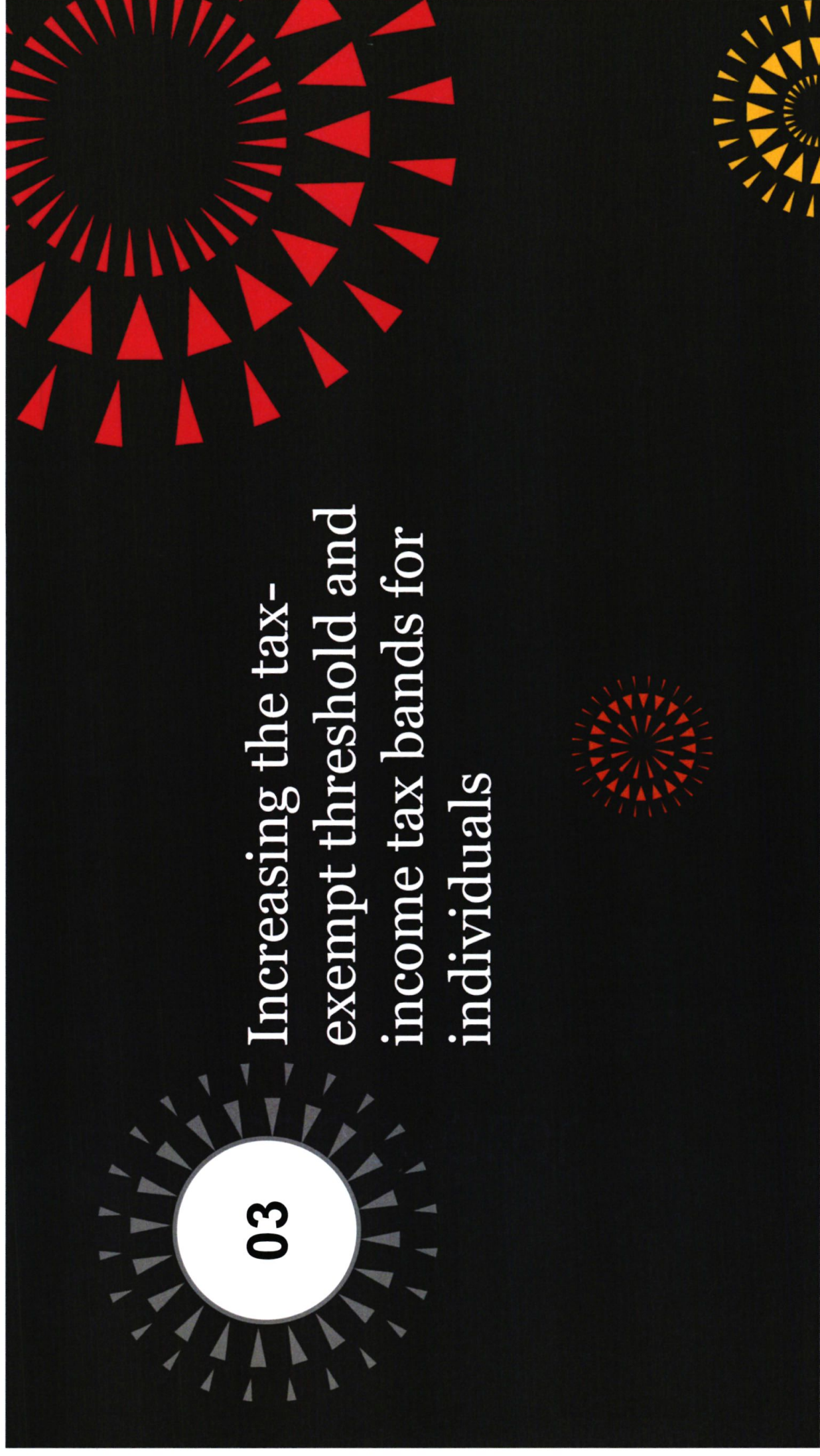


Uganda

- The Income Tax Amendment Act of 2017 initially exempted SACCOs from withholding tax on dividends and interest to promote savings and financial inclusion.
- This exemption is valid until June 30, 2027.



Increasing the tax-exempt threshold and income tax bands for individuals



Proposal to increase tax-exempt threshold and widen income tax bands for individuals

Issue

- Current individual income tax bands are not progressive enough hence individuals reach the highest income tax rates at very low-income levels.

Proposal

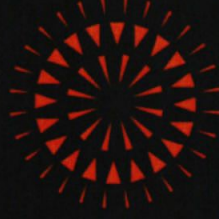
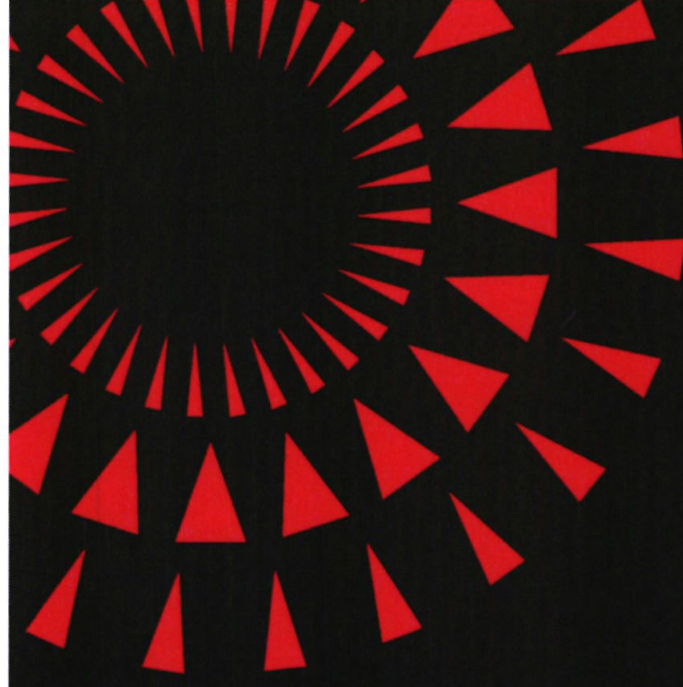
- Increase the tax-exempt threshold to KES 480,000 – KES 600,000 per annum (KES 40,000 – KES 50,000 per month).
- Review the current structure to widen the bands to achieve progressivity in taxation.

Justification

- Wider income tax bands will ensure that the tax burden remains fair and equitable.
- Current bands and tax-free threshold do not reflect the rise in cost of living and inflation.
- Proposed changes will cushion low income earners from the impact of reduced disposal income from increasing statutory payroll contributions and levies.
- Increased disposable incomes will stimulate economic growth.

Harmonization of the personal and corporate income tax rates

04





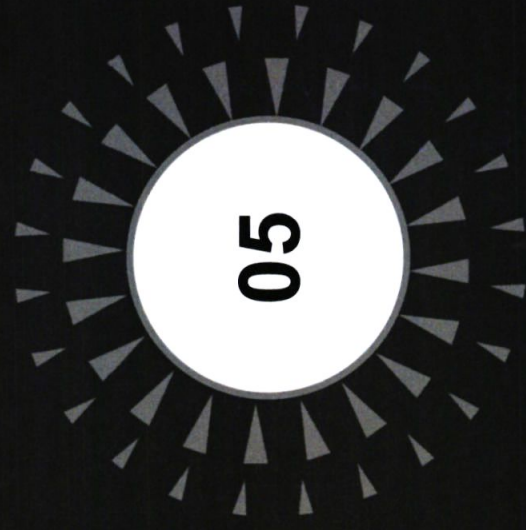
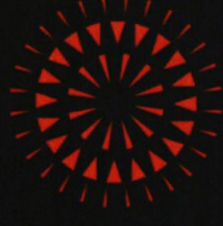
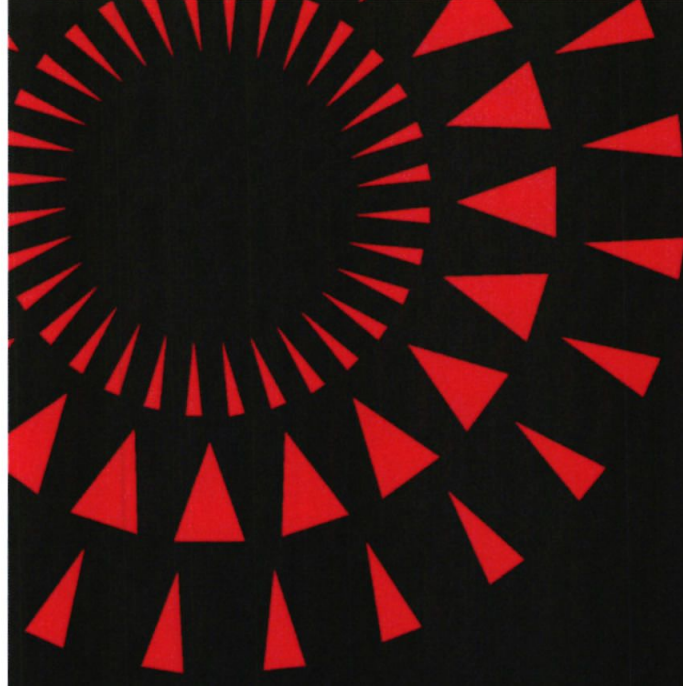
Proposal to harmonize personal and corporate income tax rates



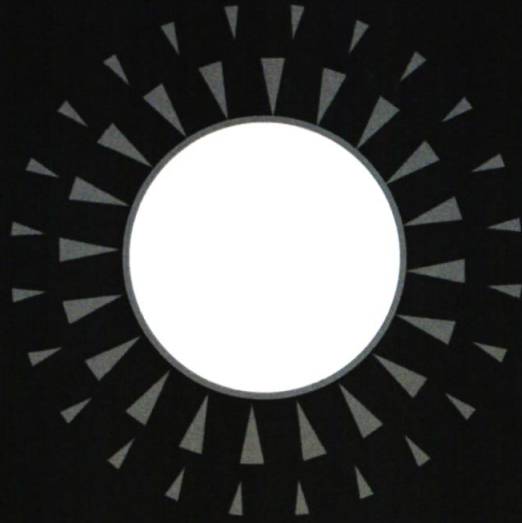
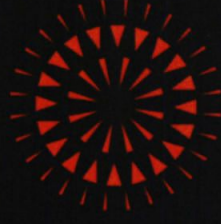
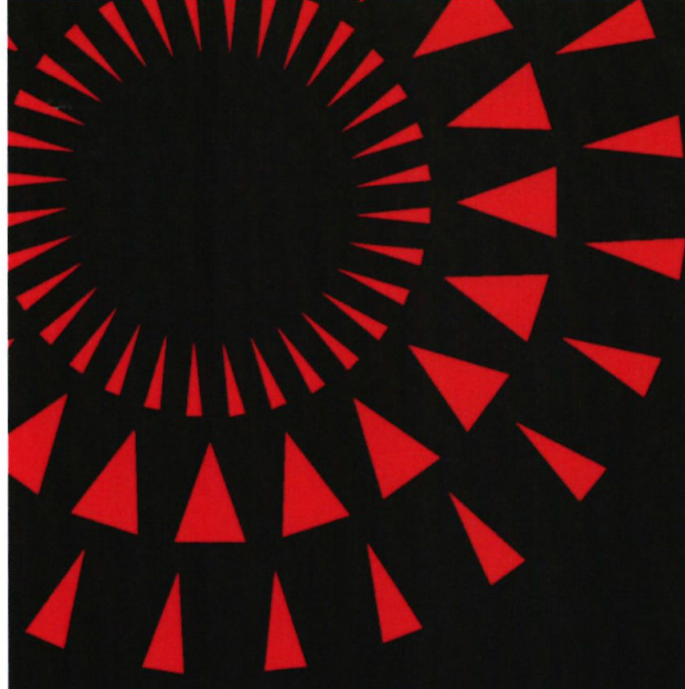
Issue	Proposal	Justification
• Inequality in taxation of business income earned by individuals and companies.	• Harmonize the highest individual income tax rate to the corporate income tax rate.	• Reduction of potential tax avoidance by shifting of income between different categories. • Single tax rate will promote fairness. • Proposed change is in line with the Medium Term Revenue Strategy ("MTRS"). • Proposed change is aligned to regional best practice (e.g. corporate and personal income tax rates in Rwanda and Tanzania is 30%).

Q & A Session

05



Thank you!





KUSCCO LTD.
Kenya Union of Savings & Credit Co-operatives Ltd.

-The SACCO Family Union-

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Our Ref:

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The Clerk of the National Assembly
Departmental Committee on Finance and National Planning
Parliament
Parliament Road
P.O BOX 41842-00100 Nairobi
Nairobi, Kenya

Sent via email to cna@parliament.go.ke

27th May 2025

Dear Departmental Committee,

Subject: THE FINANCE BILL 2025

We refer to the public notice dated 13th May 2025 issued by the National Assembly seeking proposals on tax policy measures for consideration in the of the Finance Bill 2025. We, Kenya Union of Savings and Credit Cooperatives Limited ("KUSCCO", "we", "us"), are glad to submit our tax proposals for the financial year 2025/2026.

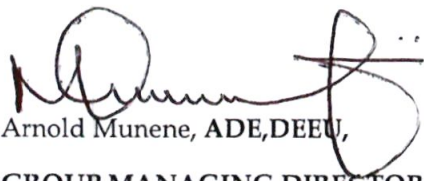
We have provided an executive summary of the legislative proposals in the attached document which also provides detailed analyses of the issues, impact, and recommendations. We are happy to provide any additional information on the proposals in case it's required.

We would be grateful for an opportunity to engage the National Assembly to further deliberate on our proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact our tax agents, Shreya Shah (shreya.shah@pwc.com) or Nicholas Kahiro (nicholas.x.kahiro@pwc.com) or the undersigned on info@kuscco.com at your convenience.

Yours faithfully

For and on behalf of KUSCCO Limited:



Arnold Munene, ADE, DEEU,

GROUP MANAGING DIRECTOR

1. Executive Summary

Table 1: Executive summary

	Issue	Provision proposed to be amended/deferred	Proposed amendment	Justification for proposed amendment
1.	Definition of a Primary designated society	Section 19A of the Income Tax Act CAP 470 (ITA)	Expand the meaning of the term “designated primary societies” to include groups of individual persons. To expand the meaning of primary society under Section 19 A (7), by inserting the following words after individual persons. “- and groups of individual persons”	Sacco membership may include individual persons or groups of individual persons. Such groups are societies and typically do not include companies. However, the given meaning of primary societies under the S19A of the ITA is restricted to individual persons. This amendment seeks to harmonise tax treatment of saccos whose membership includes both groups of individual persons and individual persons. Particularly, it seeks to harmonize the tax treatment of cooperative societies which are saccos to ensure fairness and equity by eliminating preferential treatment based on their membership. Additionally, the amendment seeks to ensure that the tax provisions do not disincentivize the formation and operation of cooperative societies which operate as saccos
2.	Differing rate of Withholding Tax on dividends and interest paid by	Paragraph 5 (e) and h (iii) of the Third Schedule to the Income Tax Act	It is proposed that the tax rates for interest and dividends paid by saccos be harmonized to 5% respectively	The proposed amendments to paragraph 5 of the 3 rd Schedule aim to reduce the administrative burden on SACCOs and make it easier for members to predict their net returns,

	SACCOs to its members on their savings		The current provisions prescribe a different tax rate for withholding tax on qualifying dividends at 5 percent and a different tax for qualifying interest at 15 percent of the gross amount payable. This difference effectively leads to administrative Complexity for both SACCOs and government, member confusion, system integration issues and equity concerns.	potentially encouraging more investment in SACCOs. Additionally, these amendments will assist Tax authorities efficiently monitor and enforce tax compliance with a standardized rate. This will lead to more effective oversight and reduced administrative costs for the government
3.	Increasing the tax exempt threshold and widen the individual income tax bands	Paragraph 1 of Head B of the Third Schedule to the Income Tax Act ("ITA")	Amendment of Paragraph 1 of Head B of the Third Schedule to the ITA to widening the individual income tax bands and harmonise the individual income tax rate with the corporation tax rate. - The tax-exempt threshold is adjusted to KES 480,000 – KES 600,000 per annum (KES 40,000 – KES 50,000 per month); and – - Apply a similar adjustment to the remaining tax bands, ensuring that the entire tax band structure is expanded in line with the remaining tax bands making it more Widening of the tax bands will make the current tax bands more progressive	Widening of the tax bands will make the current tax bands more progressive to cushion low-income earners, in the wake of rising cost of living and inflation rates Notably, disposable incomes have reduced due to the introduction of the Affordable Housing Levy ("AHL") under the Affordable Housing Act, 2024, Social Health Insurance Fund ("SHIF") contributions from October 2024 and the expected increase in the statutory contributions to National Social Security Fund ("NSSF") from February 2025, which will further impact the net take home pay of employees. There should be a focus on expanding the tax base and in particular, bringing the informal sector into the tax net. Under the proposed amendments, we suggest that the marginal income tax rate is harmonised with the corporate income tax rate, in line with the Government's objectives under the draft

				Medium-Term Revenue Strategy ("MTRS").
4.	Harmonisation of the personal income tax ("PIT" to the corporation income tax rate ('CIT'))	Paragraph 1 of Head B of the Third Schedule to the Income Tax Act ("ITA")	Amendment of Paragraph 1 of Head B of the Third Schedule to harmonise the PIT and CIT rate.	We suggest that the personal income tax rate is harmonised with the corporate income tax rate, in line with the Government's objectives under the draft Medium-Term Revenue Strategy ("MTRS").

2. Tax proposal on updating the definition of a primary designated society

2.1. Background

Cooperative societies in Kenya have evolved significantly over time. Initially, they were associations of individual persons, such as the Lumbwa Cooperative Society formed in 1908 by European settlers. These early cooperatives were primarily for individual members and were formed through member initiatives without active government promotion.

The cooperative movement in Kenya began to evolve with the 1932 amendment to the *Cooperative Societies Registration Ordinance (No. 24 of 1931)*. This amendment allowed persons, partnerships, and companies to form cooperatives, particularly in the timber industry. This evolution enabled cooperatives to pool more resources, share risks, and enhance their capabilities.

The Cooperative Societies Act (CAP 490) recognizes four specific categories of cooperative societies. These include:

- a) primary cooperative societies, which are formed by individual members with common interests;
- b) cooperative unions, which are formed by at least two primary societies to provide regional support;
- c) national cooperative organizations (NACOs), which represent cooperatives at the national level; and
- d) apex cooperative societies, which are national umbrella organizations for all cooperatives.

Despite the different forms that cooperatives can take, they all share the same fundamental objectives. These include voluntary and open membership, democratic member control, economic participation by members, autonomy and independence, education, training, and information, cooperation among cooperatives, and concern for the community.

2.2. Issue

The current Income Tax Act (ITA) in Kenya presents a differential treatment between cooperative societies that is based on membership.

Cooperative societies are classified as follows for taxation:

- a) designated primary societies that are registered and operate as credit and savings cooperatives,
- b) other than primary societies other than saccos
- c) every other designated cooperative societies

Primary societies given meaning in the ITA borrows from the Cooperatives Act and is restricted to individual persons.

Notably, the Cooperative Societies Act sets out four categories of societies as shown below:

- 1. primary cooperative societies, which are formed by individual members with common interests;
- 2. cooperative unions, which are formed by at least two primary societies to provide regional support;
- 3. national cooperative organizations (NACOs), which represent cooperatives at the national level; and
- 4. apex cooperative societies, which are national umbrella organizations for all cooperatives.

The meaning of primary societies in the ITA relies on the meaning of the term given in the Cooperatives Act.

Notably, the Cooperatives Act does not adequately pronounce itself on the category applicable to a class of cooperative societies which have both individual persons and groups of individual persons since such societies do not fall under 2, 3 or 4 above. Such societies would also not fall under 1 in strict interpretation of

the law since their membership includes groups of individual persons.

The ambiguity above results in the application of different tax provisions on saccos whose membership is individual persons only and saccos whose membership is comprised of both individual persons and groups of individual persons, with more favorable treatment for the former.

This discrepancy raises concerns given that all saccos, regardless of their membership, share the same fundamental objectives and operate under similar principles of cooperatives.

This differential tax treatment of saccos that is based on the pedantic difference between individual persons and groups of individual persons is problematic because it creates an uneven playing field among saccos. This can hinder the growth and sustainability of other saccos, which may struggle to compete under a heavier tax burden.

Addressing these issues would require a review of the Income Tax Act to ensure a more equitable tax treatment for saccos, recognizing their shared goals and contributions to the economy and community.

