



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
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REPORT ON:
THE CONSIDERATION OF
FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILLS NO. 19 OF 2025)

VOLUME IV

SUBMISSIONS

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2025



PROPOSALS ON THE DRAFT FINANCE BILL 2025

Introduction

Area	TOPIC	Current	Proposed	Justification/References
VAT Act				
PART III	VALUE ADDED TAX	155. Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary for the time being responsible for matters relating to health.	Amend to read Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as approved from time to time by the Pharmacy and Poison Board for the time being responsible for matters relating to pharmaceutical, medical products and technologies	Cap 244 mandates the Pharmacy and Poison Board the sole mandate to regulate including approval handling of raw material and medical products in the country
FIRST SCHEDULE [s. 2(1)] EXEMPT SUPPLIES Part I	GOODS SECTION A	129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.	129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon Pharmacy and Poison Board for the time being responsible for matters relating to pharmaceutical, medical products and technologies	Cap 244 mandates the Pharmacy and Poison Board the sole mandate to regulate including approval handling of health products and technologies in the country
ZERO-RATING Part	A — ZERO RATED SUPPLIES	11. Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in	11. Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical	Cap 244 mandates the Pharmacy and Poison Board the sole mandate to regulate including approval

		Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health	manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Pharmacy and Poison Board for the time being responsible for matters relating to pharmaceutical, medical products and technologies	handling of raw material and medical products in the country
FIRST SCHEDULE [s. 2(1)]	EXEMPT SUPPLIES Part I GOODS		Add New cause to read 145. Tax exemption of all inputs and raw materials used in the manufacturing of pharmaceuticals, health products and technologies locally including Unit boxes, PVC and Plastics Pharmaceutical Clean Room Panels as these are not made in Kenya/EAC and VAT exemption on laboratory equipment in a method similar to pharmaceutical manufacturing equipment	Incentivize local manufacturing of pharmaceutical and health products cushion the country in emergency response and argument resilience in health system
			Add New cause to read 146. VAT exemption of all locally Manufactured pharmaceuticals, health products, technologies	Incentivize local manufacturing of pharmaceutical and health products cushion the country in emergency response and argument resilience in health system
			Provide 12% import levy on all IMPORTED pharmaceuticals and technologies that are already manufactured in Kenya. This levy WILL NOT apply to manufactured HPTs from EAC member states	Cushion local manufacturing of pharmaceutical and health products cushion the country in emergency response and argument resilience in health system

TO: THE NATIONAL ASSEMBLY

FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)

FKE MEMORANDUM ON THE FINACE BILL, 2025

1. BACKGROUND

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation's members employ 70% of formal private sector wage employees in Kenya. The role of the Federation is to build the capacity of employers and to influence the business environment through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, Confederation of IGAD Employers, BUSINESS Africa-Employers Confederation, the International Organization of Employers (IOE), and the International Labour Organization (ILO), and other global forums.

In taking a policy position, FKE is guided by the need to ensure a balanced and sustainable policy environment that promotes:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair labour practices
- Resilient and competitive businesses
- Harmonious industrial relations
- Social Justice
- Feasibility and affordability of the costs associated with implementation of the policy.

The above mandate guided FKE position on the proposed Finance Bill, 2025.

2. THE FINANCE BILL, 2025

This is a proposed Bill for an Act of Parliament to amend the law relating to various taxes and duties, and for matters incidental thereto. As a Federation, we understand that the Bill proposes taxation measures that the government will undertake to raise revenue for financing its operations. We hereby submit our views/proposals on the Bill for your consideration and incorporation.

FKE Comments on the Proposed Finance Bill, 2025

No.	Finance Bill Section/Clause	What is in the Finance Bill 2025	FKE's Proposal	Justification/Rationale
INCOME TAX ACT, CAP 470				
1.	Section 2 (a) (iii) of the Finance Bill 2025	Section 2 of the Income Tax Act Cap 70 on the definition of royalty. The Bill proposes to expand the definition of royalty to include transactions relating to distribution of software where regular payments are made for	Delete Section 2 (a) (iii) of the Finance Bill 2025	This proposal is in direct conflict with the Ruling in the High Court decision in Income Tax Appeal no. 8 of 2017 <i>Seven Seas Technologies Limited Vs the Commissioner of Domestic Taxes</i> where the High Court ruled that the purchase of software for resale does not give rise to a royalty to the extent that the software reseller does not acquire the rights to enable them to commercially exploit the software.

		the use of the software through the distributor.		
2.	Section 5 of the Finance Bill 2025	Section 10 of the Income Tax Act cap 70 on the enforceability of Withholding Tax on Scraps and Public supplies.	Delete Section 5 of the Finance Bill 2025	The formalization of scrap sales through withholding tax could discourage informal or unregistered scrap transactions leading to reduced margins or price increases, as sellers may pass the tax burden onto buyers.
3.	Section 8 (a) (ii) and (iii) of the Finance Bill 2025	Section 15 (2) (ii) (iii) of the Income Tax Act Cap 70 The Bill proposes to repeal the provisions that empower the Commissioner to determine the just and reasonable cost attributable to the cost of timber sold during a year of income.	Delete Section 8 (a) (ii) and (iii) of the Finance Bill 2025	This amendment would likely result in higher taxable income for both landowners and purchasers of timber rights, as they would no longer be able to offset income with these timber-related cost deductions. It may also discourage timber-related transactions or increase the effective tax burden on such activities.
4.	Section 8(b) (ii) of the Finance Bill 2025	The Bill proposes to delete Section 15(3)(f) of the Income Tax Act Cap 470 that allows for the carrying forward of losses	Delete Section 8(b) (ii) of the Finance Bill 2025	This proposal is unfair to employers as it contradicts the principle of taxing net gains and penalizes genuine economic losses. This may discourage investment, distort

		incurred in the transfer of property.		taxpayers' financial positions, and create unfairness by taxing profits while ignoring related losses, ultimately harming economic efficiency.
5.		The Bill proposes to introduce a 5-year cap on deductibility of tax losses. Currently, the law permits taxpayers to carry forward losses indefinitely.	Delete Section 8(d) of the Finance Bill 2025 and insert a new paragraph to read as follows: <i>“Notwithstanding subsection (4), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction beyond five years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.”</i>	Introducing the aspect of extending the period of deductibility of tax for another five years strikes a fair balance between revenue protection and business recovery. Many sectors require more time to become profitable, and a five-year extension ensures legitimate losses are fairly utilized.

6.	Section 19 of the Finance Bill 2025	The Bill proposes to charge tax to dividends distributed out of untaxed gains or profits	Amend Section 19 of the Finance Bill 2025 to define the phrase “untaxed profits”	Clearly defining the term untaxed profits will eliminate the ambiguity of what constitutes untaxed profits.
7.	Section 26 (a) of the Finance Bill 2025	The Bill proposes to extend the timelines for approval for an Income Tax exemption certificate from sixty to ninety days	Amend Section 26 (a) of the Finance Bill 2025 to delete the word “ninety” and substituting with the word ‘thirty’	The proposal to extend the approval timeline for an Income Tax exemption certificate from 60 to 90 days is a step in the wrong direction. Instead, this period should be reduced to 30 days to enhance efficiency, especially with the government's ongoing investment in digitized tax systems, there is no justification for prolonged delays.
8.	Section 27 of the Finance Bill 2025	The Bill proposes to delete the incentive of claiming one hundred percent on cumulative investments done outside Nairobi and Mombasa or within the special economic zone with respect to hotel buildings, buildings used for manufacture and machinery used for manufacture where;	Delete Section 27 of the Finance Bill 2025	The proposal is likely to discourage major capital investments in regions outside Nairobi and Mombasa, and in Special Economic Zones (SEZs). It may also deter investment in the tourism sector, a vital source of foreign exchange. Consequently, this could lead to slower economic growth in non-urban areas and reduced activity in SEZs.

		• The cumulative investment value in three preceding years outside Nairobi and Mombasa counties exceeds one billion shillings; • The investment value outside Nairobi County and Mombasa County exceed two hundred and fifty million shillings in that year of income; or • The person has invested in a special economic zone.		
9.	Section 28 (b) (ii) of the Finance Bill 2025	The Bill proposes to remove the 15% tax incentive for real estate developers that construct at least one hundred residential units annually.	Delete Section 28 (b) (ii) of the Finance Bill 2025	The proposed amendment is likely to discourage investment in the real estate sector and seems not to align with the Government's affordable housing agenda, potentially undermining the progress achieved in the sector so far.

10.	Section 28 (b) (iii) of the Finance Bill 2025	The Bill proposes to remove the fifteen percent corporate tax incentive on local assemblers of motor vehicles.	Delete Section 28 (b) (iii) of the Finance Bill 2025	The proposed proposal may deter investment in the local automotive industry. Although eliminating the incentive could boost short-term revenue, it risks diminishing long-term economic activity and job creation within the sector.
VALUE ADDED TAX, CAP 476				
11.	Section 31 (b) of the Finance Bill 2025	The Bill seeks to include internet, radio or television broadcasting services as Vatable	Amend Section 31 (b) of the Finance Bill 2025 to define the phrase 'broadcasting services'	The current lack of definition creates legal uncertainty, especially given the evolving nature of content delivery through digital and online platform.
12.	Section 36 (e) of the Finance Bill 2025	The Bill proposes to charge VAT to taxable goods for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty.	Delete Section 36 (e) of the Finance Bill 2025	Imposing VAT on these goods would significantly increase the cost of establishing such critical infrastructure, potentially discouraging investment in specialized healthcare facilities. Exemption helps lower project costs, promotes access to quality medical services, and supports the achievement of universal health coverage, especially in underserved regions.

13.	Section 36 (g) of the Finance Bill 2025	The Bill proposes to charge VAT on specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators	Delete Section 36 (g) of the Finance Bill 2025	This exemption should be retained to promote investment in the local tourism and automotive sectors. This exemption encourages local assembly, supporting job creation and industrial growth while also aligning with the government's goal of boosting tourism which is a key foreign exchange earner.
TAX PROCEDURES ACT, CAP 469B				
14.		The Bill seeks to increase the timeframe for determination of an overpayment of tax application by KRA from 90 days to 120 days.	Deletion of Section 50 (b) of the Finance Bill 2025	The proposed amendment may lead to delays in resolving taxpayers' overpayment claims, which could negatively impact their cash flow and disrupt financial planning.
15.		The Bill proposes to increase the timeframe to review an application for refund of overpaid taxes subject to an audit by the Commissioner from 120 days to 180 days.	Deletion of Section 50 (c) of the Finance Bill 2025	The proposed amendment may result in prolonged delays in the resolution of overpayment claims, potentially straining taxpayers' cash flow and disrupting their financial planning.

16.	Section 52 of the Finance Bill 2025	The Bill proposes to allow the Commissioner to access trade secrets and personal data information for integration into the electronic tax management system.	Delete Section 52 of the Finance Bill 2025	These restrictions will help balance effective tax enforcement with the protection of businesses' proprietary information and individuals' privacy rights. They also foster trust between taxpayers and the Kenya Revenue Authority encouraging voluntary compliance without fear of data misuse.
17.	Section 54 of the Finance Bill 2025	The Bill proposes to remove weekends and public holidays in the computation of time for lodging objections and appeals	Delete Section 54 of the Finance Bill 2025	The proposal to exclude weekends and public holidays from the computation of time for lodging objections and appeals should not be adopted because it undermines the principle of efficiency and timely resolution of tax disputes.
18.	Section 56 (5A) of the Finance Bill 2025	The Bill proposes to waive penalties and interests on errors generated from the electronic tax system upon recommendation by the Cabinet Secretary	Amend Section 56 (5A) of the Finance Bill 2025 to remove for the CS's approval	Errors caused by the system are beyond the taxpayer's control, and relief from penalties and interest in such cases should be automatic and clearly provided for in law not subject to bureaucratic approval.

MISCELLANEOUS FEES AND LEVIES ACT, CAP 469C				
19.	Section 58 of the Finance Bill 2025	The Bill seeks to narrow the Import Declaration Fee (IDF) and Railway Development Levy (RDL) exemptions to only apply to spare parts under Chapter 88 and aeroplanes and aircraft over 2,000 kg but below 15,000kg as well as those over 15,000 kg.	Deletion of Section 58 of the Finance Bill 2025	The airline industry already contributes to various revenues to the government through existing taxes such as: • Air navigation and landing fees; • Passenger service charges; • Fuel levies and excise duties; • Corporate income tax; and • Employment-related taxes like PAYE and training levies. Removal of this exemption could adversely affect certain players in the industry who may be required to pay additional import taxes including the 1.5% RDL and 2.5% IDF if their imported aircraft do not fall under HS Codes 8802.30.00 or 8802.40.00.



3. EMPLOYERS ASK AND PROPOSED WAY FORWARD

The Federation of Kenya Employers humbly requests that employers' views be taken into consideration and the Bill amended to incorporate them.

Signed for and on behalf of the
FEDERATION OF KENYA EMPLOYERS

Jacqueline Mugo (MRS), EBS, MBS, OGW
EXECUTIVE DIRECTOR & CEO

27/05/2025

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KENYA ASSOCIATION OF AIR OPERATORS

CHAIRMAN:
MBUVI NGUNZE
CHIEF EXECUTIVE OFFICER:
LIZ ALUVANZE



P.O. BOX 27592 – 00506
NAIROBI
KENYA

KAAO/76

26th May 2025

Clerk of the National Assembly
The National Assembly
P.O. Box 41842-00200
NAIROBI

Dear S. Njoroge CBS,

REF: KENYA ASSOCIATION OF AIR OPERATORS MEMORANDUM ON FINANCE BILL 2025

Reference is made to your letter **Ref: NA/DDC/F&NP/2025/032** dated **15th May 2025** regarding stakeholder engagement on the **Finance Bill 2025**. The Kenya Association of Air Operators (KAAO) hereby submits its memorandum for consideration by the National Assembly Departmental Committee on Finance and National Planning.

Our memorandum (attached) outlines serious concerns regarding several proposed tax measures in the Finance Bill which if enacted, will catastrophically have an impact on the safety, growth, sustainability and competitiveness of the aviation sector.

We urge the committee to consider our proposals, and we are available to provide further clarification if required.

Yours faithfully,

LIZ ALUVANZE
CHIEF EXECUTIVE OFFICER





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Copy to:

1. Hon. John Mbadi, EGH
Cabinet Secretary
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Nairobi.
2. Hon. Davis Chirchir
Cabinet Secretary
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KENYA ASSOCIATION OF AIR OPERATORS

CHAIRMAN:
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KAAO/76

26th May 2025

Clerk of the National Assembly
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P.O. Box 41842-00200
NAIROBI

Dear S. Njoroge CBS,

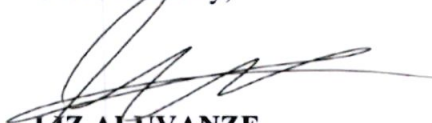
REF: KENYA ASSOCIATION OF AIR OPERATORS MEMORANDUM ON FINANCE BILL 2025

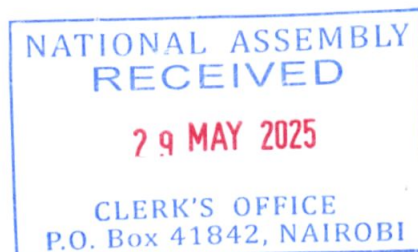
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Principal Secretary
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While taxation is a critical tool for public finance, its design and application must align strategically with national development priorities set forth in the National Aviation Policy and international best practices. Given the aviation sector's catalytic role and extensive multiplier effects across the economy, it requires a fiscally supportive environment. Any reversal of these exemptions would not only jeopardize recent progress but also compromise national development goals under **Kenya Vision 2030**, the **Bottom-Up Economic Transformation Agenda (BETA)**, the **African Continental Free Trade Area (AFCFTA)**, and the **Single African Air Transport Market (SAATM)**. As an established aviation hub in East Africa, Kenya's air transport sector is integral to the realization of economic growth, job creation, and global integration.

Extensive global evidence, including the European Commission's 2019 analysis of aviation taxation, demonstrates that aviation taxes substantially influence air connectivity, ticket prices, passenger demand, fleet acquisition, and overall industry competitiveness. The removal of aviation tax exemptions has been shown to reduce passenger volumes, employment, investment, and GDP contributions. While such taxes may generate short-term fiscal revenue, they risk distorting market dynamics, particularly in economies where aviation is foundational to tourism and economic growth.

This memorandum, prepared by the Kenya Association of Air Operators (KAAO), articulates the sector's concerns and provides a detailed analysis of the potential implications of the proposed tax amendments. It highlights the sector's significant contribution to the national economy, aligns the discussion with global and regional best practices, and offers evidence-based recommendations to guide policymakers toward sustainable, growth-oriented decisions.

The objective is to ensure that Kenya's aviation industry remains a catalyst for economic development, regional connectivity, and international competitiveness, while safeguarding the interests of all stakeholders involved which is clearly stipulated in the National Aviation Policy.

2. OVERVIEW OF THE AVIATION INDUSTRY IN KENYA

Kenya's aviation industry is a cornerstone of its socio-economic framework. Beyond connecting people and places, it serves as a catalyst across diverse sectors: powering tourism, enabling trade, advancing film and photography, and sustaining high-skilled employment. It is indispensable in delivering humanitarian aid, facilitating emergency medical evacuations, and supporting scientific and environmental research. In the realm of conservation, aviation strengthens wildlife protection efforts through aerial patrols, rapid anti-poaching deployments, and improved access to remote ecosystems. From precision agriculture to connecting underserved regions, aviation weaves through nearly every facet of national development. The prevailing VAT exemption regime has been instrumental in safeguarding Kenya's status as a strategic and competitive aviation hub on the continent. This strategic positioning is reflected in the consistent volume of aircraft movements over the years (see *Appendix 1, Figure 2*), underscoring aviation's growing importance in supporting national and regional development goals.

According to a report by the International Air Transport Association (IATA) titled *The Importance of Air Transport to Kenya*, the aviation sector and its supply chain contribute **USD 1.2 billion** to Kenya's Gross Domestic Product (GDP) annually equal to 1.1% to total national GDP. When the wider supply chain, tourism activities and employee spending are included, the sector supports a combined KES 425 billion (USD 3.3 billion) in economic activity, accounting for **3.1%** of the national GDP.

Moreover, the aviation industry is a significant source of employment, directly and indirectly supporting 460,000 jobs, including 21,100 people are directly employed in aviation, generating USD 1.2 billion of economic output, equal to 1.1% of total GDP. Moreover, the tourism sector, heavily reliant on-air travel, contributes USD 1.2 billion to Kenya's GDP and provides employment for 242,200 people. Additionally, international tourists arriving by air are estimated to inject USD 1.9 billion annually into the economy through their spending on local goods and services.

2.1 ECONOMIC CONTRIBUTION TO VARIOUS SECTORS

i. Tourism

Aviation is the lifeblood of Kenya's tourism industry—a key economic pillar within the East African Community (EAC). Over **70% of international tourists** arrive by air, and the availability of direct international flights to Nairobi, Mombasa, and other regional airports has enabled Kenya to position itself as a top destination for safari, coastal, and conference tourism. Without robust air connectivity, the competitiveness of Kenya's tourism offering would significantly diminish. The projected growth in passenger traffic through JKIA, as shown in *Appendix 1 Figure 3*, underscores the ongoing and future importance of aviation in sustaining and expanding Kenya's tourism industry.

ii. Agriculture and Trade

Kenya's agriculture sector—the backbone of the economy—relies heavily on aviation for the export of perishable high-value goods such as cut flowers, fruits, vegetables, and herbs to markets in Europe, the Middle East, and Asia. According to the Horticultural Crops Directorate (HCD) 2023 Annual Report, Kenya exported over **250,000 tonnes of cut flowers**, earning approximately **KSh 107.6 billion**. Avocado exports reached **122,581 tonnes**, valued at **USD 159 million**, with most of the premium shipments relying on air freight to maintain quality and freshness. Air transport enables swift delivery to international markets, safeguarding product integrity and export earnings. As illustrated on *Appendix 1 Figure 4*, the number of freight movements through Jomo Kenyatta International Airport (JKIA) reflects the scale and consistency of cargo operations supporting this trade. JKIA remains one of Africa's busiest cargo hubs, handling between **350,000 and 400,000 tonnes** of cargo annually, as noted by the Kenya Airports Authority (KAA, 2023), due in part to its modern cold-chain infrastructure and strategic positioning.

iii. Health, Emergencies, and Humanitarian Operations.

Aviation also plays an essential role in supporting **humanitarian operations, medical evacuations, and disaster response**, particularly in remote and underserved areas. In 2022, AMREF Flying Doctors conducted over 960 evacuations (AMREF 2022), while the UN Humanitarian Air Service (UNHAS) supported relief operations in remote areas. Additionally, the expansion of **Unmanned Aircraft Systems (UAS)** has accelerated emergency response and last-mile medical delivery. Since 2023, Zipline has completed over 6,300 drone deliveries of medical supplies (Scholar Media Africa), with Kisumu County alone accounting for over 10,000 flights where 40% were emergency supplies (Africa Science News). These efforts highlight the growing impact of aviation and drone technology in strengthening public service delivery across the country.

iv. Training and Maintenance Hub

Kenya is widely recognized as a **regional leader in aviation training and aircraft maintenance**, hosting **17 Approved Training Organizations (ATOs)** (*see Appendix 2 Table 1*) and **Approved Maintenance Organizations (AMOs)**. These institutions not only serve local demand but also attract trainees and aircraft from the wider Africa region, reinforcing Kenya's stature as a regional aviation hub.

2.2 INTERNATIONAL COMPARISONS AND BENCHMARKING

What is the impact of uneven and unpredictable tax policy relative to ICAO recommendations and the approved Kenyan National Aviation Policy?

1. Increased costs on importation of aircraft, aircraft engines and parts thereof (i.e. propellers, rotors, under carriages etc.)
2. Increased cost of maintenance leading to increased operational costs which will ultimately be borne by the travelling public impacting Kenya's aviation sector competitiveness.
3. Cost increases deter airlines from timely maintenance and purchase of uncertified parts impacting safety.
4. International Air Transport is different. Its global nature justifies exemption of VAT, RDL, IDF among other taxes for an even playing field.
5. It is directly contrary to the Government's own ambition of job creation enumerated in BETA, and sustainability for a sector that has a direct multiplier effect on the economy.

Globally, aviation is widely recognized as a strategic industry warranting preferential fiscal treatment. In line with ICAO policies on taxation (**ICAO Doc 8632**), signatory states are encouraged to exempt aviation fuel, aircraft, spare parts, and international transport services from taxation to foster sustainable growth in air transport.

The European Commission's 2019 report on aviation taxation corroborates that removing such exemptions leads to increased ticket prices, reduced passenger volumes, and diminished employment within the sector. These adverse effects occur with only limited environmental or fiscal benefits, particularly in less mature markets where aviation acts as a critical development multiplier.

Within the African context, multiple jurisdictions have maintained VAT exemptions or zero-rating mechanisms to preserve sector competitiveness and attract investment. **At an Africa level, and linked to the AfCFTA, the Economic Community of West African States (ECOWAS), has decided to eliminate taxes on aviation by 2026.**

Table 1: A comparative analysis of other countries Aviation Taxation

Country	Provision	Incentive
Tanzania	Importation of aircraft, engines, and parts	VAT Exempt
Uganda	Leased aircraft, engines, spares, and MRO services	Zero-rated (Indefinitely)
Rwanda	Aircraft, spare parts, and maintenance tools	VAT Exempt
Nigeria	Imports and leases by Nigerian-registered airlines	Zero-rated, plus excise exemption
Angola	Supplies for international traffic aircraft	Zero-rated
Mozambique	Lease, repair, maintenance, and freight for aircraft	Zero-rated
Malawi	Importation of aircraft and spacecraft	VAT Exempt
European Union	Aircraft and aircraft parts by airlines operating 50% of their flights internationally	VAT Exempt
China	International transportation services, repair and maintenance for aircraft used in international flights	Zero-rated
United Arabs Emirates	Importation of aircraft and related services for international transportation	Zero-rated
Singapore	International air transport services, aircraft leasing, maintenance, and repair services	Zero-rated

Source

1. National Finance Acts (2023), *PWC VAT and Indirect Taxes in Africa – A Guide*, and ICAO Taxation Policy (Doc 8632), [VAT exemption for aircraft scope of the exemption for international airlines](#)
2. China VAT essentials guide 2021: <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2021/02/china-vat-essentials-guide-2021.pdf>
3. Ministry of Finance-UAE: <https://mof.gov.ae/vat/>
4. Inland Revenue Authority of Singapore (IRAS): [https://www.iras.gov.sg/taxes/goods-services-tax-\(gst\)/charging-gst-\(output-tax\)/when-to-charge-0-gst-\(zero-rate\)/providing-international-services](https://www.iras.gov.sg/taxes/goods-services-tax-(gst)/charging-gst-(output-tax)/when-to-charge-0-gst-(zero-rate)/providing-international-services)

3. KAAO PROPOSAL ON THE FINANCE BILL 2025

PART III – VALUE ADDED TAX					
Clause No.	Description of the Clause	Current Provision (VAT Act No. 35 of 2013)	Proposed Amendment	Economic Impact	Benefit
346	<i>First Schedule to Cap.476</i> 36. SECTION A OF PART I OF THE FIRST SCHEDULE TO THE VALUE ADDED TAX IS AMENDED – (a) by deleting paragraph 49; 49. All goods and parts thereof of chapter 88;	49. All goods and parts thereof of chapter 88;	Delete	The introduction of 16% VAT on importation of aircraft, spacecraft and parts thereof under Chapter 88 will result in Kenyan operators losing their competitiveness due to increased costs of purchase, leasing or financing of these equipment. This in turn will result in increased operational costs which will be cascaded down to the consumers and the public travelling. It may also lead to safety concerns deterring airlines from timely maintenance therefore impacting safety. Increased costs will also discourage investors from registering aircraft in the Kenyan registry, which will impact revenue generated by the Kenya Airports Authority and Kenya Civil Aviation Authority in the form of fees and charges.	Sector competitiveness and a more inducive environment for investment. This therefore cross facilitates other sectors and economic activities including but not limited to Tourism, Trade, Surveillance, Agriculture, Medicine, Training, Maintenance etc. The trickledown effect is eventually the creation of more jobs and services, overall contributing to the growth of our GDP. Kenya's aviation industry has experienced notable growth under the current tax regime, as reflected in the recent acquisition of new equipment by various operators. From 2023 to date, several aircraft and related assets have been registered in the country (see details below). These developments signal a strong upward trajectory for the sector, reinforcing Kenya's position as a regional aviation market leader. - X1 B7237-800F - X1 ATR 72-500

				As shown in Appendix 1, Figure 1, the annual passenger statistics for key airports highlight the scale and growth of air travel. This underscores the importance of maintaining cost efficiency in the industry.	- X1 Bombardier CRJ200 - X2 Dash 8 400 - X2 Dash 8 100 - X6 C208B - X2 C172 - X1 F100 - X1 F70 - X1 Airbus H125 - X2 Boeing 737-400F - X1 Boeing 737-300F - X1 Dash 8-200 - X1 Cessna 208 - X1 Dash 8-400 - X1 Cessna Citation 680 Sovereign - X1 Pilatus PC-12NG - X1 ATR 72-500 - X1 ATR 42-500 Such developments are more than just numbers on a registry—they are markers of an industry on the ascent. They affirm Kenya's growing stature as a regional aviation leader, where policy, purpose, and progress continue to align.
	Our Request Reinstate paragraph 49 allowing for exemption of aircraft and spare parts from VAT.				
346	<i>First Schedule to Cap.476</i> 36. SECTION A OF PART I OF THE FIRST SCHEDULE	58. Direction-finding compasses, instruments and	Delete	Introduction of 16% VAT on Direction-finding compasses, instruments and appliances for aircraft will result in higher cost	Modernization of fleet This will encourage maintenance and modernization of fleet which

	TO THE VALUE ADDED TAX IS AMENDED – (c) by deleting paragraph 58; 58.Direction-finding compasses, instruments and appliances for aircraft.	appliances for aircraft.		for aircraft maintenance, which has a safety implication as the costs will be extremely high. This will have a negative impact to local aircraft maintenance organizations since it will be cheaper to outsource maintenance activities in other countries within the region thereby making Kenya uncompetitive. This will result in the loss of jobs.	will make Kenya have good safety records globally. Boost to Economy Overall, Kenya remains an aviation hub in the region. This will encourage companies from the region to seek maintenance services from Kenya thereby boosting the country's economy. Creation of jobs Robust aviation maintenance activities will result in creation of jobs for the country.
Our Request Reinstate Section 58 that allows for exemption of Direction-finding compasses, instruments and appliances for aircraft from VAT.					
347	<i>First Schedule to Cap.476</i> 36. SECTION A OF PART I OF THE FIRST SCHEDULE TO THE VALUE ADDED TAX IS AMENDED – (f) in paragraph 89, by deleting the words 'other aircraft spare' and substituting therefor the word 'aircraft'. 89. Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the	89 Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent Authority responsible for civil aviation.	Delete the word 'aircraft' and include the words 'all goods and parts thereof of Chapter 88, and any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent Authority responsible for civil aviation	The risk includes increased costs for the entire aviation sector due to VAT on aircraft spare parts and other goods of chapter 88. This has a direct impact on costs of maintenance and the well-established MRO business in the country, which can quickly move to neighboring jurisdictions where these taxes are not applied. This has in the past benefited Tanzania and Ethiopia who do not charge VAT on aircraft spare parts. This section now provides for exemption of aircraft.	Improved safety and growth of MRO business, and reduced cost of doing business and cost to the end consumer. Having said the above, it is important to be alive to the risk of bureaucracy and back-log that the approval process through the competent authority will bring if tasked with more than the existing provisions which only cover the non-chapter 88 aircraft part and spare parts.

	competent authority responsible for civil aviation.			Aircraft spare parts are not exempted from VAT with deletion of other aircraft spares and paragraph 49 above. This amendment will impact on local operators since the income on local transportation of pax and cargo is exempted from VAT.	
Our Request Reinstate exemption from VAT on all goods of Chapter 88 above and any other aircraft spare parts to cover those that not under Chapter 88.					

PART VI – MISCELLANEOUS FEES AND LEVIES

Clause No.	Description of the Clause	Current Provision	Proposed Amendment	Economic Impact	Benefit
358	<i>Second Schedule of Cap 469C</i> 58. SECOND SCHEDULE OF THE MISCELLANEOUS FEES AND LEVIES ACT IS AMENDED - Part A — GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS (i) by deleting paragraph (xv) (xv) All goods and parts thereof of Chapter 88;	GOODS EXEMPT FROM IMPORT DECLARATION FEE All goods and parts thereof of Chapter 88;	Delete	Increased operational costs for local air operators, AMOs (Approved Maintenance Organizations), and related aviation service providers, who will now face 3.5% more on import costs (1.5% IDF + 2% RDL). Higher maintenance and safety costs will lead to longer aircraft downtimes, use of older aircraft, or cutting of services to low-traffic regions—ultimately weakening air connectivity, especially for humanitarian and medical services.	Improved Safety and Compliance The removal of these levies will facilitate quicker and more affordable access to genuine spare parts, encouraging timely maintenance. This ensures aircraft safety and enhances Kenya's compliance with international aviation safety standards, boosting the country's reputation as a reliable aviation jurisdiction. Strengthened Regional Competitiveness By aligning Kenya's tax regime with those of Ethiopia, Rwanda, and other aviation-friendly nations, this move reinforces Kenya's

			Negative spillover effects on sectors dependent on aviation, such as: • Tourism – According to projections by the Tourism Research Institute (TRI), Kenya aims to welcome over 5 million international tourist arrivals annually by 2028, more than doubling the current figures. Achieving this target depends significantly on affordable air travel and expanded connectivity. Increased airfare and reduced route access, driven by adverse fiscal changes, could deter tourists and threaten these ambitious projections, ultimately impacting both tourism and aviation sector revenues. • Film and photography – aerial equipment and aircraft use in filmmaking (e.g., for safaris, documentaries) will become costlier. • Humanitarian aviation – emergency response by air (e.g., drought, flood relief) could slow due to increased costs. • Aviation training – flight schools and maintenance training facilities will face increased costs on imported simulators, engines, and avionics, reducing the	position as the region's preferred aviation services destination, especially in Maintenance, Repair and Overhaul (MRO), cargo handling, and aviation logistics. Boost to Economy Overall, Kenya remains an aviation hub in the region. Eliminating IDF and RDL on aircraft parts lowers operational costs, encouraging regional airlines to base their maintenance and repair activities in Kenya. This will attract foreign exchange, support local aviation businesses, and stimulate growth across allied industries such as tourism, cargo, humanitarian aid, and filming, aviation training, — ultimately boosting the country's economy.
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				attractiveness of Kenya as a training destination. Undermines Kenya's status as a regional aviation hub, especially compared to Ethiopia, Rwanda, and South Africa—who maintain targeted exemptions to boost the industry.	
	Our Request Reinstate the exemption for all goods and spare parts of chapter 88.				
358	<i>Second Schedule of Cap 469C</i> 58. SECOND SCHEDULE OF THE MISCELLANEOUS FEES AND LEVIES ACT IS AMENDED - Part A — GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS (ii) by deleting paragraph (xva) substituting the following new paragraph - (xva) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00	GOODS EXEMPT FROM IMPORT DECLARATION FEE (xva) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.	Delete	Disproportionate impact on small operators: This amendment narrows the scope of exemption to only large commercial aircraft, effectively excluding small and medium aircraft such as those used for flight training, tourism, film production, private charter, and humanitarian relief. This will disproportionately affect smaller operators who form a large portion of Kenya's general aviation sector and lack the economies of scale to absorb increased costs. These operators will now bear the full brunt of added costs. Reduced pilot training opportunities: Higher cost of	Inclusive sector growth: Broad-based exemptions ensure that small and medium enterprises (SMEs) in aviation, including ATOs, AOC and AMOs, can operate sustainably and expand. Accessibility and equity: Retaining exemptions for light aircraft promotes air access to underserved areas and supports national cohesion goals. Aviation talent development: Affordable flight training supports the development of pilots, engineers, and technicians needed to drive future growth. Stimulation of drone ecosystem: Kenya's leadership in drone delivery and UAS services depends

			simulator parts, avionics, and engines will result in costlier training programs, reducing the number of new pilots entering the job market. Tourism sector vulnerability: Safari operators and aerial tour providers use light aircraft to reach remote parks and conservancies. Increased costs may lead to fewer routes, reduced frequency, or higher prices, dampening tourism growth. Barriers to innovation and drone use: Emerging players in UAS, including logistics and medical drone services, will struggle to scale operations due to higher import costs on drone parts and systems. Aircraft Spares and parts thereof: An important part of the aviation cost structure is aircraft spare parts which are life limited and require constant replacement.	on predictable, low-cost access to aircraft components. Competitiveness across services: Supporting diverse aircraft categories reinforces Kenya's attractiveness in film production, conservation, surveillance, and specialized logistics.
Our Request Reinstate the exemption for any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for Civil Aviation.				

358	<i>Second Schedule of Cap 469C</i> 58. SECOND SCHEDULE OF THE MISCELLANEOUS FEES AND LEVIES ACT IS AMENDED - Part B — GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS (i) by deleting paragraph (xiii) (xiii) all goods and parts thereof of Chapter 88; (xvi)	GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT All goods and parts thereof of Chapter 88;	Delete	Cumulative cost burden: The additional 2% RDL on all aircraft, spacecraft and parts thereof including engines creates an untenable cost structure to ALL aviation related operators. Diverted maintenance spending: Operators will choose to outsource maintenance to countries with lower taxes, redirecting investment and jobs away from Kenya's MRO sector as was witnessed prior to the Finance Bill 2023. Slowdown of aircraft modernization: Higher costs reduce the financial viability of replacing aging aircraft with more fuel-efficient models, undermining Kenya's green aviation goals. Weakened aviation ecosystem: Rising input costs across the board may result in reduced profitability for operators, job losses, and closure of marginal aviation businesses.	Retention of MRO investments: Maintaining exemptions encourages investment in local maintenance facilities and attracts regional contracts. Efficiency in logistics: Lower aircraft part costs improve turnaround time, reduce service interruptions, and enhance sector reliability. Enhanced public service capacity: Cost-effective operations support continued delivery of critical public functions such as airlifting vaccines, aerial spraying, and disaster relief. Environmental alignment: Affordability in aircraft renewal supports the shift to cleaner, more efficient aviation technologies. Support for Kenya Vision 2030 and BETA: A fiscally enabling environment fosters sector expansion aligned with national economic transformation goals.
358	<i>Second Schedule of Cap 469C</i> 58. SECOND SCHEDULE OF THE MISCELLANEOUS	GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT	Delete	Exclusion of light and specialized aircraft: Narrowing the exemption eliminates relief for aircraft most used in training,	Balanced industry support: Full exemptions for all aircraft types ensure equitable development

	FEES AND LEVIES ACT IS AMENDED - Part B — GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS (ii) by deleting paragraph (xvi) and substituting therefor the following new paragraph- (xvi) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00	(xvi) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;		tourism, conservation, and medical flights. Erosion of Kenya's training leadership: Foreign trainees may opt for countries with lower costs, impacting revenue and regional dominance in aviation training. Reduced operational capacity in remote areas: Light aircraft enable access to areas with limited road infrastructure. Cost increases may lead to reduced service or exit from the market. Constrained adoption of drone technology: UAV operators will face new cost pressures just as public and private sector demand for drone services is expanding.	across all aviation tiers. Strategic advantage in regional training: Kenya retains its competitive edge as a centre of excellence for pilot and aircraft technician training. Strengthened rural development: Light aircraft enable agricultural, emergency, and educational access across hard-to-reach regions. Scalable innovation: Cost savings allow UAV startups to scale drone-based services in healthcare, logistics, and agriculture. Diversified growth: A thriving general aviation sector complements commercial carriers and ensures sector-wide resilience in volatile market conditions.
340	Section 35 of the Income Tax is amended— (a) in subsection (1), by inserting the following new paragraph immediately after paragraph (t)— (u) gains or profits which are chargeable to tax under section 9(1) derived from the	N/A	Delete	The gross earnings of nonresident Shipowner, charterer or air transport operator and any ship or aircraft owned or chartered will now be subject to withholding tax in Kenya. The withholding tax of 20% on nonresident business will hinder effectively becomes a cost	Tax exemption has made Kenya competitive in the global markets. Kenya is a great source of Agricultural products to export market. This has been a source of foreign earnings for decades. Exemption from tax will ensure Kenya remains competitive in global market.

	business of a ship owner or charterer;			impacting Kenya's competitiveness due to the limited Double Tax Treaties. Nonresidents will not be able to recoup the tax paid in Kenya. This increases the cost of doing business.	
Our Request. Delete subsection (u) of Section 35 (1); the new provision.					
338	<i>INCOME TAX ACT CAP 470</i> 8. Section 15 of the Income Tax Act is amended - (c) in subsection 4, by inserting the word 'five' immediately after the word 'succeeding'	(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.	Delete	Five years period is arbitrary in a capital-intensive business, where companies accrue tax losses due to accelerated tax allowances	The aviation sector is recovering from Covid where significant tax losses were incurred. Limiting the period of tax losses without recognizing this and investment allowances given is inherently unfair for the sector and will discourage investments.
Our Request. We request the amendment of this proposal by retaining the provision to carry forward the tax losses in the year of income and succeeding years of income.					

5. CONCLUSION

The Finance Bill 2025 seeks to reintroduce VAT, Import Declaration Fees (IDF), and Railway Development Levy (RDL) on aircraft, parts, and maintenance services—measures that would fundamentally alter the cost structure of aviation in Kenya. These proposed changes threaten to unravel recent progress made and puts at risk Kenya's position as a regional leader in air connectivity, fleet modernization, and innovation. They also run counter to ICAO and EAC policy frameworks recommending tax exemptions on international air transport inputs due to their wide-reaching economic impact.

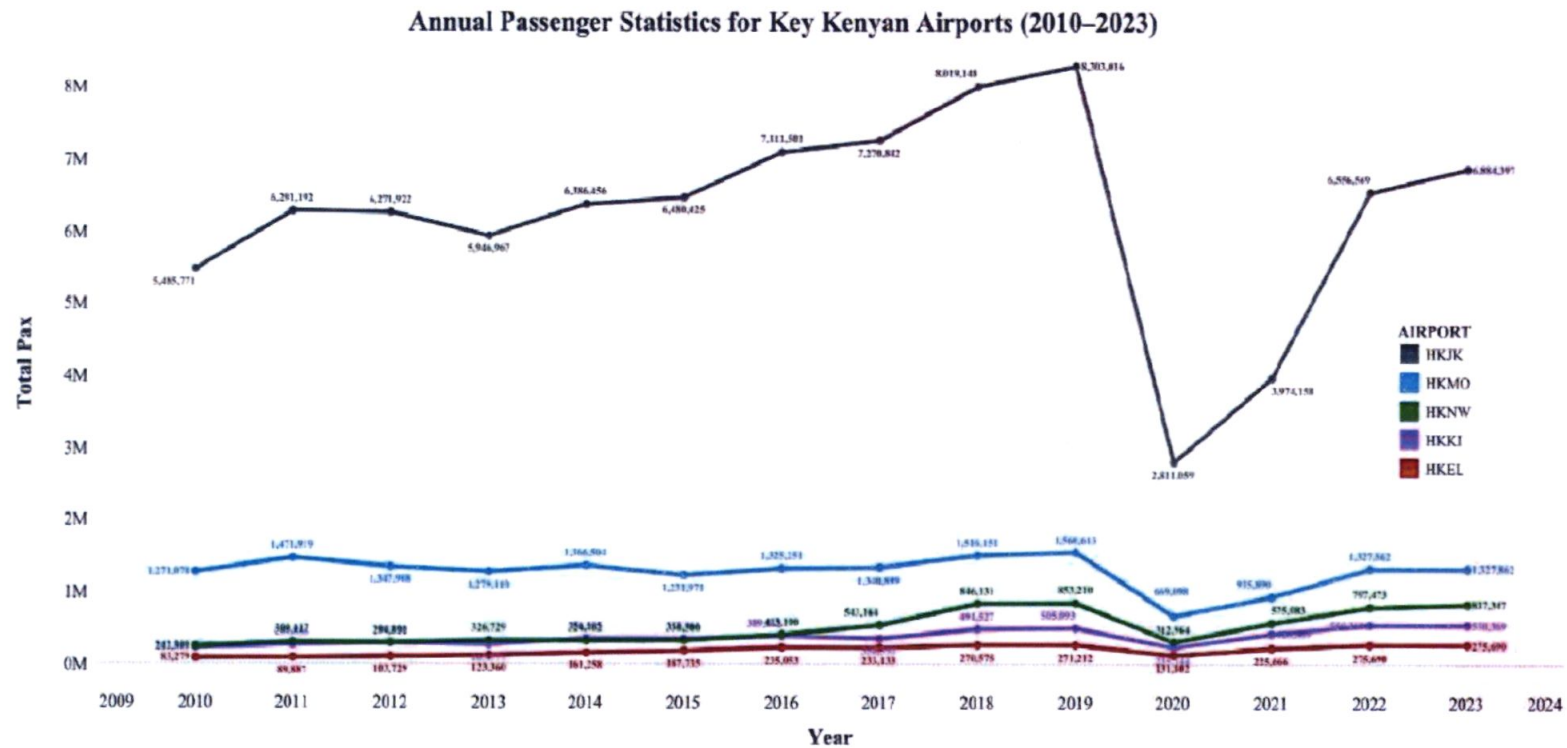
Tourism, a cornerstone of Kenya's economy, stands to suffer the most. With over 70% of international tourists arriving by air and light aircraft playing a vital role in connecting visitors to national parks and coastal destinations, any increase in aviation costs will directly affect visitor volumes. The government projects international tourist arrivals to exceed 5 million by 2028, a target that hinges on affordable, reliable air access. Furthermore, the domestic air travel market is vibrant and a key connector for both business and leisure travel with projections indicating growth to over 6 million passengers by 2028. (Source: *Kenya Airports Authority*). Burdening the aviation sector with new taxes risks driving up fares, shrinking route networks, and ultimately eroding Kenya's brand as a premier destination. To protect this growth, and the thousands of jobs and businesses tied to it, Parliament must uphold the current exemptions and reaffirm aviation's role as a national economic driver and in line with the Government's own National Aviation Policy.

To safeguard economic growth, environmental goals, and regional leadership, it is imperative that Parliament upholds existing VAT, IDF, and RDL exemptions, aligning with ICAO and EAC frameworks. This will ensure Kenya remains at the forefront of aviation innovation in Africa.

Finally, it is not without concern that despite the Departmental Committee on Finance and National Planning pronouncing itself three times on these matters in support of the industry and its role, these proposals are re-instated in the Finance Bill 2025. The industry needs certainty on policy and the current constant twist and turns in policy environment do not give confidence for long term and capital-intensive investments required for the sector to flourish.

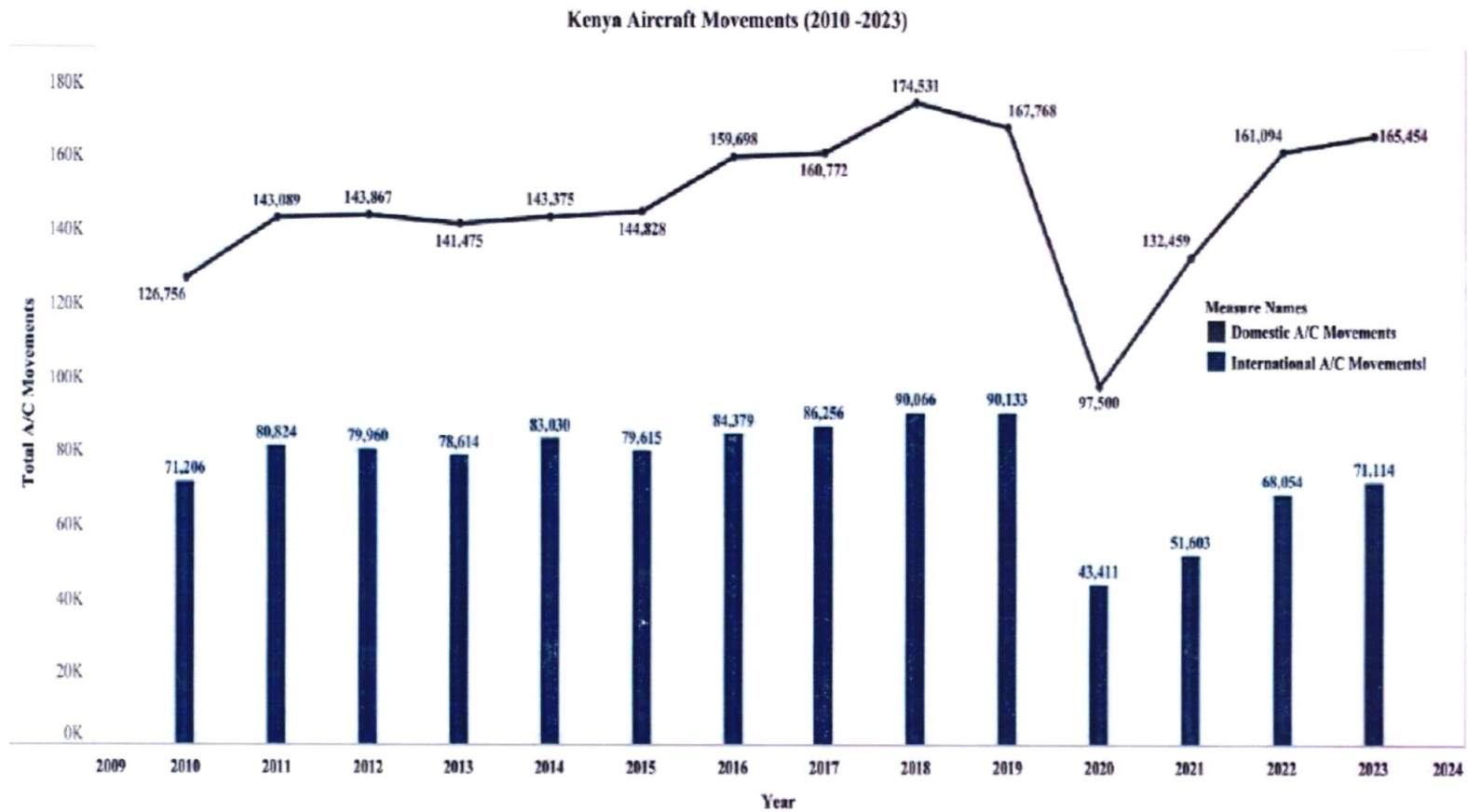
Appendix 1

Figure 1: Passenger Statistics at the five major Airports (2010-2023)



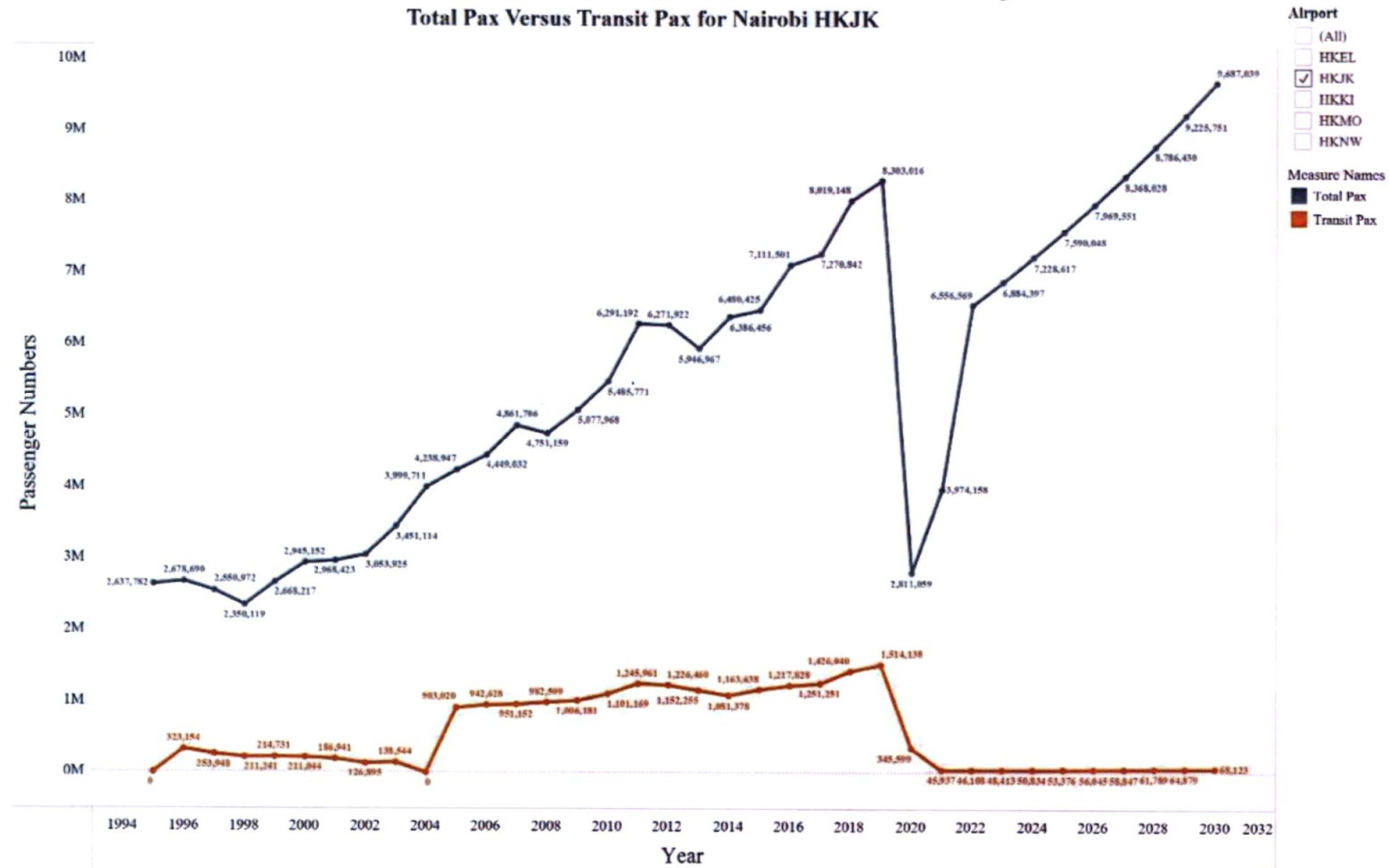
Source: Kenya Airports Authority

Figure 2: Domestic vs International A/C Movements (2010-2023)



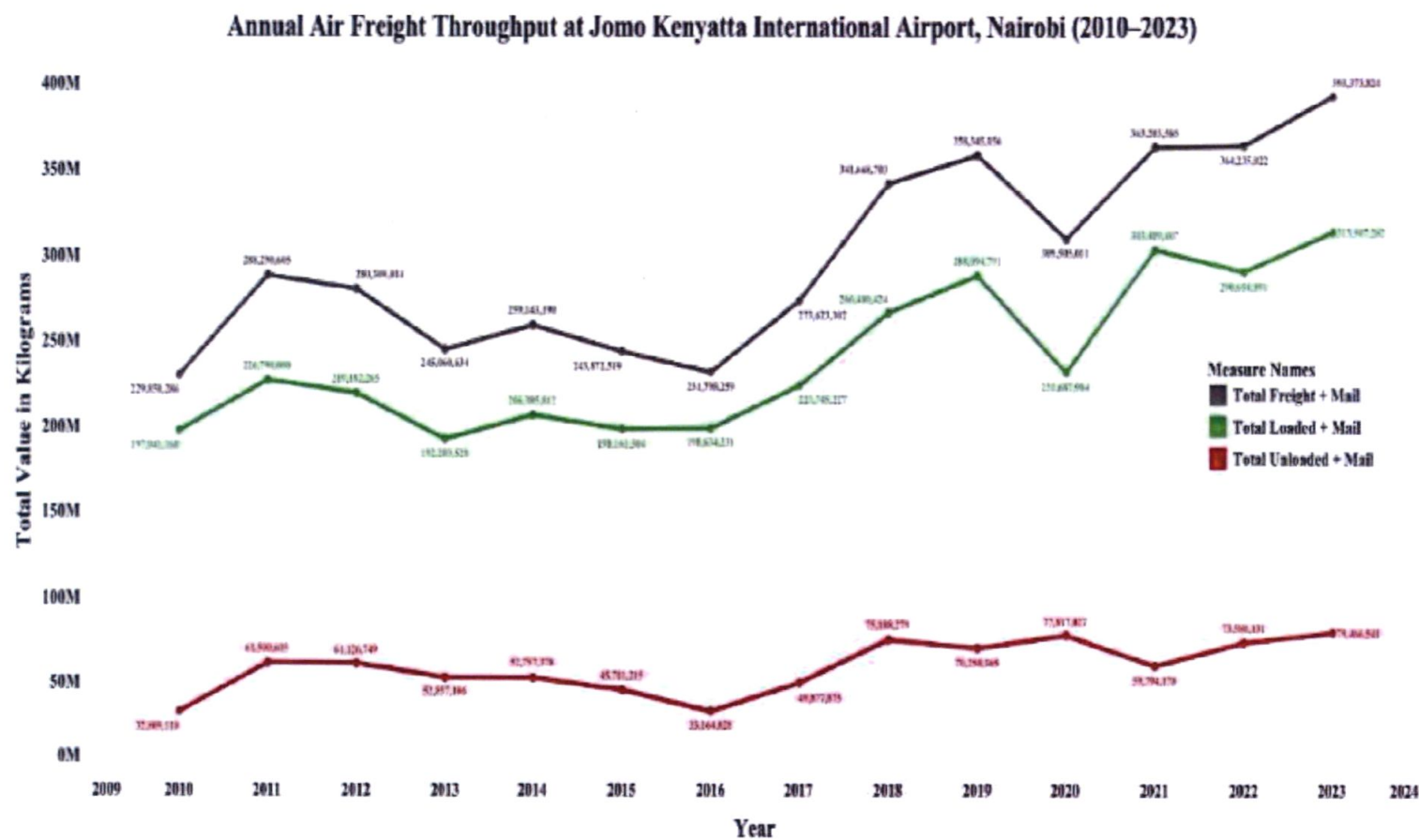
Source: Kenya Airports Authority

Figure 3: Jomo Kenyatta International Airport (HKJK) total passenger versus Transit Passengers



Source: Kenya Airports Authority

Figure 4: Freight + Mail Statistics (2010-2023)



Source: Kenya Airports Authority

Appendix 2

Table 1: List of Approved Training Organizations

ATO No.	ATO Name	Postal Address	Courses	ATO Location
1	East African School of Aviation	P. O. Box 30689-00100, NAIROBI	FOO, ATC, AMEL	Old Airport Road, Embakasi
2	Kenya School of Flying	P. O. Box 74714- 00100, NAIROBI	PPL, CPL, ATPL, MULTI ENGINE, IR, FIR	Wilson Airport; Malindi Airport; Orly Airpark
3	Standards Aviation	P. O. Box 1255- 00200, NAIROBI	PPL, CPL, ATPL, FIR	Wilson Airport
4	Flight Training Centre	P. O. Box 45538-00100, NAIROBI	PPL, CPL, ATPL, FIR, MULTI-ENGINE, IR	Wilson Airport; Nyaribo Airstrip; Mombasa Airport
5	Ninety Nines Flying School	P. O. Box 46968-00100, NAIROBI	PPL, CPL, MULTI-ENGINE, IR, FIR, FOO	Wilson Airport
6	Proactive Air Services	P. O. Box 9135-00300, NAIROBI	PPL, CPL, MULTI-ENGINE, IR	Wilson Airport
7	Kenya Aeronautical College Flying School	P. O. Box 6372-00200, NAIROBI	PPL, CPL, ME-IR, FOO	Wilson Airport; Malindi Airport
8	Aerosafe Africa Consultants	P. O. Box 24557-00100, NAIROBI	FOO	Wilson Airport
9	Nairobi Flight Training	P. O. Box 16050-00100, NAIROBI	PPL, CPL, ATPL, IR	Wilson Airport
10	Westrift Aviation LTD	P. O. Box 60091-00200, NAIROBI	PPL, CPL, ATPL, IR, MULTI- ENGINE, FOO, FIR	Wilson Airport
11	Capital Connect Aviation Supplies	P. O. Box 4197-00102, THIKA	PPL, CPL, FOO, IR	Wilson Airport
12	Pegasus Flyers (EA) LTD	P. O. Box 40813-00100, NAIROBI	PPL, CPL	Wilson Airport
13	KQ Pride Centre	P. O. Box 19002-00501, NAIROBI	FOO	KQ Headquarters Embakasi
14	Think Aviation Training	P. O. Box 480-00502, NAIROBI	FOO	Wilson Airport
15	Flitestar Academy	P. O. Box 15819-00509, NAIROBI	PPL, CPL, SE-IR, FIR, FOO	Wilson Airport
16	Mount Kenya Flight School	P. O. BOX 102504-00100, NANYUKI	PPL, CPL	Nanyuki
17	Global Quality and Safety Solutions LTD	P. O. Box 76926-00620, NAIROBI	FOO	Wilson Airport

Source: Kenya Civil Aviation Authority

Finance Bill 2025 Submissions

Bolt

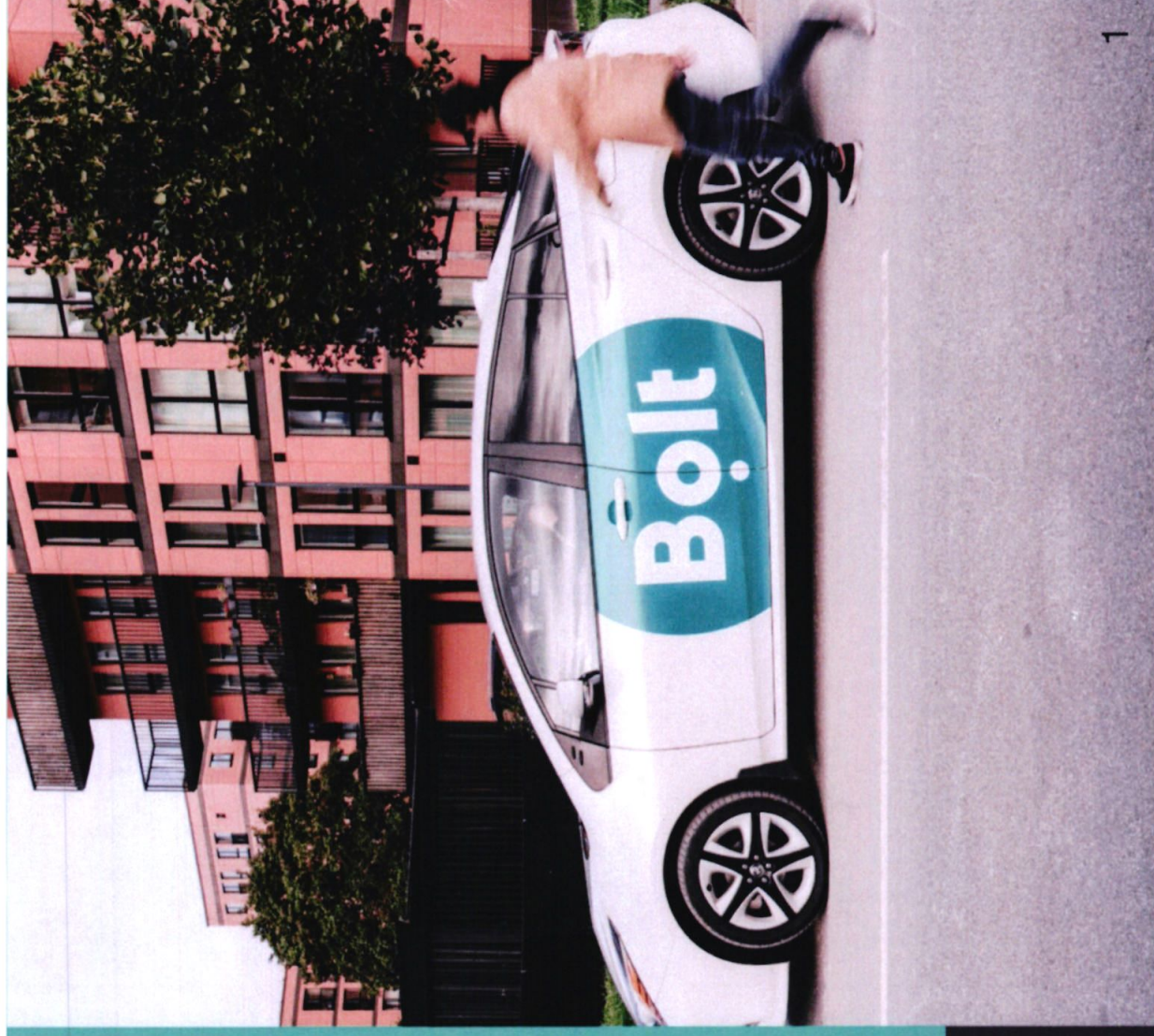


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- Ride Hailing Landscape and Overview
- ETIMS Requirements
- VAT on Electric Products
- Personal Data

Ride Hailing Landscape and Overview

Ride Hailing Landscape and Overview

- The ride hailing industry in Kenya has experienced significant growth and transformation over the past few years, driven by factors such as urbanization, smartphone and network penetration and it offer a convenient solutions.
- The industry is regulated by National Transport Services Authority (NTSA) including including pricing among others.
- The industry in Kenya includes cars, boda bodas and tuk tuks.
- Over 70% of drivers operating rent their vehicles from 3rd party owners.
- The drivers are mostly in the 18 to 35 demographic age group.