2.3. Proposal

To address these issues, it is proposed that the Income Tax Act be reviewed to ensure a more equitable tax treatment for all types of cooperatives, recognizing their shared goals and contributions to the economy and community. The review should aim to:

- Align the tax treatment of saccos whose membership include groups of individual persons to ensure fairness and equity.
- Ensure that the tax provisions do not disincentivize the formation and operation of any type of cooperative society, including saccos whose membership includes both groups of individual persons and individual persons. .

By implementing these changes, the tax framework will better support the cooperative movement in Kenya, fostering a more equitable and sustainable environment for all cooperative societies.

2.4. Justification

The proposed amendments to Section 19A of the Income Tax Act aim to create a more equitable and neutral tax framework for all cooperative societies in Kenya, regardless of their form. The current tax treatment differentiates between primary societies and other types of cooperatives, which creates an unequal playing field and undermines the cooperative movement's ability to grow and thrive.

By ensuring that all cooperatives, whether primary or designated, are taxed in a similar manner, the proposals promote fairness and neutrality in the tax system. This removes any preferential treatment based solely on the structure or classification of the cooperative, ensuring that no cooperative is unfairly burdened or disadvantaged based on its legal form.

Cooperatives, regardless of their classification, share the same fundamental objectives of promoting economic participation, community cohesion, and social welfare. Their ability to pool resources and work together enhances their overall impact, whether they operate as small primary societies or larger unions, national organizations, or apex societies.

The proposed amendments recognize that the benefits of cooperatives can be amplified when they come together as larger legal entities. By pooling resources and leveraging economies of scale, cooperatives can provide more effective services to their members, engage in more impactful advocacy, and contribute more significantly to both local and national development. Larger cooperative structures also allow for enhanced

solidarity and better risk-sharing, ultimately creating stronger and more resilient organizations.

Furthermore, cooperatives in Kenya generally play a crucial role in social welfare by providing affordable services, supporting government initiatives, and contributing to social cohesion. Their role in reducing the financial burden on the state through efficient service provision and social welfare contributions is widely recognized. Cooperatives are often able to deliver services more effectively and at a lower cost than the state or private enterprises, fostering greater inclusivity and social stability.

By removing the distinctions between different types of cooperatives in the Income Tax Act, the proposal helps ensure that all cooperatives, regardless of their structure, can reinvest in their operations, enhance their growth, and continue to provide benefits to their members and communities. This will foster a more inclusive, sustainable cooperative sector that can continue contributing to Kenya's economic and social development.

Further this inclusion will help address some of the inadequacies of the definition of a primary designated society within the Co-operatives Act which is used under the ITA. SACCOs whose membership includes groups are locked out of favorable tax provisions that apply to SACCOS whose membership is only individual persons. Interest earned from members by Saccos whose membership is individual persons only is exempt from tax while interest from members earned by Saccos whose membership includes groups of individual persons is subject to income tax.

2.5. Best practices from other jurisdictions

Uganda

In Uganda, SACCOs have been exempted from paying taxes on their incomes from July 1, 2017, to June 30, 2027. This policy aims to encourage Ugandans to join financial institutions and move away from informal savings methods. The government believes that keeping money in formal institutions will benefit the economy through increased productive work. While SACCOs' incomes are tax-exempt, salaries paid to their staff are still subject to taxation. This initiative is part of a broader effort to integrate more Ugandans into the formal financial system and boost economic growth.

India

In India, the tax treatment of cooperative societies is designed to support their diverse activities and promote growth. Governed by Section 80P of the Income Tax Act, 1961, these provisions allow cooperative societies to benefit from various deductions based on the economic activities they engage in, rather than their membership.

For instance, cooperative societies involved in banking and credit facilities can deduct the entire amount of profits and gains from these activities. Similarly, those engaged in cottage industries, marketing of agricultural produce, and the purchase of agricultural supplies can also fully deduct their profits.

This comprehensive system of deductions reduces the overall tax burden on cooperative societies, supporting their development and sustainability. By focusing on the economic activities rather than the membership, the tax policy encourages cooperatives to contribute to the socio-economic development of the country. This targeted support promotes growth in crucial sectors such as agriculture and rural development, providing valuable lessons for Kenya to consider in its tax policies for cooperatives.

Philippines

In the Philippines, the tax treatment of cooperatives is determined by their relationship with the public and their financial status, rather than their membership, as per the *Philippine Cooperative Code of 2008 (RA 9520)*. 'Member of a cooperative' as defined in RA 9520 includes 'a person either natural or juridical who

adhering to the principles set forth in this Code and in the Articles of Cooperative, has been admitted by the cooperative as member.'

Turning to the tax treatment, with regard to relationship to the public, all registered cooperatives which do not transact any business with non-members or the general public are not subject to any taxes and fees imposed under the internal revenue laws and other laws. On the other hand, cooperatives transacting business with both members and non-members are not subject to tax on their transactions with members.

The cooperatives that transact with non-members or the general public are further split into two based on their accumulated reserves and undivided net savings. Smaller cooperatives, with reserves and net savings less than or equal to approximately KES 24,500,000, enjoy significant tax benefits. They are exempt from all national and local taxes, customs duties, and taxes on imported machinery and equipment. This exemption helps reduce their operational costs and supports their growth and development within the community.

Larger cooperatives, with reserves and net savings greater than KES 24,500,000, face specific income tax obligations. They are subject to income tax on the amount allocated for interest on capital. However, the same tax is not imposed on the interest individually received by members. Additionally, all cooperatives, regardless of their size, are exempt from income tax from the date of their registration with the Authority. This exemption provides a significant benefit, particularly during the initial stages of a cooperative's operation, helping them to establish and grow without the immediate burden of income tax.

3. Harmonization of Withholding Tax Rates for of Dividends and Interest paid out to members to Savings and Credit Cooperations

3.1. Background

The imposition of withholding tax on interest and dividends given to members of SACCOs in Kenya has evolved over time, reflecting changes in the regulatory and economic landscape.

SACCOs (Savings and Credit Cooperative Societies) have been a significant part of Kenya's financial system for decades. They were established to provide financial services to members, particularly those who might not have access to traditional banking services.

The cooperative movement in Kenya dates to the early 20th century, with significant growth occurring post-independence as the government encouraged the formation of cooperatives to promote economic development. The concept of withholding tax was introduced to ensure that taxes on income, such as interest and dividends, were collected at the source. This system helps improve tax compliance and revenue collection. In Kenya, the Income Tax Act governs the imposition of withholding tax on various types of income, including those earned from SACCOs.

Prior to 2009, SACCO's were regulated under the Cooperative Societies Act (CAP 490) of 1998. Under this act contributions by members to a SACCO were considered as share capital and members would be entitled to receive dividends on the same. Similarly, members to the SACCO still had access to their contributions as deposits and would receive interest based on the deposits saved with the SACCO.

However, in 2009, the SACCO Societies Act CAP490B amended the Cooperative Societies Act to distinguish between share capital and members deposits. This brought about a change in the rate of Withholding tax rate applied to dividends issued on the share capital a member had and the interest on deposits saved with the SACCO. Currently, for SACCOs, the withholding tax on dividends and interest was formalized under Section 35 of the Income Tax Act. According to this section, SACCOs are required to withhold tax on dividends paid out to members and interest paid out to members on their savings at a rate of 5% and 15% respectively.

This change in the act impacted members of SACCOs as they were now to be charged a higher rate of

withholding tax on interest earned by their deposits while the rate of withholding tax on dividends remained the same.

Currently, for SACCOs, the withholding tax on dividends and interest was formalized under Section 35 of the Income Tax Act. According to this section, SACCOs are required to withhold tax on dividends paid out to members and interest paid out to members on their savings at a rate of 5% and 15% respectively.

This change arguably reduced the competitive advantages of saving in a SACCO as interest earned on savings was subject to a higher tax rate. Ordinarily SACCOs serve low to medium earners and a high rate of Withholding Tax on the interests earned has a high impact on the financial wellbeing and inclusion of members.

3.2. Issues

Due to the different withholding tax rates provided for interest and dividends issued by SACCOs on members deposits, several issues have arisen that impact both the SACCOs and their members.

SACCOs face significant challenges in managing and applying different tax rates for interest and dividends. This complexity leads to higher administrative costs and necessitates more sophisticated financial systems. Further having two tax rates leads to an overall higher tax burdens for SACCO members. This in turn would reduce the net returns on investment and savings, making it less attractive to save or invest in SACCOs.

The higher withholding tax rate has led to a reduction to the incentive to invest or save with SACCOs. Members ultimately may choose to invest elsewhere as returns after tax are no longer competitive within the market, leading to a decline in the industry and potentially reducing the capital available for SACCO operations and growth.

Since SACCOs primarily cater to individuals, small and medium enterprises, these groups would ultimately suffer under a higher tax rate. SMEs, in particular, rely heavily on SACCOs for affordable financing and investment opportunities. Higher tax rates could reduce their profitability and growth potential, making it harder for them to thrive in a competitive market.

Additionally, ensuring accurate compliance with varying tax rates is difficult. SACCOs must meticulously withhold and remit the correct amounts to tax authorities, and any errors can result in penalties and interest charges while members often struggle to understand why different tax rates apply to their interest and dividend earnings. This confusion can lead to dissatisfaction and a lack of trust in the SACCO's management

Lastly, the different tax rates affect the net returns received by members, potentially influencing their investment decisions. Members may prefer investments with lower tax rates, which could impact SACCO's overall financial strategy.

3.3. Proposal

To address these issues, it is proposed that the tax rates for interest and dividends be harmonized to 5%. This would simplify the administrative process, reduce compliance risks, and provide clarity and fairness to members, ultimately enhancing the overall efficiency and effectiveness of SACCO operations.

3.4. Justification

Saccos have a unique business structure in that they trade with their members. SACCOs acquire deposits from members in the form of core share capital and withdrawable deposits.

The investment from members is lent onwards to some of the members and at the end of the year surplus earnings are distributed to members as either rebates or dividends.

To this end, both rebates and dividends are paid on the investment of the members, who are equivalent of company shareholders. Both payments are made from surplus of the trade although the basis of determining dividends payable is the member's proportion of core share capital while the basis for determining rebates payable is the member's proportion of deposits.

A uniform tax rate for rebates and dividends reduces the complexity of tax administration for SACCOs. This simplification can lead to lower administrative costs and fewer errors in tax calculations and remittance. With a single tax rate for similar payments, SACCOs can more easily ensure compliance with tax regulations. While this increases compliance it reduces the risk of penalties and interest charges due to incorrect withholding or remittance of taxes. Members will also have a clearer understanding of the tax implications of their investments. This transparency can enhance trust and satisfaction among SACCO members, as they will no longer be confused by different tax rates for interest and dividends

Harmonizing tax rates further ensures that all types of income are treated equally, which can be perceived as fairer by members. Further a consistent tax rate can make it easier for members to predict their net returns, potentially encouraging more investment in SACCOs. This can lead to increased capital for the SACCOs to support their activities and growth and a better economic outlook for the country.

By addressing these points and harmonizing the withholding tax rates for interest and dividends it will create a more streamlined, fair, and efficient system for both SACCOs and their members

3.5. Best practices from other jurisdictions

Tanzania

In Tanzania, the withholding tax rate on interest is set at 10% for both residents and non-residents. This applies to interest payments made by SACCOs to their members. Similarly, the withholding tax rate for dividends paid out by SACCOs is generally **10%**. This rate applies to dividends from resident corporations, including SACCOs, to both residents and non-residents.

Uganda

In Uganda, the withholding tax rate on interest payments is set at **15%**. However, there has been some controversy regarding the taxation of SACCOs. The Income Tax Amendment Act of 2017 initially exempted SACCOs from withholding tax on dividends and interest to promote savings and financial inclusion. This exemption is valid until June 30, 2027.

4. Tax proposal on the widening of the individual income tax bands

4.1. Background

The Finance Act, 2023 introduced two new tax brackets: a 32.5% rate for monthly earnings exceeding KES 500,000 but less than KES 800,000, and a 35% rate for monthly earnings above KES 800,000. As a result, the highest personal income tax rate for individuals increased from 30% to 35%. This change builds on the existing narrow tax bands, which tax individuals earning above KES 32,333 per month at the rate of 30%.

For over two decades, the Personal Income Tax (PIT) and Corporate Income Tax (CIT) rates have been aligned at 30%, with the exception of 2020 when the PIT rate was temporarily reduced to 25% to help mitigate the effects of the Covid-19 pandemic.

The primary aim behind the tax rate hikes introduced by the Finance Act, 2023 was to raise revenue for funding public expenditure and to make the tax system more progressive. However, economic theories such

as the Laffer Curve suggest that raising tax rates does not always lead to higher tax revenues. Early signs of this effect are evident in the Q1 FY24 revenue collection data from the Kenya Revenue Authority (KRA).

Taxes are a critical factor in attracting multinational companies (MNCs) and their expatriate staff to a country. If Kenya becomes perceived as a high-tax environment, these companies may opt to relocate their expatriates to other countries. This could result in Kenya missing out on the additional economic benefits that come with being a regional business hub, including spending at international schools, restaurants, real estate, and travel.

The combination of higher taxes and increases in statutory contributions to the National Social Security Fund (NSSF), Social Hospital Insurance Fund (SHIF) contributions, and the Affordable Housing Levy (AHL) could potentially drive-up unemployment. Employees may seek higher salaries to offset the burden of these increased taxes, which could prompt employers to implement retrenchment measures. Employers may respond by encouraging voluntary redundancies, early retirements, or even layoffs in an effort to manage rising labour costs.

4.2. The issue

The existing tax bands are not sufficiently progressive, with taxation starting at KES 24,000 per month at a rate of 10%. A 25% marginal tax rate applies to incomes up to KES 32,333 per month. For instance, an individual earning KES 30,000 per month would incur KES 641 in income taxes and additional statutory contributions and levies amounting to KES 3,435, leaving them with a disposable income of only KES 25,924 per month.

At this income level, the individual would struggle to afford basic necessities and support a family, including covering rent, school fees, utility bills, and transportation costs, especially given the rising cost of living. Moreover, the marginal tax rate of 30% is not far off and applies to income above KES 32,333 per month.

Therefore, it is crucial to expand the tax bands to raise the threshold for the 30% tax rate from the current KES 32,333 per month (KES 388,000 per year) to KES 500,000 per month (KES 6,000,000 per year). This adjustment would make the tax system more progressive. Our suggested income tax bands aim to provide greater relief to low-income earners, aligning with Kenya Kwanza's bottom-up economic transformation agenda that seeks to promote inclusive growth.

Additionally, the proposed removal of the personal relief of KES 2,400 per month for resident individuals, as outlined in the government's Medium Term Revenue Strategy (MTRS) for the years 2025 to 2027, underscores the need to revisit the current tax bands. This revision would help ensure that such a change does not further reduce the disposable income of low-income earners.

4.3. Proposed amendment

Amendment to Paragraph 1 of Head B of the Third Schedule to the Income Tax Act (ITA) to widen the individual income tax bands and harmonize the individual income tax rate with the corporation tax rate.

4.4. Justification

Harmonisation of the income tax rate with the corporation tax rate

We have proposed that the PIT and CIT rates are harmonised, in line with the Government's objectives under the draft MTRS. This will address the challenge introduced by the Finance Act, 2023 which puts sole proprietors at a disadvantage. For example, a sole proprietor earning income in excess of KES 800,000 is currently taxable at the rate of 35% whilst a company earning the same amount of income is chargeable to tax at 30%.

Increase in disposal income will stimulate economic growth

Widening the individual income tax bands and harmonizing the individual income tax rate with the corporate income tax rate can have a profound impact on economic growth. By widening the tax bands, individuals will have more disposable income, which they are likely to spend on goods and services, thereby increasing demand in the economy. This increased demand can lead to higher production levels, more job opportunities, and overall economic expansion.

Moreover, with more disposable income, individuals may choose to invest in various financial instruments, real estate, or small businesses, further fuelling economic growth. These investments can lead to the creation of new businesses, innovation, and infrastructure development, all of which contribute to a robust and dynamic economy. Overall, these changes can create a positive cycle of increased spending and investment, driving sustained economic growth.

Rising cost of living and inflation rates

The lowest threshold for chargeability to individual income tax rate has remained at KES 24,000 per month since April 2020. The tax rates applicable to monthly income of up to KES 32,333 has also not changed since January 2021. The gap between these income levels is merely KES 8,333 per month, which indicates that the current tax structure is not progressive.

Consumer price indices of basic commodities and services such food and non-alcoholic beverages, transport, electricity, fuel, housing and water continue to register increases of up to 13% over these years. For instance, the consumer price index for food and non-alcoholic beverages increased by 15.8% between October 2021 and October 2022¹ while that for transport increased by 13.65% between October 2022 and October 2021². This increase is mainly attributed to the high fuel prices and fluctuations in food prices due to supply chain disruptions and the weakened Kenya Shilling which has depreciated by approximately 41% since 2020 when the lower threshold of KES 24,000 was set.

Based on the foregoing, it is imperative to adjust the individual income tax bands to reflect the rising cost of living which is limiting the disposal income available to employees. Our proposed individual income rates of tax will achieve progressivity in the tax structure in the wake of the current inflation rates and rising cost of living. This will ensure that even the low-income earners are able to afford basic living commodities.

In addition, reducing the top personal income tax rate will improve the purchasing power of individuals. The ripple effect of this proposed change will stimulate economic growth in various sectors such as tourism, education, hospitality and entertainment due to increased spend on non-essential goods and services. The government will then be able to realise increased revenues from corporate income taxes and consumption taxes such as VAT and excise duty.

Increased statutory social security contributions and levies

The Finance Act, 2023 introduced AHL which is chargeable on emoluments earned by an employee at the rate of 1.5% of their gross monthly salary effective from July 2023.

In furtherance of the NSSF Act, 2014, employer and employee contributions to the NSSF are expected to increase in 2025 in line with the national average earnings. The standard employee contribution to the NSSF is computed at 6% of an employee's pensionable earnings. Pensionable earnings comprise the lower of:

- a) the employee's monthly wages (which includes 'all emoluments payable to an employee'); and
- b) the upper earnings limit (which means the level of earnings equal to four times the national average

¹ <https://www.knbs.or.ke/consumer-price-indices-and-inflation-rates-for-october-2022/>

² <https://www.knbs.or.ke/wp-content/uploads/2023/10/October-2023-CPI-.pdf>

earnings).

The national average earnings have increased each year from the year 2012 when this amount dropped due to the impact of covid-19.

Employee contributions to SHIF have also increased from the maximum amount of KES 1,700 to 2.75% of gross monthly salary. Since the statutory employee contributions are set to increase quite significantly in the year 2025, this will further reduce disposable incomes of employees while increasing the employer's employment costs.

Expansion of the tax base

The estimated number of persons employed in both formal and informal sectors in 2021 was just over 19 million³ while the total number of registered taxpayers was approximately 6.1 million in 2021. According to KRA, over 5.4 million individuals filed their returns in 2023, which represents 88.5% of the registered taxpayers but much lower than the total number of persons employed in the country.

The number of persons working in the informal sector accounted for about 83% of the total estimated number of persons in wage employment in both 2021 and 2022. This partly explains the disparity between the number of employed persons and registered taxpayers.

A key focus area for the Government should be around improving tax collection from the informal sector. In our view, some of the ways in which tax collection from the informal sector can be improved includes:

- Creating public awareness of the tax legislation and making it available in Swahili.
- Leveraging and enhancing investment in appropriate, administratively efficient technology; and
- There is a need to have a simplified tax regime for small business traders and the informal sector. For example, any business permit fees should be taken as a tax credit to incentivise filing of their tax returns, while making it a mandatory requirement to avail copies of previous year's tax returns at the point of subsequent period's business permit fees renewal.

Expanding the tax base will translate to collection of higher taxes.

4.5. Regional best practice

It is important to note that the current rate of 35% is not the highest in the Continent, but it is still relatively high when benchmarked with a number of countries.