ETIMS Requirements

Section 43 of the Finance Bill 2025

Section 23A of the Tax Procedures Act is amended by deleting subsection (4) and substituting therefore the following new subsection -

(4) The electronic tax invoice referred to in subsection (3) may exclude payments of emoluments, payments for imports, payments of interest, transactions for accounting for investment allowances, airline passenger ticketing and payments subject to withholding tax that is a final tax.

Impact on the Ride Hailing Industry

- The current wording of the legislation brings to the ambit of ETIMS the invoices issued in the ride-hailing industry. However, certain complexities in the industry make this a challenging proposal to implement practically.

Volumes

- Ride-hailing platforms process millions of transactions daily. Generating real-time ETIMS for each ride poses performance issues.

Industry Complexity

- The industry involves multiple parties—passengers, independent drivers and the platform owners. Implementing ETIMS in this tripartite arrangement is complicated. We also note, the Revenue Authority is currently unable to provide a workable solution to capture the complexity in the industry all this time after ETIMS was implemented.

Our Appeal

- Include the term “Payments made to players in the Ride Hailing and Food Delivery Industry”. The updated Section should read as follows:
- The updated Section 23A of the Tax Procedures Act is amended by deleting subsection (4) and substituting therefore the following new subsection - (4) The electronic tax invoice referred to in subsection (3) may exclude payments of emoluments, payments for imports, payments of interest, transactions for accounting for investment allowances, airline passenger ticketing and payments subject to withholding tax that is a final tax and ***payments made to players in the Ride Hailing and Food Delivery industry***

VAT on Various Electric Solar Products

Section 36 of the Finance Bill 2025

Section A of Part I of the First Schedule to the Value Added Tax Act is amended.....(annotated) Section O by inserting the following new paragraph immediately after paragraph 154.....

159. The supply of motorcycles of tariff heading 8711.60.00

160. The supply of electric bicycles

Impact on the Ride Hailing Industry

- The reclassification of the goods from zero-rated to exempt means that local assemblers and manufacturers will lose the ability to claim input VAT on costs incurred in producing the goods.
- The main expected consequence is that local assemblers will be unable to seek refunds for input VAT related to such supplies and they will be likely to pass this costs over to the consumers.
- Bolt provides significant livelihood opportunities for people who would otherwise not have significant prospects. Our boda boda category is one of the fastest growing categories due to the affordability of electric motorcycles in the country.
- This proposed change is likely to reverse this as it will increase the barriers to entry. This change will make electric motorcycles more expensive resulting in barring out a vulnerable proportion of the population without much economic prospects.

Our Appeal

Delete Section 36 of the Finance Bill 2025 Part O, paragraph 159 and 160

159. The supply of motorcycles of tariff heading 8711.60.00

160. The supply of electric bicycles

Personal Data

Section 52 of the Finance Bill 2025

Section 59A of the Tax Procedures Act is amended by deleting subsection (1B).

Impact on the Ride Hailing Industry

- Deletion of the safeguard that protects trade secrets and personal customer data from unnecessary government access raises serious risks of privacy infringement and corporate espionage. This erosion of privacy undermines public trust in regulatory bodies, potentially discouraging participation in digital ecosystems.
- The proposed deletion contradicts key data protection principles such as data minimization and purpose limitation, as enshrined in global standards like the GDPR. Allowing the Commissioner to demand unrestricted data access opens the door to over-collection, misuse, or mission creep, increasing the risk of data breaches, unauthorized profiling, or surveillance.

Our Appeal

- Delete Section 52 of the Finance Bill 2025

Significant Economic Presence

Section 12E (3) of the Income Tax Act

12E. The Income Tax Act was amended in December 2024 by repealing section 12E and replaced with the following new section—(1) Notwithstanding any other provision of this Act, a tax known as significant economic presence tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace.

(3) For the purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be **ten per cent** of the gross turnover.

Impact of on Ride Hailing Companies

- The SEP of 3% which replaced Digital Services Tax (DST) of 1.5%, representing a 100% increase in the applicable tax rate, is significantly high. This increase has limited the investment in the industry hence limiting the demand for ride hailing services. We have seen a significant drop in new customers sign-ups as there has been erosion in investment which is necessary to stimulate demand.

While the expectation was that the doubling of the rate from 1.5% to 3% would result in double the tax paid, the reality is that the increase in the tax payable was lower than expected result on a constant growth basis.

Our Proposal

- Section 12 (E)(3) For the purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be **five per cent** of the gross turnover.



George Abasy

Public Policy Manager

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taxteam@bolt.eu

Confluence:

- [Bolt's Global landing page](#)
- [Bolt in a nutshell](#)

Subject Fw: Finance Bill 2025 memo

From Clerk of the National Assembly Kenya <cna@parliament.go.ke>

Make Notes on Justification

To bemack2@gmail.com <bemack2@gmail.com>, benson kamande <benson.kamande@parliament.go.ke>, Jennifer Mutio Ndeto <jennifer.ndeto@parliament.go.ke>

Date Thursday May 22, 2025 12:51:31 PM

Kind Regards

OFFICE OF THE CLERK

THE NATIONAL ASSEMBLY

P . O. Box 41842-00100

NAIROBI.

Tel: +254202848000 ext 3300 / +254790494055

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website: www.parliament.go.ke/the-national-assembly

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From: Ernest muriu <ernest@ernestandmartin.com>

Sent: Thursday, May 22, 2025 12:21 PM

To: Clerk of the National Assembly Kenya <cna@parliament.go.ke>

Cc: consolata.moraa@ernestandassociatesllp.com <consolata.moraa@ernestandassociatesllp.com>

Subject: Finance Bill 2025 memo

Hi,

Please find my comments to the Finance Bill 2025.

Kind Regards,

Ernest Muriu

Partner

ERNEST & ASSOCIATES LLP

Certified Public Accountants (Kenya)

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Web: www.ernestandmartin.com



Attachments

Finance Bill 2025 memo.docx (36.5 kB)

cna@parliament.go.ke
Finance Bill 2025

* Corporate Tax rate to 25% as is in the Nat. Tax Policy.

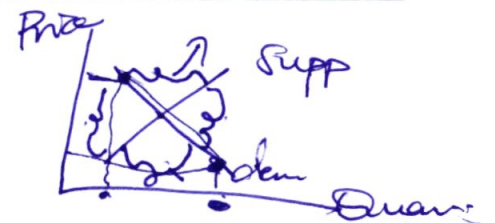
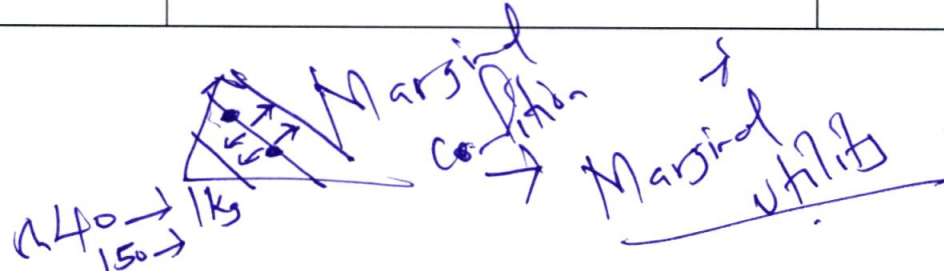
Proposal	Reason	Existing
Clause 4 Insert (cc) delete subsection 5A	Clean up - makes reference to ^{sub-section} 5 that is deleted in Clause 4(c)	
Clause 8 Delete paragraph (a) (vi)	Its not enough to build sporting facilities, other costs may need to be defrayed eg kits, travel, paying couch etc	(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports;
Clause 8 Delete paragraph (b)(ii)	Loss carried forward CGT, removal not good, for the below reasons	(f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;
Clause 8 Delete paragraph (c) Delete paragraph (d)	Loss carried forward restricted to 5 years. This is an indirect repeal of the 2 nd schedule, and the capital allowances provided therein. This is an indirect introduction of minimum tax, declared unconstitutional for taxing losses. And unfair, depending on the investment structure of the company, e.g. leasing financing v outright purchase of asset.	
Clause 12 In subsection (4) of the proposed section 12G Add "with reasons thereof" after the words "in writing"	To require reasons to be given for declaring an advance pricing agreement void Amend to add	
Clause 17 Delete subsection 5A and replace with (5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, object to such imposition or	Subsection 5A be amended to direct all objections be done per section 51 of the tax procedures act.	(5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, within thirty days, object to such imposition or decision.

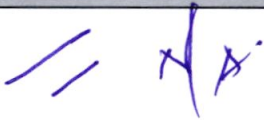
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Proposal	Reason	Existing
decision in accordance with the provisions of section 51 of the tax procedures act.		
Clause 19 Insert the words "or any Repatriated income" after the words "untaxed gains or profits"	So that we can capture section 7A and 7B	
Section 22A Delete Section 22A(8)	See proposals to section 8 of the ITA in the bill 22A(8) For the purposes of this section, contributions made to the National Social Security Fund shall be deemed to be contributions made to a defined contribution registered fund.	
Clause 16 Insert (e) By deleting paragraph (b) in subsection (5) and replacing thereof with (5) The Commissioner shall credit any amount paid under this section in favour of the person to whom the payment is made and also issue to the person a certificate stating the amount of the payment.	Withholding tax certificates are no longer issued by the withholder, these are automatically generated by iTax	(5) Where a person deducts tax under this section he shall, within five working days after the deduction was made— (a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment the amount of tax deducted, and such other information as the Commissioner may specify; and (b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.
Clause 24 Insert (aa) By deleting paragraph (a) in subsection (1)	Withholding tax certificates are no longer issued by the withholder, these are automatically generated by iTax	(1) Any person shall be guilty of an offence if he, without reasonable excuse— (a) fails to furnish a return or give a certificate as required by section 35 (5) of this Act; or
Clause 26 In paragraph (c)(i) After the words "payment of gratuity" "upon attainment of the retirement age determined in accordance with the rules of the National Social Security Fund or in the case payment prior to attaining such retirement age due to ill health; or payment after the twenty years of service"	Delete and allow gratuity to be taxed if taken before retirement.	

Not clear. →

Not clear.



Proposal	Reason	Existing
Delete paragraph (c)(ii) " (aa) other allowances paid under a public pension scheme"		
Only pension benefits should be exempt		
Clause 27 By deleting clause 27 and replacing it as follows: By deleting subparagraph 1B and replacing it as follows (1B) Paragraph (1A) shall (a) apply to items listed under paragraphs 1(1)(a)(i) and (ii), and (1)(b)(i). (b) continue to be in force until 31st December, 2030	This proposal is in effect repealing Kenya's tax policy that provides tax incentives should be repealed with a 5 year notice. We cannot have an environment where tax incentives are exterminated / extinguished at a heartbeat. Making investment and financing arrangements are long and laborious and involves complex agreements, then the process of design / engineering, procurement and development and implementation take a long time. When making considerations including the tax structure, such incentives are built into the project cashflows, unit economics of the products to produce such as overheads and selling prices. This proposal will unravel any project proposal in the pipeline or any projects currently ongoing that were envisioned or implemented on the basis of the current tax structure.	(1A)Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent where- (a)the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least one billion shillings: Tax Laws (Amendment) 2024 Provided that where the cumulative value of investment for the preceding three years of income was two one billion shillings on or before the 25th April, 2020, and the applicable rate of investment 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 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 one 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 (c)the person has incurred investment in a special economic zone
Clause 28(b) Delete Clause 28(b)(ii) and replace as follows	A proper sunset date should be put in place, we cannot have abrupt stoppage of incentives.	(i)in the case of a company that constructed at least one hundred residential units annually, fifteen per cent for that year of income, subject to

Proposal	Reason	Existing
(ii) by deleting paragraph (i) and replacing therefor with (i) in the case of a company that constructed residential units and has sold at least one hundred in a year of income, fifteen per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing, Provided that (i) where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of fifteen per cent shall be applied proportionately to the extent of the turnover arising from the housing activity (ii) subparagraph (i), shall continue to be in force until 31st December, 2030	Also the language used to phrase this paragraph (i) be revised to reflect business processes.	approval by the Cabinet Secretary responsible for housing,
Clause 28(b) Delete Clause 28(b)(iii) and replace as follows (iii) by deleting paragraph (j) and replacing therefor with (j) in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations: Provided that – (i) the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles. (ii) in this paragraph, “local content” means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya and (iii) subparagraph (j), shall continue to be in force until 31st December, 2030	We are removing incentives from productive sectors, that employ skilled and semi-skilled workers are putting incentives to companies licenced by the Nairobi International Financial Centre Authority. Qualified activities under NIFCA are Financial Service Activities and ancillary activities.	(j) in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations: Provided that–(i) the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles; and(ii) in this paragraph, “local content” means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.
Clause 29 Insert (c) paragraph 13 is amended by inserting the following new paragraph immediately after paragraph (d)-	To harmonise the 8th schedule with the new proposed section 117(1)(r) of the stamp duty act – see clause 60 of the finance bill 2025	

Proposal	Reason	Existing
(e) the transfer of property by a company to its shareholders as part of an internal reorganisation: Provided that- (i) the property is transferred to the shareholders in proportion to their shareholding in the company immediately before the transfer; and (ii) where the property consists of shares, such shares should be in a subsidiary of the company undertaking the transfer.		
Insert clause 33A Amend the proviso to section 34(1) after the words "Provided that a" to insert "non-resident" Add another proviso "further provided a non-resident person is a person outside Kenya"	This aligns with the provision under clause 39 that amends the excise duty act. This will also align to the proposals section 42 on agency notices in the TPA.	34. Application for registration (1)A person who in the course of a business— (a)has made taxable supplies or expects to make taxable supplies, the value of which is five million shillings or more in any period of twelve months; or (b)is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months,shall be liable for registration under this Act and shall, within thirty days of becoming so liable, apply to the Commissioner for registration in the prescribed form: Provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings.
Clause 36 Delete paragraph (d) and replace as follows (d) insert proviso to paragraph 62 Provided paragraph 62 shall continue to be in force until 1st December, 2030	To stop the abrupt end of this investment incentive.	62.Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate

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Proposal	Reason	Existing
		in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills.[]
Clause 36 Delete paragraph (e) and release is as follows (e) insert proviso to paragraph 62 Provided paragraph 63 shall continue to be in force until 31st December, 2030	To stop the abrupt end of this investment incentive.	63.Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption63.Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption
Clause 36 Delete paragraph (g) and release is as follows (g) insert proviso to paragraph 91 Provided paragraph 91 shall continue to be in force until 31st December, 2030	48.Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum. 56.Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization 66.Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy. 69.Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, adult diapers, sanitary towels (pads) and tampons	91.Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions—(i)the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime;(ii)the vehicles shall be used exclusively for the transportation of tourists;(iii)the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and(iv)any other condition the Commissioner may impose:Provided that tax shall become payable upon change of use or disposal of the vehicle for other use

Proposal	Reason	Existing
	90.Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture 105.Locally manufactured motherboards 106.Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for information communication technology 107.Plant, machinery and equipment used in the construction of a plastics recycling plant.	
Clause 36 Insert new paragraph VAT Act, First Schedule Part I is amended in paragraph 95 as follows: After the words “any political sub-division thereof” or “a water company owned by National Government, County Government, any political sub-division thereof”	To include water companies in the exemptions, since counties supply water through water companies	95.The supply of natural water, excluding bottled water, by a National Government, County Government, any political sub-division thereof or a person approved by the Cabinet Secretary for the time being responsible for water development, for domestic or for industrial use
Clause 36 Delete paragraph (h) and release is as follows (h) insert proviso to paragraph 109 Provided paragraph 109 shall continue to be in force until 31st December, 2030		109.Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing
Clause 36 Delete paragraph (i) and release is as follows (i) insert proviso to paragraph 112 Provided paragraph 112 shall continue to be in force until 31st December, 2030		112.Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act (Cap. 314), production sharing contracts in accordance with the Petroleum Act (Cap. 308) or a mining license in accordance with the Mining Act (Cap. 306) upon recommendation by the Cabinet Secretary responsible for matters relating to

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Proposal	Reason	Existing
		energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be
Clause 36 Delete paragraph (j) and release is as follows (j) insert proviso to paragraph 113 Provided paragraph 113 shall continue to be in force until 31st December, 2030		113.Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.
Clause 36 Delete paragraph (l) and release is as follows (l) insert proviso to paragraph 129 Provided paragraph 129 shall continue to be in force until 31st December, 2030		129.Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health
Clause 36 Delete paragraph (m) and release is as follows (m) insert proviso to paragraph 143 Provided paragraph 143 shall continue to be in force until 31st December, 2030	These provisions were put in the law books in 2022, its not even 5 years since they were enacted	143.Inputs and raw materials used in the manufacture of passenger motor vehicles.[Act No. 22 of 2022, s. 30(a)(V).]
Clause 36 Delete paragraph (n) and release is as follows (n) insert proviso to paragraph 144 Provided paragraph 144 shall continue to be in force until 31st December, 2030	These provisions were put in the law books in 2022, its not even 5 years since they were enacted	144.Locally Manufactured passenger motor vehicles:Provided that in this paragraph—"locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and"local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.[Act No. 22 of 2022, s. 30(a)(V).]

Proposal	Reason	Existing
Clause 38(a) delete this and replace it By deleting the definition of digital lender <i>Where is the new definition?</i>	Per the Business Laws (Amendment) 2024, Central Bank of Kenya has power for Regulation of non-deposit taking credit providers. Under section 33R of the CBK Act Under the CBK the definition of “digital credit provider”; was deleted. Now that all on-deposit taking credit providers are CBK licensable Now paragraph 4 Part II – EXCISABLE SERVICES, of 1st schedule is sufficient to cover all lenders, thus we can now delete the proposed definition of “digital credit lenders” and paragraph 6 of Part II of the 1st schedule 4.Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value 6.Excise duty on fees charged by digital lenders at a rate of twenty percent	“non-deposit taking credit business” means— (a) granting of loans or credit facilities, whether or not digitally, to members of the public or a section of it, with or without interest, and either secured or unsecured on the goods or assets purchased; (b) asset financing whether directly or through a third-party financier; (c) buy now pay later arrangements as determined by the Bank but does not include hire purchase agreements governed by the Hire-Purchase Act; (d) credit guarantees; (e) pay as you go arrangements as maybe determined by the Bank; (f) peer to peer lending under collective investment schemes regulated under the Capital Markets Act; and (g) any other activity as the Bank may determine to be a non-deposit taking credit business for purposes of this Act; Provided that this does not include any credit arrangements involving the provision of credit by a person that is merely incidental to the sale of goods and provision of services by the person. “non-deposit-taking credit provider” means a person licensed by the Bank to carry on nondeposit taking credit business using own funds and assets but does not include the 33R. (1) Without prejudice to the generality of section 4A(1)(da), the Bank shall have power to—
Clause 41 Amend clause 41 to renumber the current proposal to (a) and insert a new paragraph (b) (b) by inserting a proviso to subsection 1		Similar to section 51(4) of the tax procedures act (4)Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the

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Proposal	Reason	Existing
Provided the Commissioner shall within a period of fourteen days notify the applicant in writing if the application does not have all the required documents and request the applicant to submit the information specified in the notice within seven days after the date of the notice.		information specified in the notice within seven days after the date of the notice.
Insert new clause 43A Section 29 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (2)- (2A) Where the Commissioner has made a default assessment, the Commissioner shall include in the notification under subsection (2) the reasons for the default assessment and provide any workings or computation used to arrive at the assessment.	Similar to the proposal in clause 44. <i>Commissioner should communicate in a timely manner - supply workings used to arrive at the claim.</i>	Section 31 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (8)- (8A) Where the Commissioner has made an amended assessment, the Commissioner shall include in the notification under subsection (8) the reasons for the amended assessment.
Clause 44 at the end of the proposal insert "and provide any workings or computations used to arrive at the assessment."	<i>Add to Section 29 of the TPA for consistency and uniformity</i>	
Clause 47 (i) Insert (fa) in subsection (7)(b) insert the word "setting out the reasons for the rejection" after the words "the notification" (ii) Delete (m)(v)	The taxpayer should be allowed to appeal for any assessment, and during the appeal, ADR should be allowed to resolve any issues <i>Commissioner is to give reasons for rejecting a request.</i>	(7) When the Commissioner is notified by an agent under subsection (6) that an agent is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to the agent— (a) accept the notification and cancel or amend the notice issued under subsection (2); or (b) reject the notification. (14) (e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court
Clause 50 Insert new subsections (ba) in subsection (30, by deleting the words " ninety days " and substituting thereof the words "one hundred and twenty days"	To match the amendments in subsection (3) to subsection (2) <i>Clean up.</i> Where the decision to subject an application to an audit, the commissioner should inform the taxpayer	(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—

Duplam ruler Kicks in after 100 months.

Proposal	Reason	Existing
(bb) renumber the current subsection (4A) to (4B) and insert a new subsection (4A) (4A) Where the Commissioner has decided to subject the application under subsection (1), to an audit, under subsection 4, the Commissioner shall within a period of fourteen days notify the taxpayer in writing of the decision to subject the application to an audit Amend paragraph (c) by deleting "(4A)" and replacing it thereof with "4B"	Comm. should notify an applicant if He/she decides to take an audit.	(3)Where the Commissioner fails to ascertain and determine an application under subsection (1) within ninety days, the same shall be deemed ascertained and approved. (4)The Commissioner may, for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit. (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.
Clause 51, delete the proposed subsection and replace it (7B) Where the Commissioner has allowed the application for late objection under subsection (7) and the objection has been validly lodged, the period within which the Commissioner may make an objection decision, under subsection (11) shall be computed from the day the objection is lodged.	Rewording the Bill.	
Clause 54 Delete this clause <i>Trade secrets, Holidays, Weekends, etc.</i>	This is a new clause, been in the books since 27th December 2024. We live in a country where public holidays are declared abruptly, to plant trees, a second Islam holiday, or any other reason the government desires to give, for a holiday. This is a very forward thinking provision and dovetails well with good practice.	(2)In computing the period for the lodgement of an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays.
Clause 56 <i>New Proposal.</i> Insert new paragraph by amending subsection 2 by deleting the words "shall determine"	In line with 50(2)(p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the	(2)If the same act or omission imposes more than one penalty under a tax law on a taxpayer, the Commissioner shall determine which penalty applies.

Ernest & Associates LLP
info@ernestandassociatesllp

Proposal	Reason	Existing
which penalty applies" and replace " shall impose least severe penalty "	time of sentencing;	

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MAERSK

26 May 2025

The Clerk of the National Assembly
Main Parliament Buildings, First Floor
Parliament Road
P.O. Box 41842 – 00100
Nairobi

By email: cna@parliament.go.ke

Dear Sir,

Memorandum: Legislative proposals for consideration by the National Assembly in the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025)

We, Maersk Kenya Limited, (collectively "Maersk Kenya" or "the Company"), refer to the above subject matter where you invited interested members of the public and organizations to submit any representations that they may have on the Finance Bill, 2025 ("the Bill"). These representations have been made pursuant to Article 118 (1) (b) of the Constitution and the National Assembly Standing Order 127 (3).

1. Company Background

Maersk Kenya is a company incorporated in Kenya under the Companies Act, Chapter 486 of the Laws of Kenya. The Company acts as a shipping agent for Maersk Shipping Line within the A.P. Møller-Maersk group of companies. Maersk Kenya is a key player in Kenya's logistics and shipping sector, offering a range of services including container shipping, freight forwarding, and supply chain solutions. Since 1987, the Company has been active in the Kenyan market with offices in both Nairobi and Mombasa.

The Company has remained a tax compliant taxpayer since its inception and is also responsible for the applicable tax obligations of its Principal, mainly consisting of freight tax under Section 9(1) of the Income Tax Act ("ITA").

In respect of freight tax, the Company has noted key changes proposed through the Finance Bill, 2025 that seek to replace the current tax compliance framework, where Maersk Kenya accounts for freight tax on behalf of its Principal, with a withholding tax regime.

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Classification: Confidential

The Company understands that the proposed change will vest the responsibility to deduct and account for freight tax, under a withholding tax regime, with the various customers of its Principal. We understand that this may have been influenced by, arguably, the ambiguity within the provisions of the ITA concerning the party responsible for accounting for freight tax and the absence of a clearly defined due date under the law.

The Company therefore submits this memorandum to further make proposals for consideration by the National Assembly and for inclusion in the Bill prior to assent.

2. Our tax proposals for consideration

2.1 Proposals included in the Finance Bill, 2025

Clause 16 of the Bill seeks to amend Section 35 of the ITA by inserting a new Paragraph immediately after Paragraph (t). The proposed amendment reads as below:

16. Section 35 of the Income Tax Act is amended –

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (t) –

(u) gains or profits which are chargeable to tax under section 9(1) derived from business of a ship owner or charterer;

Section 9(1) of the ITA provides as below:

9. (1). Where a non-resident person carries on the business of ship owner, charterer or air transport operator and a ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from that business from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya shall be the gross amount received on account of the carriage ; and those gains or profits shall be deemed to be income derived from Kenya; but this subsection shall not apply to gains or profits from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya solely as a result of trans-shipment.

Provided that all income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods shall be deemed to be income derived from Kenya.

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Section 47(2) of the ITA further provides as below:

*"The **master of a ship**, or the **captain of an aircraft**, owned or chartered by a non-resident person who is chargeable to tax under section 9 shall (though not to the exclusion of any other agent) be deemed the agent of that non-resident person for the purposes of this section."*

The import of Section 9(1) as read together with 47(2) of the Income Tax Act is that Section 47(2) bestows a responsibility upon the master of a ship, or the captain of an aircraft including any other agent to account for tax charged under Section 9(1).

The proposal to amend Section 35 of the ITA as above seeks to remove the tax imposed under Section 9(1) from a self-declaration regime to a withholding tax one. Effectively, should this proposal be passed as currently drafted under the Bill, the obligation to account for freight tax will be transferred from Maersk Kenya, who collates data and declares freight tax under self-assessment regime, to the customers of Maersk Shipping Line.

Through this memorandum, Maersk Kenya, on behalf of its Principal MLAS, proposes as below in respect of the change.

2.2 Our Proposals for consideration by the National Assembly on The Finance Bill (National Assembly Bill No. 19 of 2025)

2.2.1 Retention of the current self-declaration tax regime

Section 9(1) of the ITA is currently administered through a self-declaration regime where ship owners self-charge and account for tax on qualifying income mainly through their maritime agents. In the case of Maersk Shipping Line, Maersk Kenya, being the appointed maritime agent accounts for tax imposed under Section 9(1) of the ITA as below:

- Maersk Kenya receives data from MLAS relating to all qualifying income mainly consisting of gross income received on account of the carriage of cargo that is embarked onto MLAS vessels at Kenya's ports;
- Maersk Kenya then computes the tax applicable under Section 9(1) and prepares a payment return on the iTax Portal; and
- Maersk Kenya, on behalf of MLAS, then settles the tax liability to the Kenya Revenue Authority ("KRA") by the 20th day of the following month.

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This tax compliance process currently works seamlessly and allows the KRA to monitor compliance by reaching out to agents of shipping companies where compliance gaps are observed. Accordingly, Maersk Kenya, on behalf of MLAS, wishes to propose the retention of the current self-declaration regime. This is for the following reasons:

Rationale for retention of the self-declaration regime

- The number of entities through which the KRA collects freight tax on qualifying income is currently limited to appointed maritime agents who collect and remit the tax. In practice, though not provided for in the ITA, the tax is remitted every 20th day of the following month. According to the Kenya Ships Agents Association ("KSAA") website, there are about forty-five registered shipping agents. These agents represent majority of the shipping lines that dock at Kenyan Ports. Accordingly, they form a significant number of the agents that collect and account for freight tax under Section 9(1) of the Income Tax Act.

The proposed move to change the collection of freight tax from a self-declaration regime to a withholding tax regime means a move from these limited number of shipping agents to thousands of exporters who pay shipping lines for cargo embarked onto vessels mainly for export. In the case of Maersk, for instance, the Shipping Line operates hundreds of vessels that call at Kenyan Ports in a month which translates to thousands of customers. Maersk Kenya records an average of fifteen thousand transactions relating to cargo embarked onto vessels monthly.

The proposed change would require a shift from a centralised collection and accounting for freight tax by Maersk Kenya to a regime requiring thousands of shippers to account for withholding tax upon payment to Maersk. Extrapolation of this scenario to all shipping lines docking at Kenya's ports would completely decentralize compliance. Such decentralization of tax compliance will not only lead to tax administration challenges but also heavy leakage in revenue and high cost of enforcement/administration. This comes at a time when the Country is making every effort to mobilize tax revenue in view of the limited options in financing the Budget.

- Secondly, MLAS is apprehensive that decentralization of compliance through the adoption of a withholding tax regime creates potential internal administrative challenges and costs on its part. For instance, not all persons shipping cargo out of Kenya would necessarily understand the administration of withholding tax upon payment. Potentially therefore, the Company may face cases of over-deduction or under-deduction, an issue that would not only necessitate regular reconciliations on the part of the Company but could also impact the Company's cashflows. This is considering the fact that the tax rate

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is also subject to change based on the Double Tax Agreements signed with other Countries across the globe.

Further, the proviso to Section 10(1) of the ITA provides that Withholding Tax shall not apply unless a payment is incurred in the production of income accrued in or derived from Kenya or in connection with a business carried on or to be carried on, in whole or part, in Kenya. Accordingly, in Kenya, Business to Consumer ("B2C") transactions do not attract withholding tax. As a result, there is a high likelihood that the Government will lose revenue where freight income is earned on B2C transactions.

Further, the proposed move to a withholding tax regime would require all customers who make qualifying payments to MLAS to commence complying with the current five-day working deadline within which to make withholding tax payments. Section 35(5) of the ITA requires a person who deducts withholding tax to remit tax so deducted to the Commissioner within five working days after the deduction was made. An enactment of the change to a withholding tax regime would require traders to start remitting freight tax every five working days, an adventure that the Company considers not only cumbersome but one that will increase compliance, enforcement, and administrative costs to both the KRA and taxpayers.

Ultimately, this proposed change would result in rising non-compliance, enforcement challenges on the part of KRA, heavy revenue leakage, and loss to the National Treasury. On the taxpayers' side, it creates further an administrative and compliance burden, potential cash-flow challenges and additional operating costs. It's demerits heavily outweigh the advantages it poses. The Company submits that the same should not be considered for enactment into law.

2.2.2. Alternative proposed changes to the law

Further, as noted above, the Company appreciates that the ITA may have legislative gaps when it comes to the procedural framework for the administration of freight tax. For instance, the Income Tax Act does not prescribe the timelines within which freight tax ought to be paid. While the KRA has modified the iTax Portal to allow for filing and settlement of freight tax by the 20th day of the next month, the law does not prescribe this timeline.

Accordingly, the introduction of a timeline will enhance clarity, transparency and efficiency in tax administration which will reduce ambiguity and disputes. Additionally, this introduction should align with the current practice where iTax is configured to recognize the twentieth day of the following month as the due date. Such alignment will ensure that the KRA

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does not incur further costs to modify the iTax system to support a different deadline for remittance of freight tax.

Further, Section 47(2) of the Income Tax Act deems the master of any ship as the agent of a non-resident ship owner for purposes of collection of freight tax under Section 9(1) of the Act. The Section does not expressly include shipping agents as an agent for purposes of collection of tax yet shipping agents remain, in practice, the primary agents that administer the collection and remittance of freight tax. To avert any ambiguity in the law as to whether shipping agents would be liable for freight tax on qualifying income earned by their principals, an amendment of Section 47(2) is necessary.

In light of the foregoing, the Company proposes the following changes to the ITA to address the current ambiguity:

a) Deadline - amendment to Section 9 of the ITA

An amendment to Section 9(1) of the Income Tax Act to prescribe the timelines for the payment of freight tax as below:

Section 9 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1):

(1A): Tax chargeable under subsection (1) shall be payable monthly at a date not later than the twentieth day of the month succeeding that in which the income is earned.

b) Responsible party to compute and remit freight tax - amendment to Section 47 of the Income Tax Act

An amendment to Section 47(2) of the Income Tax Act to expressly recognize shipping agents as alternative agents to ship masters:

Section 47 of the Income Tax Act is amended by inserting a proviso immediately after subsection (2):

Provided that the owner of any ship may elect to use his shipping agent as an agent for purposes of collection and remittance of tax under Section 9(1) in place of the master of the ship. The owner of the ship shall notify the Commissioner, not later than thirty days after the appointment of his shipping agent as agent for purposes of collection and remittance of tax under Section 9(1). The notification referred to shall be made to the Commissioner in such form as the Commissioner may specify.

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2.3 Our request

In conclusion, we request your favourable consideration and support of our submissions to amend the relevant tax laws to retain the current freight tax regime and to introduce relevant provisions that lay a clear legal framework for the administration of freight tax as set out above.

Please feel free to reach out to the undersigned or our tax agents, Deloitte & Touche LLP via email cmusyoka@deloitte.co.ke should you require additional information or clarification regarding our submissions.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Oliver Bunting", with a long horizontal stroke extending to the right.

Oliver Bunting
Chief Finance Officer

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The Chairman
Departmental Committee on Finance and National Planning
Main Parliament Buildings – 1st Floor.
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Attention: The Clerk of the National Assembly

23 May 2025

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

Dear Sir,

Subject: In the matter under consideration by the National Assembly of the Finance Bill (National Assembly Bills No. 19 of 2025) - Submission of legislative proposals

The Clerk of the National Assembly, through a public notice dated 13 May 2025, called for submission of memoranda on the Finance Bill, 2025 (National Assembly Bills No. 19 of 2025) ("the Finance Bill") as provided for by Article 118 (1) (b) of the Constitution of Kenya, 2010. The Finance Bill was published on 6 May 2025 and submitted to the Departmental Committee on Finance and National Planning ("the Committee") for consideration.

Pursuant to the said notice, East Africa Devices Assembly Kenya Limited ("EADAK", "the company") hereby submits a tax proposal for inclusion in the Finance Act, 2025.

We have provided a brief background of the company and the industry, a detailed analysis of the issue, its impact, and our recommendations with justifications. We would be grateful to appear before the Committee to further deliberate with your members on the same. We are happy to provide any additional information on the above should you require it through johnstone.kamunde@eadak.co.ke or +254 722 616 666.

Yours faithfully

For: East Africa Devices Assembly Kenya Limited



Johnstone Kamunde
Chief Finance Officer

Cc. Maurice Mwaniki
Associate Director
PricewaterhouseCoopers Limited
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Waiyaki Way/Chiromo Road
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maurice.mwaniki@pwc.com

1. Background

1.1. East Africa Devices Assembly Kenya Limited

EADAK is a local company set up by a consortium of partners in the telecommunication sector. The company was incorporated on 8 August 2023 to carry out local assembly of affordable smart phones at its assembly plant located in Athi River, Graylands Phase V. EADAK's operations were officially launched on 30 October 2023 by His Excellency Dr. William Samoei Ruto.

EADAK has had significant achievements in its short period of operation. For instance, in the year 2023, it assembled smartphones supplied to the Ministry of Health ("MoH") for use by thousands of community health promoters ("CHP") who were deployed to communities across Kenya as part of the Bottom-Up approach to preventive healthcare. Each CHP would be responsible for a certain number of households and needed to be kitted with modern communication and medical equipment as they worked among Kenyan communities.

In the year 2024, EADAK was recognized by the Kenya Revenue Authority ("KRA") as the highest taxpayer in the non-fuel importers category for the fiscal year 2024, demonstrating that the partnership between the Government and private enterprises through targeted incentives brings tangible impact to the economy and results in mutual success for both.

EADAK has 3 assembly lines and 3 packaging lines, currently operated within an 8 hour shift but with the capacity to accommodate up to three 8-hour shifts within a 24-hour day cycle. During its peak production, EADAK has employed up to 750 employees. The number of active employees at any point is dependent on demand for the devices.

The company has produced approximately 1.4 million mobile devices as of April 2025. The company is keen to expand its locally assembled product portfolio to include a broader list of technology/telecommunication devices i.e., routers, Know Your Client ("KYC") and Point of Sale ("PoS") devices, Smart and Internet of Things ("IoT") devices such as smart meters, smart watches, and smart CCTV cameras, Customer Premise Equipment ("CPE") devices, Modems, and My Wireless Fidelity ("MiFi"), and laptops, desktops, and tablets.

1.2. Unlocking a digitally empowered economy

In the 21st century, the digital economy has become a cornerstone of global economic development. The integration of digital technologies into various sectors has revolutionized how businesses operate, how governments deliver services, and how individuals interact with the world. Digital technologies open up significant socio-economic opportunities for the benefit of governments, businesses, households and individuals. This transformation is driven by the increasing penetration of the internet, the proliferation of mobile devices, and the development of innovative digital solutions.

The global digital economy is expanding at an unprecedented rate. According to the International Telecommunication Union ("ITU") and Global System for Mobile Communications ("GSMA") intelligence, by the start of 2025, approximately 5.56 billion people, were using the internet, which is a 1.7% increase in the twelve months prior as shown in **Figure 1** below¹.

Figure 1: Global digital growth as of February 2025

¹ <https://datareportal.com/reports/digital-2025-global-overview-report>

continent. As Africa continues to embrace digital transformation, the increasing number of internet users will play a pivotal role in shaping the future of the digital economy in the region⁵.

As such, efforts to enhance digital empowerment in Africa are gaining momentum. The African Union's Digital Transformation Strategy for Africa (2020-2030) aims to harness digital technologies to drive economic growth and development. The strategy focuses on improving digital infrastructure, promoting digital skills, and fostering innovation. Additionally, initiatives like the Smart Africa Alliance, which includes 32 African countries, are working towards creating a single digital market in Africa⁶.

Kenya has emerged as a leader in the African continent, with a robust digital economy driven by mobile money and digital innovation, by prioritizing the development of digital infrastructure, evidenced by the National Optic Fibre Network Backhaul Initiative ("NOFBI"). NOFBI aims to deploy over 100,000 km of optic fibre by 2027, connecting all 314 sub-counties in the country⁷. This initiative is crucial for enhancing high-speed internet access, particularly in underserved regions, thereby bridging the digital divide and promoting inclusive growth. Further, Kenya remains one of the global leaders in driving financial inclusion through the use of digital finance solutions⁸. The government's commitment to digital empowerment is further demonstrated by the development of smart cities like Konza Technopolis, which houses the country's data centre and aims to be a hub for innovation and technology⁹.

Statistics on digital adoption in Kenya show that in 2025, Kenya has over 27.4 million internet users, representing an internet penetration rate of 48%¹⁰, and a mobile penetration rate of 121% with 68.8 million mobile cellular connections¹¹. This widespread connectivity is a cornerstone of Kenya's digital transformation, enabling the proliferation of digital services and fostering innovation across various sectors. It is notable that despite the widespread connectivity and digital transformation, there is still a lack of affordable digital devices. A report by the Kenya National Innovation Agency ("KeNIA") highlights that infrastructure limitations, regulatory complexities, and the digital divide present formidable obstacles on our path to widespread adoption¹². Additionally, this also demonstrates that the Kenyan Information and Communication Technology ("ICT") sector, still requires targeted investments by the Government. This can be through providing affordable, accessible, resilient and reliable infrastructure, or encouraging the presence of an ecosystem that supports homegrown and other businesses to generate world class products and services which will help to widen and deepen digital economic transformation.

1.3. BETA as an enabler of digital growth

One of the Kenyan Government's five pillars supporting its Bottom-up Economic Transformation Agenda ("BETA") is the "Digital Superhighway and Creative Industry". Under this pillar, the Government hopes to achieve, among other things:

⁵ [https://www.statista.com/statistics/505883/number-of-internet-users-in-african-countries/#:~:text=In%20January%202024%2C%20Southern%20Africa,global%20average%20\(66.2%20percent\).](https://www.statista.com/statistics/505883/number-of-internet-users-in-african-countries/#:~:text=In%20January%202024%2C%20Southern%20Africa,global%20average%20(66.2%20percent).)

⁶ <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>

⁷ <https://ict.go.ke/sites/default/files/2025-01/Kenya%20National%20AI%20Strategy%20%28Draft%29%20for%20Public%20Validation%20%20%5B14-01-2025%5D.pdf>

⁸ <https://www.investmentpromotion.go.ke/digital-superhighway-creative-economy>

⁹ <https://konza.go.ke/wp-content/uploads/2024/06/Konza-Final-Draft-Strategic-Plan-2023-2027.pdf>

¹⁰ <https://www.itweb.co.za/article/additional-pop-in-kenya-strengthens-east-africas-internet-ecosystem/G98YdMLG6EN7X2PD>

¹¹ <https://datareportal.com/reports/digital-2025-kenya#:~:text=A%20total%20of%2068.8%20million,percent%20of%20the%20total%20population.>

¹² https://www.innovationagency.go.ke/storage/pub-docs/ken_pub_Kenya%20Outlook%20Report%202023%20New_compressed.pdf

- Expansion of Kenya's fibre network coverage countrywide including the laying of 100,000 kilometres of fibre optic cable;
- Digitization and automation of Government processes and services;
- Reduction in the cost of calls and data to enhance the use of online platforms; and
- Strengthening of the Konza Technopolis to bring together industry, academic institutions, and other innovators who will co-invest in emerging technologies to create high-quality jobs which leverage artificial intelligence, robotics, and other technologies¹³.

The Government has communicated its eagerness to open up the Kenyan ICT sector for more investment by technology companies¹⁴ and the citizenry at large through, among, other things, its focus on expanding digital infrastructure to enhance connectivity across the country and investments in fibre optic cables and 5G technology. These efforts are aimed at leveraging the digital infrastructure to support e-commerce, online education, telemedicine, and other digital services¹⁵. Further, there is a deliberate push to support the creative economy, including sectors such as film, music, fashion, and digital content creation¹⁶. Other initiatives have been launched to provide funding, training, and resources to young creatives and entrepreneurs in these industries. Closely related is that the government is also working on policies to protect intellectual property rights and promote local content in the media¹⁷.

To ensure these government initiatives are impactful to the targeted consumers, it is necessary to ensure that tools and accessories required to tap connectivity from the backbone fibre network are readily available and affordable to institutions and the common person both in urban and rural settings.

It is against this backdrop that we wish to submit a proposal for exemption from Value Added Tax ("VAT") for:

- The supply of locally assembled digital devices; and
- Imported inputs or raw materials supplied to approved assemblers/manufacturers of such digital devices in Kenya.

2. The issue and proposed solution

The Government has enacted a series of tax policies specifically designed to accelerate the transformation of the digital economy. For instance, the Government has previously implemented VAT zero-rating on the supply of locally assembled and manufactured mobile phones, thereby reducing the cost burden on consumers and encouraging the adoption of digital technology. This was in addition to a Customs duty remission (0%) provided for raw materials and inputs for the manufacture of smartphones.

Furthermore, in 2024, the Government took a significant step by seeking approval from the East Africa Community Council of Ministers ("Ministers") to approve Customs duty remission (0% duty rate) for inputs for the assembly or manufacture of smart telecommunication devices including laptops and tablets through Legal Notice No. EAC/154/2024 (item 91). This provision aims to lower production costs and stimulate local manufacturing within the digital sector. EADAK is among the companies poised to benefit from these incentives, positioning itself advantageously within the nascent industry.

¹³ <https://www.investmentpromotion.go.ke/digital-superhighway-creative-economy>

¹⁴ <https://www.president.go.ke/government-has-prioritised-digital-super-highway-says-president-ruto/>

¹⁵ <https://www.president.go.ke/wp-content/uploads/DURING-THE-LAUNCH-OF-THE-FOURTH-MEDIUM-TERM-PLAN-MTP-IV-2023-2027.pdf>

¹⁶ <https://repository.kippra.or.ke/handle/123456789/4856>

¹⁷ http://www.parliament.go.ke/sites/default/files/2023-09/Budget%20Watch%202023_0.pdf

Currently, the supply of locally assembled digital devices, such as smart telecommunication equipment including laptops and tablets, is subject to the standard VAT rate of 16%.

2.1. Policy proposal as a solution for both the Government and the sector

In a bid to achieve a balance between affordability and local manufacturing competitiveness, we propose that the Government introduce a VAT exemption on the supply of locally assembled digital devices, specifically the following items:

1. Routers;
2. Know Your Client and Point of Sale devices;
3. Smart and Internet of Things devices such as smart meters, smart watches and smart CCTV cameras;
4. Customer Premise Equipment devices;
5. Modems and My Wireless Fidelity ("MiFi"); and
6. Laptops, desktops and tablets.

In addition, we propose that the VAT exemption also be extended to imported inputs or raw materials supplied to approved assemblers/manufacturers of such digital devices in Kenya. The VAT exemption on both the inputs and output would eliminate the VAT cost on end consumers.

We provide in the table below a description of these digital devices, how they work, as well as their use cases. Further, we provide within **Appendix 1** pictorial presentations of the devices.

#	Device	Description	How it Works	Use Case
1	Routers	Devices that transmit Wi-Fi signals over a broadband connection allowing devices e.g., smartphones, tablets and laptops to access the internet.	Connects to a modem, like a fiber or cable connection to other devices like CPEs to allow communication between those devices and the internet through a secured network.	A business connecting to the internet through a secured Local Area Network ("LAN") connecting laptops and desktops for its employees.
2	KYC and POS devices	Know Your Customer and Point of Sale are devices that help in the identification and verification of a customer in compliance with the law and support in secure payment transactions between businesses and customers.	Identify, validate and register customers' information when accessing services from businesses. Businesses can receive payments from customers seamlessly.	- Businesses and institutions can verify customer information before offering services hence reducing the risk of fraud. - Customers can make payments for services without risk of fraud e.g., M-Pesa.
3	Smart and IoT Devices such as Smart Meters, Smart Watches and Smart CCTV Cameras	Smart device - An electronic device connected to other devices or network that can operate interactively or autonomously to monitor different services remotely. IoT - Internet of Things are devices with sensors, processing ability, software and other technologies that connect and exchange data with other devices and systems.	Tracks the use or consumption of different services within a home or business e.g., electricity and water consumption, security systems like cameras, gas consumption etc. remotely linked to a smart phone, laptop or tablet.	- The utility companies can keep track of power consumption, gas consumption, water consumption and billing across different premises from a central location enhancing revenue collection and resource management. - Smart meters can be used to reduce operation expenses, monitor leakages, and prevent fake connections e.g in power and waterlines. - Smart devices can also be used to track infrastructure like the housing project by the government where the government installs a smart tracking device in every unit sold to collect data.
4	CPE devices	Customer Premise Equipment ("CPE") are telecommunication hardware devices located in a	Enable delivery of voice, video and data services over an Internet Protocol ("IP") network managed by	Customers - Access digital services in the comfort of their homes like e-learning services for

#	Device	Description	How it Works	Use Case
		customer's premises that deliver connection and delivery of internet connection or other communication service.	service provides to provide a connection between the customer's premises and service provider's network.	children's education material. • Business – Access to digital services like government services e.g., iTax, eCitizen etc.
5	Modem/MiFi devices	MiFi is a small portable broadband device that enables customers to connect to wireless signals and share this connection with multiple devices.	Enable delivery of network services managed by services provider through a SIM card to provide a connection between the customer and service provider's network anywhere and anytime and share this network with multiple devices.	• Customers in remote areas can access digital services where wired cables are yet to reach i.e., fiber cables. • When customers have to access services while on the go or in transit.
6	Laptops, desktops and tablets	Computers with a keyboard, screen and trackpad.	Enables access to different digital services connected to the internet via a network and access to other devices remotely.	• Accessing eCitizen services from your home or business to register or pay for government services. • Enhance e-learning and education. • Enhance online job opportunities for the youth.

EADAK currently has sufficiently installed assembly capacity to produce the above-listed devices. We therefore request the Government to support EADAK and other players within the sector to expand their digital product portfolios by exempting the supply of the specified devices from VAT, provided they are locally assembled or manufactured, together with their inputs. This will empower the sector to support the country's wider agenda of digital transformation beyond mobile phone penetration through affordable devices in addition to creating employment for the many youths leaving Kenyan tertiary schools annually.

3. Justification

3.1. VAT exemption on the supply of digital devices together with their inputs will positively impact the digital devices penetration rate in Kenya

Applying VAT exemption on the supply of locally assembled digital devices as well as their inputs will make them more affordable to the consumer, averting a potential VAT charge of 16% that would increase the final cost of the digital devices to the consumer. This is because VAT is ordinarily borne by the final consumer of a good, therefore the exemption benefit will directly benefit the consumer by reducing the device's retail cost.

We illustrate the impact of VAT using the prices of the smartphones we assemble locally below. Whilst these are currently zero rated, the impact of VAT would result in a significant increase in cost as shown.

#	Smartphone	Current retail price (KES)	VAT @ 16% (KES)	Adjusted retail price (with VAT) (KES)
1	Neon Smarta	7,499	1,200	8,699
2	Neon Ultra	8,999	1,440	10,439

It is therefore evident that should our proposal to introduce VAT exemption on the supply of locally assembled digital devices together with their inputs be accepted, the retail price of these devices will be more affordable to end consumers therefore increasing the market for the devices and be competitive relative to imports.

3.2. VAT exemption on the supply of locally assembled digital devices together with their inputs may discourage reliance on imported digital devices which will have a positive impact on the economy.

An increase in the population's reliance on imported products as a better option has negative impacts on the overall economy as it leads to imbalanced or negative Balance of Payments ("BOP") in both the short and long run. For emphasis, when there are too many imports coming into a country in relation to its exports, it can distort a nation's balance of trade and devalue its currency. Statistics on the import and export values of telecommunication equipment as of March 2025 was at 2.4 billion and 0.13 billion respectively¹⁸. This results in an imbalance on the country's Balance of Payments leading to the devaluation of the Kenyan shilling. The devaluation of a country's currency can have a huge impact on the everyday life of a country's citizens because the value of a currency is one of the biggest determinants of a nation's economic performance and its GDP. Furthermore, a majority of the imported telecommunication devices are non-tax compliant due to grey/fake imports that get into the country. Therefore, maintaining the appropriate balance of imports and exports is crucial for the government since the importing and exporting activity of the country

¹⁸ <https://www.knbs.or.ke/wp-content/uploads/2025/05/Leading-Economic-Indicators-March-2025.pdf>

can influence the country's GDP, its exchange rate, and its level of inflation and interest rates¹⁹.

Additionally, competitive pricing of local products can make the overall local market more resilient to potential dumping from foreign markets, ensuring the availability of high-quality products. Dumping arises when a foreign producer sells a product at a price lower than its normal value or below the producers' sale price in the country of origin. While dumping enables consumers to obtain goods at an affordable price, it may also expose them to low quality products²⁰. The level of unfair competition created by dumping may drive local investors like EADAK out of the market thereby causing stagnated or retarded growth for the impacted sectors in the long run. EADAK's next frontier is exports to other markets outside of Kenya, but that is hinged on success in the local market. Therefore, if the business struggles as a result of existing taxation measures, the benefits of exportation, e.g., foreign exchange earnings and impact on BOP will be lost.

Further, imposition of VAT exemption on locally assembled digital devices together with their inputs may encourage additional Foreign Direct Investment ("FDI"). FDI is widely acknowledged as a pivotal driver of sustainable economic growth due to its potential to foster innovation, introduce advanced technology, and alleviate poverty. FDI offers numerous benefits that promote resilient economic development, technological advancements, poverty reduction through job creation, increased tax revenue, enhanced production and productivity, and other transformative effects on a nation's socioeconomic landscape. Consequently, policymakers and experts view FDI as a vital catalyst for local communities and overall economic improvements, leading to the enactment of laws and policies aimed at attracting foreign investments²¹.

3.3. VAT exemption on the supply of locally assembled digital devices together with their inputs is an overarching enabler for the growth of other sectors including education, health, agriculture, among others

Kenya stands as a prominent digital and economic centre in East Africa. Despite this, it falls behind in global digital Gross Domestic Product ("GDP") rankings, highlighting a significant digital divide. A report by the United Nation's Conference on Trade and Development data highlights this gap, emphasizing on the disparities in ICT access, usage, and benefits²². To address this issue, the Kenyan government should develop comprehensive internet access strategies to connect the majority who lack internet access, as well as encourage policies that promote access to digital devices for many citizens²³.

Additionally, the five pillars of the BETA are: (1) Agriculture and transformation, (2) Micro Small and Medium Enterprise ("MSME") Economy, (3) Healthcare, (4) Housing and Settlement and (5) Digital Superhighway and Creative Industry. An investment in the latter through encouraging local production of digital products will be the underlying enabler for the other pillars. For instance, the housing sector could benefit from the use of smart meters, IoT can be used in increasing efficiencies in agricultural production, and devices will enhance initiatives aimed towards providing online learning such as the Digital Literacy Program ("DLP"). The health sector would also be improved by enabling access to health programs information through affordable internet and digital devices.

¹⁹ <https://www.investopedia.com/articles/investing/100813/interesting-facts-about-imports-and-exports.asp>

²⁰ <https://www.standardmedia.co.ke/article/2001468503/china-square-local-retailers-at-risk-of-being-driven-out-of-business>

²¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10868797/#:~:text=Nevertheless%2C%20all%20these%20studies%20indicated,negative%20impact%20on%20FDI%20inflows>

²² <https://unctad.org/news/kenya-unveils-e-commerce-strategy-better-harness-digital-economy>

²³ <https://ict.go.ke/wp-content/uploads/2023/12/E-Commerce-Strategy-2023.pdf>

3.4. VAT exemption on the supply of locally assembled digital devices together with their inputs will promote the government's digitisation agenda

Besides the BETA, the Kenya National Digital Master Plan 2022 – 2032 ("Master Plan") articulates the Government's masterplan flagship programmes which are aimed towards achieving a holistic and coordinated approach towards aligning and optimizing ICT resources.

The Master Plan flagship programmes include installation of high-speed fibre optic infrastructure, establishment of internet hotspots, creating a digital one stop for all Government common services, digital capacity building among others. These flagship programmes are anchored on 5 major pillars i.e., (1) digital infrastructure, (2) digital services, products, and data management, (3) digital skills, (4) digital enterprises, innovation and businesses (5) policy, legal and regulatory considerations.

It is clear that the Government has a focused strategy; besides the significant investments it has made in the digital economy, towards achieving its broader digitisation agenda. Further, emerging technologies such as Artificial Intelligence ("AI") and IoT, among others, are critical and it is therefore imperative for the Government to consider incentivising a wider range of products within Kenya's digital ecosystem. We have provided in **Appendix 1** an illustration of how the above listed devices contribute to the digital ecosystem.

It is also important to note that the Kenyan Government intends to bridge the digital divide by ensuring universal digital services by all in the country²⁴. This objective can only be achieved by increasing the penetration of smart digital devices.

EADAK and the wider ICT/technology industry has capacity to make a significant contribution towards the Government agenda of building a digital superhighway as envisaged under the BETA should the supply of these locally assembled digital devices together with their inputs be exempted for VAT purposes.

3.5. VAT exemption will contribute to Government's BETA and the wider Vision 2030 by promoting the growth of the manufacturing sector, and accessibility and use of the digital devices

According to a report by the Ministry of Information Communications and the Digital Economy, the availability of affordable digital devices, such as smartphones, laptops, digital assistants, etc, is crucial for participation in the digital economy²⁵. The report further highlights that fostering the local production of digital devices and related digital economy equipment will significantly reduce the costs associated with these devices and equipment. This reduction in cost will facilitate broader access for citizens, enabling them to utilize these technologies for both productive and social engagement within the digital economy. This includes enhancing opportunities for learning, accessing social and economic benefits, and participating in civic activities. Electronic Device Manufacturers ("EDMs") play a crucial role in this ecosystem, covering the entire value chain for Original Equipment Manufacturers ("OEMs"). This encompasses manufacturing, product development, and providing after-sales service support for EDMs.

Vision 2030, through the economic vision and strategy pillar, aims to promote manufacturing in the country. To achieve this, the Vision 2030 highlighted on the need for Kenya to produce consumer goods that compete with imports without resorting to restrictions on such imports. Some of the specific strategies for this agenda was to exploit opportunities in adding value to imports that could also be re-exported in order

²⁴ <https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf>

²⁵ <https://ict.go.ke/sites/default/files/2024-09/MICDE%20Sector%20Working%20Group%20Report%20-%20June%202024.pdf>

to capture the “last step” of value addition.²⁶ Similarly, the Government’s BETA includes manufacturing as one of its enablers with the broad target being creation of jobs and increase in Kenya’s exports²⁷.

The digital products listed in section 2 above are all imported by consumers within Kenya whereas the industry has already built some capacity for manufacturing some volumes locally. In obtaining VAT exemption on the local supply of these digital devices as well as their inputs, the Government will have made a significant contribution towards reducing the final cost of these products which will then enable the industry to assemble digital products that will compete favourably against those imported.

3.6. VAT exemption on the supply of locally assembled digital devices together with their inputs will contribute positively to the growth of the Kenyan economy

With the VAT zero rating on the supply of locally assembled or manufactures mobile phones, EADAK has positively contributed to Kenya’s economy as follows;

- 4.6.1 Creation of employment:** EADAK has, at its highest, employed up to 750 people at its facility and could easily employ up to 1,000 employees to assemble a wider range of digital products. Additionally, with the expansion of its product portfolio, EADAK can be able to sustain the jobs of its current employees with the additional local manufacturing of the listed digital devices.
- 4.6.2 Local transfer of technical skills:** EADAK is already facilitating the transfer of technical assembly skills to its local workforce through the 5 expatriate engineers that it has at the plant. Should the Government approve the VAT exemption on the supply of digital devices, where these have been locally assembled, and their inputs, this will enable the expansion of the industry, and digital product portfolio. Therefore, the local transfer of technical skills to the Kenyan labour force will be enhanced through the experience gained on the jobs thereby making them competitive not only for a broadening industry locally but for the foreign labour market too.
- 4.6.3 Increased revenue from employment and corporate income taxes:** The Government will benefit from the organic growth of revenues as a result of higher employment taxes from a significantly larger workforce and higher income taxes based on increased production and hence, increased turnover and profits.

4. International practice

Within the African region, various incentives have been applied for the supply of digital devices, for instance:

- **Rwanda**

In 2023, Rwanda updated its list of ICT equipment exempted from VAT. The exempted items include:

- Routers,
- Modems,
- Laptops,

²⁶ <https://nairobi.aics.gov.it/wp-content/uploads/2019/01/Kenya-Vision-2030.pdf>

²⁷ http://www.parliament.go.ke/sites/default/files/2023-09/Budget%20Watch%202023_0.pdf

- Tablets,
- Smartphones,
- Other ICT devices.