Table 2. Comparison of current top marginal individual income tax rates across Africa

Country	Marginal tax rate	Annual marginal tax threshold (original currency)	Annual marginal tax threshold (USD)	Annual marginal tax threshold (KES)
Mauritius	15.0%	2,390,000	52,819	8,192,442
Nigeria	24.0%	3,200,000	4,160	613,760
Egypt	27.5%	1,200,000	38,760	5,741,280
Rwanda	30.0%	2,400,000	1,920	287,760
Tanzania	30.0%	1,000,000	400	58,700
Kenya	35.0%	9,600,000	12,672	9,600,000

³ <https://www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf>

Ghana	35.0%	600,000	50,820	7,546,680
Algeria	35.0%	3,840,000	28,416	4,111,872
Malawi	35.0%	30,000,000	27,000	3,813,000
Zimbabwe	41.2%	6,000,000	16,800	2,820,000
South Africa	45.0%	1,817,000	95,574	14,878,868

In the Western Africa market area, Nigeria's marginal tax rate is lower at 24%, whilst Ghana is at 35%. For the Southern Africa market area, South Africa is relatively higher at 45% and similarly Zimbabwe at 41.2%. Mauritius has the lowest tax rate at 15% in Africa.

It is notable that in countries that have higher marginal tax rates, basic services such as education and healthcare are provided at subsidised rates or in some cases at no cost at all. For instance, basic healthcare is free for everyone in South Africa, irrespective of one's nationality. Primary and secondary school education is also free in South Africa for children from low-income families. Residents of Algeria also enjoy free healthcare in public facilities while Ghanaian residents are provided with free primary and secondary school education.

When we compare with our East African counterparts, Rwanda and Tanzania's marginal tax rates are 30%. It is important to note though that, while the marginal tax rate in Rwanda and Tanzania may be lower, their tax brackets are quite narrow.

Our proposal to harmonise the PIT and CIT rates, is justified on the basis that it will boost investment and is aligned to the government's strategic focus on increasing the country's foreign exchange earnings. Further, lowering the taxes will raise disposable incomes allowing the consumer to spend more, which would stimulate economic growth.

5. Harmonisation of the personal income tax ("PIT") rate and corporation income tax ("CIT") rate

5.1. Background

The Finance Act, 2023 introduced two new tax brackets: a 32.5% rate for monthly earnings exceeding KES 500,000 but less than KES 800,000, and a 35% rate for monthly earnings above KES 800,000. As a result, the highest personal income tax rate for individuals increased from 30% to 35%. This change builds on the existing narrow tax bands, which tax individuals earning above KES 32,333 per month at the rate of 30%. For over two decades, the Personal Income Tax (PIT) and Corporate Income Tax (CIT) rates have been aligned at 30%, with the exception of 2020 when the PIT rate was temporarily reduced to 25% to help mitigate the effects of the Covid-19 pandemic.

5.2. The issue

The primary aim behind the tax rate hikes introduced by the Finance Act, 2023 was to raise revenue for funding public expenditure and to make the tax system more progressive. However, economic theories such as the Laffer Curve suggest that raising tax rates does not always lead to higher tax revenues. Taxes are a critical factor in attracting multinational companies (MNCs) and their expatriate staff to a country. If Kenya becomes perceived as a high-tax environment, these companies may opt to relocate their expatriates to other countries. This could result in Kenya missing out on the additional economic benefits that come with being a regional business hub, including spending at international schools, restaurants, real estate, and travel. This curtails the government's strategic efforts on increasing the country's foreign exchange earnings and boosting investment.

The combination of higher taxes and increases in statutory contributions to NSSF, SHIF and AHL could potentially drive-up unemployment. Employees may seek higher salaries to offset the burden of these

increased taxes, which could prompt employers to implement retrenchment measures. Employers may respond by encouraging voluntary redundancies, early retirements, or even layoffs in an effort to manage rising labour costs.

5.3. Proposed amendment

Amendment to Paragraph 1 of Head B of the Third Schedule to the Income Tax Act (ITA) to harmonise the PIT rate and CIT rate to 30%.

5.4. Justification

Harmonisation of the income tax rate with the corporation tax rate

We have proposed that the PIT and CIT rates are harmonised, in line with the Government's objectives under the draft MTRS. This will address the challenge introduced by the Finance Act, 2023 which puts sole proprietors at a disadvantage. For example, a sole proprietor earning income in excess of KES 800,000 is currently taxable at the rate of 35% whilst a company earning the same amount of income is chargeable to tax at 30%.

Our proposed amendment is also in line with regional best practice. For instance, the personal income tax rates and corporate income tax rates in Mauritius and Tanzania is 15% and 30% respectively.

Reduction of potential tax avoidance

Different tax rates for corporate and personal income can create incentives for tax avoidance strategies. A unified rate reduces the opportunities for individuals and businesses to shift income between different tax categories to minimize their tax liability. A single tax rate can promote fairness by ensuring that all income, whether earned by individuals or corporations, is taxed at the same rate. This can help in reducing perceived inequities in the tax system



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May 23, 2025

Our Ref: KESMA/CS/ TNT/FB/5/25

The Cabinet Secretary,

The National Treasury and Economic Planning,
Treasury Building, Harambee Avenue,
P.O.BOX 30007-00100,

NAIROBI

Hon. Cabinet Secretary,

RE: IMPACT OF PROPOSAL IN FINANCE BILL 2025 TO SHIFT SUGARCANE TRANSPORT FROM ZERO-RATED VAT TO EXEMPT VAT STATUS

The Kenya Sugar Manufacturers Association (KESMA), as the apex body representing sugar millers in Kenya, takes this opportunity to thank you for the continued engagement and efforts by the National Treasury in addressing policy matters affecting the agricultural and manufacturing sectors.

We write to respectfully raise concern over a specific proposal in the Finance Bill 2025 under **Part I - Value Added Tax, Item 36, Section (A), Item 157**, which seeks to amend the VAT treatment of "transportation of sugarcane from farms to milling factories" from **zero-rated** to **exempt** status.

We write to express our concerns regarding the proposal in the Finance Bill 2025 to shift sugarcane transport from Zero-rated VAT status to VAT-exempt status. While we acknowledge the government's efforts to broaden the tax base and increase tax collections, we believe this particular proposal will have unintended negative consequences for the sugar industry, affecting farmers, millers, consumers and the broader economy.

The Sugar Industry as is the case in other farming sectors has its own unique challenges. The business can only be run after intensive investment in equipment and machinery that includes but not limited to Tractors, Trailers and Weigh bridges that are essential to the daily running of the Mills but cannot be owned or maintained by the individual farmers or groups of farmers.

It is in that regard that Millers invest in these Assets to properly run their operations. We pass on the cost of these operations to the farmers at a highly subsidized rates; as an example, Butali charges only 54% of its incurred costs to the farmers and shelters the rest (these does not include the wear and tear of machinery that would otherwise have increased the cost).

The proposed change will in-turn increase the sugarcane transport costs by 16% as all input VAT associated with facilitation of the sugarcane transport like fuel, lubricants and spares will be exempted from input claim and will therefore increase the overall transport cost. If this increased transport cost is passed to the farmer without sheltering the proportionate cost, then the cost to



the farmer will have increased by more than 30%. This will not only reduce the profit margins of the farmers but could also discourage small scale farmers from continuing with sugarcane cultivation on their farms.

This in essence goes against the spirit of developing the sugar industry as we try to make cane farming worth venturing into. On the other hand, if this cost is absorbed by the millers, it will have a proportionate impact on increased costs of sugar production which will translate to correspondingly higher sugar prices in the country impacting the end consumers. This will not only add to the inflationary pressure on the economy but also make sugar imports cheaper.

The Sugar Board on the other hand has introduced a 4% SDL on the millers which is a more welcomed move with contention only on the rate. The appropriation of these monies is well understood and if operated as promised will reignite the lost glory the sector had.

The ripple effect of these two is that the consumer prices for sugar will go up by a whole 7% if these were to be implemented. These as previously seen will make farmers shy from the crop thus encouraging sugar importations both legit and unscrupulous to cover for the demand gap that would have been created. The result would be reduction in farmers' income, increased costs of production, loss of jobs, diminishing standards of living, lost revenues to the Government and increased dependence on sugar imports.

The government has emphasized agricultural development, food security, and industrial growth as pillars of the country's economic development. The sugar industry plays a fundamental role in supporting local livelihoods, creating employment, and contributing to the overall national food security.

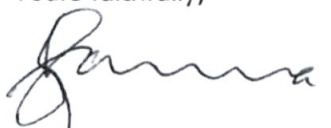
Moreover, the government has previously introduced various interventions to revive the struggling sugar industry, including regulatory reforms, debt restructuring for millers, and financial support for farmers. The proposed VAT change risks undermining these efforts by imposing unnecessary financial burdens that could push stakeholders further into economic distress.

Recommendation

To sustain and grow the sugar sector and promote economic development at micro and macro levels, our logical proposal would be to maintain the Zero-rated VAT status for sugarcane transport as it is. All millers including ourselves are always in a VAT paying position and we've always remitted our taxes on time.

Let's grow the sector for the betterment of our communities.

Yours faithfully,



Stephen Ligawa
Chief Executive Officer



Joyce A. Opondo (Ms.)
KESMA-Secretary



Cc: The Chairperson,
Parliamentary Committee on Finance and National Planning,
Parliament Buildings,
P.O. Box 41842 – 00100,
NAIROBI

**Attached: 1. Schedule I – Changing from Zero-rating to Exempt in the Finance
Bill 2025**

2. Schedule II- Limiting carry forward of tax losses to five years.



Schedule I

CHANGING FROM ZERO-RATING TO EXEMPT IN THE FINANCE BILL 2025

NO	CLAUSE	DESCRIPTION OF THE CLAUSE	PROPOSAL	JUSTIFICATION
1	PART I-Value Added Tax, Item 36,Section (A), Item 157	The Finance Bill 2025, proposes to change the status of Transportation of Sugarcane from farms to milling factories from zero-rated to exempt.	Transportation of Sugarcane from farms to milling factories to remain zero-rated under the VAT Act.	Kenya is the highest cost producer of sugar in the world. The proposal in the Finance Bill will increase the costs even more bringing pain to the sub-sector. The Government of Kenya has emphasized agricultural development in food security and industrial growth as pillars of Kenya's economic development. The proposed VAT changes will negate the government's efforts in reviving the sugar industry. 1. The cost of sugarcane transportation will increase by 16% as all input VAT associated with facilitation of sugarcane transportation like fuel, lubricants and spares will be exempted from input claim resulting in a proportionate increased cost to the farmer by more than 30%.This will discourage small scale farmers who are the majority cane suppliers from the industry leading to collapse of sugarcane supply. 2. Exempting rather than Zero-rating this essential service introduces restrictions on the deductibility of input VAT for service providers. This results in higher net costs, which are ultimately passed on to sugarcane farmers and millers, thereby increasing the cost of doing business. Farmers will this in the current volatile business environment.

				3. Transportation costs are already a significant component of sugarcane production and are predominantly borne by farmers. The proposed amendment would increase these costs further, thereby eroding farmer margins and negatively impacting the sustainability of sugarcane farming. 4. Additionally, it would raise the cost of local sugar production , making it less competitive in the regional and global markets
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SCHEDULE II

IMPACT OF PROPOSAL IN FINANCE BILL 2025 TO LIMIT CARRY FORWARD OF TAX LOSSES TO FIVE YEARS

The Finance Bill 2025 proposes to limit the carry-forward period for tax losses to five years, thereby proposing to replace the current law allowing to indefinitely carry-forward the tax losses incurred by businesses. While this measure may aim to enhance short-term revenue collection, it risks undermining Kenya's economic competitiveness, hindering long-term investments, and stifling business growth.

The tax losses incurred by businesses are usually a combination of the following;

- a. Allowable operating expenses incurred in normal course of business
- b. Wear & Tear allowances
- c. Interest and forex losses
- d. Any other industry specific deductions

The move to carry forward tax losses indefinitely was a welcome move and relief to businesses especially those in capital intensive sectors like agriculture, manufacturing, infrastructure (among others) that require longer gestation periods to recover their investments and establishment costs and to achieve optimum and sustained break-even operating levels. The current law of indefinite tax loss carry-forward has been instrumental in supporting businesses through cyclical downturns, economic shocks and other industry specific challenges.

Limiting the tax loss utilisation to five years would force businesses to absorb losses prematurely thereby constraining their ability to reinvest in operations and business expansion including capital expenditure. It is also important to note many businesses are emerging from Covid-19 induced economic slowdown and imposing a five-year limitation would severely affect their financial resilience and weaken their liquidity and overall sustainability.

In the broader economic context, below is overall view of Kenya and its immediate neighbouring economies for year 2023 (source: World Bank Data).

	GDP 2023 (US\$ Billion)	Population 2023 (Million)	GDP per Capita 2023 (USD)	GDP Growth 2023 (%)	FDI 2023 (% of GDP)	Tax Loss carry limit
Kenya	\$ 108	55	\$ 1,952	6%	1%	Indefinite
Tanzania	\$ 79	67	\$ 1,225	5%	2%	Indefinite
Uganda	\$ 49	49	\$ 1,002	5%	6%	5 years
Ethiopia	\$ 164	129	\$ 1,272	7%	2%	5 years
Rwanda	\$ 14	14	\$ 1,010	8%	3%	5 years
Burundi	\$ 3	14	\$ 193	3%	1%	5 years

It can be noted that Kenya had second highest GDP (falling behind Ethiopia) and the highest GDP per capita with the third largest growth in GDP (falling behind Ethiopia and Rwanda) – but still Kenya was lowest (and at par with Burundi) in FDI which was only 1% of GDP. While most of the economies have a five-year limit on carry forward of tax losses, it may not be in Kenya's economic interest (to attract local and foreign investments) to follow the same route specially given Tanzania (the 3rd largest economy after Kenya and Ethiopia and with a strong and stable political system) is retaining the indefinite carry forward of tax losses (subject to some conditions).

Impact on Deferred Tax Asset (DTA)

Under IAS 12 – Income Taxes, a deferred tax asset is recognised for deductible temporary differences and unused tax losses carried forward, only if it is probable that future taxable profits will be available to utilise those losses.

If tax losses can be carried forward for only five years, businesses must assess whether they will be able to generate sufficient taxable income within that period to offset the tax losses, and if the future taxable profits within the 5 year period are insufficient or uncertain, the DTA may be impaired and written off.

A five-year limit significantly reduces the window for businesses to recover tax losses, increasing the likelihood of impairment of DTA. External factors such as inflation, uncertain economic outlook, geopolitical instability, industry downturns, and supply chain logistics may affect a company's ability to generate sufficient taxable profits within a restricted timeframe leading to increased impairment of DTA. Additionally, capital intensive industries (agriculture, manufacturing, infrastructure and others) may struggle to utilise their tax losses within the five years period, leading to DTA impairment.

The impairment of DTAs results in higher tax expenses, reduction of net income and negatively impacts the balance sheet. A decline in DTA may signal financial instability thereby undermining investor confidence and hampering business growth.

Sugar sector

The proposed change to limit the carry-forward of tax losses poses significant risks to the Kenyan sugar industry, an essential sector that directly impacts national food security, rural livelihoods, and economic stability.

The Kenyan sugar industry has faced numerous challenges over the years, including high operational costs, adverse climate conditions, fluctuating global sugar prices, and competition from imports. Many sugar millers and processors accumulate losses due to these external factors and require extended recovery periods to regain profitability.

Under the current indefinite tax loss carry-forward policy, sugar companies can offset losses against future earnings, allowing reinvestment in modernization, expansion, and sustainability initiatives. However, imposing a five-year limit would force millers to absorb losses prematurely, making it difficult to maintain operations, hindering financial recovery and downsizing capital investments.

The sugar industry requires capital-intensive investments, including agricultural development, factory modernization, and infrastructure upgrades. Given the nature of the sector, most investors do not expect immediate returns, as it can take over a decade to achieve stable profitability.

Restricting tax loss carry-forward could deter investors from engaging in long-term projects, reducing expansion efforts and technological advancements within the industry. Comparisons with Tanzania, which continues to allow indefinite tax loss utilization, highlight the importance of maintaining a favourable tax regime to attract agricultural and manufacturing investments.

Some of the economic data supporting the need for indefinite tax loss carry-forward includes;

- Kenya's sugar production has declined from 600,000 metric tons in 2018 to less than 450,000 metric tons in 2023, largely due to operational inefficiencies and financial distress.
- Sugar millers often operate at losses due to high input costs, regulatory constraints, and competition from subsidized imports.
- Job security for over 600,000 farmers and thousands of factory workers depends on sustained financial stability in the sector.
- FDI inflows into agribusiness have fluctuated, with investment uncertainty slowing industry growth.
- Over the last 3 years, the sugar sector in the country has become a seasonal business running, 6 to 8 months in a year instead of a full year.

The proposed limitation on tax loss carry-forward would have adverse effects on the Kenyan sugar industry, exacerbating financial strain and hindering future investments. We urge the Kenya Revenue Authority to reconsider this measure and engage industry stakeholders in constructive dialogue to explore policies that balance revenue collection and economic sustainability.



KENYA SUGAR MANUFACTURERS ASSOCIATION

REINSURANCE PLAZA | OGINGA ODINGA STREET | P. O. BOX 7661 - 40100 KISUMU

| kesmakenya@gmail.com | Tel: 0792 024 890 | 0738 686 291

26TH May 2025

The National Treasury and Economic Planning
P.O BOX 30007-00100
NAIROBI

Email: submissions@treasury.go.ke

"Advance copy by email"

Dear Sir,

RE: FINANCE BILL 2025 SUBMISSIONS

Kenya Sugar Manufacturers Association (KESMA), the apex body sugar manufacturers in Kenya, is a critical stakeholder in the sugar sub-sector in Kenya. We represent the majority of sugar manufacturers in Kenya with the mandate to enhance the sector, and advocate for the issues affecting the sugar sub-sector. The sugar-subsector is blazing the trail in the circular economy and we are currently, adding value to sugar by-products, producing high value products into the local and international market using wastes from production of sugar.

Mombasa Sugar Refinery Limited was set up because there was too much refined sugar coming into the country duty free and being diverted into the local market; the result of which was to destabilize the local sugar industry.

For Mombasa Sugar Refinery Limited to be viable, it is expedient to import raw sugar from the world market and refine it for the local market.

We therefore make the following proposals to facilitate the refinery of sugar in the country.

ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Reduce the threshold for 150% Investment allowance deduction	Paragraph 1A of the second schedule to the Income tax act provide for an investment deduction of 150% where cumulative investment value in the preceding three years outside Nairobi County and Mombasa County is at least KES 2 billion	The Kshs. 2 B is a high threshold and excludes many indigenous small and medium sized enterprises. We propose that this be reduced to KES 500M	Kenya is a developing country, with opportunities to grow the GDP by encouraging investments. The investment deduction at 150% will attract foreign direct investment	The companies will have better access to debt financing, hence more investments on machineries, and attracting foreign direct investments. This will in turn lead to more industrial sugar refineries, an increase in the domestic tax revenue, job creation in line with the Bottom-Up Economic Transformation

				Agenda, urban-rural migration, strengthening the foreign exchange rate and increased foreign direct investments.
ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Import Declaration Fee (IDF) and the Railway Development Levy (RDL) on raw and industrial sugar	Currently the IDF is charged at 2.5% and RDL at 1.5% of the custom value.	We propose this to be exempted for raw sugar imports.	The current IDF and RDL discourages for new entrants in industrial sugar refinery.	This will in turn lead to more industrial sugar refineries, an increase in the domestic tax revenue, job creation in line with the Bottom-Up Economic Transformation Agenda, urban-rural migration, strengthening the foreign exchange rate and increased foreign direct investments.
Excise duty on imported sugar (HS Code 1701.11)	Currently the excise duty levied on sugar is Kshs 7.50 per kg. excluding sugar imported by a registered pharmaceutical manufacturer and raw sugar imported for processing by a licensed sugar Refinery but excluding those originating from East African Community partners states that meet the East African Community Rules of origin.	We propose that the excise duty of Ksh.9.00 per kg be levied on imported sugar excluding sugar imported by a registered pharmaceutical manufacturer and raw sugar imported for processing by a licensed sugar refinery	There is a high demand for industrial sugar hence the high importation of industrial sugar. An excise duty exemption on sugar for licensed sugar refinery manufacturers will lead to more domestic production of industrial sugar.	An increase in the local production of industrial refined sugar will result to an import substitution on the product., This will in turn lead to more industrial sugar refineries, an increase in the domestic tax revenue, job creation in line with the Bottom-Up Economic Transformation Agenda, urban-rural migration, strengthening the foreign exchange rate and increased foreign direct investments.

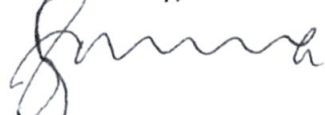


ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Excise Duty on Imported Sugar Confectionary	Currently the excise duty on imported sugar confectionary is KSH 85.82 per Kg but excluding those originating from East African Community partners states that meet the East African Community Rules of origin.	We propose that the excise duty be increased to KSH 100 per Kg	This will discourage the importation of the confectionary hence creating the demand for the local manufacturers.	An increase in the local production of industrial refined sugar will result to an import substitution on the product., This will in turn lead to more industrial sugar refineries, an increase in the domestic tax revenue, job creation in line with the Bottom-Up Economic Transformation Agenda, urban-rural migration, strengthening the foreign exchange rate and increased foreign direct investments.
Excise duty on imported industrial sugar (HS Code 1701.14.90) used for the manufacture of soft drinks, beverages, and luxury consumables	Currently the Ad valorem Duty Rate @ 100% & Specific Duty Rate @ USD 460 Per Ton Whichever is higher) specific excise duty levied on Industrial refined sugar is Kshs 7.50 per kg excluding sugar imported by a registered pharmaceutical manufacturer and raw sugar imported for processing by a licensed sugar	We propose an increase of the excise duty on imported industrial refined sugar used for the manufacture of soft drinks, beverages, and luxury consumables to Kshs. 20 per kg. excluding sugar imported by a registered pharmaceutical manufacturer and raw sugar imported for processing	There is a high demand for industrial sugar hence the high importation of industrial sugar. An increase in the excise duty on imported industrial sugar used for the manufacturer of luxury consumables will make the domestically produced industrial sugar more competitive, facilitating the increase in the local production.	An increase in the local production of industrial refined sugar will result to an import substitution on the product., This will in turn lead to more industrial sugar refineries, an increase in the domestic tax revenue, job creation in line with the Bottom-Up Economic Transformation Agenda, urban-rural migration, strengthening the foreign exchange rate and increased foreign direct investments.

	Refinery but excluding those originating from East African Community partners states that meet the East African Community Rules of origin.	by a licensed sugar refinery		
ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Work permit	Currently the work permit fee for prospective employees is Kshs. 500,000 per year.	We propose the work permit for prospective employees in the agro-based industries and agro-processing to be charged at Kshs. 100K per Year	The introduction of modernized agro-based plants requires specialized skills, that are currently limited in the country.	Issuance of work permits at an annual fee of Kshs. 100,000 will facilitate the importation of skilled labour in the areas that require special skills to operate the modern machineries in industrial sugar production that are limited in the country. These personnel will in turn transfer their skills to local professionals resulting in more local jobs created in line with the Bottoms-Up Economic Transformation Agenda.

Your cooperation in considering our above proposals which have immense merit will be very highly appreciated.

Yours faithfully,



Stephen Ligawa
CHIEF EXECUTIVE OFFICER





KENYA SUGAR MANUFACTURERS ASSOCIATION

REINSURANCE PLAZA | OGINGA ODINGA STREET | P. O. BOX 7661 - 40100 KISUMU

| kesmakenya@gmail.com | Tel: 0792 024 890 | 0738 686 291

Monday, 26th May 2025,

The National Treasury and Economic Planning
P.O BOX 30007-00100

NAIROBI

Email: submissions@treasury.go.ke

"Advance copy by email"

Dear Sir,

RE: FINANCE BILL 2025 SUBMISSIONS

Kenya Sugar Manufacturers Association (KESMA), the apex body sugar manufacturers in Kenya, is a critical stakeholder in the sugar sub-sector in Kenya. We represent the majority of sugar manufacturers in Kenya with the mandate to enhance the sector, and advocate for the issues affecting the sugar sub-sector. The sugar-subsector is blazing the trail in the circular economy and we are currently, adding value to sugar by-products, producing high value products into the local and international market using wastes from production of sugar.

Kibos Paper and Packaging Ltd are manufacturers of paper and packaging materials who began operations in the year 2017. They produce paper from both wastepaper biomass and sugarcane bagasse which is a waste product from milling of sugarcane. 100% of KPPL's products are environmentally friendly with a green footprint. These operations improve Kenya's carbon position and contribute to reducing the country's carbon footprint aiding in the country's efforts against climate change.

ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Reduce the threshold for 150% Investment allowance deduction	Paragraph 1A of the second schedule to the Income tax act provide for an investment deduction of 150% where cumulative investment value in the preceding three years outside Nairobi County and Mombasa County is at least KES 2 billion	The Kshs. 2 B is a high threshold and excludes many indigenous small and medium sized enterprises. We propose that this be reduced to KES 500M	Kenya is a developing country, with opportunities to grow the GDP by encouraging investments. The investment deduction at 150% will attract foreign direct investment	This will encourage capital investment, promote local manufacturing, attract foreign direct investment, boost economic growth, encourage regional competitiveness, reduce start-up costs, as well as create jobs in line with the Bottom-Up Economic Transformation Agenda. As a result, there will be higher tax revenue collection by the government, and industrial growth.



ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Excise duty on imported carton, boxes and cases of corrugated paper or paper board (HS Code 4819.10.00)	Currently the excise duty levied is 25% of the customs value or Ksh.150 per Kg , whichever is higher, excluding those originating from the EAC partner States in which the products are duty free.	We propose that the excise duty on the products under the (HS Code 4819.10.00) be maintained as it is currently.	To encourage local production of the items covered under the (HS Code 4819.10.00)	The government will maximize revenue collection from the excise duty, increased local production, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development.
Excise on imports under the following HS Codes 4804.11 4805.24 4805.25	Currently the excise duty levied is 25% of the customs value excluding those originating from the EAC partner States.	We propose that the excise duty be maintained as it is currently.	To encourage local production of the items covered under the HS Code 4804.11.00)	The government will maximize revenue collection from the excise duty, there will be an increased local production, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development



ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Excise on imports under the following HS Codes 4802.57 4802.58 4802.61 4804.11 4804.21 4804.29 4804.31 4804.41 4804.49 4805.11	Currently the excise levied is 25% of the custom value excluding those originating from EAC partner states	We propose that the excise be maintained as it is currently.	To encourage local production of the items covered under the HS Code 4804.42.00)	The government will maximize revenue collection from the excise, there will be an increased local production, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development
Duty on imported biodegradable table ware (HS Code 4823.70.00)	Currently the duty levied is 25% of the customs value excluding those originating from the EAC Partner States.	We propose that a duty on the products under the HS Code 4823.70.00 be increased from the current 25% to 35%	This increase in the duty on imported biodegradable table ware will encourage the local manufacture of biodegradable products as the country has the capacity to manufacture biodegradable tableware, which is environmentally friendly.	The government will maximize revenue collection from the importation, there will be an increased local production, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development.
Environmental levy on plastic packaging.	Currently there is no levy on the environmental tax	We propose an imposition of Eco-levy as was proposed in the finance bill 2024 at Kshs 200 per kg of plastic packaging	Imposing an eco-levy will create a circular economy, fund waste-management and environmental conservation as well as support Kenya's Green Economy Goals	The imposition of environmental tax will help address the issues of climate change, while enhancing growth of local biodegradable products' industry. This will also increase local production of biodegradable products, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration



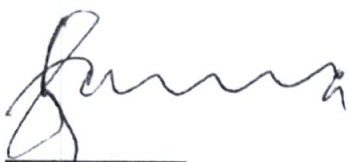
				facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development
ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Excise duty on imported plastic plates of (HS Code 3919.90)	Currently the excise duty levied on imported plastic plates is 25% of the customs value or Ksh.200 per Kg , whichever is higher, excluding those originating from the EAC partner States in which the products are duty free	We propose that the excise duty on imported plastic plates be increased to 35% or Ksh. 500 per KG, whichever is higher	An increase of the excise duty to 35% will enhance the competitiveness of locally produced biodegradable products in the region.	The government will maximize revenue collection from the excise duty, there will be an increased local production, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development.
Work permit	Currently the work permit fee for prospective employees is Kshs. 500,000/= per year.	We propose the work permit for prospective employees in the agro-based industries and agro-processing to be charged at Kshs. 100,000/= per Year	The introduction of modernized agro-based plants requires specialized skills, that are currently limited in the country.	Issuance of work permits at an annual fee of Kshs. 100,000 will facilitate the importation of skilled labour in the areas of demand that require special skills to operate the modern machineries used in biodegradable industries. These special skilled labourers will in turn transfer the skills to the local professionals leading to more job creations for the Kenyan nationals in line with the Bottoms-Up Economic Transformation Agenda



ISSUE	CURRENT SITUATION	PROPOSAL	JUSTIFICATION	EXPECTED OUTCOME
Environmental levy on paper packaging made from wood.	Currently there is no levy on the environmental tax	We propose an imposition of an Eco-levy of 5% as was proposed in the finance bill 2025 at Kshs 100 per kg of paper packaging made from wood	Imposing an eco-levy will create a circular economy, fund waste-management and environmental conservation as well as support Kenya's Green Economy Goals	The imposition of environmental tax will help address the issues of climate change, while enhancing growth of local biodegradable products' industry. This will also increase local production of biodegradable products, more industries, job creation in line with the Bottoms-Up Economic Transformation Agenda, Rural-Urban migration facilitated by the jobs created, stabilize the Real Effective Exchange Rate in Kenya and infrastructural development

Your cooperation in considering our above proposals which have immense merit will be very highly appreciated.

Yours faithfully,



Stephen Ligawa
Chief Executive Officer



7



May 26, 2025

The Chairperson
Departmental Committee on Finance and National Planning
Parliament Buildings
P.O. Box 41842 – 00100
Nairobi, Kenya

Dear Chairperson,

RE: SUBMISSION OF ASNET'S INPUTS ON THE FINANCE BILL 2025

The Agriculture Sector Network (ASNET) appreciates the opportunity to submit our inputs on the Finance Bill 2025. As the apex umbrella body bringing together stakeholders across Kenya's agricultural value chains, we remain committed to contributing constructively to national policy and legislative processes that impact the sector.

Our submission presents sector-specific concerns and recommendations, with a focus on promoting inclusive growth, enhancing competitiveness, and safeguarding the livelihoods of smallholder farmers and agribusinesses. We trust that the views and proposals shared herein will support the Committee in developing a Finance Act that balances revenue generation with the need to stimulate agricultural productivity and economic resilience.

We welcome any further engagement that may be required and remain available to provide additional insights or clarifications.

Thank you for your consideration.

Yours Sincerely,

For: Agriculture Sector Network (ASNET)

A handwritten signature in black ink, appearing to read "Agatha Thuo".

Agatha Thuo
Chief Executive Officer
0722422885



INPUT ON THE FINANCE BILL 2024

Clause Number	Current Clause	Proposed Change/Amendment	Justification/Rationale
Clause 50	Timeline for offset or refund of overpaid tax: a) Commissioner has 90 days to process claims b) If audit is involved, timeline is 120 days	Maintain or reduce current timelines	Increasing to 120 and 180 days respectively would delay resolution of refund claims, disrupt cash flow for taxpayers, and reduce efficiency in tax administration.
Clause 52	Restriction on sharing trade secrets and personal data (Section 59A (1B))	Maintain the current restriction	Deleting this clause violates the Data Protection Act and constitutional rights to privacy. It creates significant legal and reputational risks.
Clause 36(o)	Reclassification of VAT zero-rated items (e.g., fertilizers, seeds) to VAT exempt, subject to Cabinet Secretary's discretion	Maintain current classification (zero-rated)	Zero-rated items allow input VAT claims, reducing costs. Changing to exempt increases consumer prices and burdens farmers. There's no clarity on why the shift is necessary.
Clause 8©	Proposal to limit tax loss carry-forward to five years	Maintain current indefinite provision	Limits long-term recovery for capital-intensive agri-businesses and startups. Reduces investment incentives and penalizes businesses with longer ROI periods.
Part IV (Excise Duty Act)	Excise Duty on Fuel raised from KES 21.95 to 24.95 per liter	Reduce the exercise duty introduced/maintain it at the previous rate	Increased fuel costs raise transportation costs across agricultural value chains thus rendering these value chains uncompetitive, impacting farmer incomes and food prices.

Clause Number	Current Clause	Proposed Change/Amendment	Justification/Rationale
			Targeted relief would stabilize agri-logistics.
Part IV (Excise Duty Act Cap. 472)	Higher Excise Duty on packaging for processed products (e.g., tea, coffee)	Maintain lower excise duties for value-added agricultural products	Higher taxes will discourage local agri-processing, reduce exports, and harm rural employment. Incentives should promote domestic value addition.
Part III (Cap. 476)	Raw materials for animal feed production exempted from VAT	Change status to zero-rated instead of exempt	VAT exemptions prevent recovery of input VAT on utilities, machinery, etc., leading to higher final costs. Zero-rating ensures full cost savings are passed to livestock farmers.
Part III (Cap. 476)	Sugarcane transport exempt from VAT	Change to zero-rated instead of exempt	Exemption limits VAT recovery by transporters, inflates prices, and creates administrative complexity. Zero-rating would ensure farmers benefit from lower transport costs.
Part II (Income Tax Act Cap. 470)	Introduction of minimum top-up tax on multinationals	Negotiate investment-friendly tax terms for agribusinesses	May discourage FDI in the agriculture sector. Collaboration with KEPSA and Treasury can help mitigate adverse investor reactions.

CONTACTS:

Agatha Thuo

Chief Executive Officer

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Office Tel No: +254 112386224

Email: ceo@asnet.or.ke, info@asnet.or.ke

PROPOSED AMENDMENTS ON THE EXCISE DUTY ACT

No	Clause	Description of the clause	Implication/ Proposal	Justification/Position
1.	Excise Duty - First Schedule Amendment	Introduces a 25%-35% excise duty on imported materials like plastic films, float glass, and printed packaging not from EAC states.	Maintain the current 20% excise duty	The abrupt hike risks inflation, stifles manufacturing, and may lead to an increase in consumer goods prices; the final products will become more expensive.
2.	Clause 60 – Stamp Duty Act amendment	Exempts internal reorganizations from stamp duty.	In support; clarify transfer thresholds to avoid abuse.	Supports corporate restructuring and efficiency.

PROPOSED AMENDMENTS ON THE TAX PROCEDURES ACT

No	Clause	Description of the clause	Implication/Proposal	Justification/Position
1.	Clause 43–56 – Tax Procedures amendments	Enhances digital tax processes, limits relief claims, extends deadlines.	In support, with the condition that taxpayers be informed of delays and provided with prompt progress updates. Ensure system stability to avoid errors triggering penalties.	Emphasizes automation and accountability facilitating dispute resolution while protecting procedural fairness.
2.	Clause 52 - Amends section 51 of the Tax Procedures Act	Deletes subsection 1B of Section 59A of the Principal Act barring KRA from requiring people to integrate or share data on trade secrets and private or personal data on behalf of customers or collected in the course of business.	Retain subsection 1B of Section 59A of the Principal Act	There is a bigger risk when this clause is abused considering what happened during and post 2024 protests. This is an unconstitutional decision violating the Article 31 of the Constitution of Kenya, 2010 on the Right to Privacy and the Data Protection Act, 2019.

PROPOSED AMENDMENTS ON THE MISCELLANEOUS FEES				
No	Clause	Description of the clause	Implication/ Proposal	Justification/Position
1.	Clause 59 – Misc. Fees & Levies Act amendment	Reduces export levy from 17.5% to 10% on steel products and hot-rolled rods.	While the proposal to lower export levy rates appears positive, it is proper to question the position of local companies when the growth in the construction sector has slowed since the introduction of the levy.	Ideally, such a levy should be introduced on finished goods that are not inputs in different sectors unless they are locally available

Submitted by the undersigned members of the Okoa Uchumi Campaign;

1. The Institute for Social Accountability (TISA)
2. Inuka Kenya Ni Sisi! Ltd
3. Amnesty International Kenya
4. Twaweza East Africa
5. Youth Lead CBO
6. Jijenge Youth
7. County Governance Watch
8. Bunge Mashinani
9. Onagi Comrade Alliance (OCA)
10. Fight Inequality Alliance Kenya
11. Katiba Institute
12. Centre for Economic Governance
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14. PAWA 254
15. University Student Leadership Association
16. AFRICOG

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46. The Kenya Human Rights Commission (KHRC)
47. REMUSI HCSL
48. The National Council of Churches of Kenya (NCCCK)



Introduction

As Kenya moves closer to one year since the June 2024 protests against the Finance Bill 2024, a new fiscal proposal is here with us. The Finance Bill 2025 gazetted on May 6, 2025 details the proposed tax and revenue measures set to anchor the government's fiscal policy for FY 2025/26. Unlike its predecessor, the 2025 bill treats cautiously on matters of increasing burdensome taxes on the common '*mwamchi*' who are already weary. On the surface, the bill appears modest with the Government promising to focus on efficiency and simplification of tax laws, and the reduction of tax expenditure by cutting subsidies through reduced refund requests and the number of items covered as zero-rated and VAT exempt

The Finance Bill 2025 has focused on changes that widen the current tax base to meet the estimated ordinary revenue of KSh.2.76 trillion as well as to enhance revenue mobilization to support the country's fiscal consolidation efforts and economic growth under the Bottom-Up Economic Transformation Agenda (BETA). The Bill purports that its primary objective is to alleviate the cost of living and to restore public trust. Yet, a closer and in-depth analysis and scrutiny of the Bill suggests that it may fall short of these reforms, instead of improving and delivering any economic progress will deepen inequality.

New Taxation Measures and their Impacts

A. Value-Added Tax (VAT)

The government has proposed shifting various zero-rated inputs and goods to VAT-exempt. This includes raw materials for medicines, sugarcane transport, mobile phones assembled locally, solar panels, batteries, and animal feed inputs. The shift means that the firms cannot reclaim VAT on inputs. The following key sectors are bound to be affected by this shift

- i. Health – The health sector is paramount to the growth of an economy. The shift of raw materials for medicine from zero-rated to tax-exempt will increase the production cost for drugs, consequently, the distribution prices. This affects raw materials that are by themselves intermediate goods, a good example being packaging materials for medicine. By having these items as VAT exempt this means that the input VAT on these intermediate goods will not be recovered. The net effect therefore will be patients will be required to pay more for their health which might affect those with chronic conditions that require lifetime medication.
- ii. Agriculture – The backbone of the Kenyan Economy might be hit negatively if the VAT exemptions target intermediate goods that are inputs in animal feed production. The same effect replicates when exemptions are on spare parts and fuel. When the precedence holds, the impacts shall spread to livestock and sugarcane farmers who might pay more for feeds and cane transportation to mills.

Such changes would affect rural income and prices for agricultural inputs because suppliers and manufacturers would likely shift the burden to the final consumer.

- iii. The bill has proposed to apply 16 percent VAT on construction materials for affordable housing projects. The bill has also set its sights on the expansive digital lending space when provided by foreigners, with the Bill proposing to expand the scope of excise duty charged on digital platforms to include services offered by non-resident persons over the internet, an electronic network, or through a digital marketplace. Additionally, the Bill introduces the definition of non-resident person to mean a person who is outside Kenya. This will increase the cost of access to short-term credit for those who rely on digital loans for business capital, school fees, rent payments, and emergency expenses.

B. Personal Income Tax (PAYE)

The Finance Bill 2025 requires that employers automatically apply for eligible tax reliefs and exemptions in the computation of PAYE. This change ends the need for employees to file refund claims for omitted claims. This change aims to ensure that employees receive their entitled tax benefits directly through their monthly payroll, eliminating the need for them to file for refunds with the Kenya Revenue Authority. Under the current system, many employers do not factor in available tax relief such as personal relief, insurance relief, mortgage interest relief, and disability relief—when computing PAYE. As a result, employees often have to individually claim these reliefs from the KRA, leading to administrative burdens and delays. With the proposed change, employers will be legally obligated to incorporate all applicable deductions, reliefs, and exemptions into the PAYE calculations before deducting taxes from employees' salaries. This ensures that employees benefit from reduced tax liabilities upfront, improving their take-home pay.

Eligible businesses can deduct the full cost of qualifying tools and utensils from their taxable income in the same year they are acquired, rather than spreading the deduction over several years through depreciation. The 100% deduction applies to implements, utensils, and similar articles used in business operations, excluding plant and machinery. This includes items like hand tools, kitchenware for food businesses, and other small equipment essential for daily operations. The amendment aims to reduce administrative tasks for the Commissioner and to improve compliance by taxpayers, as well as to promote certainty.

C. Corporate Tax

There is no increase in the headline corporate rate proposed. The bill introduces incentives and base-broadening: 100% expensing for small business tools and equipment at the year of purchase. The move lowers the tax burden for small firms purchasing work-related gear.