This initiative aims to foster digital transformation, increase internet penetration, and make digital devices more affordable.²⁸

- **Togo**

In 2017, Togo's government exempted personal computers, laptops, tablets, and smartphones from VAT. This measure was part of a broader strategy to enhance digital access and establish a regional digital hub.²⁹

- **Chad**

As of January 2022, Chad abolished import taxes on:

- Smartphones
- Computers
- Tablets
- Modems
- Routers
- Other internet connection devices

This five-year tax exemption aims to boost digital inclusion and support the country's digital economy goals.³⁰

Elsewhere in the world, incentives have been applied for the supply of digital devices, for instance:

- **Colombia**

In 2017, Colombia introduced VAT exemptions for:

- Mobile devices priced below approximately US\$245
- Personal desktop or laptop computers valued under US\$550

This policy aimed to make digital devices more accessible, especially for lower-income populations.³¹

5. Conclusion and legislative proposal

In summary, EADAK would like to request the Kenyan Government to amend the Value Added Tax Act, CAP 476, to include the VAT exemption of the supply of the following digital devices, provided these are locally assembled or manufactured by approved local assemblers:

1. Routers;

²⁸ https://www.minict.gov.rw/news-detail/vat-exemption-the-2023-new-list-of-ict-equipment-exempted-from-vat?utm_source=chatgpt.com

²⁹ https://africa-news-agency.com/togo-exoneration-de-tva-pour-linformatique/?utm_source=chatgpt.com

³⁰ <https://www.connectingafrica.com/digital-inclusion/chad-drops-import-duties-on-smartphones-for-five-years>

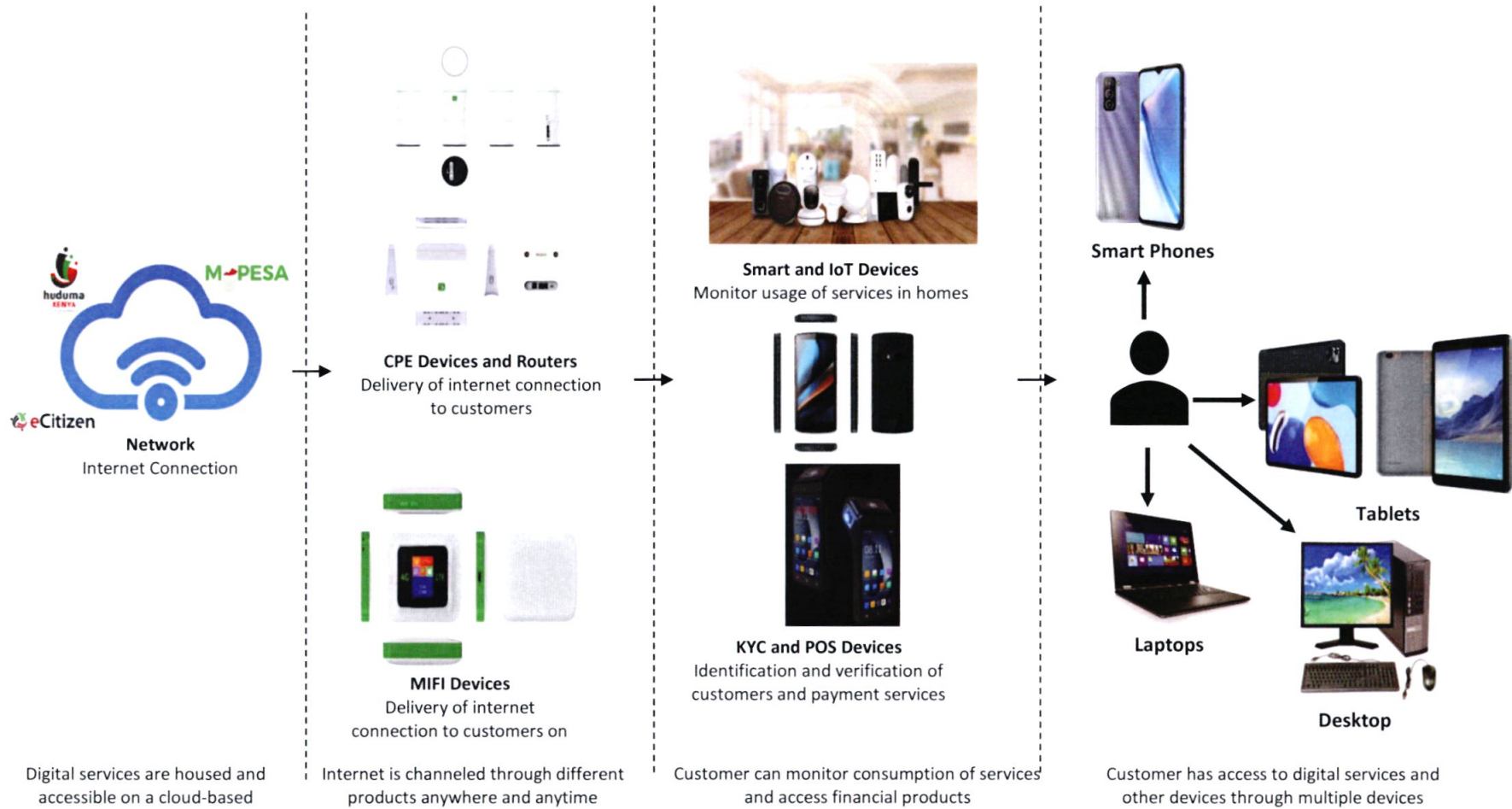
³¹ https://a4ai.org/research/good-practices/eliminating-luxury-taxation-on-ict-essentials/?utm_source=chatgpt.com

2. Know Your Client and Point of Sale devices;
3. Smart and Internet of Things devices such as smart meters, smart watches, and smart CCTV cameras;
4. Customer Premise Equipment devices;
5. Modems and My Wireless Fidelity ("MiFi"); and
6. Laptops, desktops and tablets.

At the same time, we request that VAT exemption also be extended to imported inputs or raw materials supplied to approved local assemblers and manufacturers of these devices.

This dual exemption proposal, when adopted, will better promote a vibrant manufacturing sector, contribute to the Government's digital transformation agenda and lead to tangible economic benefits such as employment creation, the transfer of technical skills, increased contribution to the fiscus, increased foreign exchange earnings and increased foreign direct investment, among others.

Appendix 1





Legislative proposals – The Finance Bill 2025

Presentation to the National Treasury

East Africa Devices Assembly Kenya Limited

May 2025



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About EADAK



Locally manufactures and assembles affordable smart devices at its assembly plant in Athi River, Graylands Phase V.



Has employed up to 750 people at its facility.
Produced approximately 1.4 million mobile devices as of April 2025.



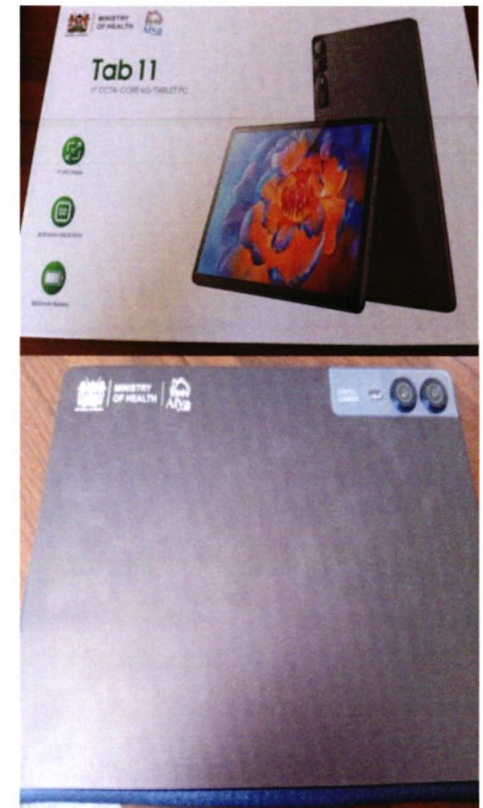
Recognized by the KRA in November 2024 as the top taxpayer in the non-fuel importers category for the fiscal year 2024.



One of EADAK's achievements: Supply of smartphones and tablets to the Ministry of Health for use by community health promoters supporting the preventive healthcare under the Bottom-up Economic Transformation Agenda ("BETA") and the universal Social Health Authority project.



Currently assembles smart mobile phones and tablets and plans to expand its locally assembled product portfolio to include a broader list of technology/telecommunication devices.





Proposal 1: VAT exemption on imported inputs or raw materials for approved local assemblers/manufactures of mobile phones



Unlocking a digitally empowered economy through mobile phones

- Smartphone penetration in Sub-Saharan Africa has been steadily increasing. According to the GSMA Mobile Economy 2025 report, mobile internet subscriber penetration in the region reached 46% in 2024, with smartphone adoption reached 54% and continues to rise due to falling device costs and expanding 3G/4G coverage. As of December 2024, over 41 million smartphones were in use in Kenya, reflecting a penetration rate of 80.5%.
- The Fourth Medium Term Plan (“MTP IV”) 2023-2027 highlights that increased access to smartphones and mobile broadband is essential for delivering digital government services, expanding e-commerce, and enhancing financial inclusion, especially in underserved rural areas.
- Smartphones are a key enabler of internet access and digital financial services (e.g. M-Pesa and online banking) due to their ability to support high-speed connectivity, mobile apps, and secure transactions.
- EADAK is actively supporting government policy on digital inclusion by making smart devices more accessible and affordable for all Kenyans. Currently, EADAK offers the most affordable smart device at an ex-factory price of approx. \$51. It is also investing in research and development to produce an ultra-low cost 4G cloud smartphone priced at < \$20.
- Stability in the tax policy environment, especially in relation to tax incentives, will help Kenya to bridge the digital and technology gap and accelerate access to the best internet and mobile networks.



The issue

Issue

- In 2023, the Government introduced VAT zero-rating on the supply of locally assembled smartphones to promote digital inclusion and local manufacturing.
- EADAK launched operations under this framework, targeting affordable smartphones for low-income Kenyans, who, for example, make up approx. 70.9% of Nairobi's population, according to a 2025 report.
- The Finance Bill 2025 proposes to replace VAT zero-rating with VAT exemption, which will result in input VAT being a non-recoverable expense. This will increase production costs, push up phone prices, and potentially curtail the sector's operation thereby stalling progress on digital access.
- This VAT cost resulting from non-recoverable input VAT must either be passed on to the customer or absorbed by the manufacturers which is not sustainable.



Impact of current proposal for VAT exemption on the locally manufactured phones

Scenario	Input Cost (KES)	VAT on Inputs (KES) (16%)	Total Input Cost (KES) (A)	Margin Applied (KES) (5%) (B)	VAT on Sale (16%)	VAT Recovered by Manufacturer?	VAT Cost to Consumer (KES)	Final Price to Consumer (KES) (A+B)
Zero rated sale	1,000	160	1,000	50 (5% of 1,000)	0	Yes (160)	0	1,050
Exempt sale (VAT on input only)-cost passed to customer	1,000	160	1,160	58 (5% of 1,160)	0	No	160	1,218
Exempt sale (VAT on input only)-cost absorbed by manufacturer	1,000	160	1,000	5% of 1,000 = KES 50 minus KES 160 VAT cost to consumer = KES (110) (loss)	0	Absorbed by manufacturer.	0	1,050
Fully exempt (input & output exempt)	1,000	0	1,000	50 (5% of 1,000)	0	Not Applicable	0	1,050



Proposal

Proposed amendment

- To balance the Government's priorities to address tax challenges and pursue the digital inclusion agenda, it is our view that the proposed VAT exemption on the supply of locally assembled smartphones should be accompanied by a VAT exemption on imported inputs/raw materials supplied to approved mobile phone assemblers/manufacturers in Kenya.
- This will resolve the VAT refund challenge caused by zero rating of the phones but at the same time maintain relative affordability, support local production, and ensure smartphones remain accessible to low-income populations thereby safeguarding Kenya's progress toward a digitally empowered economy. Further, this will not only safeguard existing jobs but also increase more jobs in the industry through increased production.



Justification for the proposed legislation



- Non-recoverable VAT on inputs will raise production costs, threatening the viability of local phone assembly plants like EADAK, already facing KES 1.8B in unpaid VAT refunds. Important to note is that in less than 2 years of operation, EADAK has already contributed **KES 1B** in taxes to the Kenyan economy.
- This will lead to higher consumer prices, reduced demand, and potential plant closure, affecting over 700 direct jobs and significant tax contributions of more than KES 1billion from Nov 2023–Apr 2025.
- Investor confidence will decline due to unpredictability in the tax environment which directly impacts Return on Investment (“RoI”). This will push investors to other countries in the region with a stable tax environment.
- Higher prices would limit smartphone access for low-income users, undermining Kenya’s Digital Economy Blueprint and Vision 2030 goals.
- Reduced smartphone uptake will harm downstream sectors such as mobile operators, by shrinking the user base for digital services like M-Pesa, e-Citizen, and eTIMS.
- Unequal tax treatment makes locally assembled phones less competitive than imports, undermining Kenya’s domestic manufacturing sector. Exempting inputs would level the playing field.



Proposal 2: VAT exemption on the supply of locally assembled digital devices, as well as VAT exemption on imported inputs or raw materials supplied to approved assemblers/manufacturers of such digital devices in Kenya

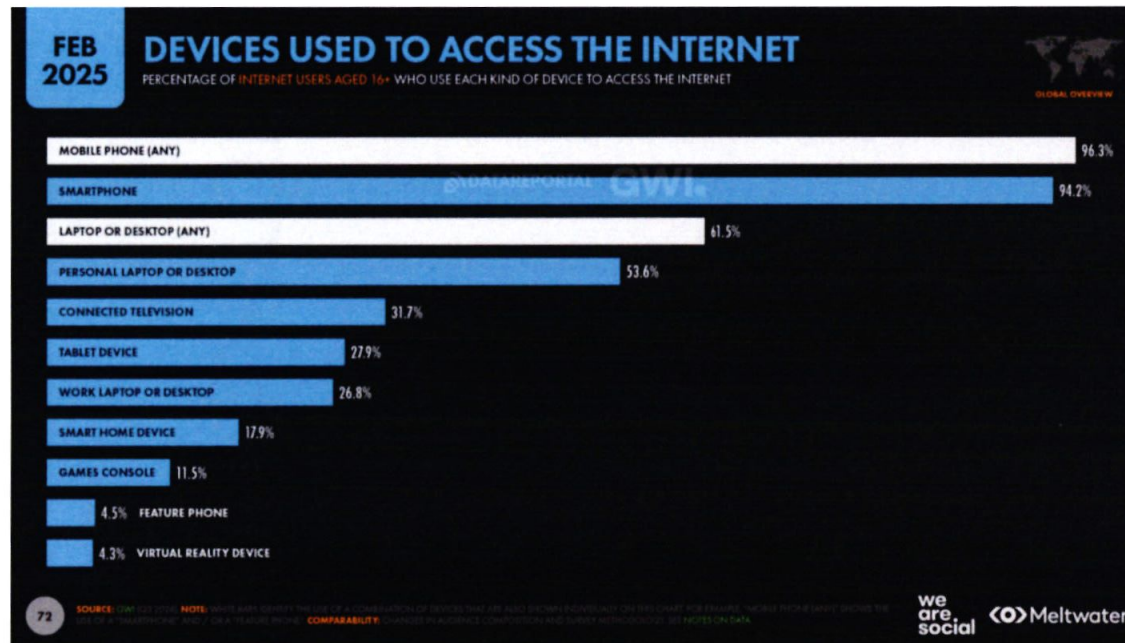


Unlocking a digitally empowered economy

- The digital economy is a key global growth driver, fueled by internet access, mobile devices, and innovation. Over 5.56B global users are now online (as of 2025), with large investments seen in the European Union (“EU”) (€7.5B) and US (\$100B) to boost digital infrastructure.
- Africa's digital transformation is growing, with a projected 51.8% increase in internet users by 2029. Despite challenge like connectivity, infrastructure gaps, and policy hurdles, initiatives like the African Union’s (“AU”) Digital Strategy and Smart Africa Alliance aim to create a single, inclusive digital market.
- Kenya leads in Africa’s digital progress through, Konza Technopolis and mobile innovation, etc., achieving 48% internet penetration and 121% mobile penetration in 2025.
- However, device affordability remains a critical barrier, limiting widespread digital access. The Government’s BETA Agenda targets this through fibre rollout, digital automation, and creative industry support, but achieving impact requires VAT exemption on the supply of locally assembled digital devices as well as their inputs (raw materials), ensuring access to essential tools of connectivity.



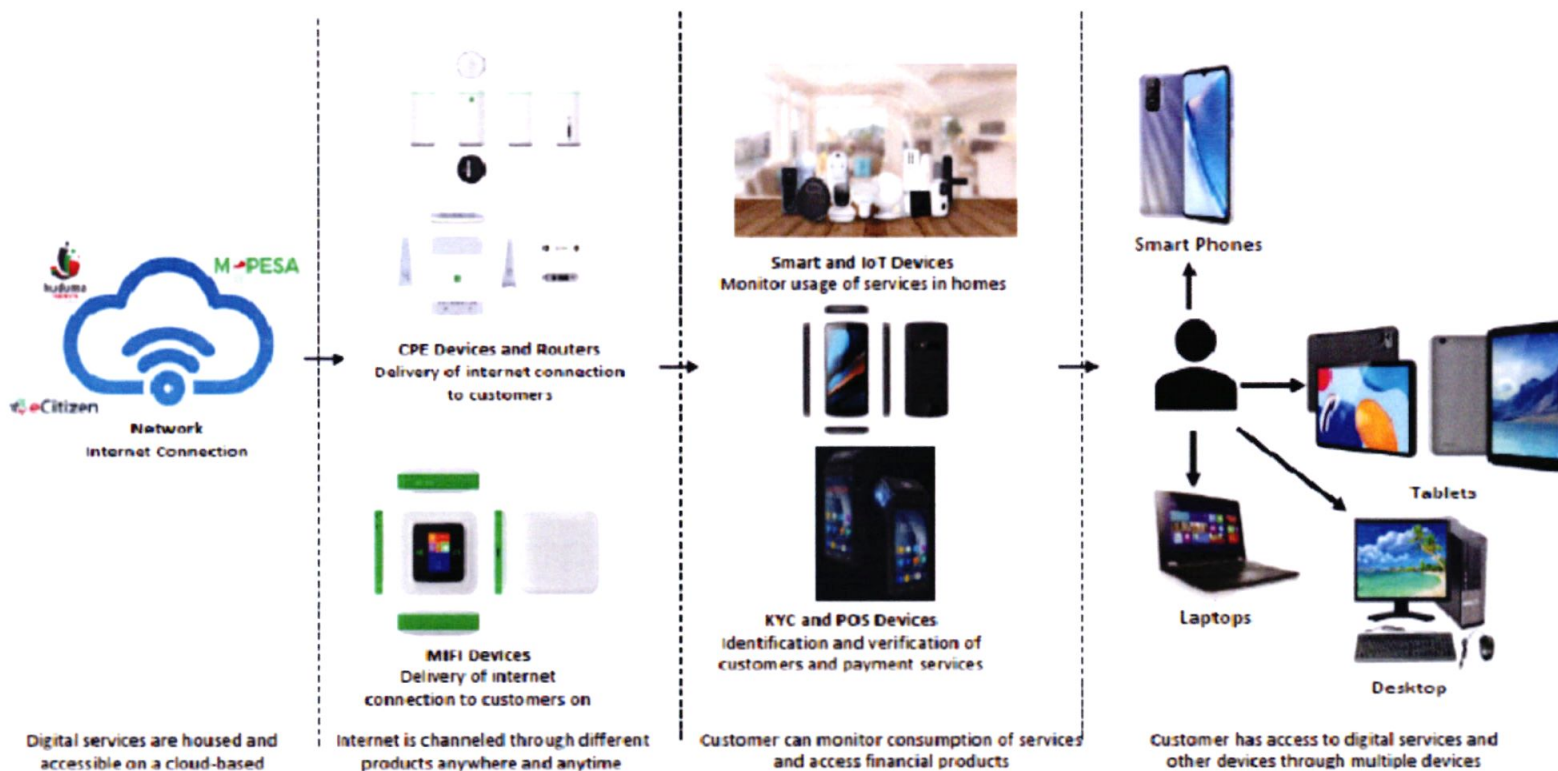
Kenya Stats: Devices used to access the internet as of Feb 2025



According to the International Telecommunication Union (“ITU”) and Global System for Mobile Communications (“GSMA”), by the start of 2025, approximately 5.56 billion people were using the internet, which is a 1.7% increase from one year before.



The digital ecosystem





Example: Impact of VAT on EADAK's tablet prices

#	Tablet	Retail price (exclusive of VAT) (KES)	VAT @ 16% (KES)	Retail price (inclusive of VAT) (KES)
1	Neon Tab 11 (8+ 128GB)	26,872	4,300	31,172



Tax proposal: Introduction of VAT exemption on the supply of devices and their inputs

Issue

- Despite prior tax incentives on mobile phones and smart devices, locally assembled digital devices (e.g., laptops, routers, modems) are still subject to 16% VAT.
- The 16% VAT would be borne by the customer thus increasing the price of the devices.

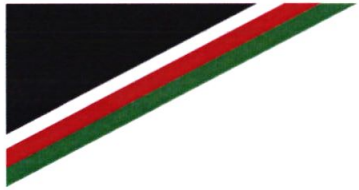
Proposed amendment

- Our proposal is for the Government to grant VAT exemption on the supply of the following digital devices, where these have been locally assembled:
 1. Routers;
 2. Know Your Client and Point of Sale devices;
 3. Smart and Internet of Things devices such as smart meters, smart watches and smart CCTV cameras;
 4. Customer Premise Equipment devices;
 5. Modems and My Wireless Fidelity (“MiFi”); and
 6. Laptops, desktops and tablets.
- At the same time, we request the government to extend the VAT exemption to imported inputs or raw materials supplied to approved local assemblers and manufacturers of these devices.



Justification for VAT exemption

- Will positively impact the digital devices penetration rate in Kenya.
- Will make the digital devices affordable and mitigate grey market imports.
- Will discourage reliance on imported digital devices which will have a positive impact on the economy.
- Will be an overarching enabler for the growth of other sectors including education (tablets for school programs), health (tablets for the Universal Health Initiative), agriculture, among others.
- Will promote the government's digitisation agenda.
- Will contribute to Government's BETA and the wider Vision 2030 by promoting the growth of the manufacturing sector, accessibility and use of digital devices.
- Will contribute positively to the growth of the Kenyan economy through:
 - Creation of employment;
 - Local transfer of technical skills; and
 - Increased revenue from employment and corporate income taxes.



Thanks!

IPF/CEO/SBM/03/-05-2025

27th May 2025

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P. O. Box 41842-00100,
Nairobi, Kenya.

RE: INSTITUTE OF PUBLIC FINANCE (IPF) AND KENYA WOMEN PARLIAMENTARY ASSOCIATION (KEWOPA MEMORANDUM ON THE FINANCE BILL, 2025

This memorandum has been prepared by the Institute of Public Finance (IPF) in partnership with the Kenya Women Parliamentary Association (KEWOPA).

We begin by applauding the Finance and National Planning Committee of the National Assembly for giving the public the opportunity to air their views on this critical Bill, which is of great significance to the country. Before we discuss our submission in detail, we set the context.

Context: Revenue performance vis-à-vis target

The 2024 Budget Policy Statement projected that the withdrawn Finance Bill 2024 would raise KES 344 billion in revenue. Following its withdrawal, the Tax Laws (Amendment) Act 2024 was introduced with a more modest target of approximately Ksh 178 billion in additional revenues. However, the Exchequer Issue as of 30th April 2025 indicates that actual revenue collection continues to fall short of these targets, highlighting persistent gaps between projections and performance and raising concerns about their reliability and planning.

By April 2025, tax revenue was Ksh 1,800.8 billion, against an annual target of Ksh 2,400.7 billion, meaning that the government targets to collect Ksh 600 billion to meet its target, putting pressure on tax performance in the last two months. Meeting this target is unlikely as monthly tax collections have averaged Ksh 180.1 billion so far, even though April and June usually see higher revenues due to quarterly tax payments and increased business filings. Last year, collections averaged 209 billion in the last quarter. This year, the government will have to collect Ksh 300 billion in the last two months to meet the annual target.

For the FY 2025/26, the government targets to raise Ksh 2,757.0 billion in ordinary revenue, despite the clear reality that previous years' projections have consistently fallen short. According to the 2025 BPS, there were revenue shortfalls in both FY 2022/2023 and FY 2023/2024 of Ksh 173.7 billion and Ksh 367.9 billion, respectively. This raises important questions about the realism of the estimated additional revenue that the Finance Bill 2025 is expected to generate. It is thus our call that future revenue estimates should be based on a realistic assessment of our actual collection capacity as overestimating revenue targets has consistently resulted in higher-than-target fiscal deficits.

As indicated in the 2025 Budget Policy Statement, the Finance Bill 2025 aims to close loopholes and enhance tax administration efficiency. However, we continue to emphasize the need for the National Treasury to provide detailed information on the revenue impact of each proposed tax measure. This transparency is essential to enhance clarity and support informed decision-making.

Key challenges facing Kenya's tax system

1. Limited public trust

A key issue facing Kenya's current tax system is the limited support and trust from taxpayers, leading to low compliance levels. While citizens recognize the importance of taxes in funding public services, they remain uncertain whether new tax measures will lead to tangible improvements in service delivery. This underscores the need for credible, evidence-based policy decisions. Both the National Tax Policy and the Medium-Term Revenue Strategy (MTRS) emphasize the importance of using regular studies to guide tax reforms and legislation. More specifically, the government on the MTRS had committed to conducting studies and review on; implementation of rental income tax regime, tax exemptions and reliefs, implementation of a minimum tax, review personal income tax band, optimal taxation of petroleum products, tax structure of alcoholic and tobacco products, carbon taxation, and develop a tax expenditure framework to guide granting, monitoring and evaluation of tax incentives, among others.

The National Tax Policy (NTP) and Medium-Term Revenue Strategy (MTRS) outline broader tax policy goals beyond raising revenue, such as safeguarding local industries, aligning with global best practices, and fostering a stable and predictable business environment. While taxation serves both to fund public services and to shape investment decisions and social behavior, it remains unclear what research informed the Finance Bill, 2025, and whether such studies are publicly accessible. Additionally, the government has failed in the past to estimate the impact of the annual changes to its tax laws on revenue and the economy at large. This remains critical to ensure that government's decisions do not stifle economic growth and development.

2. Significant tax changes have resulted in an insignificant change in tax revenue

Kenya's revenue performance in relation to the Laffer Curve suggests that while tax rates have increased across various instruments such as VAT and excise duties, overall tax revenue has not grown proportionally indicating possible movement beyond the revenue-maximizing point of the curve. For example, despite various revisions, VAT revenue has declined from 4.6% of GDP in FY 2013/14 to 4.1% in FY 2023/24, highlighting the limits of rate-based strategies amid a shrinking tax base and rising tax expenditures.

Table 1: Revenue performance/growth/percent of GDP

	Ksh Billion				Growth%				% GDP			
	2020/21	2021/22	2022/23	2023/24	2020/21	2021/22	2022/23	2023/24	2020/21	2021/22	2022/23	2023/24
Total Revenue	1,803.5	2,199.8	2,355.1	2,702.7	4.0	22.0	7.1	14.8	15.9	17.3	16.5	16.8
Ordinary revenues (tax + non tax)	1,562.1	1,918.0	2,041.1	2,288.9	-0.7	22.8	6.4	12.1	13.7	15.0	14.3	14.2
Income Tax	694.1	876.7	941.6	1,042.8	-1.8	26.3	7.4	10.7	6.1	6.9	6.6	6.5
VAT	410.8	523.1	550.4	645.5	7.1	27.3	5.2	17.3	3.6	4.1	3.8	4.0
Import Duty	108.4	118.3	130.1	133.9	10.6	9.1	10.0	2.9	1.0	0.9	0.9	0.8
Excise Duty	216.3	252.1	264.5	276.7	10.8	16.6	4.9	4.6	1.9	2.0	1.8	1.7
Others (including investment income)	132.5	147.8	154.5	190.0	-30.1	11.5	4.5	23.0	1.2	1.2	1.1	1.2
Appropriation-in-Aid	241.5	281.9	313.9	413.7	50.7	16.7	11.4	31.8	2.1	2.2	2.2	2.6
GDP	11,370.3	12,752.0	14,299.2	16,106.0	0.1	12.2	12.1	12.6	100	100	100	100

Data source: Budget Review and Outlook Papers

commendable. We also commend the National Treasury for shifting focus away from introducing new tax measures and instead concentrating on improving tax administration.

However, several proposals in the Bill remain contentious. These include the repeal of key data protection provisions, which would allow the Kenya Revenue Authority (KRA) to access personal data and trade secrets held by businesses raising significant privacy and confidentiality concerns. Additionally, the proposed extension of VAT refund timelines from 90 to 120 days for standard applications, and from 120 to 180 days for cases requiring audits, could severely strain business cash flows and erode trust in the tax refund system. The proposed reduction in the timeframe for taxpayers to seek legal redress further compounds these concerns by limiting access to fair and timely resolution of tax disputes.

Therefore, while some tax proposals as contained in the Finance Bill 2025 are welcome, some gaps still remain as detailed in the **attached matrix**. We hope that the issues and proposed interventions will be considered to enrich the Finance Bill 2025, and continuously ensure that our tax system is equitable, efficient and effective.

We are available to provide further information and discuss our recommendations on the proposed tax measures.