The Export and Investment Promotion Levy (EIPL) on certain construction materials, such as iron and steel inputs, has been proposed to be cut significantly from 17.5% to 10%. The cut is set to encourage manufacturing. This policy shift aims to alleviate the high costs associated with importing essential construction inputs, thereby stimulating the manufacturing sector and revitalizing the construction industry. The EIPL, introduced in the Finance Act of 2023, was initially designed to support local manufacturing, boost exports, create jobs, and promote investment. However, it inadvertently led to increased input costs, particularly in sectors reliant on imported materials. The proposed reduction specifically targets: Semi-finished products of iron or non-alloy steel and Bars and rods of iron or non-alloy steel. This, however, should not be lost on the political interests in the steel industry. Nevertheless, by lowering the levy on these materials, there will be reduced construction costs, encouraging investment in infrastructure projects, and enhancing the competitiveness of local manufacturers who depend on these imports.

The surrogate parent test for related-party loans has been replaced by country-by-country reporting. The Kenya Finance Bill 2025 introduces a significant change in the taxation framework for multinational enterprises (MNEs) operating within the country. Specifically, it replaces the "surrogate parent test" with a requirement for Country-by-Country (CBC) reporting concerning related-party loans. Previously, Kenya relied on the surrogate parent test to determine the reporting obligations of MNEs. Under this approach, if the ultimate parent entity of a multinational group was not obligated to file a CBC report in its jurisdiction, a surrogate parent entity within the group could be designated to fulfill this requirement on behalf of the entire group. Country-by-Country Reporting in the new provision mandates that MNEs provide detailed CBC reports directly to the Kenya Revenue Authority (KRA). These reports should include comprehensive information on the global allocation of income, taxes paid, and other economic indicators for each jurisdiction in which the MNE operates. Implications for this test is that MNEs are now required to disclose detailed financial and operational data for each country of operation, increasing transparency in their global activities, the shift eliminates reliance on surrogate parent entities, ensuring that the KRA receives information directly, which may improve the accuracy and timeliness of data and that MNEs must adapt their internal reporting systems to comply with the new CBC reporting standards, which may involve additional administrative efforts.

D. Tax Procedure and Administration

The prohibition on requiring businesses to integrate their IT system with the Kenya Revenue Authority (KRA) under the Tax Procedure Act has been proposed to be deleted. In effect, KRA will be empowered to access real-time customer data, including bank and mobile money records, from firms without prior warrant. This move to expand the audit powers of KRA is unconstitutional and contravenes the Data

Protection Act. It proposes to amend the Tax Procedures Act, 2024, by deleting the provision that prohibits the KRA from accessing sensitive information when integrating with businesses to give it real-time transactional data. With this amendment, KRA is to circumvent the constitutional requirement for the government to seek court orders before accessing sensitive information from taxpayers.

The bill extends the VAT refund timeline from 90 to 120 days for the verification and audit period from 4 to 6 months. This will compound an already existing challenge that businesses are already grappling with.

The Treasury CS authority waive penalties or interest tax liabilities emanating from system errors have been reinstated. These powers have previously been exercised with prejudice for personal and political interests. The system should be enhanced to be accurate with minimal human intervention. Whereas the moves aim to seal revenue leaks and speed enforcement, they raise cash-flow and fairness concerns among taxpayers.

PROPOSED AMENDMENTS ON THE INCOME TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
1.	Clause 3 amends Section (5) (2)(a) (iii)	The proposed amendment affects income from employment: The amendment proposes the minimum taxable allowance to employees at ten thousand (10,000), up from two thousand (2,000)	Though it reduces tax burden on low income earners with a per-diem of up to 10,000; its implication negates the principles of equity, inclusivity, pro-poor taxation, and the progressivity of the tax regime.	Section 5 (2)(a) (iii) should be expanded by further amending the Income Tax to also expose Public servants earning more than KShs. 10,000 to taxation. While the current approach could widen the already existing disparity between Public and Private sector employees with regards to DSA compensation, reviewing the PAYE tax band as proposed in the MTRS is the most ideal approach for increasing the disposable income.
2.	Section 12 G	The proposed new subsection provides that a minimum top-up tax shall be	Adopt the proposed amendment; it enhances compliance, however,	The proposal aligns with the current CIT timelines therefore should be adopted

PROPOSED AMENDMENTS ON THE INCOME TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
		payable by the end of the fourth month after the end of the year of income.	precaution during implementation is vital to curb potential cash flow challenges for SMEs..	

PROPOSED AMENDMENTS ON THE VALUE ADDED TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
1.	Section 17 (5) (c)	The Bill proposes the deletion of paragraph (c) in subsection (5)	The deletion of this paragraph implies that the refunds on excess input tax refunds on the tax withheld cannot be applied to offset other payable VAT obligations.	Section 17 (5) (c) should not be deleted
2.	Clause 12 – Advance Pricing Agreements (APA)	Introduces APA regime.	Develop regulations early and train KRA officers. The regulations should also take into account the time taken to negotiate these APAs which can stretch up to 18 months which may make the 5 years period insignificant unless rolled back to recover the negotiation period.	APA helps resolve transfer pricing disputes proactively. For transparency accountability, APAs should be published.
3.	Clause 27 & 28 – Special economic zones and Nairobi Financial Centre tax rates	Introduces reduced tax rates for qualifying investments.	This sets a dangerous precedence that does not reveal the beneficiaries and company owners. It could concentrate economic power to only few thus increasing the widening gap between the poor and rich.	The tax rates should be the same to all players. This proposal could result in tax evasion and unnecessary revenue loss.

PROPOSED AMENDMENTS ON THE VALUE ADDED TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
4.	Clause 30-35 – VAT amendments	Introduces anti-abuse measures and expands supply taxability. Removes some exemptions and increases timelines for refund claim	Monitor inflation impact and ensure compliance readiness.	Aims at improving VAT efficiency and reducing refund abuse.
5.	Clause 36 - VAT First Schedule Changes	The Bill proposes the deletion of paragraphs: 63, 109, 113, 129, 155, 156, 160, 161, 162, and 163	Object the saving clause that proposes mega government construction projects of fifty acres or more. The proposed amendment implies that these categories of goods are classified as exempt. These goods will now be subjected to 16%VAT, thus potentially resulting in cumulative increased tax burden.	The saving proposal is inconsistent with the government policy on reducing the tax expenditure thus risks depleting resources for providing services to citizens. In solving the unpredictability and annual amendments, OUC recommends the need for a clear policy framework determining the threshold for introducing and removing incentives with a clear background on the revenue impacts.

PROPOSED AMENDMENTS ON THE VALUE ADDED TAX ACT				
No:	Clause	Description of the Section	Implication/ Proposal	Justification/Position
6.	Clauses 37 – amends VAT Second Schedule in part A	The Bill proposes to move a number of products from Zero-rating to VAT Exempt. The Bill proposes the deletion of some paragraphs from Part A in the Second Schedule: 11, 21, 29, 30, 31, 32, 33, 34, and 35. • Raw materials for pharmaceutical manufacturing • Raw materials for animal feed production • Transportation of sugarcane from farms to milling factories • Locally assembled or manufactured mobile phones • Motorcycles under tariff heading 8711.60.00 • Electric bicycles • Solar and lithium-ion batteries • Electric buses under tariff heading 87.02 • Bioethanol vapour (BEV) stoves (HS Code 7321.12.00) • Packaging materials for tea and coffee	The proposed amendment implies that the goods classified as zero-rated will move to VAT exempt. These goods will no longer allow suppliers to reclaim input VAT, potentially increasing production costs where intermediate goods and inputs are involved.	The deletions may raise costs where intermediate goods or inputs are targeted, by passing the burden to consumers. Therefore, these will have negative impacts on consumers. With Solar being under the category of VAT exempt will further hinder the promotion of green energy solutions due to increased costs.

PROPOSED AMENDMENTS ON THE EXCISE DUTY ACT				
No	Clause	Description of the clause	Implication/ Proposal	Justification/Position
1.	Excise Duty - First Schedule Amendment	Introduces a 25%–35% excise duty on imported materials like plastic films, float glass, and printed packaging not from EAC states.	Maintain the current 20% excise duty	The abrupt hike risks inflation, stifles manufacturing, and may lead to an increase in consumer goods prices; the final products will become more expensive.
2.	Clause 60 – Stamp Duty Act amendment	Exempts internal reorganizations from stamp duty.	In support; clarify transfer thresholds to avoid abuse.	Supports corporate restructuring and efficiency.

PROPOSED AMENDMENTS ON THE TAX PROCEDURES ACT				
No	Clause	Description of the clause	Implication/Proposal	Justification/Position
1.	Clause 43–56 – Tax Procedures amendments	Enhances digital tax processes, limits relief claims, extends deadlines.	In support, with the condition that taxpayers be informed of delays and provided with prompt progress updates. Ensure system stability to avoid errors triggering penalties.	Emphasizes automation and accountability facilitating dispute resolution while protecting procedural fairness.
2.	Clause 52 - Amends section 51 of the Tax Procedures Act	Deletes subsection 1B of Section 59A of the Principal Act barring KRA from requiring people to integrate or share data on trade secrets and private or personal data on behalf of customers or collected in the course of business.	Retain subsection 1B of Section 59A of the Principal Act	There is a bigger risk when this clause is abused considering what happened during and post 2024 protests. This is an unconstitutional decision violating the Article 31 of the Constitution of Kenya, 2010 on the Right to Privacy and the Data Protection Act, 2019.

PROPOSED AMENDMENTS ON THE MISCELLANEOUS FEES				
No	Clause	Description of the clause	Implication/ Proposal	Justification/Position
1.	Clause 59 – Misc. Fees & Levies Act amendment	Reduces export levy from 17.5% to 10% on steel products and hot-rolled rods.	While the proposal to lower export levy rates appears positive, it is proper to question the position of local companies when the growth in the construction sector has slowed since the introduction of the levy.	Ideally, such a levy should be introduced on finished goods that are not inputs in different sectors unless they are locally available

Submitted by the undersigned members of the Okoa Uchumi Campaign;

1. The Institute for Social Accountability (TISA)
2. Inuka Kenya Ni Sisi! Ltd
3. Amnesty International Kenya
4. Twaweza East Africa
5. Youth Lead CBO
6. Jijenge Youth
7. County Governance Watch
8. Bunge Mashinani
9. Onagi Comrade Alliance (OCA)
10. Fight Inequality Alliance Kenya
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45. The Kenyan Section of the International Commission of Jurists (ICJ Kenya)
46. The Kenya Human Rights Commission (KHRC)
47. REMUSI HCSL
48. The National Council of Churches of Kenya (NCCCK)



ASSOCIATION OF GAMING OPERATORS - KENYA

(10th Floor Utalii House, Suite 1020, Utalii Street, Nairobi)

29 May 2025

Departmental Committee on Finance and National Planning,
1st Floor, Main Parliament Buildings,
P. O. Box 41842-00200
Nairobi, Kenya

Attn: Hon. Kuria Kimani, CBS, MP

Dear Sirs,

PROPOSALS TO THE FINANCE BILL 2025

We refer to the above subject.

We are pleased to submit our Memorandum highlighting our various proposals to the Finance Bill, 2025 (the Bill).

We make these submissions to propose measures which in our view will result in a more sustainable tax regime for the sector in Kenya.

Our proposals entail the following:

- a) Replacing the Income Tax Act provision on the 20% WHT on winnings with a 5% WHT on withdrawals (i.e., the gross payout made which is the stake plus the winnings) remitted to punters / players on a daily basis; and
- b) Replacing the Excise Duty Act provision on the 15% Excise Duty on stakes with 5% Excise Duty on deposits (all sums deposited by a customer in their online wallet inclusive of the stake) made by punters / players on a daily basis.

Our proposal will lead to a predictable and sustainable tax regime which will create certainty for investors to plan accordingly in investing in the sector leading to increased revenue collection in the long run. It is a fact that investors have held back from making significant capital investment as a result of the constantly changing tax regime.

Further, not only does the betting and gaming sector experience the most dynamic tax environment, but it also is the most taxed sector in Kenya. Currently, the taxes applicable in the sector include:

- a) Betting / gaming tax which is applicable at 15% on the Gross Gaming Revenue (GGR) pursuant to the Betting, Lotteries and Gaming Act, Chapter 131, Laws of Kenya (the BLGA).
- b) Corporation income tax which is applicable at 30% on the business income of the betting and gaming operators.
- c) Withholding Tax (WHT) which is applicable at 20% on the winnings which is withheld



ASSOCIATION OF GAMING OPERATORS - KENYA

(10th Floor Utalii House, Suite 1020, Utalii Street, Nairobi)

from customers and remitted to the KRA.

- d) Excise Duty which is applicable at 15% on the stakes placed by customers (therefore reducing the value of the stake in a betting and gaming transaction).
- e) Excise Duty which is applicable at 15% on the fees charged on advertisement of betting and gaming services.

In the region, Kenya is the only country that charges multiple taxes in the sector. Uganda, Tanzania and Rwanda only impose tax on the GGR and therefore operators in Kenya carry a heavy tax burden.

In view of the foregoing, we have set out our legislative proposals below and should be grateful for the Committee to consider them for inclusion in the resulting Act.

Yours sincerely,

Sasa Krneta
Chairman - AGOK

FINANCE BILL, 2025 – PROPOSALS RELATED TO THE BETTING AND GAMING SECTOR

Clause of the Bill	Issue	Recommendations	Justification
2. Section 2 of the Income Tax Act is amended – a) In subsection (1) 5. Section 10 of the Income Tax Act is amended in subsection (1) (g), 16. By inserting Section 34 (1) (m) and 34 (2) (i) before Section 35. 17. Section 35 of the Income Tax Act is amended in sub section (1) (i) , (3) (h) and 5A 28. The Third Schedule to the Income Tax Act is amended in Head B by inserting – Paragraph 3(i) under (c) by inserting – Paragraph 5(i) under (c)	Applicability of WHT on Winnings Currently, WHT in the sector applies at the rate of 20% on winnings which has been defined and interpreted by the courts as the difference between the amount staked or waged by a customer, and the gross payout made by a betting or gaming operator.	We propose to replace the 20% WHT on winnings with a 5% WHT on withdrawals (i.e., the gross payout made which is the stake plus the winnings) remitted to punters / players on a daily basis. In our view, this will allow a transparent and fair compliance mechanism for the industry. Transparency means that the tax revenues are easy to verify and audit. In this regard, we propose that the Income Tax Act, Chapter 470, Laws of Kenya is amended – In Part I – PRELIMINARY I. At Section 2 (1) by deleting the definition of “winnings” and substituting therefor – <i>“withdrawals” means the amount of money withdrawn by a customer from their betting or gaming wallet maintained by a person licensed under the Betting, Lotteries and Gaming Act”.</i> In Part II – IMPOSITION OF INCOME TAX At Section 10 (1) (g) by deleting the word “winnings” and substituting therefor – “<i>withdrawals</i>”. In Part VI – RATES, DEDUCTIONS AND SET- OFF OF TAX AND DOUBLE TAXATION RELIEF	Most withdrawals by customers are made through mobile money, which data is easily verifiable. Withdrawals through Mobile Network Operators (MNOs) is therefore an assured method of tax collection and provides much-needed visibility on the transactions. Similar to the proposal to apply excise duty on deposits, the recommendation to apply WHT on withdrawals will streamline the taxation of the sector and result in the following: Growth in Tax Collections: The focus on taxation on withdrawals as opposed to winnings will lead to a 50% growth in revenue collections, translating to KES 6.5 billion in additional revenue annually. Guaranteed Tax Collections: The collection of tax revenue where the WHT is collected at source when the betting / gaming customer withdraws from their betting / gaming wallet to their MNO wallet is guaranteed as opposed to the current scenario where a tax event arises only upon the chance if they win. Tax Base Expansion: will remove the porous need for self-reporting and assessment and broaden the tax base by bringing more operators into the tax net. This tax regime makes sure that there is no manipulation of the reported numbers.

Clause of the Bill	Issue	Recommendations	Justification
		A - Rates of Tax I. At Section 34 (1) (m) by deleting the word "winnings" and substituting therefor – "withdrawals". II. At Section 34 (2) (i) by deleting the word "winnings" and substituting therefor – "withdrawals". B – Deduction of Tax I. At Section 35 (1) (i) by deleting the word "winnings" and substituting therefor – "withdrawals". II. At Section 35 (3) (h) by deleting the word "winnings" and substituting therefor – "withdrawals". III. At Section 5A by deleting the word "winnings" and substituting therefor – "withdrawals". In the Third Schedule – RATES OF PERSONAL RELIEF AND TAX Head B – Rates of Tax I. At paragraph 3 (i), by deleting the words "in respect of winnings, twenty percent" and substituting therefor the words "in respect of withdrawals, five percent". At paragraph 5 (i), by deleting the words "in respect of winnings, twenty percent" and substituting therefor the words "in respect of withdrawals, five percent".	There will be no need for external integrations that are cumbersome and often not working properly including downtime. Daily collection of tax (that is easy): encourages legal domestic economic activity by ensuring no delays in revenue collection. Anti-Money Laundering and Terrorism Financing: Taxing betting and gaming transactions withdrawals guarantees transparency and allows for reporting of suspicious and unusual transactions that are the basis of illicit financial flows. This is particularly relevant for Kenya now that it has been grey listed by the FATF.

Clause of the Bill	Issue	Recommendations	Justification
42. By inserting Part II of the First Schedule to the Excise Duty Act	The rate of Excise Duty has consistently been on the increase since its introduction in the sector which is not sustainable. Consistent increase of excise duty, which is borne by the customers, is likely to dampen the demand for betting and gaming on eligible persons and deepen offshore and illegal gambling that will generate no revenue for the Government since customers will be drawn to "black market" companies that are unregulated by the Betting Control and Licensing Board.	We propose that the current 15% Excise Duty on stakes is replaced with 5% Excise Duty on deposits (i.e., all sums deposited by a customer in their online wallet inclusive of the stake) made by punters / players on a daily basis. In this regard, we recommend that the First Schedule to the Excise Duty Act, 2015 is amended – In Part II – EXCISABLE SERVICES I. At paragraph 4A, by deleting the words "fifteen percent" and substituting therefor the words "<i>five percent</i>" and by deleting the words "wagered or staked" and substituting therefor the words "<i>deposited into the customers betting wallet</i>"; II. At paragraph 4B, by deleting the words "fifteen percent" and substituting therefor the words "<i>five percent</i>" and by deleting the words "wagered or staked" and substituting therefor the words "<i>deposited into the customers gaming wallet</i>"; III. At paragraph 4C, by deleting the words "fifteen percent" and substituting therefor the words "<i>five percent</i>"; At paragraph 4D, by deleting the words "fifteen percent" and substituting therefor words "<i>five percent</i>".	In the last four (4) years, the excise duty regime in the betting and gaming sector has consistently been amended. From no excise duty to introduction of excise duty at 7.5% by the Finance Act, 2021, which was subsequently increased to 12.5% through the Finance Act, 2023 (against a proposal to increase the rate to 20%), and the Tax Laws Amendment Act, 2024, which increased the rate to 15%. The effect of sudden and frequent increases in taxes will create an incentive for unscrupulous operators to game the system in an effort to evade tax and illegal gambling which will result in unregulated activities where minors cannot be protected. A move to the "black market" also means that customers cannot be protected against gambling addiction and fraudulent schemes. For this reason, we propose a different application of excise duty on the deposits as opposed to the wagers or stakes which is guaranteed to result in the following: Growth in Tax Collections: The focus on taxation on withdrawals and deposits as opposed to winnings and stakes is likely to lead to a 50% growth in revenue collections, translating to KES 6.5 billion in additional revenue annually. Guaranteed Tax Collections: The collection of tax revenue where the excise duty is collected at source when the customer deposits their funds to their betting or gaming wallet is guaranteed as opposed to the current scenario where a tax event arises only upon action by a customer in placing a stake.

Clause of the Bill	Issue	Recommendations	Justification
42. By inserting Part III of the First Schedule to the Excise Duty Act		In Part III – INTERPRETATION OF SCHEDULE I. Deleting the definition “amount wagered or staked”. II. Inserting the following new definition in proper alphabetical sequence: <i>“amount deposited into the customers betting wallet” means the amount of money transferred by a customer into the customer wallet maintained by a licensed betting and gaming operator for betting and gaming purposes.</i>	Tax Base Expansion: Excise duty on deposits will remove the porous need for self-reporting and assessment and broaden the tax base by bringing more operators into the tax net. This tax regime makes sure that there is no manipulation of the reported numbers. There will be no need for external integrations that are cumbersome and often not working properly including downtime. Daily collection of tax (that is easy): This encourages legal domestic economic activity by ensuring no delays in revenue collection. Anti-Money Laundering and Terrorism Financing: Taxing betting and gaming transactions on deposits guarantees transparency and allows for reporting of suspicious and unusual transactions that are the basis of illicit financial flows. This is particularly relevant for Kenya now that it has been grey listed by the Financial Action Task Force (FATF).