Sincerely,



James Muraguri

Chief Executive Officer

Institute of Public Finance

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Mercy Mwangi

Executive Director

Kenya Women Parliamentary Association

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Item/Clause	Previous Provision	Description of the Clause	Proposal	Justification
Income Tax Act				
Clause 2(a)(iii): Definition of royalty	The Income Tax Act defines the term royalty to mean payments made as a consideration for the use or the right to use copyrights, cinematograph films, patents, trademarks, designs or models, plans, formulas, or processes, and industrial, commercial, or scientific equipment, or for information concerning such equipment or experience.	The Bill proposed to amend the definition of royalty to include the words “and includes the distribution of software where regular payments are made for the use of the software through the distributor”	Reject the proposal to ensure consistency with the Court’s jurisprudence and the OECD Model Tax Convention, which Kenya is a party to.	The Finance Bill 2025 reintroduces, albeit in revised language, a provision previously critiqued in the Finance Bill 2024 and excluded in the Tax Laws Amendment Act 2024 due to its misalignment with established legal and international tax standards. Specifically, the Bill proposes that the distribution of software involving regular payments for its use be treated as royalty income. This position stands in direct contradiction to Kenyan jurisprudence, notably the decision in <i>Commissioner of Domestic Taxes v Dynasoft Business Solutions Limited (2024)</i> , where the courts drew a clear distinction between the mere use of software and the use of underlying copyright, only the latter being subject to withholding tax. Furthermore, the proposal is inconsistent with the OECD Model Tax Convention, which treats standard software distribution as the sale of goods rather than a royalty, unless the distributor acquires substantive rights such as reproduction, modification, or commercial exploitation of the software. Under both domestic case law and international standards,

Clause 2(a)(vii): Definition of related person	The Income Tax Act defines of two persons where a person participates directly or indirectly in the management, control or capital of the business of another person.		The bill proposes the deletion of the current definition of related person and replacing it with a broader definition adding criteria such as in the case of more than the two persons: Any other person who participates directly or indirectly in the management, control or capital of the business. Any other individual who is associated with the two persons by marriage or affinity	Reject the proposal	payments for standard-use software should not be classified as royalties.
					The proposed definition of a "related person" is overly broad, ambiguous, and lacks the clarity necessary for effective tax enforcement and compliance. Unlike internationally accepted standards such as the OECD Transfer Pricing Guidelines, which define related parties based on specific thresholds, typically a 25% ownership or voting control rule, the new definition in Kenya's law vaguely includes anyone who "participates directly or indirectly in the management, control, or capital" of another business, without defining what level of influence qualifies. Additionally, the inclusion of relationships based on marriage, consanguinity (blood relation), or affinity (relation by marriage) significantly expands the scope of related-party transactions, potentially capturing individuals and businesses that operate at arm's length, thereby imposing unnecessary compliance

				burdens on taxpayers and complicating enforcement for KRA. This lack of precision increases the risk of arbitrary tax assessments and administrative inefficiencies, as companies and individuals may find themselves subjected to complex transfer pricing regulations even when no real control or profit-shifting occurs. Furthermore, the broad nature of the definition creates uncertainty that could discourage both local and foreign investment, as businesses require clear, predictable tax rules to operate efficiently. By failing to align with global best practices, Kenya also risks conflicts in cross-border taxation, leading to double taxation disputes and potential treaty violations. To ensure fairness, efficiency, and consistency with international norms, the definition should be revised to include clear ownership thresholds (e.g., 25%), objective criteria for determining control, and a limited scope for family relationships, such as restricting it to first-degree relatives (spouses, parents, children). A well-defined related-party framework will help strengthen tax enforcement without stifling legitimate business
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				operations or deterring investment. This is especially remembering that the effectiveness of taxation in transfer pricing agreements is heavily hinged on clarity of its enforcement measure
Clause Amendment of section 5 of the Income Tax Act	3:	The Income Tax Act stipulates that any amount received by an employee as payment for subsistence, travel or entertainment in respect to a period spent outside their scope of work, the first two thousand shillings shall be deemed as reimbursement of the amount so expended thus making it non-taxable.	The bill proposes to raise the exempt amount from two thousand shillings to ten thousand shillings.	For employees more of their per-diem becomes tax free, which may lead to a small increase in disposable income.
Clause Amendment of section 8 of the Income Tax Act	4:	Section 8 of the Income Tax Act provides that any pension received by a resident individual from a pension fund or pension scheme established outside Kenya shall be deemed to have accrued in or to have been derived from Kenya to the extent to which it relates to employment or services rendered by the individual,	The bill proposes the change of the name "Husband" to "spouse"	This move essentially removes the explicit gender bias in the original wording which only recognised male partners as the source of pension benefits. It now acknowledges both male and female partners, so men and women receiving pensions linked to their spouse's work regardless of gender are treated equally.

	or the husband or parent of the individual, in Kenya.			From a tax administration point of view, it expands the scope of who may be taxed on a pension scheme. Now, anyone, regardless of gender, receiving foreign pension linked to the spouse's employment in Kenya can be taxed proportionately, enhancing horizontal equity.
Clause 5: Amendment of section 10 of the Income Tax Act	Section 10 of the Income Tax Act currently lists types of payments on which withholding tax rules apply.	The bill proposes to add new paragraphs which will see the supply of goods to a public entity and the sale of scrap added to the list of payments which withholding tax rules apply.	Adopt the proposal.	This broadens the base of withholding tax at the following rates: supply of goods to a public entity at 0.5% for a resident and 5% for a non-resident. Sale of scrap at 1.5% for both residents and non-residents. This in turn strengthens the revenue collected on these transactions.
Clause 6 (a): Expansion of Significance of Economic Presence Tax	Section 12E(1) of the Act provides that SEPT shall be payable by non-resident persons whose income is from the provision of services that are derived from or accruing in Kenya through a business carried out over a digital marketplace.	The Bill proposes the expansion of the income that is subject to SEPT to include businesses that not only derive income in Kenya from the digital marketplace but also over the internet or electronic networks.	Reject the proposal unless clear definitions are included on the definitions of "electronic networks" and "business over the internet," introduce minimum thresholds, and align	The Finance Bill's proposal to expand the scope of SEPT to include businesses that derive income not only from the digital marketplace but also "over the internet or electronic networks" introduces major legal, policy, and administrative concerns. Most notably, the terms <i>electronic networks</i> and <i>business over the internet</i> are not defined in the Bill or the Income Tax Act, leaving their scope

Clause 6(b): SEPT Now Applicable to Non-Residents With Annual Turnover of			the SEPT rules with international norms to ensure fair, effective, and administratively feasible taxation of the digital economy.	dangerously vague. This raises constitutional issues under Article 210, which requires tax laws to be clear, certain, and predictable. The absence of definitions could lead to overreach, where even incidental or minimal online activity is deemed taxable. It also exposes the provision to legal challenges and makes it difficult for businesses, especially non-resident ones, to assess whether and how the tax applies to them. From an administrative perspective, KRA may face similar implementation difficulties as experienced with the Digital Services Tax (DST), which suffered from unclear scope and poor compliance among non-resident service providers. Comparatively, Nigeria's framework offers a model of clarity, where its Finance Act precisely defines digital services, sets clear monetary thresholds (e.g., ₦25 million turnover), and imposes registration obligations on affected businesses.
Clause 6(b): SEPT Now Applicable to Non-Residents With Annual Turnover of	Section 12E(3)(d) provides that a non-resident person with an annual turnover of less than five million	The Bill proposes the deletion of the section now allowing non-residents with turnover below 5 million to pay the SEPT.	Reject the proposal.	The proposed removal of the KES 5 million turnover exemption for SEPT in the Finance Bill effectively means that all non-resident persons conducting business in Kenya through

Below Million	Kshs	5	shillings are exempt from paying SEPT.			the digital marketplace, internet, or electronic networks will now be subject to SEPT, regardless of their scale of operations. This blanket application resurrects the very issues that plagued the former DST, particularly the lack of proportionality, administrative complexity, and the imposition of burdensome compliance obligations on small and low-revenue businesses. If the purpose of SEPT is to align with OECD best practices on taxing the digital economy, then reintroducing a clear and reasonable threshold is critical to ensure that the tax only applies to entities with a demonstrable and significant economic presence. Jurisdictions like Nigeria have adopted such thresholds to balance revenue collection with ease of doing business and legal clarity. Without a threshold, Kenya risks deterring smaller global service providers, increasing enforcement burdens, and potentially undermining the tax's effectiveness. Therefore, to preserve fairness and international credibility, it is imperative that a minimum turnover threshold be retained.
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Clause 8 (a)(i): Deductions allowed on Utensils and Articles	Section 15(2)(g) of the Income Tax Act provides that the depreciated value of any utensil or article other than machinery or plant in the production of gains or profits is considered as a tax deductible in the determination of the taxable net profit, subject to consideration by the Commissioner.	The Bill proposes to amend the same and include that the rate applicable shall be 100% of the year's income and shall not require the consideration of the commissioner.	Adopt the proposal	The Bill introduces a clear and standardized rule for claiming deductions on implements, utensils, and similar articles used in generating income. Specifically, it provides that such assets will now be eligible for a 100% deduction in the year they are first put into use and eliminates the previous requirement for discretionary approval by the Commissioner. Under the current law, the deduction lacked a defined rate and was subject to the Commissioner's interpretation and valuation, creating ambiguity, and administrative delays, and inconsistencies across taxpayers. The proposed amendment brings much-needed certainty, predictability, and administrative efficiency, as businesses will now know in advance the tax treatment of these items. Importantly, it offers a substantial incentive for investment, particularly in small tools and equipment, by allowing immediate full write-offs in the year of acquisition, which particularly benefits the manufacturing sector and newly established small businesses
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Clause 8 (a)(ii)(iii): Deductions on sale or felling of standing timber	The Income Tax Act provides for specific deductions when calculating taxable income from the sale or felling of standing timber still rooted in the ground, distinguishing between two key scenarios. First, landowners selling timber are permitted to deduct an amount reflecting either the portion of the purchase price attributable to the timber or, in cases of inheritance or gifts, the value of the timber at the time of acquisition, both of which are subject to determination by the Commissioner. Second, individuals who purchase timber rights (i.e., the right to fell trees on land they do not own) can claim deductions based on a proportion of the purchase price paid for those rights. This deduction is calculated according to the volume of timber felled and sold during the year of income, using a just and reasonable apportionment as assessed by the Commissioner.	The Bill proposes the deletion of this clause	Reject the proposal	The deletion of these provisions would significantly and adversely impact individuals and businesses engaged in the timber industry. Previously, these rules allowed for deductions tied to the cost of acquiring timber, either through direct purchase, inheritance, or acquisition of timber-felling rights, thereby ensuring that income tax was only applied to the net profits derived from timber sales. Without such deductions, taxpayers would be required to pay tax on the full gross receipts from timber sales, irrespective of the actual investment or acquisition costs incurred. This undermines a foundational principle of income taxation: that tax should apply to gains, not gross revenue. The removal of these deductions is likely to lead to unjust tax assessments, where legitimate business costs are disregarded, effectively penalizing timber traders and forest-related enterprises. It could also result in legal and constitutional challenges on the grounds of unfairness, as it violates the principles of equity and horizontal fairness in taxation. The disproportionate impact on sectors heavily reliant on upfront investment, such as forestry, may also discourage
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Clause 8(a)(iv)	The Income Tax Act provides a special tax concession in the form of a one-third exemption on the employment income of certain non-citizen employees, effectively excluding that portion of their income from taxation in Kenya under specific conditions. This applies where the employee is hired by a non-resident employer engaged in profit-making activities in Kenya and is assigned to perform duties exclusively for the employer's regional office, provided that the regional office is formally approved by the Commissioner. Additionally, the employee must be absent from Kenya for at least 120 days in the year due to work obligations performed outside the country, and the employer must not claim the employee's income as a	The Bill proposes the deletion of this clause	Revise the deduction by reducing the allowable portion rather than eliminating the deduction entirely, preserving some tax relief while still broadening the tax base.	further investment and formalization in this area, undermining tax compliance and broader economic objectives. The proposed deletion of the one-third tax deduction for certain non-citizen employees would mean that individuals who previously benefited from this relief will now be subject to income tax on their entire earnings in Kenya, thereby increasing their effective tax liability. For multinational and regional offices operating out of Kenya, this change could lead to higher employment costs, especially if they are compelled to offer higher gross salaries to offset the lost tax benefit for affected employees. This could, in turn, make it less attractive for such entities to base their regional operations in Kenya, which has traditionally been a preferred hub due in part to favourable tax treatment for expatriate staff. The policy shift may thus undermine Kenya's competitive edge as a regional headquarters destination. While the amendment may result in increased short-term tax revenues and reduce the fiscal incentives tied to foreign personnel, it risks deterring long-term investment. A more balanced approach could involve scaling down the exemption
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	deductible business expense for Kenyan tax purposes.			rather than removing it entirely, thereby preserving Kenya's attractiveness for regional offices while still improving revenue mobilization.
Clause 8(a)(v): Deductions of expenditure incurred in the construction of a public sports facility	The Act provides for the allowable deductions of any donation in the year of income to a charitable organisation whose income is exempt by the CS Treasury	The Bill proposes the addition of the exemption of expenditure incurred in the construction of a public sports facility	Adopt the proposal	This move is geared towards promoting the construction of public sports facilities in Kenya by deducting expenditure incurred in the calculation of taxable income, which is an initiative that is aligned with the Bottom-Up Economic Transformation Agenda (BETA).
Clause 8(a)(z): Deductions of Expenditure Incurred by a Person Sponsoring Sports	The Act provides that expenditure incurred in that year of income by a person sponsoring sports with the prior approval of the Cabinet secretary responsible for sports shall be an allowable deduction.	The Bill proposes the deletion of the clause.	Adopt the proposal but ensure that other incentives are still created to enhance corporate investment in sports.	The removal of this provision could have both positive and negative implications. On the one hand, it eliminates some of the deductions and exemptions previously available to corporations, leading to an increase in corporate tax liability and DRM. On the other hand, by removing the allowance for deductions related to corporate investments in sports, it may discourage businesses from sponsoring sports activities, potentially reducing overall investment in this area. This shift could lead to a decline in corporate engagement with sports sponsorship, which may have broader implications for the industry.

Clause 8(b): Personal Income Tax Deduction on Home Loan Interest now Extended to Construction	The Income Tax Act allows an individual to claim a deduction of up to Kshs 360,000 per year of interest paid on a mortgage loan borrowed from specified financial institutions, provided the loan is used to purchase or improve a residential property that the individual occupied during that year. The deduction is proportionately reduced if the property was occupied for only part of the year and may only be claimed for one residence.	The Bill proposes the inclusion of the construction of houses as well to apply to the deduction.	Adopt the proposal The recent tax provisions align with and actively support the government's BETA, particularly in the housing sector. Under the revised framework, interest paid on loans used not only for the purchase or improvement of a residential property but also for its construction now qualifies as a deductible expense against an individual's taxable income. This expansion means that individuals constructing their own homes using mortgage financing can claim an annual deduction of up to KES 360,000, limited strictly to the interest component of the loan repayment. The principal amount repaid does not qualify for this deduction. This measure is a targeted form of tax relief designed to reduce the overall tax liability of individuals undertaking self-financed housing projects. By easing the financial burden on taxpayers engaged in home construction, the provision incentivizes private home ownership and enhances access to affordable housing. It further strengthens the government's commitment to making home ownership more attainable,
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				thereby contributing to broader social and economic development goals.
Clause 8(b)(ii): Disallowing Loss Offsets in CGT Computation	The Income Tax Act allows a deduction for taxpayers to offset capital losses against capital gains that are chargeable to tax under section 3(2)(f) of the Income Tax Act. Thus, if a loss is realised in a particular year when computing chargeable CGT under paragraph 5(2) of the Eighth schedule, that loss can be deducted only against capital gains in the same year. If full loss is not used up, it can be taken or carried forward to the next year of income	The Bill now proposes the deletion of the clause.	Reject the proposal	The proposed removal of the provision allowing the offsetting of capital losses against capital gains in the computation of CGT would have significant negative implications for investors and the broader economy. Under the current framework, taxpayers are permitted to deduct capital losses incurred in the same year or carried forward from previous years when calculating their CGT liability. Eliminating this relief would mean that investors must pay CGT on gross gains, regardless of any corresponding losses incurred within the same tax period or prior years. This change would disproportionately affect investors and property owners operating in highly volatile markets such as real estate and the stock exchange, where asset values frequently fluctuate. Without the ability to offset losses, taxpayers would face an increased and often inequitable tax burden, particularly in cases where their net investment position is neutral or negative. The disincentive created by such a regime could suppress investment activity, as taxpayers may become more risk-

				averse, knowing that unsuccessful ventures will not receive any tax relief. Moreover, the deletion of the loss offset provision undermines a fundamental principle of fair taxation: taxing net income or net economic gain. Tax systems that recognize only gains while disregarding losses introduce asymmetry and distort the treatment of taxpayers. Such an approach deviates from established norms of equity and efficiency in taxation, ultimately weakening investor confidence and potentially hampering economic growth.
Clause 8(c): Allowable Deduction on Deficits on Personal Income for only Five Years	Section 15(4) of the Act provides that 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.	The Bill proposes to introduce a 5-year cap in the reliance of the deduction.	Reject the proposal, unless a balance is struck between safeguarding the tax base and supporting genuine business development. Specifically, the Bill should provide for an extension of the carry-forward period where a taxpayer can substantiate, to the satisfaction of the Commissioner, that the failure to utilize the losses within five	This provision has traditionally provided flexibility for businesses, allowing them to manage fluctuations in profitability over time, particularly in capital-intensive or cyclical industries. However, the proposed amendment seeks to introduce a five-year cap on the carry-forward period for such losses. This will mean that taxpayers will only be able to offset losses against future profits for up to five years from the year in which the loss was incurred. After the lapse of this period, any unutilized losses will expire and will no longer be available

			years was due to legitimate commercial or economic circumstances beyond their control.	to reduce taxable income in future years. While this proposal is intended to curb potential abuse of the indefinite loss carry-forward provision, where some entities might perpetually report losses to avoid taxation, it raises significant concerns, particularly for businesses with long gestation periods or those operating in capital-intensive sectors such as manufacturing, infrastructure, and energy. These industries often take several years before they become profitable, and limiting the carry-forward loss period may result in them being unable to fully recover their initial losses. Consequently, such entities may face a higher effective tax rate, which could discourage long-term investment and stifle growth. Moreover, the imposition of a strict five-year limit may place undue pressure on emerging businesses to become profitable within a short timeframe, potentially leading to unsustainable financial practices or underinvestment in strategic growth
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				initiatives. It may also reduce Kenya's competitiveness as an investment destination, particularly when compared to jurisdictions that offer more flexible tax loss treatment.
Clause 8(d)	This previous provision provides that the CS Treasury may, on 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	The Bill proposes the deletion of the clause	Reject the proposal.	This is related to the previous clause which seeks to ensure that persons with losses utilise them within five years. However, this would negatively impact capital-intensive and genuine making losses corporations and thus justifying the need for an extension based on genuine circumstances.
Clause 10: Proposes Deletion of Related Party in Transfer Pricing	The previous provision under section 18(6) provides a related party in cases of transfer pricing to be: One that directly or indirectly participates in the management, control or capital of the other's business	The bill proposes the deletion of the current definition of related person and replacing it with a broader definition adding criteria such as in the case of more than the two persons: Any other person who participates directly or indirectly in the management, control or capital of the business.	Reject the proposal. To ensure fairness, efficiency, and consistency with international norms, the definition should be revised to include clear ownership thresholds (e.g., 25%), objective criteria for determining control, and a limited scope for family	The proposed definition of a "related person" is overly broad, ambiguous, and lacks the clarity necessary for effective tax enforcement and compliance. Unlike internationally accepted standards such as the OECD Transfer Pricing Guidelines, which define related parties based on specific thresholds, typically a 25% ownership or voting control rule, the new definition in Kenya's law vaguely includes anyone who "participates directly or indirectly in the management, control, or capital" of

	A third party controls both entities directly or indirectly Individuals managing or controlling the two businesses are related by family ties that by blood or marriage.	Any other individual who is associated with the two persons by marriage or affinity	relationships, such as restricting it to first-degree relatives (spouses, parents, children). A well-defined related-party framework will help strengthen tax enforcement without stifling legitimate business operations or deterring investment. This is especially remembering that the effectiveness of taxation in transfer pricing agreements is heavily hinged on clarity of its enforcement measure.	another business, without defining what level of influence qualifies. Additionally, the inclusion of relationships based on marriage, consanguinity (blood relation), or affinity (relation by marriage) significantly expands the scope of related-party transactions, potentially capturing individuals and businesses that operate at arm's length, thereby imposing unnecessary compliance burdens on taxpayers and complicating enforcement for KRA. This lack of precision increases the risk of arbitrary tax assessments and administrative inefficiencies, as companies and individuals may find themselves subjected to complex transfer pricing regulations even when no real control or profit-shifting occurs. Furthermore, the broad nature of the definition creates uncertainty that could discourage both local and foreign investment, as businesses require clear, predictable tax rules to operate efficiently. By failing to align with global best practices, Kenya also risks conflicts in cross-border taxation, leading to double taxation
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				disputes and potential treaty violations.
Clause 11: Filing of Country-by-Country Report, Master File and Local File	Section 18D(8) and (9) of the Income Tax requires that where there is more than one constituent entity of the same multinational enterprise group resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity. The surrogate entity vide subsection 9 would not be required to file a country-by-country report with the Commissioner with respect to the report of the financial year of the group if; The ultimate parent entity is obligated to file the report in its jurisdiction of tax residence The jurisdiction in which the ultimate parent entity is resident for purposes has an international agreement and	The Bill proposes the removal of the designation of a surrogate parent entity and rather provides that such multinational enterprise groups shall designate a constituent entity that will file a country-by country report and notify the Commissioner by the last date of the reporting financial year of that group in for prescribed by the Commissioner. It further proposes the deletion of section 9 which provided for when a surrogate parent entity would be required to file the country to country reports	Adopt the proposal	The proposed amendments represent a significant step toward enhancing financial transparency and corporate accountability, particularly with respect to MNE groups operating in Kenya. The repeal of Section 9 of the Income Tax Act and the introduction of provisions requiring the designation of a constituent entity within an MNE group to file Country-by-Country Reports (CbCR) locally, irrespective of the jurisdiction in which the ultimate parent entity is resident. This reform aligns with Kenya's obligations under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), to which Kenya is a signatory. Specifically, it reflects the implementation of BEPS Action 13, which mandates that large MNEs (typically with consolidated group revenue above EUR 750 million) file detailed CbCRs outlining the allocation of income, taxes paid, and other economic indicators across the jurisdictions in which they operate. The objective is to give tax authorities greater visibility into the global

	a competent authority agreement in force The Commissioner has notified the resident constituent entity in Kenya of a systemic failure if any			operations of MNEs and to curb profit-shifting practices that exploit mismatches between domestic tax systems. By requiring the local filing of CbCR, even when the parent entity is domiciled outside Kenya, the amendment ensures that KRA has direct access to critical financial data for tax risk assessment for minimum top up tax and transfer pricing oversight. This not only strengthens Kenya's capacity to enforce its domestic tax laws more effectively but also enhances cooperation and information exchange in accordance with international best practices. Furthermore, these measures are anticipated to deter aggressive tax planning strategies and foster a fairer tax environment by compelling MNEs to disclose economic substance and profit allocation more transparently.
Clause 12: Advance Pricing Agreement (APA)		The Bill proposes the following clause with regards to advance pricing agreement which include:	Adopt the proposal and require the National Treasury and KRA to provide a clear mechanism for transparency and	The proposal to operationalize APAs marks a notable advancement in Kenya's transfer pricing regime and reflects the country's growing alignment with international tax standards. By providing a mechanism

		That the commissioner may enter into APA with a person who undertakes a transaction either through transfer pricing or through a preferential tax regime The amount which would have been expected to accrue if that business had been conducted by an independent person dealing at an arm's length shall be determined in accordance with the APA entered into. The APA entered shall be valid for a period not exceeding 5 years The APA can be revoked where it is ascertained that it was entered into through misrepresentation of facts, the same shall be declared void by issuance of notice The CS shall make regulations for better implementation	for pre-approval of transfer pricing arrangements, APAs are expected to significantly reduce the frequency and intensity of disputes, audits, and litigation between taxpayers and KRA. This reform aligns Kenya with global trends, especially following its accession to the OECD Inclusive Framework on BEPS in late 2023, and is consistent with the OECD Transfer Pricing Guidelines, which form the basis for APA frameworks worldwide. Despite these positive developments, the proposal leaves certain critical gaps that may undermine its overall effectiveness. A key concern is the absence of provisions requiring the publication or public disclosure of APA arrangements. The lack of transparency may create opportunities for opaque dealings between tax authorities and corporations, potentially facilitating sweetheart deals or tax avoidance practices further undermining public trust. Moreover, the Bill's current definition of "related persons" remains vague and lacks the clarity needed for consistent interpretation and
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				enforcement. As highlighted in prior analyses, this ambiguity may hinder the effective administration of APAs, as the scope of qualifying transactions and entities remains uncertain. Netherlands have taken more progressive steps by implementing measures that promote transparency within their APA systems. For example, the Dutch tax authority publishes anonymized summaries of APA rulings, including the rationale and transfer pricing methodology applied. This approach, while protecting confidential taxpayer information, fosters greater public accountability and enables scrutiny of the consistency and fairness of tax rulings.
Clause 16(a): Expansion of Taxable Income		Introduces a withholding tax at the rate of 3% (on payments made to non-resident persons conducting businesses in respect of gains or profits which are chargeable to tax under section 9(1) derived from the business of a ship owner or charterer	Adopt the proposal	The proposed amendment introduces a requirement that any person transacting with a shipping company subject to tax under Section 9(1) of the Income Tax Act must withhold tax on payments made to that company or charter. This measure aims to enhance compliance and improve tax collection from non-resident shipping entities operating in Kenya's territorial waters or engaging in cross-border transactions with local businesses.

				From a public interest perspective, the measure promotes fairness and accountability by ensuring that foreign shipping companies contribute their fair share to the national tax base, consistent with the principles of equity and source-based taxation. It also strengthens the enforcement of tax obligations in sectors where compliance has historically been difficult to monitor. While it may result in a marginal increase in the cost of shipping services, given that shipping companies may attempt to pass on the tax burden to importers or exporters, this impact is not expected to be significant. Moreover, such compliance costs are justifiable in light of the broader objective of creating a transparent and equitable tax system. To minimize adverse effects, it would be prudent for the government to engage stakeholders and explore transitional mechanisms that smooth implementation and protect small-scale traders.	
Clause 17 Requirement Employer	(a) by to		The Bill now proposes that an employer shall, before computing the tax deductible in	Adopt the proposal; however, there is a need to consider	The proposed amendment requires that, prior to the computation of PAYE, employers must first apply all

Compute deductions, reliefs and exemptions provided as tax deductibles		respect of payment of emoluments shall grant an employee all applicable deductions, reliefs and exemptions provided in the Act	more reliefs and relaxation of sector-specific deductions that can be given to ensure that the employees take much more net income home.	relevant deductions, reliefs, and exemptions as provided for under the Income Tax Act. This procedural shift is intended to ensure that employees receive the full benefit of available tax reliefs upfront, thereby modestly increasing their net (take-home) pay. While this measure is a step in the right direction toward improving employees' disposable income, the actual financial impact may be marginal and may not significantly alleviate the broader cost-of-living pressures faced by most workers. To meaningfully improve employee welfare and purchasing power, more targeted and substantive reforms are needed. These may include expanding the scope and thresholds of existing reliefs, reducing the rates of sector-specific deductions (e.g., affordable housing levy and social health insurance), or revising tax bands to reflect current economic realities. According to the MTRS, it was to be conducted in this financial year.
Section 19: Final Return with Self-Assessment	Section 52B(4) of the Income Tax Act provides that every company liable to tax shall include within its self-assessment and return	The Bill proposes that every company liable to tax under the Act shall include within the self-assessment and return of income, an assessment and	Reject the proposal.	This removes the requirement of including within the self-assessment and return of income of a company, the compensating tax required to be paid. As previously argued in previous

	of income an assessment and return of any compensating tax due with respect to such tax year, and the compensating tax so calculated shall be payable at the date for the self-assessment.	return of any dividend distributed out of untaxed gains or profits due with respect to such tax year and the tax so calculated shall be payable at the due date for self-assessment		parts, this removal of a compensating tax may encourage companies to exploit loopholes to avoid taxation on distributed profits, undermining overall revenue mobilization. As observed in the Institute of Public Finance analysis <i>"Is Minimum Tax Still a Viable Option for Kenya?"</i>, the introduction of tax measures that enable the non-taxation of actual profits, particularly among profitable companies, would erode tax equity and further incentivize avoidance strategies. A more balanced approach would involve reforming, rather than abolishing, the compensating tax to target abuse while protecting genuine commercial scenarios.
Clause 20: Supply of Information Upon Change particulars	Section 54B of the Income Tax Act provides that every person carrying on a business shall notify the Commissioner of any changes in the following particulars within 30 days of the occurrence of the change: The place of business, trading name and contact address; in the case of an	The Bill proposes the deletion of this clause	Reject the proposal	Notification of changes with the KRA is quite important towards ensuring that the Authority has an effective database of records of its taxpayers.

		incorporated person of the persons, of the persons with shareholding of 10% or more of the issued share capital; a nominee ownership to disclose the beneficial owner of the shareholding; a trust, full identity and address of trustees, settlors and beneficiaries of the trust; a partnership, the identity and address of all partners or cessation or sale of business, all relevant information regarding liquidation or details of new ownership			
Clause 25(a): Exemption from stamp duty		Section 131 provides for exemptions from stamp duty for any security over property, movable or immovable, and all transfers of such property in favour of or by the commissioner.	The Bill proposes to repeal section.	Reject the proposal	The deletion of Section 131 would eliminate the current exemption from stamp duty on securities and property transfers involving the Commissioner, thereby subjecting such transactions to standard stamp duty charges. This change could increase the cost of tax enforcement actions, such as when KRA secures or transfers property in the course of recovering tax debts. For taxpayers, it may raise compliance

Clause 26(a): Application for tax exemptions	Paragraph 10 of the First Schedule to the Income Tax Act requires that, where an applicant has complied with all the requirements of the paragraph, a certificate or approval shall be issued within sixty days of lodging the application	The bill seeks to extend the timelines for issuing approval or a certificate from 60 days to 90 days.	Reject the proposal unless the Bill proposes mandatory communication on the application status	costs in cases where property is used to secure tax obligations or settle liabilities. While the move could expand the stamp duty tax base and generate additional revenue, it may also introduce delays and administrative burdens in transactions involving the Commissioner, potentially affecting the efficiency of tax recovery processes.
Clause 26(d): tax incentives for the manufacture of human vaccines	Paragraph 63 grants compensating tax benefits to companies engaged in the manufacture of human vaccines.	The bill proposes the deletion of that paragraph	Reject proposal	On the positive side, this could lead to more thorough reviews and reduce administrative pressure on KRA, potentially improving accuracy and compliance oversight. However, it may also cause delays for applicants, particularly investors or businesses who rely on timely approvals for planning and operations. The extended waiting period could affect investment decisions, project timelines, and ease of doing business, especially in sectors where tax incentives or exemptions are critical.
				The removal of this provision would eliminate a key tax incentive aimed at supporting local vaccine production. This could lead to increased operational costs for manufacturers, potentially discouraging investment in the sector and undermining efforts to

Clause 26(f)(75): Dividend exemptions from Nairobi Financial centre (NIFC)-certified companies				strengthen domestic vaccine supply chains. While the move may result in modest short-term revenue gains for the government, it risks weakening the country's public health resilience and long-term pharmaceutical development goals.
		The bill proposes to add a new paragraph immediately after paragraph 73; Dividends paid by a company certified by the Nairobi International Financial Centre (NIFC) Authority shall be exempt from tax, provided the company reinvests at least two hundred and fifty million Kenyan shillings in Kenya during that year of income.	Reject the proposal.	The proposed dividend tax exemption for companies certified by the Nairobi International Financial Centre (NIFC) that reinvests at least KES 250 million annually has the potential to stimulate substantial foreign and domestic investment in key sectors of the economy. By linking tax incentives to tangible reinvestment, the measure promotes long-term capital retention and supports economic growth. Nonetheless, effective oversight will be essential to ensure genuine compliance and to guard against manipulation, such as the inflation of reinvestment figures to unjustly benefit from the exemption. Despite its potential, the policy introduces a preferential regime that creates a stark contrast between NIFC-certified entities and ordinary domestic businesses subject to standard tax rates. This disparity risks

				undermining domestic resource mobilization and could fuel perceptions of inequity within the tax system. Moreover, the high investment threshold restricts access to the incentive to large-scale investors, raising concerns about vertical equity. Without stringent anti-avoidance safeguards, there is a heightened risk of tax base erosion through round-tripping, where domestic capital is funneled through NIFC entities without contributing to real economic activity. In the context of ongoing fiscal consolidation and expenditure cuts, such preferential tax treatments may also lead to short-term revenue losses, potentially contradicting broader public finance goals.
Clause 27(a)(b); special (100%) rates of investment allowances	Paragraph 1, subparagraph 1A and 1B provide for a claim of investment allowances at the rate of 100% of the capital expenditure in a particular year of income where: (a) the cumulative investment value (of a hotel building or a building used for manufacture or machinery used for manufacture) in the	The bill proposes the deletion of that part	Reject the proposal, if there is evidence that this incentive has not resulted in investment outside of Nairobi and Mombasa over and above what would have taken place without the incentive.	