OFFICE OF THE CHAMBER PRESIDENT

OUR REF: ADM/57

27th May 2025

To:

Mr. Samuel Njoroge
The Clerk of the National Assembly
Departmental Committee on Finance and National Planning
Parliament Buildings
P.O. Box 41842 – 00100
Nairobi, Kenya

Dear Mr Njoroge,

**RE: SUBMISSION OF MEMORANDUM BY THE KENYA NATIONAL CHAMBER OF COMMERCE AND
INDUSTRY (KNCCI) ON THE DRAFT FINANCE BILL, 2025 – PROPOSALS TO THE DEPARTMENTAL
COMMITTEE ON FINANCE AND NATIONAL PLANNING**

The Kenya National Chamber of Commerce and Industry (KNCCI) respectfully submits its proposals and comments on the Draft Finance Bill, 2025, in response to the public invitation for stakeholder input.

KNCCI is a non-profit, membership-based organization mandated to advocate for the interests of the business community across Kenya. Representing a wide spectrum of enterprises—from micro and small businesses to large corporates—KNCCI is committed to supporting the development of a competitive, inclusive, and resilient economy through policy advocacy, trade facilitation, and capacity building.

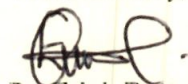
The Finance Bill, 2025, proposes significant amendments to various tax laws that will directly impact the cost of doing business, investment flows, and the general economic environment. After extensive consultation with our membership and policy experts, we have outlined specific clauses of concern, provided detailed recommendations, and analyzed the likely impact of each proposed amendment.

We urge the National Assembly to carefully consider our submissions with the view of ensuring that the Finance Bill supports economic recovery, business growth, and long-term fiscal sustainability.

Attached to this letter are the detailed proposals and a background brief. We are available to provide further clarification or participate in scheduled stakeholder hearings as required.

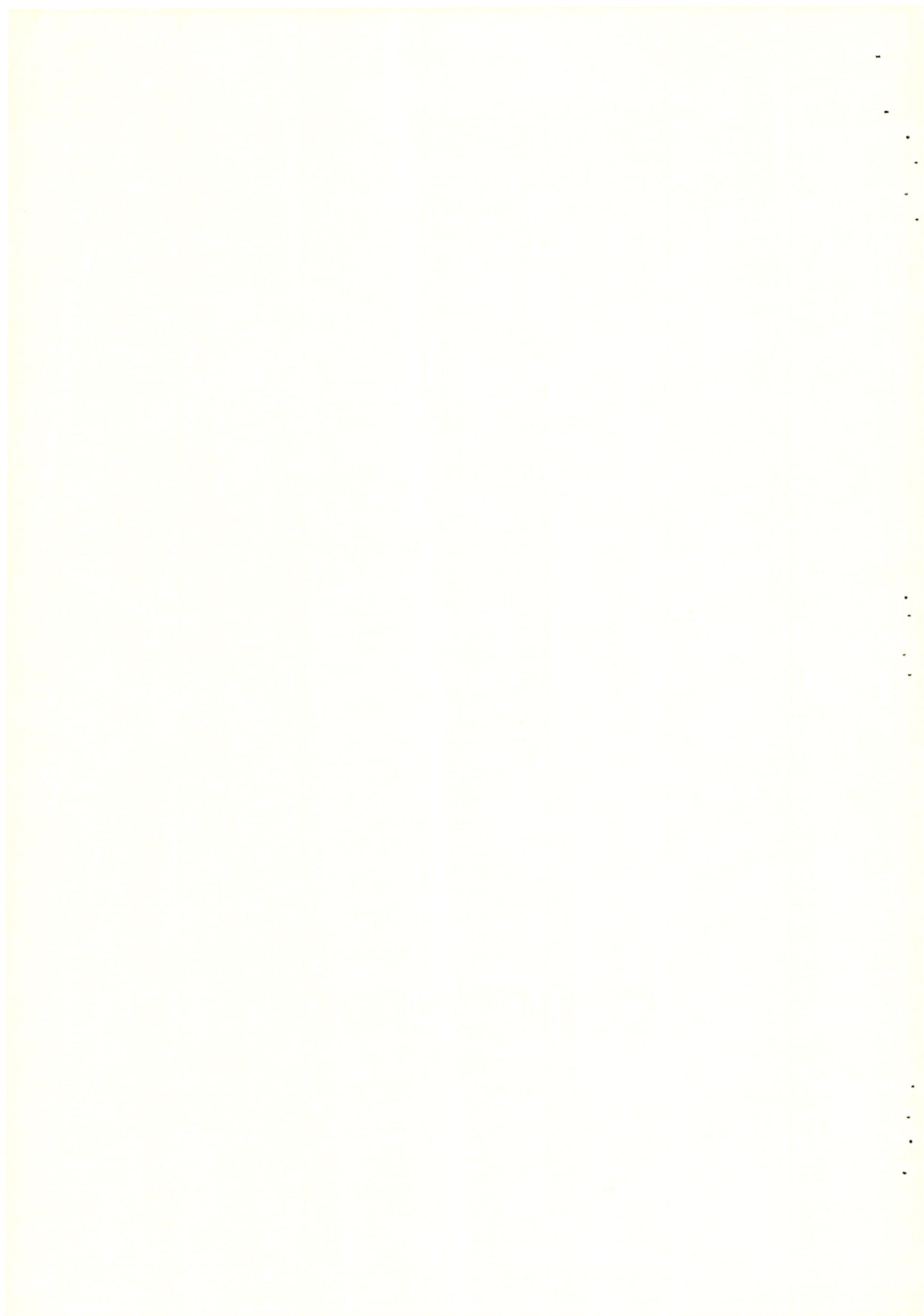
Thank you for the opportunity to contribute to this critical national process.

Yours faithfully,



Dr. Erick Rutto
Chamber President





THE KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI) SUBMISSION ON THE DRAFT FINANCE BILL, 2025

Background

The Kenya National Chamber of Commerce and Industry (KNCCI) represents the interests of businesses across the country, including Micro, Small, and Medium Enterprises (MSMEs), large corporates, and sectoral associations. With a mandate to promote, protect, and develop trade and investment, KNCCI works closely with both national and county governments to create a conducive business environment.

The Finance Bill, 2025, proposes a range of amendments to key tax laws, including the Income Tax Act, VAT Act, Excise Duty Act, Tax Procedures Act, and the Miscellaneous Fees and Levies Act. These proposed changes will have far-reaching implications on the cost of doing business, the competitiveness of Kenyan enterprises, and the overall economic landscape.

KNCCI has conducted a comprehensive review of the Bill, incorporating feedback from its membership, sectoral leaders, and policy experts. This submission presents our concerns, recommendations, and the anticipated impact of various clauses in the Bill. Our objective is to support sound fiscal policy while ensuring that tax measures do not unduly burden businesses or stifle economic growth.

The Missed Opportunity: Unleashing the Power of Kenya's MSMEs

Micro, Small, and Medium Enterprises (MSMEs) are the backbone of any economy—but in Kenya, they have been systematically weakened by punitive tax regimes, duplicated licensing, and uncontrolled levies from both national and county governments.

Current State:

- **GDP Contribution:** Kenya's MSMEs contribute approximately 33% of GDP and support an estimated 15 million jobs. This contribution is modest when compared to global peers—Uganda's MSMEs contribute 49% of GDP, while in China, MSMEs generate over 60% of GDP, employ 80% of the urban workforce, and contribute more than 70% of tax revenue.
- **Tax Compliance:** Fewer than 2 million MSMEs are registered with the Kenya Revenue Authority (KRA), and fewer than 200,000 are affiliated with KNCCI—out of an estimated 7.5 million businesses. Most enterprises deliberately avoid formal registration due to the cost of compliance.

Challenges:

- **Punitive Tax Structures:** MSMEs are subject to turnover taxes on gross receipts regardless of profit, which is particularly burdensome for businesses with low margins.
- **Licensing and Levies:** Multiple uncoordinated licenses across county and national agencies increase operating costs. Numerous unpredictable levies from regulatory and sectoral agencies stifle profitability and discourage formality.

Potential Impact of Reforms:

If Kenya's MSMEs were enabled through harmonized taxation, simplified compliance, and a predictable policy environment to match China's performance levels, the national economic impact would be transformative:

- **Additional GDP Boost:** Ksh 4.05 Trillion
- **Additional Jobs created:** 12 million
- **Tax Revenue Growth:** Ksh 600–800 Billion annually
- **Poverty Reduction:** Millions lifted into self-reliance
- **Registered MSMEs with KRA:** 6 million (up from <2M)

Key Concerns and Rationale from KNCCI Members

- **Liquidity Strain:** The proposed removal of VAT refunds places undue pressure on exporters and manufacturers, reducing working capital.
- **Compliance Burden:** High compliance burden on MSMEs due to digital and motor vehicle taxes.
- **Impact on Informal Sector:** Excise and circulation taxes negatively impact the informal sector and low-income groups.
- **Disincentives for CSR:** Restrictions on deductions for CSR and value chain growth discourage corporate social responsibility initiatives.
- **Regulatory Unpredictability:** Sudden introduction of levies creates regulatory unpredictability.

CLAUSE-BY-CLAUSE SUBMISSION TABLE

INCOME TAX

S/I	FINANCE BILL CLAUSE	CLAUSE/PROPOSAL	CURRENT LAW	KNCCI PROPOSED CHANGE	GDP IMPACT (KSH BN)	JOBS IMPACT (NUMBER)	TAX REVENUE IMPACT (KSH BN)	COMPARISON (CHINA & HK)	COMPARISON (EAC)	CATEGORY	CLAUSE S/NO.
2	Introduce	TOT and Housing Levy Reform + Start-Up Exemption	TOT at 1.5% + Housing Levy at 1.5%	Cap both at 0.5% for MSMEs with <1% margin; 3-year startup exemption.	+60 to +90 over 3 years	+500,000	+20 to +30 (long-term)	Startup tax holidays (3–5 yrs), preferential SME rates.	Presumptive tax reliefs and exemptions for start-ups.	INCOME TAX	Income Tax Act – Section 12C
3	Clause 6	New Section 12F: Significant Economic Presence Tax	Income Tax Act Sec. 12E – DST at 1.5%	Retain 1.5% to give competitive advantage to Kenyan businesses OECD	Neutral to positive in tech adoption	Supports digital jobs	+5–6	SEPT aligned with OECD norms; low rates to attract FDI	Limited implementation; Uganda at 5% for some digital platforms	INCOME TAX	Income Tax Act – Section 12F

				average is 3% SEPT aligned to OECD; avoid double taxation							
4	Clause 8 (b)(ii)	Section 15(3)(f): Capital Gains Loss Carryforward	Losses on asset transfers deductible against future gains (Income Tax Act)	Maintain deduction ; provide threshold exemption for informal traders	-10 to -20	-5,000 (scrap traders, public suppliers)	Neutral	Allowed with documentation; HK allows indefinitely	Rwanda/Uganda allow similar offsets	INCOME TAX	Income Tax Act – Section 15(3)(f)
5	Clause 8(c)	Loss Carryforward Limitation	10-year carryforward	Remove the Ceiling or on worse Maintain 10-year or allow indefinite for strategic sectors	-40 to -70	-10,000	+8 (short-term)	10 years or indefinite for key sectors.	Uganda: indefinite for some sectors. Rwanda: 10 years.	INCOME TAX	Income Tax Act – Section 15(7)

VALUE ADDED TAX

S/N O.	FINANCE BILL CLAUSE	CLAUSE/PR OPOSAL	CURRENT LAW	KNCCI PROPOSED CHANGE	GDP IMPACT (KSH BN)	JOBS IMPAC T (NUMB ER)	TAX REVENUE IMPACT (KSH BN)	COMPARI SON (CHINA & HK)	COMPARISON (EAC)
Clau se 50	VAT Refund overall Audit Period increased from 210 days to 300 days	VAT Refund overall Audit Period increased from 210 days to 300 days	Used to be 210 Days	Reduce the days to 90 Days on the worse Retain the current period	Will destabilize exporter/ma nufacturer liquidity	Negativ e	Negative	Negative	Uganda offers refund on rolling basis

Clause 32	1. Reduction of Waiting Period for VAT Refund on Bad Debts 2. Allowing taxpayers to utilize approved VAT refunds on bad debts to offset other VAT liabilities	Reduction of Waiting Period for VAT Refund on Bad Debts: The Bill proposes to reduce the waiting period for a taxpayer to apply for a VAT refund on bad debts to two (2) years from the date of supply.		Welcome move but we could make it even less than the 2 years	Protects working capital	Supports cash flow for SMEs	Big impact	More flexible relief frameworks	No major restriction in Uganda, Rwanda
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Clause 33	Value Added Tax Act, 2013 ■ Section Amended: Sec 31(a)	Limiting VAT pre-registration claim period from 36 to 24 months	Input VAT can be claimed within 36 months prior to registration, subject to conditions.	Retain 36-month window. 24 months is too short for most capital-intensive startups to claim input VAT especially in Hotels.	-12 to -20	-5,000 in investment-heavy sectors	Neutral		
Clause 32	Section 17(2B) (Addition)	Restricting input VAT claims to only directly used taxable supplies	Proportional input tax claims are allowed even where goods/services are used for both taxable and exempt supplies.	Reject strict restriction. Allow proportional deduction through apportionment, which is standard globally. This supports SMEs and reduces compliance complexity.	-8 to -14	-3,500	Minimal gain, offset by reduced voluntary compliance	Apportionment models widely used.	Rwanda and Uganda apply proportional allocation methods.

EXCISE DUTY

No.	S/NO.	FINANCE BILL CLAUSE	CLAUSE/PROPOSAL	CURRENT LAW	KNCCI PROPOSED CHANGE	GDP IMPACT (KSH BN)	JOBS IMPACT (NUMBER)	TAX REVENUE IMPACT (KSH BN)	COMPARISON (CHINA & HK)	COMPARISON (EAC)
11	Clause 38	amends the Excise Duty Act, 2015	Excise on Digital Services (20%)	No specific excise on non-resident digital services	Not a good proposal as we already have VAT and Digital Tax	-15 to -25 (tech growth)	-5,000 digital economy jobs	6–8 short term	Regulates but avoids heavy front-end levies	Not yet implemented at scale

MISCELLANEOUS / OTHER

No	S/NO.	FINANCE BILL CLAUSE	CLAUSE/PROPOSAL	CURRENT LAW	KNCCI PROPOSED CHANGE	GDP IMPACT (KSH BN)	JOBS IMPACT (NUMBER)	TAX REVENUE IMPACT (KSH BN)	COMPARISON (CHINA & HK)	COMPARISON (EAC)
12	Misc	Income Tax	Non-Deductibility of Club Subscriptions and CSR	Business-related CSR and sponsorships deductible	Retain deductibility for sponsorships promoting trade, sports, education	Positive for social capital	Supports thousands in sponsored events/programs	Minimal impact	CSR often deductible with conditions	Treated as allowable expense in Uganda/Rwanda if justified
13	Clause 50	Section 47(3)	Extension of Audit Period for Refunds 1. ascertain and determine a refund	Refund audits must be completed in 120 days and	Due to ETIMS and iTax, we expect the period to reduce to less	-2 to -4 from delayed liquidity	Delays cash for MSMEs, risks short and long-term layoffs. This is encouraging	More strain on MSMEs causing reduced in GDP, Employment	Tight refund audit windows with digital resolution	Uganda allows 120–150 days with checks

			application is extended from 90 days to 120 days. 2. T period to complete the audit is extended from 120 days to 180 days.	Determinati on 90 days	than 30 days in determination and Audit 30 Days Total 60 Days		inefficiency at the expense of economic growth. We should avoid normalizing inefficiency.	and overall Tax revenue		
14	Claus e 34	Section 42(1)	Mandatory Invoicing on Supplies whether Vatable or exempt	Invoicing is limited to taxable supplies	Limit new requirement to taxable goods only	Avoids administrati ve costs to MSMEs	Protects informal businesses from compliance burdens	Neutral	Invoice mandatory only for taxable services	Generally exempted from full VAT compliance
15	Misc	VAT Act 2013 66A	Penalties for Misuse of VAT Exemptions	Enforcemen t through VAT assessment s and audits	Tier penalties, include safeguard for good faith use	Avoids distortion in trade and services	Protects legal and service sector jobs	+1–2 with proper enforcement	Graduated penalties, strong appeal frameworks	Uganda: penalty bands based on severity
16	MISC	Tax Procedures Act (Cap. 469B)	Commissioner's Powers on Tax Disputes (Agency Notices)	KRA may not issue agency notice if matter is in court	Judicial oversight required before freezing accounts	Maintains investor and business confidence	Avoids SME collapse and job losses due to liquidity freeze	Neutral to negative if abuse unchecked	Court or tribunal approvals mandatory	EAC region cautious— Kenya unique in scope of proposed power

17	MISC	Section 59A(1B) he bill proposes to delete Section 59A(1B) of the Tax Procedures Act, which currently stipulates: "The Commission er shall not require a person to integrate or share data relating to— (a) trade secrets; and (b) private or personal data held on behalf of customers or collected in the	Access to Bank/M-Pesa Data Without Court Order	Requires court warrant	Maintain judicial oversight as per Constitution Article 31.	-30 to -45	-25,000	+2–3 (but offset by compliance loss)	Strict judicial safeguards.	Court or ministerial oversight required.
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		course of business								
18	MISC	Act Amended: Miscellaneous Fees and Levies Act	Eco Levy on all imported Electronic products-10%	Standard VAT/customs duties only.	Should be suspended to allow a well research on impact to MSMEs players	-20 to -25	-30,000	5	Device subsidies or e-waste regulations; no consumer eco levy.	Uganda exempts educational tech; Rwanda taxes only luxury electronics.
19	Clause 59	Miscellaneous Fees and Levies Act (Cap. 469C)	Export Levy on Semi-Finished Products	Levy of 17.5% on semi-finished goods exports	Delay implementation. Build capacity and offer incentives and low power rate	+10 to +20 (local value addition)	+25,000 industrial jobs	Short-term dip, long-term manufacturing tax base growth	Protective levies coupled with local incentives	Uganda encourages in-country processing with levy reliefs
20	18	Not specific	Section 15(7): Limiting Tax Loss Carryforward to 5 Years	10 years carryforward allowed (Income Tax Act)	Retain the current status	-40 to -70	-10,000 in long-term projects	+8 (short-term only)	10 years or indefinite for capital sectors	Uganda: indefinite for some; Rwanda: 10 years

A Call to Action: Enabling Enterprise for National Transformation

Kenya cannot tax its way out of poverty. However, it can empower its way to prosperity. The current hostile fiscal regime has driven the majority of MSMEs underground. Formal registration with KRA remains below 2 million, and active engagement with institutions like KNCCI is limited due to the high cost of compliance.

With a supportive fiscal and regulatory environment—including margin-based taxation, a unified MSME licensing portal, and the elimination of arbitrary levies—KRA could expand MSME registration to over 6 million. KNCCI could reach and support over 1.5 million actively engaged enterprises. This would expand the tax base, enhance policy legitimacy, and fast-track inclusive economic growth.

The Finance Bill, 2025, presents a generational opportunity. By enabling enterprise, not burdening it, Kenya can ignite its largest economic transformation yet.

A Call to Action for Legislators

Kenya is standing on a ticking economic bomb—where businesses are retreating into informality, avoiding growth, and collapsing silently.

If the Finance Bill, 2025, is enacted without bold reforms to support MSMEs, the country risks:

- Killing the golden goose that could fund national development
- Eroding tax morale and undermining voluntary compliance
- Accelerating youth unemployment and deepening poverty

This is a critical juncture. Parliament must rethink the taxation and licensing model for MSMEs—not as a revenue trap, but as the foundation for inclusive, sustainable economic transformation.

"You cannot tax poverty into prosperity. But you can enable enterprise into productivity."

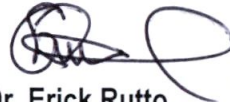
Let Parliament lead this shift. By embracing a pro-business, pro-growth fiscal framework, Kenya can ignite the single largest economic transformation in a generation.

Conclusion

KNCCI reiterates its commitment to working with the National Treasury, Parliament, and all relevant stakeholders to ensure the Finance Bill 2025 supports economic recovery, employment creation, and Kenya's long-term development goals.

We urge the National Assembly to consider these proposals to protect enterprise viability and enhance Kenya's business environment and ensure sustainable economic growth.

Submitted By:



Dr. Erick Rutto

Chamber President



26th May 2025

The Clerk
The National Assembly
Office of the Clerk
Main Parliament Building
Nairobi

Dear Sir,

**Submission of Memoranda
The Finance Bill, 2025**

We write to you in response to your invitation for public participation and submission of memoranda on the aforementioned Bill. The Bills proposes a raft of measures aimed at revenue collection and also enhanced economic activity in the country. Please see below our submission on the same.

Clause	Description of the Clause	Proposal	Justification
First Schedule to the Excise Duty Act 	Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African Community Partner States that meet the East African	Amend to: 25% or KShs. 200 per kilogram, whichever is higher	The proposed increase in the specific excise duty rate from KShs. 150 to KShs. 200 per kilogram is intended to provide enhanced protection for Kenya's local paper and packaging industry, which is currently grappling with rising production costs, including energy, transport, and raw materials. At the same time, the domestic market faces intensifying competition from low-cost imported paper products, many of which are manufactured in jurisdictions with state subsidies or

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	Community Rules of Origin Current rate: 25% or KShs. 150 per kilogram, whichever is higher		economies of scale not available to Kenyan producers. The KShs. 150/kg rate has proven insufficient in creating a level playing field. The proposed upward revision will: • Help curb the influx of underpriced imports that undercut domestic manufacturers; • Support job preservation in a sector employing thousands directly and indirectly; • Encourage investment and retooling in local production facilities; • And promote value addition and import substitution, in line with the country's industrialization goals under Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA). By adopting a higher specific duty, the government will be reinforcing its commitment to safeguarding local industry while maintaining predictability and simplicity in tax administration.
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First Schedule to the Excise Duty Act 	Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin Current rate: 25% or KShs. 200 per kilogram, whichever is higher	Add the word: IMPORTED at the beginning of the description	As currently phrased, the description results in taxation of both imported and locally manufactured goods, undermining the competitiveness of domestic producers who already face high input costs. Inserting the word “IMPORTED” ensures the duty applies only to non-EAC imports, preserves the protective intent of the provision, and aligns with Kenya’s regional trade obligations.
First Schedule to the Excise Duty Act 	Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non- corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90	1) Amend rate to: 25% or KShs. 200 per kilogram , whichever is higher 2) Add in description: <i>but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin</i>	The proposed rate increase to 25% or KShs. 200 per kilogram is aimed at enhancing protection for local manufacturers of paper packaging, who face stiff competition from low-cost imports and operate under high production costs. The current rate does not sufficiently deter underpricing, threatening jobs, investment, and local value addition. Adding the phrase “ but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin ” ensures that the duty is not applied to EAC-origin goods, preserving Kenya’s

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	Current rate: 25%		commitments under the EAC Customs Union Protocol and preventing trade disputes. This distinction safeguards regional integration while reinforcing domestic industrial growth.
First Schedule of the Excise Duty Act 	A Direct Air Capture (DAC) machine is a technology that removes carbon dioxide directly from the atmosphere to help mitigate climate change by capturing and storing CO₂. Imposition of excise duty on fully built or semi-built Direct Air Capture (DAC) machines of HS Code 8421.39.10 with the description of Industrial filtering or purifying machinery and apparatus for gases	Introduce a 25% excise duty on the importation of fully built and semi-built DAC machines, with exemptions for locally assembled or manufactured units.	Kenya is currently the only African country that manufactures DAC machines, representing a substantial advancement in environmental sustainability and technological innovation. A Kenyan-based company engaged in the manufacture of these machines has employed over 60 Kenyan engineers in their development, thereby promoting local manufacture and enhancing technical capacity within the green technology sector. The localization of DAC machine production not only reduces dependency on imports but also contributes to national economic development through job creation in manufacturing, research, and engineering. In light of this, the imposition of a 25% excise duty on imported DAC machines is justified as a policy measure that supports domestic manufacturing, incentivizes local innovation, and accelerates the country's transition to a green economy. Such a fiscal measure aligns with Kenya's broader climate change mitigation strategies and reinforces its

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			leadership in carbon capture technologies on the African continent and beyond. <u>Comments</u> Requires KRA to implement strict monitoring processes to track the importation of semi-built or fully assembled DAC machines; risk of non-compliance if oversight is weak. <u>Implementation Considerations</u> Amend Excise Duty regulations to define importation criteria for DAC machines; set up monitoring systems to track semi-built and fully assembled imports; train customs officers to enforce regulations and to ensure that the proposed excise duty under HS Code 8421.39.10 specifically targets the DAC machines only, as other types of machinery are also classified under the same code. Clear classification and enforcement guidelines must be established to ensure that unrelated machinery imports are not inadvertently subjected to the excise duty.
Clause 36 Section A (o) 164 of Part of the First Schedule to	Packaging materials for tea and coffee are currently subject to the standard VAT rate of 16%. The Bill	Include packaging materials for tea and coffee under the Second Schedule of the VAT Act to ensure that	Reclassifying packaging materials for tea and coffee from the standard VAT rate of 16% to exempt would defeat the purpose of making them affordable for exporters and processors. Exempt status would render input VAT non-



the Value Added Tax Act	proposes to reclassify these supplies from 16% to exempt, upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture,.	packaging materials for tea and coffee are zero-rated (0%), upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture.	recoverable, significantly increasing production costs. This would erode cash flows, shrink profit margins, and weaken Kenya's competitiveness in global markets. To truly support value addition, foreign exchange earnings, and job creation across the agricultural and manufacturing value chains, these materials should be zero-rated under the Second Schedule of the VAT Act. Zero-rating ensures full input VAT recovery. In particular, the tea sector, being a major contributor to Kenya's GDP and export revenues, stands to be adversely affected by a shift to exemption, potentially reversing the gains made in the sector. <u>Comments</u> Requires policy coordination between the National Treasury and the Ministry of Agriculture to preserve export competitiveness. <u>Implementation Consideration</u> Implementation in law may be achieved by amending the VAT Act to include packaging materials for tea and coffee under the Second Schedule.
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Clause 57:	Amends Section 9B of the Miscellaneous Fees and Levies Act by deleting references to “excess tax refunds” and to Section 47 of the Tax Procedures Act.	Support the amendment as proposed.	This is a cleanup to align the provision with the correct statutory framework. Section 47 of the Tax Procedures Act deals only with overpaid tax and does not relate to penalty or interest administration, making its reference in Section 9B unnecessary.
Clause 58:	Narrows the exemption scope under Part A and B of the Second Schedule by replacing the blanket exemption for all goods under Chapter 88 with a limited exemption for goods under HS Codes 8802.30.00 and 8802.40.00 only.	Oppose the amendment and retain the existing exemptions for all aircraft and aircraft parts , including aircraft engines.	The aviation industry relies on cost-effective importation of parts and equipment. Narrowing the exemption will significantly raise operational costs, especially for general aviation and maintenance, thereby hurting regional connectivity, air safety, and investment in the aviation sector.
Clause 59:	Reduces the Export and Investment Promotion Levy on select steel products from 17.5% to 10%.	Support the amendment as proposed.	The reduced rate eases the cost burden on local manufacturers who rely on imported billets and wire rods as raw materials. It promotes competitiveness, supports key sectors such as construction and manufacturing, and complements Kenya’s affordable housing and infrastructure goals. Making this reduction permanent

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			provides certainty and encourages long-term investment.
Clause 8 Section 15 of the Income Tax Act	The Bill proposes to cap the carry-forward period for tax losses at five years, thereby repealing the current provision that allows for an indefinite carry-forward period.	Our proposal is to retain the indefinite carry-forward period for tax losses	Retaining the indefinite carry-forward period for tax losses is essential for sound business planning and financial reporting. From an accounting perspective, limiting the carry-forward to five years forces premature write-offs of deferred tax assets, distorting a company's true financial position. Indefinite carry-forward aligns with the economic reality that some investments, especially capital-intensive ones, take longer to yield profits. It ensures fairness in taxation by allowing businesses to fully recover losses incurred during downturns, thereby promoting stability, reinvestment, and sustainable growth.
Clause 27 Second Schedule of the Income Tax Act	Removing the 100% investment allowance previously granted to companies undertaking substantial investments outside Nairobi, Mombasa municipalities, and Special Economic Zones	Retain the 100% investment allowances.	The removal of the 100% investment allowance for companies investing outside Nairobi, Mombasa, and Special Economic Zones risks undermining investor confidence and contradicts Kenya's constitutional and policy commitments to equitable regional development. Stable and predictable fiscal incentives are essential for attracting long-term investment, promoting industrial growth in underserved counties, and ensuring Kenya remains competitive in the

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			region. Retaining such allowances supports job creation, reduces regional disparities, and reinforces the government's obligation to create an enabling and inclusive investment environment.
Clause 36. First Schedule to the Value Added Tax Act	The Bill proposes to delete the VAT exemption for taxable goods used directly and exclusively in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, previously granted upon approval by the Cabinet Secretary for Health, and to revoke the transitional provision allowing existing approvals to remain in force until full supply.	We propose that the current VAT exemption for taxable goods used directly and exclusively in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty be retained in its present form, including the transitional provision for existing approvals.	The VAT exemption was introduced to incentivize investment in the health sector by reducing the cost of constructing and equipping specialized hospitals, thereby making quality healthcare more accessible and affordable. Removing this exemption would increase project costs, discourage private sector participation, and undermine ongoing efforts to strengthen the country's healthcare infrastructure. Retaining the exemption aligns with the constitutional right to the highest attainable standard of health and supports the government's commitment to Universal Health Coverage through increased private investment in modern, well-equipped medical facilities.

Other Sectoral Proposals ;

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ALUMINIUM INDUSTRY PROTECTION MEASURES

Background

Kenya's aluminium extrusion industry, once the leading supplier in East Africa, is now on the verge of collapse due to a combination of factors including unfair import competition, high manufacturing costs, and weak regulatory enforcement. Currently, the industry is operating at less than 50% of its installed capacity (1,000T/month), while local markets are flooded with cheap, under-invoiced aluminium products from Uganda, China, and other countries. This has severely undermined competitiveness and threatens the long-term sustainability of domestic manufacturers.

Presently, Kenya's industry operates at below 50% of its 1,000T/month production capacity due to several persistent challenges:

- Escalating energy and manufacturing costs;
- Illegal export of raw materials (notably scrap aluminium) to neighbouring countries;
- Influx of sub-standard, under-invoiced aluminium imports, mainly from Uganda and China;
- HS code manipulation to attract lower or no duty;
- The recent imposition of a 20% excise duty on key raw materials without complementary protective measures.

Proposal

We respectfully propose the introduction of an excise duty structure applicable to imported aluminium profiles, fabricated doors, and windows under the following HS Codes:

HS Codes: 7604.10, 7604.21, 7604.29, 7608.10, 7608.20, 7610.10

Proposed Rate: USD 2,500 per tonne or 25% Excise Duty, whichever is higher. This will be to protect local manufacturers in the sector.

Justification



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1. **Leveling the Competitive Playing Field**

Kenya's domestic aluminium manufacturers face unfair competition from imported products, largely from Uganda and China, that enter the market at artificially low prices. Many of these imports are either under-invoiced or misclassified, allowing them to bypass full tax obligations. The proposed excise duty ensures that all imported aluminium contributes fairly to the tax base, discouraging misdeclaration and shielding local players from predatory pricing.

2. **Promoting Local Manufacturing Capacity**

Despite having a combined monthly capacity of 1,000 tons, local manufacturers operate at under 50% capacity, while Kenya continues to import over 1,200 tons monthly of aluminium products. Imposing excise duty on imports directly encourages buyers to source locally, allowing domestic plants to scale up and generate more jobs and investment.

3. **Preserving Industry and Employment**

The sector supports over 5,000 families, both directly and through its extended value chain, including powder coating, anodizing, glazing, fabrication, and installation. Without intervention, the industry risks total collapse, with devastating socio-economic implications.

4. **Alignment with National Industrialization Goals**

Aluminium is not just a building material, it is a critical input in Kenya's real estate, automotive, solar energy, and infrastructure development. It is widely used in roofing, window and door frames, structural systems, and finishing components, making it indispensable to construction and green energy sectors.



Notably, aluminium products form a core part of the government's Affordable Housing Programme, which aims to deliver over 250,000 housing units annually under the national development blueprint. Ensuring the competitiveness of local aluminium manufacturers is therefore not only essential for industrial growth, but also for the successful delivery of affordable housing. Supporting this sector is a direct investment in the Vision 2030 objectives of value addition, manufacturing-led growth, job creation, and increased access to dignified shelter for all Kenyans.

EXCISE DUTY ON IMPORTED GLASS BOTTLES

Background

Kenya's glass bottle manufacturing industry has witnessed significant investment in recent years, especially in support of the local beverage and pharmaceutical sectors. With rising demand for glass packaging driven by consumer health consciousness, sustainability goals, and industrial growth, the industry has built strong linkages with agriculture (juice), health, and FMCG players.

However, the sector now faces mounting pressure from the unregulated importation of cheap, ready-to-use glass bottles, which are increasingly preferred by bottlers due to their low cost, resulting in a growing dependency on foreign packaging and threatening the viability of local manufacturing.

Proposal

We propose the introduction of a specific excise duty of USD 350 per metric tonne on imported glass bottles. This will to be supplement the current existing duty rate of 35%. The applicable duty rate shall be whichever is higher.

Justification

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1. Strengthening Local Value Chains

The majority of glass bottles used in Kenya can be produced locally, using both virgin and recycled inputs. However, the influx of low-cost imported bottles is displacing demand for local production, fracturing supply chains, and discouraging bottlers from sourcing domestically. A targeted excise duty would restore incentives to buy local and strengthen supplier-manufacturer linkages.

2. Safeguarding Industrial Investment and Technological Upgrading

Local manufacturers have invested heavily in automated furnaces, energy-efficient kilns, and cullet (recycled glass) processing lines. These investments require predictable demand to remain sustainable. Without protective measures, producers risk scaling down or halting operations, stalling Kenya's industrial modernization efforts.

3. Supporting National Waste Management Goals

Unlike local bottles which are manufactured with recycling in mind, many imported bottles are non-standard in design or color and are excluded from recycling streams. This increases landfill waste and undermines the progress of Kenya's Extended Producer Responsibility (EPR) framework. Encouraging local bottle usage aligns with waste reduction and recycling commitments under the Sustainable Waste Management Act and environmental regulations.

4. Reducing Supply Chain Fragility

Over-reliance on imported bottles exposes Kenya's supply chains to global shocks, such as shipping delays, container shortages, or geopolitical disruptions. Building local capacity and demand for glass bottles enhances resilience and reduces vulnerabilities in domestic production cycles.



5. Maintaining Quality and Safety Standards

Locally manufactured bottles are subject to KEBS quality certification and food safety regulations, ensuring they are safe for contact with consumables. Imported bottles, however, often enter with minimal scrutiny, posing potential health risks. Supporting local production also ensures consistent compliance with national safety benchmarks.

EXCISE DUTY ON LIGHTERS

Background

Kenya's retail markets are flooded with low-cost, plastic-bodied lighters, mostly imported and sold without basic product information or compliance labeling. These lighters, are often used once and discarded, posing serious fire, health, and environmental risks. Despite being hazardous and non-recyclable, they currently escape regulatory scrutiny, unlike other similarly sensitive products such as cigarettes, batteries, or single-use plastics.

Proposal

We propose the introduction of an **excise duty rate of 35% or a specific duty rate to be determined by the National Treasury** across the following categories:

- **9613.10.00** – Non-refillable lighters

This excise duty should apply uniformly to both locally sold and imported products, regardless of their packaging or point of sale, with rates to be prescribed by the National Treasury.

Justification

1. Environmental Pollution and Microplastics



Disposable plastic-bodied lighters are a silent but significant contributor to Kenya's growing plastic pollution crisis. Constructed from low-grade, non-recyclable plastics, these products are designed for single use and are almost never recovered through formal waste management systems. Once discarded, often on roadsides, in landfills, or flushed into drainage systems, they begin a slow and toxic decay process under exposure to sunlight, wind, and rain.

This process breaks the plastic components into microplastics, fragments smaller than 5mm that infiltrate every level of the ecosystem. These particles seep into soil, reducing its fertility and disrupting microbial activity essential for plant health. They are washed into rivers and lakes, where aquatic species mistakenly ingest them, leading to internal blockages, reproductive harm, and in some cases, death. As water flows downstream, the pollution travels with it, ultimately reaching marine environments where it can persist for hundreds of years.

Once in the oceans, microplastics are absorbed into the marine food web. Studies have found them in everything from zooplankton and shellfish to large fish and marine mammals, compromising not only biodiversity but also human food safety. Even more alarming, research now confirms the presence of microplastic fibers in municipal drinking water, human lungs, placentas, and bloodstreams, pointing to a potential public health crisis with long-term implications.

Kenya, like many nations, has made commendable progress in banning plastic bags and pushing for Extended Producer Responsibility (EPR). However, the unchecked use and disposal of plastic-bodied disposable lighters represents a dangerous loophole, one that undermines national commitments under the Sustainable Waste Management Act, the Basel Convention, and the United Nations Framework on Plastic Pollution. Failure to regulate these items not only erodes domestic environmental gains but also risks Kenya being viewed as a weak link in the global plastics governance chain.



The introduction of an excise duty on plastic-bodied lighters would send a strong policy signal, recognizing their environmental cost, discouraging indiscriminate use, and aligning Kenya with international best practices. It would also establish a framework for further control measures, including import restriction, mandatory labeling, and quality standards. Ultimately, regulating lighters is not just about taxation—it's about preserving the integrity of Kenya's ecosystems, protecting public health, and positioning the country as a leader in sustainable waste management.

2. Exclusion from Existing Plastic Controls

Despite their nature as single-use plastic items, lighters are not currently captured under Kenya's single-use plastic bans or waste control frameworks. Their widespread use and indiscriminate disposal make them functionally equivalent to banned items like plastic cutlery or straws. Excise duty introduces a first layer of control, aligning lighters with Kenya's broader plastic waste mitigation efforts.

3. Non-Conformance with Quality and Safety Standards

Most imported lighters fail to meet international quality benchmarks such as ASTM standards. They lack flame control, child safety features, and are prone to fuel leakage, flaring, and spontaneous ignition. These risks remain unaddressed in Kenya's current market due to the absence of technical standards or labeling requirements.

4. Alignment with National Environmental and Health Policy

Kenya has made strides in waste management reform through the Sustainable Waste Management



Act, Vision 2030, and environmental conservation commitments under the Paris Agreement. Introducing excise duty on lighters strengthens this policy posture and signals regulatory seriousness toward waste-heavy consumer products.

LEGAL AND TRADE RISKS ARISING FROM KENYA'S UNILATERAL SUSPENSION OF REGIONAL TREATY OBLIGATIONS (STEEL PRODUCTS)

Background

In 2024, through Section 2 of the Tax Procedures (Amendment) Act amending Section 6A of the Tax Procedures Act, Kenya enacted legislation that purports to suspend the country's regional and multilateral treaty obligations in relation to specific steel products, including billets (HS Code 7207.11.00) and wire rods (HS Codes 7213.91.00 and 7213.91.90). This legislative provision creates a two-year exemption (or longer, subject to ministerial discretion) from obligations under the East African Community (EAC) Treaty, the African Continental Free Trade Area (AfCFTA), and other international instruments with respect to import duties on these products.

While the intention may have been to protect Kenya's domestic steel industry from the liberalization commitments made under AfCFTA, the phrasing of the law has had far wider and more damaging legal consequences. As currently worded, the provision effectively places Kenya outside the scope of all applicable treaty regimes, including the EAC Treaty, the COMESA Treaty, and the World Customs Organization (WCO) multilateral agreements such as the WTO's Customs Valuation Agreement and the Harmonized System Convention. The implications of this are far reaching.