	preceding three (3) years outside Nairobi City County and Mombasa County is at least KES 1 billion; and (b) the cumulative investment in the year that a person is claiming the investment allowances is at least KES 250 million; or (c) the person has incurred investment in a special economic zone.			
Clause 28(b)(iv)	The Income Tax Act dictates in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations.	The bill proposes to amend subparagraph (n) by inserting the following: In respect of a company certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations and twenty per cent for the subsequent 10 years of its operation where: The company invests at least 3 billion shillings in Kenya in the first three years of its operation. The company is a holding company, at least 70 percent of the employees in senior	Adopt the proposal but ensure periodic assessments are done to ensure that the tax incentive creates economic benefits for Kenya.	The proposed amendment will see all companies certified by the Nairobi International Financial Centre get a 15% tax rate not just those companies operating a carbon market exchange or emission trading system. This broadens Kenya's tax incentive regime to attract a wide range of international firms not only those in climate finance. While the initial tax rate remains 15%, the proposal suggests that qualified companies after the first ten years the rate becomes 20% for the next ten years while for startups the rate is 15% for 3 years, then 20% for the next 4 years. This will encourage long term commitment to Kenya. The proposal also stipulates that for companies to qualify for the tax

		management are Kenyan citizens. The regional headquarters of the company is in Kenya and 60 percent of the employees in senior management are Kenyan citizens. In the case of a startup certified by the Nairobi International Financial Centre Authority, fifteen percent for the first three years and twenty percent for the succeeding four years.	benefits; 70% (holding company) or 60% (regional HQ) of senior management must be Kenyan citizens. This ensures skills are transferred, boosts localization while also maintaining inclusion for Kenyan professionals. The proposal of having the regional headquarters in Kenya strengthens Kenya's position as a financial powerhouse in East and Central Africa.
Clause 28(c)(i)(ii): withholding tax on qualifying dividends	The Income Tax Act provides for the imposition of a withholding tax of 5% on qualifying dividends without explicitly stating that it is a final tax.	The bill proposes to amend Subparagraph (c) under Paragraph 5 by inserting the words "which is a final tax" immediately after the word "payable."	Introducing a tax regime for startups promotes innovation and investment in the early stages making Kenya a more attractive tech hub in Africa and aligns Kenya's vision 2030 goals.
	The bill proposes to amend Subparagraph (h) under Paragraph 5 by inserting the	Adopt the proposal	The proposed amendment seeks to clarify that the 5% withholding tax on qualifying dividends is a final tax. This means that once the tax is deducted at source, the recipient will not be required to declare the dividend income in their annual tax return or pay any additional tax on it. The change simplifies tax compliance for investors, reduces administrative burdens for both taxpayers and the Kenya Revenue Authority, and aligns

		following proviso immediately after item (iii): “Provided that the tax paid under this paragraph is a final tax.		with international best practices by treating dividend income as passive income subject to final withholding.
Clause 28(d): reduction of the digital asset tax	paragraph 13 provides that the rate of tax in respect of digital asset tax shall be three per cent of the transfer or exchange value of the digital asset.	The bill therefore proposes to reduce the Digital Assets Tax rate from 3% to 1.5%	Reject the proposal	This reduction implies a more favourable tax environment for individuals and businesses engaged in digital asset transactions, such as cryptocurrencies or Non-fungible tokens (NFTs). The lower rate may encourage greater participation in the digital economy, promote compliance by reducing the tax burden, and potentially stimulate innovation and investment in digital assets. However, it could also lead to a short-term reduction in government revenue from this tax source. In the midst of fiscal constraints, the government should be limiting potential sources of domestic revenue mobilisation such as withholding tax on digital assets.
Value Added Tax (VAT) Act				
Clause 30- Section 2: Definition of tax invoice	New definition	“tax invoice” includes an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act.	Adopt the proposal	The amendment seeks to align the definition of a ‘tax invoice’ with Tax Procedures Act

Clause 31: Place of supply of services and definition of electronic services	If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person— the services are radio or television broadcasting services received at an address in Kenya;	If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person and deleted	Adopt the proposal as it provides clarity in interpretation of the section.	The bill proposes addition of the word 'and' which means that this Section will be read together with other subsections.
	political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.	in subsection (3), by deleting the words "broadcast television" appearing in paragraph (g) and substituting therefor the words "internet, radio or television broadcasting services".	Adopt the proposal.	Amendment to Section 8 (3) covers definitions of electronic services offered through broadcasting.
Clause 32: Input VAT	5 (c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act, 2015;	Deleted	Reject the proposal; instead, retain the current provision.	The current provision allows taxpayers to apply for refunds against excess withholding VAT and to offset credits against other tax liabilities owed by the taxpayer.
Section 17				If passed, removing this provision will mean that taxpayers can only offset excess withholding tax against their

				VAT liability, and have the option of applying for excess credits. This will take us back to where some taxpayers were in a perpetual refunds position with no recourse.
	the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable.	the registered person lodges the claim for refund of the excess tax within twelve months from the date the tax becomes due and payable;	Adopt the proposal	This amendment harmonizes the application period for tax refund with the Tax Procedures Act.
	Such excess arises from input tax under subsection (8): Provided that a registered person who, since the commencement of subsection (8) but before the commencement of this provision, has a credit arising from input tax under subsection (8) may apply for the refund of excess tax within twelve months from 1st July 2022;	Delete 5 (e)	Adopt the proposal The provision is no longer applicable in light of the amendment introduced by the Tax Law (Amendment) Act, 2024.	The subsection makes reference to section 8 that has since been deleted. The provision allowed manufacturers to deduct input tax with respect to taxable supplies made to an official aid funded project.
Clause 33: Refund of tax on bad debts	Where a registered person has made a supply and has accounted for and paid tax on that supply but has not	in paragraph (a), by deleting the words “three years” and	Adopt the proposal as a shorter timeframe for VAT refunds on bad debts	The Bill proposes to reduce the timeline within which taxpayers should apply for refund of VAT paid if the taxpayer has not received

	received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may refund the tax:	substituting therefor the words “two years”; ca) the amount may be used to offset any other value added tax liability, upon approval by the Commissioner;	and allowing businesses to use the amount to offset any other VAT liability will unlock working capital for businesses The amendment also addresses a current contradiction in the VAT Act by defining time to remit recoveries from previously refunded VAT on bad debts to the Commissioner	payment from the buyer to two (2) years from the date of the supply instead of the current three (3) years. In addition, the Bill proposes that: (a) any such VAT as refunded by the KRA may be used to offset any other VAT liability upon approval by the KRA; and (b) the timeline for taxpayers to pay the recovered VAT to the KRA is thirty (30) days.
Clause 34: Issuance of tax invoices	Subject to subsection (2), a registered person who makes a taxable supply shall, at the time of the supply furnish the purchaser with the tax invoice containing the prescribed details for the supply.	Delete the word “taxable”.	Adopt the proposal as it will allow KRA to have access to information on all supplies made to a registered VAT taxpayer.	The bill proposes issuance of tax invoices for all supplies, taxable and non-taxable in line with the provisions of the Tax Procedures Act that requires issuance of tax invoices for all transactions except those exempted from the requirements of Electronic Tax Invoice Management System (eTMS)
Clause 35: VAT on the disposal or use of goods or services that are tax-exempt	New paragraph	Where a person imports or purchases goods or services which are exempt or zero-rated and the person subsequently	Adopt the proposal and define what constitutes ‘inconsistent’ use	Whereas the proposal seeks to prevent abuse of tax exemptions by ensuring that exempt goods and services are exclusively used for purpose for which

or zero-rated in a manner inconsistent with the purpose of the VAT exemption or zero-rating		disposes of, or uses, the goods or services supplied in a manner inconsistent with the purpose for which the goods of services were exempted or zero-rated, the person shall be liable to pay tax on the goods or services at the applicable rate at the time of disposal or inconsistent use.	they were exempt or zero-rated, it is likely to result in tax disputes as it does not define what constitutes 'inconsistent' use.
Clause 36: Section A of Part I of the First Schedule	Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury. Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation	by inserting the words "excluding fuels, lubricants and tyres for vehicles" immediately after the words "funded project";	It is difficult to ascertain that consumables if exempt will be used exclusively in the implementation of official aid funded projects, therefore this amendment will safeguard against abuse of exemption.
Clause 36: Section A of Part I of the First Schedule	The below items were previously exempt; All goods and parts thereof of chapter 88 (Aircraft, spacecraft and parts thereof)	in paragraph 89, by deleting the words "other aircraft spare" and substituting therefor the word "aircraft";	A stable tax environment is more critical in protecting Kenya's aviation sector than giving tax incentives
Clause 36: Section A of Part I of the First Schedule		The Bill proposes to subject these items to VAT at the rate of 16%	We recognize the need to reduce tax expenditures and therefore, we agree these items should be vatatable at 16 percent especially because businesses do not transfer the benefit of these exemptions to final consumers.
			Adopt the proposal.
			We nonetheless stress on the need for Kenya to develop a framework to guide introduction and

	Direction-finding compasses, instruments and appliances for aircraft Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty Specially designed locally assembled motor vehicles for transportation of tourists Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal,	removal of tax incentives because some of items (such as Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty) have been subject to frequent amendments	In addition, a stable tax environment of more critical in protecting Kenya's aviation sector than giving tax incentives
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	oil or mining prospecting or exploration Specialized equipment for the development and generation of solar and wind energy Discs, tapes, solid-state non-volatile storage devices, “smartcards” and other media for the recording of sound Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals Inputs and raw materials used in the manufacture of passenger motor vehicles Locally Manufactured passenger motor vehicles			
Clause 36: Exemption of Packaging materials for tea and coffee	New provision	The bill proposes exemption of packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture.	While welcome, Kenya needs a framework to guide introduction of tax incentives.	The provision is aimed at reducing the cost of processed tea and coffee to improve its competitiveness within the international market and cheaper locally.

Clause 37: Reclassification from zero-rated to exempt	The below items were previously zero-rated: Inputs or raw materials supplied to pharmaceutical manufacturers Transportation of sugar cane The supply of locally assembled and manufactured mobile phones The supply of electric bicycles. The supply of motorcycles of tariff heading 8711.60.00. The supply of solar and lithium ion batteries. The supply of electric buses of tariff heading 87.02. Inputs or raw materials locally purchased or imported for the manufacture of animal feeds	The bill proposes that the items be exempted.		We recognize the need to reduce tax expenditures and therefore, we agree these items should be vatatable at 16 percent especially because businesses do not transfer the benefit of these exemptions to final consumers. In addition, a stable tax environment of more critical in protecting Kenya's aviation sector than giving tax incentives
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	Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00			
Excise Duty Act				
Clause 38: Amendment of Section 2. (Definition of a digital lender)	The existing definition of "digital lender" includes persons providing credit via digital platforms but lacks explicit exclusions for regulated financial institutions, leading to ambiguity. No definition of "digital marketplace" exists, limiting the Act's ability to tax e-commerce platforms explicitly. Goods classification is based on tariff codes, but there is no explicit reference to EAC protocols, causing potential	The definitions have been updated together with a new subsection. "Digital lender": Redefined to mean a person extending credit via electronic means, excluding banks (Banking Act), Sacco societies (Co-operative Societies Act), or microfinance institutions (Microfinance Act). "Digital marketplace": New definition as an online platform enabling users to sell goods or services. New Subsection (3): Goods classification to use tariff codes from Annex 1 of the East	Adopt the proposal	The Bill revises the definition of "digital lender" to exclude licensed banks, SACCOs, and microfinance institutions, clarifying the tax obligations for electronic credit providers. The definition of a digital marketplace aligns with the definition provided or in the VAT Act and reinforces the Government's broader strategy to tax the digital and platform economy consistently across tax statutes. Harmonization with the EAC tariff classification establishes a legal link between Kenya's excise duty structure and the EAC Common External Tariff (CET) framework. This ensures that the same product classification criteria used for customs and import duties also apply to excise taxes,

	misalignment with regional standards.	African Community (EAC) Customs Union Protocol, with interpretation per the Annex's rules.		thereby enhancing consistency and transparency in tax administration.
Clause 39: Expansion of scope of services offered by a non- resident.	Section 5(1) of the Act stipulates that excisable services provided in Kenya by a non-resident through a digital platform are subject to tax.	The Finance Bill, 2025 proposes an amendment by deleting the words "digital platform" and replacing it with "over the internet, an electronic network, or through a digital marketplace."	Adopt the proposal.	The proposition expands the scope of taxable services that are offered by non- residents to include all electronic transactions, not limited to specific platforms. However, the terms <i>electronic networks</i> and <i>business over the internet</i> are not defined in the Bill, leaving their scope dangerously vague. This raises constitutional issues under Article 210, which requires tax laws to be clear, certain, and predictable. The absence of definitions could lead to overreach, where even incidental or minimal online activity is deemed taxable. It also exposes the provision to legal challenges and makes it difficult for businesses, especially non-resident ones, to assess whether and how the tax applies to them.

Clause 40: Place of supply of excisable services	Subject to this section, a supply of excisable services shall be deemed to be made in Kenya if the services are supplied from a place of business of the supplier in Kenya. This does not explicitly address non-resident services consumed in Kenya, leaving a gap in taxing cross-border digital services.	The proposition seeks to add a new subsection that states that Services supplied by non-residents are deemed made in Kenya if consumed locally via the internet, an electronic network, or a digital marketplace.	Adopt the proposal as it aligns with the definition under the income tax act.	Again, there is need to provide a succinct definition of a <i>electronic networks</i> and <i>business over the internet</i>.
Clause 41: Issue of license for activities requiring licensing.	Section 17 (1) does not specify a processing timeline by the commissioner after an application for a license.	Amends Section 17(1) to require the Commissioner to process the license applications within 14 days of receiving all required documents.	Adopt the proposal.	The proposal will enhance regulatory certainty by providing a clear timeframe for licensing decisions. This will reduce delays in starting or expanding operations, especially to sectors that rely on timely regulatory approvals.
Clause 42: Amendments of the first schedule. Change in Excise Duty base and rates	The bill proposes changes to applicable excise duty rate and base.	Shift in tax base for coal and imported float glass- The taxation method for coal and imported float glass from "customs value" to "excisable value." The new base (customs value plus import duty) will result to an increase in the payable excise duty.		The proposal increases the minimum payable rate and expands the tax base , aligning with excise duty treatment of other commodities. The proposal is however likely to raise the costs for packaging materials, which will impact the manufacturing and food and beverage sectors.

		• Increase in excise duty rates from 25% or KES 75 per kg, to 25% or Ksh 200 per kilogram, whichever is higher, on self-adhesive plastics, printed polymers of ethylene, printed cellular plastics, printed self-adhesive paper and gummed paper and paperboard are set at excluding those goods of EAC origin; • Introduction of Ksh 500 per liter excise duty on Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages.		
Tax Procedures Act Cap.469B				
Clause 43 - Refined Invoice Exemptions	Section 23A (4) allowed certain transactions to be excluded from the requirement to issue an electronic tax invoice. These included emoluments, imports, investment interest, investment allowances, airline ticketing, and withholding tax payments, without distinguishing the nature of	The proposed amendment restructures the subsection and expressly limits the withholding tax exemption to payments where the tax is final. It retains the exclusions for emoluments, imports, interest, investment allowances, and airline ticketing, but in a more defined and orderly phrasing. The change narrows the exemption scope and adds	Adopt, but with safeguards. Include a grace period within which businesses particularly SMEs to comply.	The more restrictive wording could place an added burden on compliant taxpayers—especially SMEs—that previously benefited from broader exemptions to ease their reporting obligations.

		the tax. The language was general, leaving room for broad interpretation and inconsistent application.	precision to how invoicing requirements apply.		
Clause 44 Mandatory Assessment Reasons	-	Section 31(8) of the Tax Procedures Act obliges the Commissioner to notify the taxpayer in writing of any amended assessment. The notice must specify the assessed tax, penalties, interest, the reporting period, due date for payment, and the objection procedure. However, it does not require the Commissioner to explain <i>why</i> the assessment was amended.	The amendment introduces subsection (8A), which requires the Commissioner to include reasons for the amended assessment in the notice. This change imposes a statutory duty to justify the amendment beyond just stating figures and deadlines. It embeds transparency into the tax assessment process, aligning notice obligations with principles of fairness and accountability.	Adopt the proposal.	This requirement will promote transparency, reduces tax disputes, and builds trust in the KRA's processes. When taxpayers understand the basis of assessments, they are less likely to object unnecessarily, and administrative efficiency improves.
Clause 45 – Relief for withholding omissions		Section 39A imposes full liability on a person who fails to deduct or withhold tax, treating the amount not withheld as tax due from that person. The person becomes liable not just for the principal amount, but also for penalties and interest, regardless of whether the recipient paid their tax.	The amendment restructures the section and introduces a new subsection (2) that offers a relief mechanism. It provides that where the tax recipient has already paid the full principal tax, the person who failed to withhold or deduct will not be liable for that principal amount. However, it does not exempt	Adopt with caution The amendment brings much-needed proportionality to the law, but it must be applied cautiously, with adequate checkFs. KRA should establish a	This reform helps focus KRA's enforcement efforts on actual revenue loss, rather than penalizing technical failures where no tax has been lost. It introduces a fairer approach to tax enforcement, reduces unnecessary litigation, and encourages voluntary compliance.

	This provision created a strict liability regime with no room for equitable relief, even in cases of honest mistakes.	liability for penalties or interest related to the failure.	verification process before granting relief to ensure the recipient's tax compliance is confirmed.	
Clause 46 - Stamp Duty Relief on Tax Security	Section 40 allows the Commissioner to register a security over a taxpayer's property for unpaid taxes and restrict its disposal. Once the tax remains unpaid for two months, the Commissioner may auction or dispose of the property. A proviso under subsection (5) allowed the Commissioner to lift the notification upon settlement of the liability through an agreed payment plan—but did not address stamp duty obligations.	The amendment introduces two key changes: It expands subsection (2) to exempt stamp duty on registering the Commissioner's notification. It replaces the proviso in subsection (5) with two parts: (a) confirms that the agreed plan must be completed before the notification is lifted, and (b) exempts the transfer of the restrained property from stamp duty.	Adopt the proposal.	The proposed provision seeks to exempt the Commissioner's notification from stamp duty at the point of its registration and also grants stamp duty exemption on the transfer of the property where it is disposed of by the Commissioner following their failure to pay the tax liability.
Clause 47 - inclusion non-resident	The original Section 42 of the Tax Procedures Act	The amended Section 42 retains all enforcement powers granted	Adopt the proposal.	The amendment to Section 42 has significant implications: positively, it

persons subject to tax in Kenya	empowered the Commissioner of the Kenya Revenue Authority (KRA) to recover unpaid taxes from a taxpayer by appointing third parties—such as banks, employers, or other entities holding or owing money to the taxpayer—as agents responsible for remitting funds to the KRA. This provision allowed the Commissioner to target salaries, accounts (including joint accounts), and other financial relationships where money was due to or held for the taxpayer, with safeguards including notice to both the agent and the taxpayer, and the ability for agents to dispute or explain their inability to comply. The section applied solely to persons resident in Kenya and explicitly excluded non-resident taxpayers.	under the original provision but expands their scope by explicitly including non-resident persons who are subject to tax in Kenya. All references to “taxpayer” now also cover such non-residents, meaning KRA can appoint agents to recover tax from funds owed to or held for non-residents, enforce against their joint accounts, and require disclosures from third parties dealing with them. This closes a legal gap, brings non-residents into the compliance framework, and aligns Kenya’s enforcement capacity with global tax enforcement standards.	strengthens the Kenya Revenue Authority’s capacity to enforce tax compliance by enabling the recovery of unpaid taxes from non-resident persons, thereby expanding the tax base, closing enforcement loopholes, and aligning Kenya with international tax transparency standards. It also enhances revenue collection from cross-border transactions and offshore entities operating in Kenya.
Clause 48 - Deletion of Conviction-Based Penalty	Read strictly, Section 42A(4C) imposed a 10% penalty on persons who, without reasonable cause, failed to withhold or remit tax as required.	Strictly interpreting the previous provision means that the proposed amendment by Clause 48 which is the deletion of subsection (4D), removes the penalty that follows criminal	Adopt the proposal
			The proposed amendment will allow KRA to enforce the 10% penalty by removing the procedural hurdle of obtaining a conviction. It therefore strengthens the KRA’s ability to take

	Subsection 4D provided an additional penalty — upon conviction — of 10% of the amount involved. This effectively created dual liability: an administrative penalty under 4C and a court-imposed penalty under 4D upon successful prosecution.	conviction for failure to withhold or remit tax under 4C. This narrows the legal consequences to only administrative penalties, without additional criminal penalty upon conviction.	swift enforcement action once non-compliance is established.
Clause 49 - Repeal of DST Agent Appointment	Section 42B empowered the Commissioner to appoint and revoke agents responsible for collecting and remitting Digital Service Tax (DST). This allowed the Kenya Revenue Authority (KRA) to operationalize DST by creating a compliance mechanism through designated intermediaries. It was a necessary administrative tool under the DST regime.	Clause 49 proposes to completely repeal Section 42B of the Act. This aligns with the repeal of DST and its replacement with the Significant Economic Presence Tax (SEPT) under a previous Finance Act. As such, the section is now redundant and no longer has legal utility.	This enhances legislative clarity and coherence, by removing obsolete provisions that no longer serve the current tax framework. It signals that the government is committed to modernizing its tax code in alignment with policy shifts.
Section 50 - Extended Timeframes for Tax Refunds and Offset Processing	Section 47 allowed taxpayers to apply for refunds or offsets for overpaid taxes, including input VAT, subject to specific conditions.	Clause 50 of the Bill seeks to: Delete "input VAT" from the scope of taxes that can be offset against overpaid tax.	The removal of input VAT from eligible refunds or offsets may lead to cash flow problems, especially for businesses heavily reliant on input VAT claims for liquidity. Additionally, extended refund

	It required the Commissioner to process such applications within 90 days, or 120 days if an audit was conducted, after which the application would be deemed approved. It promoted taxpayer rights by setting statutory deadlines to prevent indefinite delay and ensured refunds were not subject to bureaucratic abuse.	Extend the Commissioner's decision period from 90 to 120 days for non-audited cases. Extend the audit resolution period from 120 to 180 days before an application is deemed approved.		timelines increase taxpayer uncertainty, weaken business planning, and undermine the principle of timely redress.
Clause 51 - Clarifying Timelines for Objection Decision after Late Objection Approval	Under the current framework: A taxpayer has 30 days to lodge a notice of objection after a tax decision. A late objection may be permitted by the Commissioner under subsection (7) for good cause (e.g., sickness, absence). The Commissioner must notify the taxpayer of that decision within 14 days under subsection (7A).	Clause 51 proposal adds a new subsection (7B): “Where the Commissioner has allowed the application for late objection and the objection has been validly lodged, the period within which the Commissioner may make an objection decision shall be computed on the day the objection is lodged.”	Adopt the proposal.	The amendment provides clarity on how to compute the 60-day window in cases where late objections are allowed has been unclear, potentially causing administrative confusion or unfairness.

Clause 52 – Requirement to share private and personal data.	Once a valid objection is lodged, the Commissioner must make an objection decision within 60 days, or the objection is deemed allowed (subsection 11). However, the starting point of the 60-day window in cases where late objections are allowed has been unclear, potentially causing administrative confusion or unfairness.			
Clause 52 – Requirement to share private and personal data.	Section 59A(1B) of the TPA currently prohibits the Commissioner from requiring taxpayers to integrate or share: (a) Trade secrets; (b) Private or personal data held on behalf of customers or collected in the course of business.	Clause 52 proposes to delete Section 59A(1B) of the TPA, effectively removing the legal protection that currently prohibits the Commissioner from requiring taxpayers to share: (a) Trade secrets; (b) Private or personal data held on behalf of customers or collected in the course of business.	Do not adopt. This clause prioritizes tax surveillance over fundamental rights. It undermines constitutionalism. Revenue collection must be pursued within the confines of the law, not at the expense of privacy, trust, and due process.	The proposed repeal of section 59A(1B) of the Tax Procedures Act poses serious risks to data privacy, constitutional rights, and business confidentiality. It violates Article 31 of the Constitution, which guarantees the right to privacy. It undermines international privacy standards domesticated under Article 2(5) and (6). It threatens commercial innovation by exposing proprietary business information, discouraging investment, and increasing the risk of industrial espionage.

Clause 53- Deletion of Section 66(1)(a)(iii).	Currently, the Commissioner may refuse a private ruling if the matter has already been addressed in a ruling published under section 69.	Clause 53 proposes that Section 66(1)(a)(iii) be deleted.	Adopt the amendment. It does not alter substantive taxpayer rights or obligations.	The proposed amendment is a <i>technical clean-up</i> intended to align section 66 with the current legislative framework by removing a reference to a repealed provision. Since section 69 was repealed by the Finance Act, 2020, retaining a ground for refusal based on rulings under it is outdated and legally redundant. The amendment ensures legal clarity and eliminates obsolete language from the statute.
Clause 54 – Deletion of Section 77(2) of the Tax Procedures Act	Section 77(2) provides that when computing the timelines for lodging tax disputes—whether objections to the Commissioner or appeals to the Tax Appeals Tribunal, High Court, or Court of Appeal—Saturdays, Sundays, and public holidays are excluded.	Clause 54 proposes that Section 77(2) be deleted, shortly after its amendment to exclude Saturdays, Sundays and public holidays.	Reject the proposed deletion. Section 77(2) plays a critical role in ensuring that time computation for dispute resolution is fair and consistent with constitutional and administrative law standards. Instead, the provision should be retained.	This proposed deletion reduces the number of days available to a taxpayer, especially in instances where the response or appeal periods are already tight (e.g., 30 days under sections 51 and 52).
Clause 55 - Expanding Administrative Penalties	Section 83(1) only imposes penalties on a person who submits a tax return <i>after</i> the due date.	Clause 55 seeks to insert the words “fails to submit a tax return or” immediately after the words “person who”.	Adopt the amendment with modifications. A clarifying provision should be added to specify:	This amendment expands the scope of Section 83(1) to also penalize a person who <i>completely fails</i> to submit a tax return, not just those who file late. While non-submission is already an offence under Section 94 of the Act, this amendment brings that infraction

Clause 56 – Waive of penalties and interests based on issues with e-TIMS.	Section 89 consists of general provisions relating to penalty.	Clause 56 proposes to introduce a new subsection (5A) empowering the Cabinet Secretary (CS), on the Commissioner's recommendation, to waive penalties or interest arising from issues caused by the KRA's electronic tax system.	That the penalty structure applicable to late submission shall also apply to non-submission. That a person shall not be penalized under both Sections 83 and 94 for the same infraction. This will promote compliance while upholding legal certainty and fairness.	into the administrative penalty regime, allowing KRA to impose penalties directly without needing to prosecute under criminal provisions.
			Adopt with clarifying regulations. The amendment is welcome and long overdue, particularly in an increasingly digitized tax environment.	While the provision promotes fairness, it also leaves room for discretion, which could lead to inconsistent application or potential abuse. Without clear guidelines on how the Cabinet Secretary should determine the appropriateness of waivers, there could be discrepancies in how waivers are granted. This might lead to some taxpayers being unfairly denied relief, while others might benefit from waivers due to subjective interpretations of the rules.
Miscellaneous and Fees Levies				

Clause 57(a)(b):	9B. Application of Tax Procedures Act (Cap. 469B) to excess tax refunds The provisions of section 47 of the Tax Procedures Act (Cap. 469B) shall apply for the purposes of application for refunds, ascertainment and determination by the Commissioner of penalties and interests on fees and levies that remain unpaid.	Deleting the words “to excess tax refunds” and “provisions of section 47 of the”	Adopt the proposal	The proposed amendment aims to clean up the Act for administrative coherence.
Clause 58(a)(b): reduced IDF/RDL exemptions for aircrafts	Previously both Part A and Part B of the Second Schedule to the Miscellaneous Fees and Levies Act provided exemptions for aircraft and related imports. Specifically, paragraph (xv) under Part A and paragraph (xiii) under part B exempted goods and parts classified under Chapter 88 which covers aircrafts , spacecraft and associated components. In addition, paragraph (xva) under Part A and paragraph (xvi) under part B granted exemptions for aircraft spare parts, including engines, by aircrafts operators or entities engaged in aircraft	The bill therefore seeks to amend part A and part B of the second schedule by deleting paragraph xva and paragraph xiii under Part A as well as paragraph xv and xvi under Part B, these provisions are to be replaced with a new paragraph xva under part A and a new paragraph xvi under Part B, both of which provides an exemption limited to all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00.	Adopt the Proposal as it aligns with VAT Act and supports Kenya’s fiscal strategy to reduce tax expenditure.	A stable tax environment is more critical in making Kenya a regional aviation hub than giving tax incentives. Therefore, the government should work towards assuring investors in the aviation sector of a stable macro-economic environment.

	maintenance, subject to recommendation by the competent civil aviation authority.			
Clause 59(a)(b)(c): Export and Investment promotion Levy	Previously under the Third schedule the following products attracted an export and investment promotion levy rate of 17.5% of the custom value: Part A: Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness Part B: Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm (both at 17.5 %) Part C: Bars and rods of iron or non-alloy steel, hot-rolled	This bill seeks to reduce this rate from 17.5% to 10%.	While lowering of the Export and Investment promotion Levy rate is welcome; the government should also monitor local availability of these products and adjust the rate upwards once the local market is able to meet the local demand.	Being intermediary products, lowering the Export and Investment Promotion Levy will lower the cost of production of final products.