Policy Concerns and Justification

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1. Legal and Operational Uncertainty at the Border

In purporting to suspend Kenya's treaty obligations on steel products in question, Section 2 of the Tax Procedures (Amendment) Act, 2024 and Section 6 (A) (4) of the Tax Procedures Act have inadvertently created a regulatory vacuum, leaving the affected products outside the scope of any legally binding customs framework. The provision states that Kenya shall not be bound by international or regional obligations "relating to the imposition of duty" on billets and wire rods. This seemingly narrow exemption, however, disengages Kenya from all instruments that give legal force to import duties on those products, including:

- The EAC Common External Tariff (CET), which provides the applicable rate schedules for Partner States;
- The EAC Gazette Notices, which are the instruments that officially communicate temporary changes or stays (e.g. the 10% rate currently applicable on billets);
- The EAC Customs Management Act (EACCMA), which gives effect to the CET and governs its implementation in Kenyan law.

Since the CET and the gazette notices derive their legitimacy and binding effect from the EAC Treaty and Customs Union Protocol, Kenya's rejection of the treaty, *in relation to the affected products*, renders those instruments inapplicable. This means that even the 10% rate that was imposed via EAC Gazette Notice No. EA 49/2023 cannot lawfully apply, because it exists solely within the framework of EAC law.

As a result, there is currently no valid domestic, regional, or multilateral law that legally authorizes the Kenya Revenue Authority to levy any import duty on steel billets (HS Code 7207.11.00) and wire rods (HS Codes 7213.91.00 and 7213.91.90). The very tariff lines Kenya sought to shield are



now effectively in a legal limbo, exposing them to *duty-free entry by default*, even from non-AfCFTA states.

This undermines the original intent of the legislation, which was to support local manufacturers by creating price parity through import duties. In practice, however, the disapplication of all legal instruments has removed the only tools that could be used to levy those duties, leaving the local steel industry more vulnerable, not less.

Moreover, by excluding itself from the EAC Treaty and its associated legal instruments in relation to steel billets and wire rods, Kenya now lacks a lawful customs mechanism to process, regulate, or control the importation of these products. The East African Community Customs Management Act (EACCMA) is the legal framework that governs every stage of cross-border goods movement within the region, from arrival at port to clearance, audit, post-clearance inspection, and release. The moment Kenya declares that the EAC Treaty does not apply to certain products, the entire body of law built on that treaty collapses in respect of those goods.

As a result, Kenya currently lacks a valid legal basis to undertake the following functions with respect to steel billets and wire rods:

- Regulate importation, berthing, and discharge at port: Under Sections 34–39 of EACCMA, customs officers oversee the entry of ships, declaration of cargo manifests, and mooring permissions. If the governing legal framework no longer applies, port authorities and KRA officers have no statutory authority to regulate the arrival and offloading of the subject goods.
- Control and record entry of goods into customs territory: Section 34(1) mandates declaration of imported goods to customs authorities. Without a recognized regional framework, the obligation to declare the goods, and the authority to demand such declaration, become unenforceable.



- Subject goods to customs control and warehousing: Sections 12–16 of the Act place imported goods under customs control from the moment of arrival until lawful clearance. For goods excluded from the EAC regime, there is no binding provision that empowers KRA to restrict movement, access, or warehousing of the goods pending clearance.
- Verify and examine the goods: Sections 42–43 empower customs to verify goods against invoices and packing lists, including physical inspection and sample taking. Without a treaty-based mandate, such verification becomes procedurally defective and potentially challengeable in law.
- Apply customs valuation: Kenya is a signatory to the WTO Agreement on Customs Valuation, implemented regionally through EACCMA under Sections 122–127 and the fourth schedule. By discarding the EAC and WCO frameworks for the affected products, Kenya no longer has a compliant statutory mechanism for applying customs value to steel imports, exposing the process to arbitrariness or legal challenge.
- Process and issue tax assessments, demand notices, and declarations: The Single Administrative Document (SAD), used uniformly across the EAC, derives its legitimacy from EACCMA and the CET. Without these instruments, KRA lacks the authority to raise assessments or issue formal demand notices for duty owed on the affected HS Codes. This breaks the audit trail and compromises tax recovery.
- Enforce classification rulings and appeals: Under Section 247, importers may apply for a ruling on classification or valuation, and customs has authority to issue and enforce such rulings. Without application of the CET or the HS Code structure via EAC law, there is no basis upon which to classify or adjudicate the correct treatment of steel imports.



- Conduct customs audits and post-clearance controls: Sections 235–240 permit retrospective reviews of customs declarations. However, without a defined set of obligations or a legal framework for these products, audits relating to their importation will lack jurisdictional foundation and legal effect.

In essence, Kenya's withdrawal has not only disrupted tariff application, but dismantled the full regulatory infrastructure governing how imported goods are processed, controlled, verified, valued, taxed, and released. This is no longer merely a matter of non-compliance—it is a fundamental breakdown of administrative authority, opening the door to legal uncertainty, revenue loss, and potential abuse at the border.

2. Exposure to Retaliatory Measures

By breaching its AfCFTA tariff concessions, specifically on steel billets and wire rods, which Kenya agreed to liberalize at a 0% rate until 2030, Kenya exposes itself to reciprocal trade measures from fellow State Parties. Under AfCFTA's principle of reciprocity, member states are entitled to deny benefits to non-compliant partners. This means that countries such as South Africa, Egypt, Uganda, and Tanzania, all of which currently honor the agreed tariff schedules, may impose countermeasures against Kenyan exports.

The consequences of such actions are economically significant. As at 2022, Kenya's intra-African merchandise trade totaled USD 5.3 billion, representing 19% of its total trade. Of this, exports amounted to USD 3 billion, accounting for 41% of Kenya's total exports. The majority of these exports are heavily reliant on preferential market access under AfCFTA and include:

- Tea – one of Kenya's top exports, particularly to Egypt and Sudan;
- Flat-rolled iron or non-alloy steel – key exports to Uganda and Rwanda;



- Palm oil and medicaments – exported extensively to Uganda and South Sudan;
- Cement, edible oils, and plastic packaging materials – dominant in regional construction and manufacturing supply chains.

If these products are subjected to reciprocal tariffs by Kenya's trading partners, it would result in:

- Loss of price competitiveness for Kenyan exporters in African markets;
- Reduced market share to rivals such as South Africa, Egypt, and Nigeria;
- Contractual disruptions for long-term export arrangements;
- And ultimately, reduced foreign exchange earnings from key regional clients.

Kenya's top four African trading partners, Uganda, Tanzania, Egypt, and South Africa, account for over 62% of Kenya's intra-African trade, and more than 50% of its intra-African exports. These are precisely the countries that stand to react most directly if Kenya undermines AfCFTA's tariff discipline

Moreover, retaliatory measures could impact strategic value chains. For example:

- South Africa is a key supplier of fertilizer, machinery, and coal to Kenya, critical for agriculture and energy.
- Uganda and Tanzania are vital conduits for regional transport, warehousing, and logistics, including via the Northern Corridor.
- Egypt plays a pivotal role in supplying chemicals, pharmaceuticals, and equipment to Kenyan industries.

Any trade disruption with these partners could have a cascading impact on Kenya's domestic manufacturing, agriculture, and infrastructure development goals, especially as the country seeks to realize targets under the Bottom-Up Economic Transformation Agenda (BETA) and Vision 2030.



3. Fragmentation of the EAC Bloc

Kenya's deviation from a jointly submitted regional tariff offer undermines the collective credibility of the EAC under the AfCFTA. Other Partner States, despite remaining compliant, could be viewed as co-breaching or unreliable. This could affect the bloc's negotiating power in future trade rounds, and invite scrutiny or procedural sanction from AfCFTA institutions.

4. Violation of Treaty Supremacy and Pacta Sunt Servanda

Kenya's action runs afoul of the principle that treaties must be honoured in good faith. As reaffirmed in Kenyan jurisprudence, a State may not invoke its own domestic law as justification for failing to perform international obligations. By subordinating Community and multilateral law to national legislation, Kenya has violated both the EAC's legal hierarchy and the AfCFTA's supremacy clause (Article 19).

5. Jeopardizing Industrial Supply Chains and Construction Projects

Contrary to the intent of protecting local steelmakers, available trade data confirms that Kenya is a net importer of billets and wire rods. Imposing import duties on these essential raw materials while lacking sufficient domestic capacity only worsens input costs for downstream manufacturers and delays major construction projects, especially in affordable housing, transport, and infrastructure.

6. Breach of Procedural and Institutional Obligations

Kenya's legislative amendment bypassed the Council of Ministers and the EAC Secretariat, violating Article 75(4) of the Treaty and AfCFTA Article 15, which require any tariff changes or waivers to be



submitted for regional or continental approval. No waiver process was followed, no exceptional circumstances documented, and no notification was issued, placing the action outside the legal bounds of all frameworks involved.

Proposal

In light of the far-reaching legal, economic, and regional implications outlined above, we respectfully recommend that Section 2 of the Tax Procedures (Amendment) Act, 2024, and Section 6A (4) of the Tax Procedures Act be repealed in their entirety.

Should you have any queries or require further clarification on the above, please do not hesitate to contact us.

Yours Faithfully

FOR: Hanan ElKathiri,
Director

Abdirahman Yasin,
Associate



28th May 2025

KFC/GK-NA/CT/001/05-2025

**The Chairman
The Departmental Committee of Finance and National Planning
Main Parliament Building - Parliament Road
P.O. Box 41842 – 00100
Nairobi.**

Attn: Clerk of the National Assembly

SUBMISSION OF MEMORANDUM ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILL NO.19 OF 2025)

The Kenya Flower Council (KFC), representing the interests of Kenya's floriculture sector, hereby submits the following input to the Finance Bill, 2025. These proposals seek to promote competitiveness, ease of doing business, and sustainability in the flower export industry, which is a major foreign exchange earner and employer.

1. Repeal of Excise Duty on Packaging Materials

Issue: Packaging materials such as test liners, fluting paper, and imported carton boxes are subjected to multiple layers of excise duty under Section 14 of the Excise Duty Act.

Proposal:

- Remove excise duty on test liners, fluting paper, and imported carton boxes.
- Alternatively, allow an input offset mechanism for excisable packaging materials used in the production of finished goods.

Justification:

- Excise duty is a consumption tax intended for the final consumer. Levying it at intermediate production stages increases production costs and renders Kenyan exports uncompetitive.
- Alignment with global best practices is necessary to maintain Kenya's leading position in the global floriculture industry.

2. Reclassification of Agricultural Inputs from Exempt to Zero-Rated

Issue: The reclassification of critical agricultural inputs (e.g., fertilizers and crop protection agents) from zero-rated to exempt for VAT purposes.

Proposal:

- Reinstate zero-rated status for all agricultural inputs.

Justification:

- VAT exemption prevents farmers from claiming input VAT, thereby increasing the net cost of production.
- Negative impact on cash flow and production viability for thousands of farmers.

3. VAT Refund Timelines and Fund Allocation

Issue:

- Proposed reduction of timeline to lodge VAT refund claims from 24 to 12 months.
- Proposed reduction of bad debt threshold from 3 years to 2 years.

Proposal:

- Fast-track VAT refunds and allow automatic offsets against future liabilities.
- Establish a dedicated VAT Refund Fund to address refund backlogs.

Justification:

- Many flower farms are owed VAT refunds in billions of shillings.
- Current delays create persistent negative VAT positions, harming cash flows and business operations.

4. Export and Investment Promotion Levy (EIPL) on Inputs

Issue: EIPL at 17.5% applies to critical imports like iron/steel (tariff codes 7207.11.00, 7213.91.10, 7213.91.90), kraft paper, and packaging materials.

Proposal:

- Reduce the EIPL rate to 5% or abolish the levy altogether on these inputs.

Justification:

- Levy causes input cost inflation and double taxation.
- Directly affects pricing and competitiveness of floriculture exports.

5. Removal of Automatic Annual Inflation Adjustment in Excise Duty

Issue: Paragraph 2 of Part 1, Schedule 1 of the Excise Duty Act introduces automatic inflation-based adjustments each year.

Proposal:

- Delete the provision requiring automatic inflation adjustment in excise duty.

Justification:

- Align with Finance Act 2023 which eliminated inflation-linked excise increases for certain goods.
- Predictable tax policy supports business planning.

6. Legacy VAT Refund Claims from Credit Adjustment Vouchers (CAVs)

Issue: Businesses remain in refund position even after applying old CAVs (pre-June 2019) due to zero-rated supplies.

Proposal:

- Introduce legal mechanisms to facilitate refund of excess tax on zero-rated supplies adjusted using the CAV formula.

Justification:

- Outstanding CAV-related refunds distort tax positions.
- Resolving legacy cases will improve business liquidity.

7. Exemption from Withholding VAT (WHVAT) for Perennial Refund Taxpayers

Issue: Exporters like flower farms consistently operate in VAT credit positions but are still subject to WHVAT.

Proposal:

- Introduce a provision exempting perennial refund taxpayers from WHVAT.
- Define eligibility as businesses in continuous refund position for at least 24 months.

Justification:

- WHVAT exacerbates negative VAT positions.
- A targeted exemption will ease compliance costs and improve cash flow.

CONCLUSION

We respectfully urge the National Assembly and the National Treasury to consider these proposals in support of a more competitive, tax-efficient, and sustainable business environment for Kenya's floriculture sector.

Yours faithfully,



CLEMENT TULEZI
CHIEF EXECUTIVE OFFICER



REPUBLIC OF KENYA

**MINISTRY OF EAST AFRICAN COMMUNITY (EAC), ASALs & REGIONAL
DEVELOPMENT**

STATE DEPARTMENT FOR EAST AFRICAN COMMUNITY AFFAIRS

OFFICE OF THE PRINCIPAL SECRETARY

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ADM.1/CONF/13/3 VOL.II (14)

26th May, 2025

The Clerk

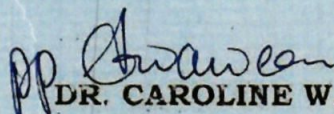
Office of the Clerk
Parliament Building
NAIROBI

**RETREAT WITH THE COMMITTEE ON REGIONAL INTEGRATION FROM 5TH
TO 8TH JUNE, 2025, IN MOMBASA**

We refer to your letter Ref. NA/DAA&GPC/RIC/2025/006 dated 19th May, 2025 on the above subject. It is noted from the letter that the State Department has been invited by the Select Committee on Regional Integration to discuss and apprise the Honourable Members on the business transacted by the East African Legislative Assembly at the 4th meeting of the 2nd session of the 5th Assembly from 23rd June to 4th July, 2024, in Arusha Tanzania.

However, owing to prior official commitments, we humbly request that the retreat with the Honourable members of the Select Committee be postponed to a later date if possible 20th and 21st June, 2025.

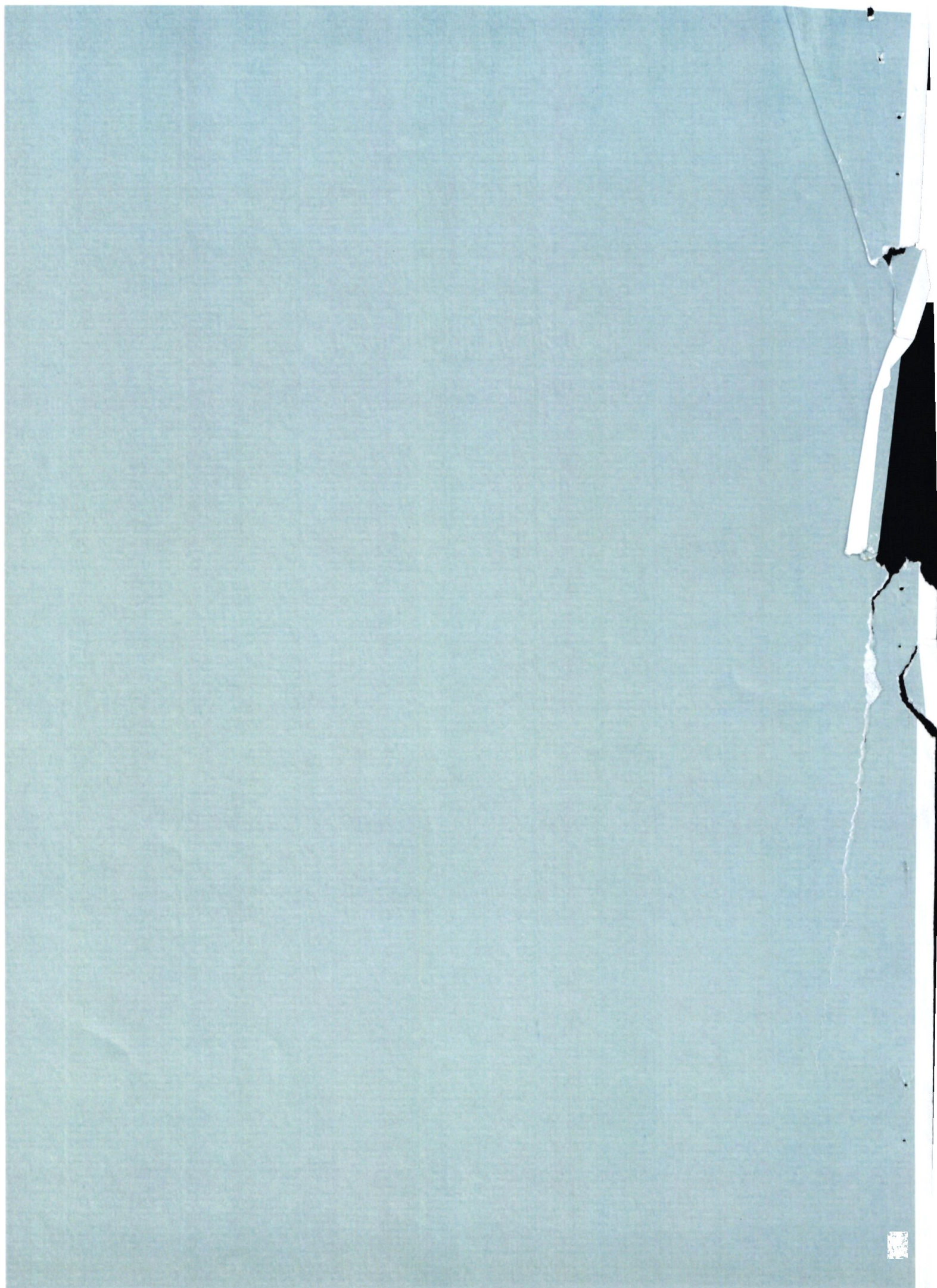
Thank you for your consideration.


DR. CAROLINE W. KARUGU, PhD
PRINCIPAL SECRETARY



Vision:
Deepen and widen East African Integration for Sustainable Development and improved livelihoods of all
Kenyans







Where the scales of balance are restored, and meaningful conversations thrive

71

Clerk of the National Assembly
The National Assembly Departmental
Committee on Finance and National Planning,
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COMMENTS ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILLS NO. 19 OF 2025)

By Mizani254

S/No.	Item of the Bill/Proposal	Comment	Justification
1	Amendment of the First Schedule to Cap. 470. Amendment of the First Schedule to the Income Tax Act by extending the period of approval of Income Tax exemption applications from 60 days to 90 days Amendment of section 47 of Cap, 4698. Proposal to increase the timeframe for determination of an overpayment	This is a step backward with regards to ease of doing business	- Kenya has made significant improvements in the ease of doing business over the past years, coming from 136th place in 2014 to 56th place in 2019 (Most recent available data by World Bank). - This proposal introduces more uncertainty, particularly for foreign investors or development partners who often operate on tight timelines and structured project cycles.

	of tax application by KRA from 90 days to 120 days.		• We also see an increased perception of bureaucracy from a regulatory standpoint, reinforcing the notion that doing business in Kenya involves red tape. • If this is not the case, clear communication/clarification on why the days are being extended would create a more positive perception.
2.	Section 59A of the Tax Procedures Act (Cap. 469B) Finance Bill 2025 proposes to amend Section 59A of the Tax Procedures Act by deleting subsection 1(B)	The proposal infringes Article 31 of the constitution of Kenya which guarantees protection of personal data and privacy comprehensively as a fundamental human right	• The deletion of subsection (1B) would remove existing legal safeguards that prevent KRA from demanding sensitive personal data and trade secrets, potentially leading to arbitrary or excessive intrusion into private information without adequate protection or limitation. • Without subsection (1B), KRA's expanded powers may lack sufficient checks and balances, increasing the risk of misuse or unauthorized disclosure of sensitive information, which the Constitution seeks to prevent. • Trade secrets for instance are valuable confidential business information protected under common law and contract law principles in Kenya. Granting KRA access to this data undermines the foundational principles of the two provisions, particularly those related to privacy, consent, and the sanctity of agreements. The threshold for confidentiality is significant, and such information is not ordinarily subject to public or government scrutiny without strict safeguards.