Clause Exemption stamp duty	60: from	in irregularly wounds coils of circular cross-section measuring less than 14mm in diameter, other.	The Bill proposes an amendment to Section 117 of the Stamp Duty Act by adding a new paragraph (f) to subsection (1). This amendment exempts the transfer of property by a company to its shareholders as part of an internal reorganization, provided that: (a) The property is distributed to shareholders in proportion to their shareholding in the company immediately before the transfer. (b) If the transferred property consists of shares, those shares must belong to a subsidiary of the transferring company.	Adopt proposal.	The amendment promotes efficient corporate restructuring by reducing tax burdens while fostering flexibility and investment, while maintaining regulatory oversight. However, it raises concerns about potential tax avoidance if misused.
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*****End*****

BCKK MEMORANDUM ON FINANCE BILL 2025 (NATIONAL ASSEMBLY BILL NO.19 OF 2025)

No.	Clause	Current	Proposed Amendment	Reasons/Justification for Proposed Amendment	Expected Outcome of the Change (s)
1	Clause 8 (b) (ii) Delete Section 15(3) (f) of the Income Tax Act	Provision allows capital losses on disposal of property to be offset against capital gains from disposal of another property in the same year of income or to carry forward the loss to subsequent years of income. The Bill is seeking to repeal this provision	Delete this proposal OR Amend the proposal to allow for offsetting with an additional provision enabling the Commissioner to assess and determine if the amount of capital losses on disposal of property deducted against capital gains from disposal of another property are just and reasonable thus allowable.	- Disallowing capital losses to be offset against capital gains will discourage risk-taking by investors as they will be unable to recoup their losses. This will result in a lower level of property investment within the country thus slowing the rate of development. - If the Government has concerns surrounding the losses being claimed, a provision for the Commissioner to assess and determine the claims could alleviate this concern.	- Sustained investment in property required to drive economic growth and development
2	Clause 8 (c) Amend Section 15(4) of the Income	Provision allows for the carry-forward of losses as a deductible for an indefinite time.	Delete this proposal OR Amend the proposal to allow businesses to apply for an	- Businesses undertaking substantial capital expenditure may be negatively affected, especially in situations where	- Encourage large-scale investments with a payback period of over 5 years.

No.	Clause	Current	Proposed Amendment	Reasons/Justification for Proposed Amendment	Expected Outcome of the Change (s)
	Tax Act by including a 5-year cap	The Bill proposes to introduce a 5-year limit on deductibility of tax losses.	extension of time in utilization of tax losses beyond 5 years.	the business does not generate profitability as quickly and require a longer period to utilize the tax losses incurred. - There is a need to provide room for such businesses to apply for an extension of time to utilize the tax losses.	
3	Clause 27(a) Delete subparagraph (1A) in the Second Schedule of the Income Tax Act	The Income Tax Act provides an incentive for 100% on cumulative investments done with respect to hotel buildings, buildings used for manufacture and machinery used for manufacture outside Nairobi and Mombasa (where cumulative investment value in three preceding years exceeds 3 billion and investment value	Delete this proposal	- The removal of this incentive will discourage significant capital investments in areas outside Nairobi and Mombasa counties in anticipation of recovering the cost in the first year from a tax perspective. - Further, it will slow investments in SEZs which are currently being promoted by the Government. - These frequent changes should be avoided to provide a stable tax policy regime for investors and decision-making.	- Encourage investment in counties outside Nairobi and Mombasa thus promoting development in other regions. - Sustained investment in SEZs

No.	Clause	Current	Proposed Amendment	Reasons/Justification for Proposed Amendment	Expected Outcome of the Change (s)
		exceeds two hundred and fifty million shillings in that year of income) or within the special economic zone. The Bill seeks to delete this provision.			
4	Clause 52 Delete subsection (1B) of Section 59A of the Tax Procedures Act	Currently, the Tax Procedures Act provides for limits in the data required to be integrated and shared with the Commissioner, including data related to trade secrets and private or personal data held on behalf of customers. The Bill seeks to remove this limitation.	Delete this proposal – A clear framework ensuring compliance with the Data Protection Act needs to be put in place by KRA before requiring trade secrets and personal data information to be integrated into the electronic tax management system.	- The proposal poses data protection and security risks on business information that may contain personal data of clients. With no clarity on the measures which will be put in place by KRA to ensure conformity to the Data Protection Act, taxpayer trust could be eroded. - There is need for KRA to provide a clear framework and mechanism indicating how they will comply with the provisions of the Data Protection Act should they integrate data on trade secrets and private date	- With a clear framework on how KRA will secure the data that is collected, taxpayer trust will not be eroded.

No.	Clause	Current	Proposed Amendment	Reasons/Justification for Proposed Amendment	Expected Outcome of the Change (s)
5	Clause 36 (j) Delete paragraph 113 in Section A of Part 1 of the First Schedule to the VAT Act with transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	VAT exemption is provided for Specialized equipment for the development and generation of solar and wind energy upon recommendation by the CS responsible for matters relating to energy. The Bill proposes to remove this exemption.	Delete this proposal in the Finance Bill	- Kenya seeks to generate 100% of its electricity from clean energy source by 2030. - The proposal is likely to jeopardize this goal as it will increase the cost of accessing solar energy and negatively impact those that rely on solar energy. - For Kenya to achieve this goal, there is need to ensure that the cost of generating solar and wind energy makes it affordable for use by households and industry. - Therefore, to ensure renewable energy is affordable, this proposal should be removed.	- Increased uptake of renewable energy. - Support sustainable development goals related to green energy and environmental conservation
6	New Proposal	The supply of cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh,	Exempt cut flowers and flower buds of tariff heading 06.03 from VAT by amending Section A of Part I of the First	- Exempting the supply of flowers from VAT will reduce the cost of purchasing flowers for exporters. - This will make Kenyan flowers more competitive in the market thus leading to	- Increased competitiveness of Kenyan flowers hence more exports - Reduced burden on VAT input claims



BRITISH CHAMBER
OF COMMERCE
KENYA

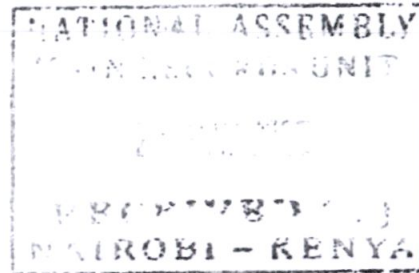
No.	Clause	Current	Proposed Amendment	Reasons/Justification for Proposed Amendment	Expected Outcome of the Change (s)
		dried, dyed, bleached, impregnated or otherwise prepared of tariff heading 06.03 are currently vatable at 16%	Schedule of the VAT Act to include "Cut flowers or flower buds of a kind suitable for bouquets or for ornamental purposes of tariff heading 06.03"	- increased exports of Kenyan flowers and higher investment in the sector. - In addition, this will alleviate challenges being experienced with the VAT claims in the country. - By exempting flowers from VAT, the supply of flowers will not have a VAT charge therefore exporters will have no claims on input VAT. - As a result, cashflow will be freed up for both government and exporters to support investment and operations.	hence ease of cash flow
7	New Proposal	Iron ores and concentrates, including roasted iron pyrites of Tariff No 2601 attract an export levy of USD 175 per tonne	Remove export levy on iron ores and concentrates of tariff no 2601 by amending Part 1 of the First Schedule of the Miscellaneous Fees and Levies Act, by deleting the description "Iron ores and	- The removal of the export levy will encourage more exports of this product, and it is expected to generate an additional USD 120million (KShs. 15 billion) in forex income for the country - Further, it is expected that an additional 5,000 jobs are to be created due to increased demand for iron ore.	- Higher exports from Kenya of iron ore - Additional forex earnings - Job creation - Tax revenue collection

No.	Clause	Current	Proposed Amendment	Reasons/Justification for Proposed Amendment	Expected Outcome of the Change (s)
			concentrates including roasted iron pyrites” and the corresponding tariff number and export levy rate.	- Finally, an increase in govt revenue from collection of other fees and levies related to the trade of this product including royalties and direct and indirect taxes is expected.	



Office of the Clerk,
National Assembly,
1st Floor, Parliament Buildings,
P. O. Box 41842 - 00200,
Nairobi - Kenya.

Attn: Samuel Njoroge, CBS



Date 26/05/2025

Ref AM/260525-1

Dear Sirs,

Subject: COMMENTS AND PROPOSALS ON THE FINANCE BILL, 2025 IN RESPONSE TO THE INVITATION TO SUBMIT MEMORANDA

The International Air Transport Association (IATA) present their compliments to the National Assembly of the Republic of Kenya.

IATA's mission is to represent, lead, and serve the airline industry. For over 70 years, we have developed global commercial standards upon which the air transport industry is built. Our aim is to assist airlines by simplifying processes and increasing passenger convenience while reducing costs and improving efficiency. IATA advocates and represents the interests of over 300 airlines in over 120 countries, carrying 83% of the world's air traffic.

Representing the airline industry

We improve understanding of the air transport industry among decision makers and increase awareness of the benefits that aviation brings to national and global economies. Advocating for the interests of airlines across the globe, we challenge unreasonable rules and charges, hold regulators and governments to account, and strive for sensible regulation.

Leading the airline industry

For over 70 years, we have developed global commercial standards upon which the air transport industry is built. Our aim is to assist airlines by **simplifying processes and increasing passenger convenience while reducing costs and improving efficiency**

Serving the airline industry

We help airlines to operate safely, securely, efficiently, and economically under clearly defined rules. Professional support is provided to all industry stakeholders with a wide range of products and expert services.

International Air Transport Association,
The Cube, 2nd Floor, Riverside Drive,
Nairobi, Kenya

iata.org



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

Clause	Description of the Clause	Proposal	Justification
Section 36(a) of Finance Bill, 2025 Amendment of the First Schedule to the Value Added Tax Act, 2013 – (a) in Section A of Part I— in paragraph 49 – By deleting all goods and parts thereof of chapter 88	The current provision in the law makes all goods and parts VAT exempt. The Bill proposes to reclassify aircrafts parts from exempt status to a standard rate VAT at 16%.	Retain the current provision of the VAT Act, 2013 by not approving the deletion.	Aircraft Acquisition Costs To promote the growth of domestic and regional travel, high aircraft acquisition costs will increase the investment costs and increase the risks on capital, hence attract less investors. VAT Exemption and Increased Domestic Travel Revenue By keeping all aircraft at VAT exempt status, domestic travel will increase in volume and KRA will collect higher Air Passenger Service Charges, VAT on hotels, meals and accommodation services. The higher volume will increase KRA's VAT earnings sustainably. Irrecoverable VAT Costs to Domestic Airlines It should be noted that the imposition of VAT on such supplies will represent an additional and irrecoverable cost to domestic airlines in Kenya as no input tax credit is available on domestic transport services VAT on International Aircraft and Refund Implications



		Where aircraft become subject to VAT at 16% are purchased for international travel, this VAT will further increase the VAT refunds due to airlines as international air travel is zero rated for VAT. This would be an adverse outcome for the KRA and National Treasury. Growth of Drones and Aviation Innovation The aviation industry is promoting the growth of Drones, an innovative last mile flight service with multiple value chain impact. Importance of Access to Air Safety Equipment Air safety is key to safeguarding passengers trust and confidence in travel. Access to safety equipment will ensure that Aircraft safety is affordable and sustainable, and safeguard on passenger safety and security. Negative Impact of VAT on Drone Technology Development Drones' technology is an innovative development at infancy – introduction of direct VAT will stifle its growth and advancement and deny National Treasury the opportunity to grow and develop rural and marginalized towns in Kenya.
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Section 36(d) of the Finance Bill 2025 Amendment of the First Schedule to the Value Added Tax Act, 2013 – in Section A of Part I by deleting paragraph 58	Direction finding compasses, instruments and appliances for aircrafts are currently VAT exempt with the proposal to charge VAT at 16% under the Value Added Tax Act, 2013.	Retain the current provision of the Value Added Tax Act, 2013 by not approving the deletion.	Direction-finding compasses and instruments are an integral part in the aviation industry and charging VAT on their acquisition would deal a big blow to the industry – making it unnecessarily expensive, for both domestic and international travel. From a tax revenue collection perspective, the introduction of VAT on these items is doubtful. Ensuring Air Safety Through Quality Maintenance and Spare Parts A safe and secure air space is promoted by the quality of the aircraft and the maintenance and repairs integrity. A safe air space will attract more investors and provide KRA opportunities for indirect tax through consumption of goods and other services. It is not uncommon for airlines to have to replace certain items due to them reaching their useful lives or due to unforeseen malfunctioning. Where such items are required to ensure the safe operation of aircraft in the provision of air transport services, this may necessitate airlines to either import spare parts into Kenya or to source such spare parts and equipment from third-party suppliers in Kenya who may not have availability.
Amendment of the Second Schedule to the Value Added Tax Act, 2013 – in Part A paragraph 5 by Adding the words "and cargo" immediately after the words "transportation of passengers"	Transportation of passengers by air carriers on international flight.	Add the words "and cargo" The new paragraph- Transportation of passengers and cargo by air carriers on international flight	To expand the scope of VAT exemption to include not only the transportation of passengers but also the transportation of cargo by air carriers on international flights. This change aligns with international best practices and supports trade facilitation by reducing the cost of exporting and importing goods via air transport.



Amendment of the Second Schedule to the Value Added Tax Act, 2013 – in Part A Paragraph 6 by deleting the word “taxable services” and substituting it with the words “taxable goods and services”	The supply of taxable services to international sea or air carriers on international voyage or flight.	Delete the word taxes services and substitute with taxable goods and services The new paragraph- The supply of taxable goods and services to international sea or air carriers on international voyage or flight	To clarify and broaden the scope of the VAT exemption by including both taxable goods and services supplied to international sea or air carriers. This ensures consistency and supports the operational needs of carriers engaged in international transport, thereby enhancing the competitiveness of the logistics and transport sector.
Section 58 (a) of the Finance Bill, 2025 Amendment of the Second Schedule to the Miscellaneous and Levies Act, Cap 496C- (b) in Part A— Goods exempt from import declaration fee when imported or purchased before clearance through customs i) By deleting paragraph (xv) ii) By deleting paragraph (xva) substituting therefore the following new paragraph- (xva) all parts of Chapter 88 and goods of tariff heading 8802.30.00 and 8802.30.00	(xv) This provision makes the goods and parts thereof of Chapter 88 exempt from import declaration fee of 2.5% (xva) This provision provides any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation exempt. The proposed amendment will only grant IDF exemptions to parts under Chapter 88 and items classified under HS Code 8802.30.00 and 8802.40.00.	Retain the exemption for all aircraft, aircraft parts under Chapter 88.	



Section 58 (b) of the Finance Bill, 2025 Amendment of the Second Schedule to the Miscellaneous and Levies Act, Cap 496C- in Part B— Goods exempt from the railway development levy when imported or purchased before clearance through customs (i) By deleting paragraph (xiii) (ii) By deleting paragraph (xvi) substituting therefore the following new paragraph- (xvi) all parts of Chapter 88 and goods of tariff heading 8802.30.00 and 8802.30.00	(xiii) This provision makes the goods and parts thereof of Chapter 88 exempt from import declaration fee of 2.5 % (xvi) This provision provides any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation exempt. The proposed amendment will only grant IDF exemptions to parts under Chapter 88 and items classified under HS Code 8802.30.00 and 8802.40.00.	Retain the current provision of the Miscellaneous Fees and Levies Act.	a) Increased Operational Costs Previously, a wide range of aircraft and their parts benefited from exemptions under IDF (2.5%) and RDL (2%). The proposed limitation excludes helicopters, drones, training aircraft, and spare parts not falling under 8802.30.00 or 8802.40.00. This change will increase the cost of importing aircraft and parts, directly impacting operating margins for airlines and maintenance firms. b) Threat to Safety and Maintenance Standards Higher costs on spare parts may discourage timely maintenance or lead to use of substandard parts, compromising aircraft safety. c) Disproportionate Impact on Smaller Operators Charter services, flight schools, and humanitarian aviation services which often rely on helicopters and smaller aircraft will face higher costs without any fiscal relief. d) Loss of Regional Competitiveness Neighbouring countries such as Uganda, Rwanda, and Tanzania continue to offer full or partial exemptions on aircraft and parts. Kenya risks losing its regional hub status for Maintenance, Repair, and Overhaul (MRO) services.
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Final remarks: Contradictions with Accepted International Principles

The setting of indirect taxes and customs duties on the field of international air transport falls under the scope of International Civil Aviation Organization

(ICAO's policies on taxation (Document 8632) which seeks to prevent the imposition of taxes on the sale or use of international air transport and states

that "each Contracting State shall reduce to the fullest practicable extent and make plans to eliminate ... all forms of taxation on the sale or use of international transport by air, including taxes on gross receipts of operators and taxes levied directly on passengers or shippers".

In this respect, Kenya as a signatory nation to the Convention on International Civil Aviation (Chicago Convention) and a Contracting State of ICAO, is obliged to adhere to the abovementioned principles and policies, including **Article 24 of the Chicago Convention which states that:**

"Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision."

Similarly, "Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty".

As a result, the Chicago Convention and ICAO's Policies on Taxation state for the provision a reciprocal exemption from customs duties, excise taxes, inspection fees and other similar duties and charges on: aircraft, fuel, lubricating oils, consumable technical supplies, spare parts (e.g., engines, aircraft equipment), and aircraft stores used in connection with the specified services. This exemption should apply to items and goods that are:

- a) introduced into the counterparty territory; or
- b) retained on board the aircraft on arrival into or departure from the counterparty territory; or
- c) taken on board the aircraft in the counterparty territory.



States should retain this reciprocal grant relief from VAT or similar indirect taxes on goods and services supplied to the airline used for the purposes of its operation of international air services. Without adherence to the various ICAO principles outlined above, international aviation would become financially overburdened by excessive and unjust taxation, which in turn would significantly limit the economic and social benefits generated by air transport. This is the direction regarding taxation on aviation in other regions within Africa as per the recently concluded ECOWAS Consultative Meeting of Experts and Ministers in charge of air transport held, 5-8 November 2024, in Lome, Togo.

Passenger Demand & Economic Considerations: -

Air transport is an enabling sector and is highly sensitive to changes in price. Imposing a tax on air passengers will undoubtedly have a negative impact on passenger demand, which in turn will have negative consequences for the economy of Kenya and significantly limit the economic and social benefits generated by air transport. As such, the significant contribution of the aviation, travel and tourism sector to the economy of Kenya should be supported and nurtured, not hindered by excessive government taxation that is contrary to accepted international standards and where increases in the tax burden on airlines and passengers are applied in an arbitrary manner.

The air transport market in Kenya is forecast under the "current trends" scenario to grow by 249% in the next 20 years. This would result in an additional 11.8 million passenger journeys by 2037. If met, this increased demand would support approximately US\$11.3 billion of GDP and almost 859,000 jobs.

Yours Sincerely,

Agnes Mucuha,
Country Manager East Africa,
mucuhaa@iata.org



DATE : 30th May, 2025.

REF : KATO /EXEC/IV (3)

The Clerk of the National Assembly,
P. O. Box 41842 - 00100
Nairobi, Kenya
Main Parliament Buildings
cna@parliament.go.ke

Dear Sir,

**RE: SUBMISSION BY THE KENYA ASSOCIATION OF TOUR OPERATORS (KATO) ON THE
FINANCE BILL 2025**

The Kenya Association of Tour Operators (KATO), formed in 1978, is a non-political Tourism Trade Association catering for the interests of over 300 of the most experienced tour operators in Kenya. KATO's key focus is to ensure that Kenyan Tour Operators maintain the highest possible standard of service to clients so as to enhance the reputation of Kenya as a preferred tourism destination. KATO also engages positively with Government over issues that are of concern to members and in so doing strives to seek a win-win outcome.

The Association fully appreciates the Government's obligation to collect tax revenues. We however note, with a measure of concern, that some provisions of the proposed Finance Bill 2025 will have an adverse impact on tour operations.

We have outlined the key area of concern in the attached Matrix and urge Parliament to retain the VAT exemption on specially designed locally assembled motor vehicles for transportation of tourists.

Yours Sincerely,

Fred Kaigua ACI Arb, CPM (MTI)
CHIEF EXECUTIVE

FINANCE BILL 2025
SUBMISSION BY THE KENYA ASSOCIATION OF TOUR OPERATORS (KATO)

No.	Cause	Description of the Clause	Proposal	Justification
1	First Schedule to Cap. 476, FIRST SCHEDULE [s.2(1)] EXEMPT SUPPLIES PART I – GOODS SECTION A	VAT Exemption on specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion.	Whilst removing the VAT exemption on the specialized locally assembled tourist vehicles may in the short-run generate some additional VAT revenue, it will in the long run have detrimental consequences for the Kenyan economy. We urge Parliament to retain the VAT exemption on specially designed locally assembled motor vehicles for transportation of tourists.	Negative Impacts on the Tourism Industry: 1. Increased Cost of Vehicles: The VAT exemption was initially introduced as an incentive to tour operators to invest in modern fleets and offer a competitive product. Revoking this incentive will lead to a substantial price increase in the price of these specialized vehicles, placing them above the reach of many operators. 2. Higher upfront investment by Tour Operators The higher costs required upfront will hinder tour operator's ability to purchase new vehicles and to upgrade aging fleets in time. The knock-on effect of this will be: a) Reduced quality of services offered to tourists due to aging vehicles. b) Decreased competitiveness compared to regional tourism destinations with lower operational costs. c) Discouragement of new entrants into the tourism sector, hindering its growth potential.

				Impact on Tax Revenue: Boost to Local Auto Industry: The VAT proposed to be deleted has significantly impacted on the local auto industry by promoting local vehicle assembly and boosting sales. Removing this exemption will discourage local manufacturers from investing in the production of specialized tourist vehicles due to decrease demand at the higher prices. Increased reliance on imported vehicles Tourism has a very high price elasticity of demand and due to the cheaper pricing, a number of operators will opt for imported units. This will in turn result in increased foreign exchange outflow. Job Creation Potential: A thriving market for locally assembled tourist vehicles creates significant job opportunities throughout the supply chain: - Increased demand for skilled labour in vehicle assembly plants. - Job creation in supporting industries like parts manufacturing and maintenance services. - Positive spillover effect on other sectors like metal fabrication and upholstery.
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DATE : 30th May, 2025.

REF : KATO /EXEC/IV (3)

The Clerk of the National Assembly,
P. O. Box 41842 - 00100
Nairobi, Kenya
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cna@parliament.go.ke

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BETTER FARMING
BETTER FOOD
BETTER HEALTH

Re: aak-GROW/VOL.I/2025

Tuesday, May 27, 2025

The Clerk of the National Assembly,

Dear Sir/Madam,

Re: aak-GROW SUBMISION ON FINANCE BILL, 2025

Introduction

aak-GROW/CropLife Kenya serves as the umbrella body for manufacturers, producers, importers, formulators, distributors, and users of pest control products in Kenya. Its central mission revolves around fostering stewardship and promoting the responsible use of pest control innovations. By minimizing risks and maximizing benefits associated with pest control technologies, the organization aims to ensure food safety, safeguard the environment and enhance food security. For 66 years now, aak-GROW/CropLife Kenya has actively collaborated with stakeholders across diverse value chains to fulfill these objectives.

Background

The pest control industry provides solutions to numerous challenges facing Kenyan farmers as they work to support and sustain Kenya's GDP through increased exports and to bridge food insecurity. Despite their essential nature to farmers, agricultural pest control products have experienced fluctuating tax statuses, ranging from zero-rated, exempt, to 16% VAT as expressed below:

1. The repealed Value Added Tax Act Cap 476 initially zero-rated pest control products under tariff heading 3808, including insecticides, rodenticides, fungicides, herbicides, anti-sprouting products, plant growth regulators, disinfectants, and similar products. However, the VAT Act 2013 (effective September 2, 2013) changed the tax status from zero-rated to exempt until April 3, 2017.
2. Following submissions from the pest control sector and farmers, the VAT status was changed to zero-rated through the Finance Act, 2017, making pest control products more affordable and accessible to farmers.
3. The Tax Law (Amendment) Act 2018 removed Agricultural Pest Control Products (PCPs)

from the second schedule Part A, subjecting all pesticides to 16% VAT.

4. Submissions from the pest control industry and growers led to the reinstatement of zero-rated status for these products.
5. The Finance Bill 2023 repeated this cycle, proposing to categorize pest control products as exempt, but subsequent industry submissions reversed this.
6. Tax laws (Amendment Act 2024 removed pest control products (PCPs), fertilizers, raw materials from zero-rated to Tax exempt

Impact of Change from Zero-rated to Exempt Status

The pest control industry is concerned about the effects of changing the VAT status of agricultural products from zero-rated to exempt. Pests and diseases can cause crop losses ranging from 40% to 100% if not managed with pesticides. Additionally, the emergence of new pests, such as the Fall Army Worm (FAW) and *Tuta Absoluta*, threaten Kenya's food security.

This change will increase the cost of pesticides, raising farmers' production costs and potentially making these products unaffordable. Improved agricultural inputs like seeds, fertilizers, and pesticides are crucial for enhancing production, ensuring food security, and supporting the livelihoods of value chain players, including importers, distributors, retailers and farmers.

Fertilizers, insecticides, and pesticides alone account for over 50% of production gross margins for many agricultural commodities. While taxes are a significant revenue source for the Kenyan government, ensuring an effective and efficient revenue system is essential.

Deleting agricultural pest control products (paragraph 19) and inputs/raw materials for manufacturing these products (paragraph 16) from zero-rated to exempt will increase production costs for resource-poor farmers, adversely affecting food security, incomes, and livelihoods, and potentially eroding gains in the agricultural sector.

Micronutrients, foliar feeds, and bio stimulants are vital for farmers. For example, bio stimulants help maximize biological efficiencies, stimulate natural processes, enhance nutrient uptake, and increase tolerance to environmental stress. These inputs are crucial for improving food security, especially in the face of climate change impacts like drought and enhancing crop nutrition solutions that would promote productivity, soil health and sustainability. Therefore, we request that these products be advanced to zero-rating.

Effects Of VAT Change On Agricultural Pest Control Products

I. Effect on Food Security, Incomes, and Livelihoods

Ensuring food self-sufficiency is a key objective for the government to achieve food security.

Producing enough quality food to meet national requirements is crucial for this goal. Food insecurity poses both social and strategic challenges, as it is vital for Kenya to maintain autonomy over its agricultural policies. This prevents the nation from becoming overly dependent on bilateral and international partners in shaping policies that drive agricultural contributions to national development.

2. Effect on Agriculture Sector Growth

Removing zero-rated status will increase production costs, leading to reduced pesticide use and higher costs per unit of output, ultimately reducing agricultural productivity and growth. Kenya's agricultural competitiveness may lag behind regional partners, increasing reliance on imported agricultural produce.

3. Effect on Cost of Production

This will increase the cost of producing our agricultural products, making them less competitive on the global market compared to those from countries that support their agricultural sectors with appropriate incentives. As a result, Kenya may struggle to market its agricultural products internationally and earn the much-needed foreign exchange. Additionally, it is likely that cheaper agricultural products from other countries will be imported into the domestic market due to the liberalized economy.

4. Effect on National Economic Growth

Negative growth in the Agricultural Gross Domestic Product (AGDP) often correlates with negative GDP growth. The adverse effects on the agricultural sector will likely impact GDP growth. Additionally, reduced taxes from decreased trade in agricultural inputs and products, lower competitiveness, reduced foreign exchange earnings, higher unemployment, and increased inflation are anticipated consequences.

Request To Zero-Rate Public Health Pest Control Products

Public health pest control products play a crucial role in safeguarding and advancing public health. They are instrumental in managing and thwarting the spread of pests that can carry diseases, trigger allergies, and compromise food stores and infrastructure. These products also bolster food safety and security by curbing contamination risks posed by pests during storage and production. Moreover, they contribute to an improved quality of life, as pests like bed bugs, lice, and cockroaches can cause discomfort, stress, and allergic reactions.

Given that health is a fundamental necessity for all individuals, we advocate for the zero-rating of all pest control products utilized in public health efforts to combat mosquitoes, bed bugs, and rodents. This initiative will foster accessible healthcare by promoting high-quality preventive

services, thus aiding in disease control, including the transmission of illnesses from animals to humans by vectors such as mosquitoes carrying Zika and dengue. Furthermore, it will effectively address the nuisance posed by pests like bed bugs and fleas, alleviating the distress caused by their presence in homes.

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Strathmore
UNIVERSITY

MEMORANDUM
BY
STRATHMORE TAX RESEARCH CENTRE
TO
THE NATIONAL ASSEMBLY

ON

FINANCE BILL 2025

The Strathmore Tax Research Centre (STRC) is a centre at the Strathmore University Law School focused on providing quality professional tax training, research and consultancy. STRC carries out research in tax in order to inform the theoretical and practical understanding of tax operations and policies in Kenya and the wider East Africa.

Below are our submissions on the Finance Bill 2025 for your consideration.

Bill proposal	Impact & recommendations
Clause 28 (b)(iv) The Finance Bill 2025 introduces several tax incentives targeting companies certified by the Nairobi International Financial Centre Authority (NIFCA). These incentives are designed to attract high-value investments and position Kenya as a competitive financial hub.	Although these incentives are beneficial to the country, there is need for a caveat to ensure that there is no capital flight. Recommendation To safeguard against capital flight and ensure long-term economic impact, it is recommended that a statutory caveat be included in the legislation requiring that: Any NIFCA-certified company that ceases operations in Kenya or relocates its regional headquarters abroad within a specified period (e.g., within the first 10 years of benefiting from the incentives) must either:



	• Reinvest an equivalent amount of the tax-exempt or incentivized benefits back into the Kenyan economy, or • Pay the full amount of taxes that would have been due without the incentives. This measure will help ensure that the incentives serve their intended purpose of stimulating sustainable economic growth and are not exploited for short-term tax advantages without delivering long-term value to Kenya.
Clause 43 of the Finance Bill 2025 The current proposal in the Finance Bill 2025 seeks to clarify and expand the list of transactions exempt from eTIMS invoicing obligations, correcting previous drafting inconsistencies introduced by the Tax Procedures (Amendment) Act, 2024. This includes payments such as employee emoluments, imports, interest, and certain	Airtime purchases, a high-frequency, low-value transaction remain within the scope of eTIMS invoicing, despite offering minimal benefit to revenue administration. This inclusion increases compliance costs, especially for micro, small, and medium enterprises (MSMEs), and imposes unnecessary administrative burdens on mobile network operators and distributors. In addition, transactions subject to WHT are already reported to KRA through the withholding tax return (IT2C) and are linked to the taxpayer PINs of both the payer and the payee. Requiring an eTIMS invoice for the same transaction creates redundant reporting.



final withholding tax transactions.	Recommendation We recommend airtime purchases and transactions that are subject to non – final withholding tax be added to the list of transactions excluded from eTIMS invoicing requirements under Section 23A of the Tax Procedures Act.
Clause 47 (v) of the Finance Bill The Finance Bill 2025 proposes to amend Section 42 of the Tax Procedures Act to permit the Commissioner to issue agency notices even when a taxpayer has appealed a decision from the Tax Appeals Tribunal (TAT) or a court. Under the current law, the Commissioner is not allowed to issue agency notices if the taxpayer has filed an appeal within the prescribed timelines. However, the proposed amendment would enable the Commissioner to begin enforcement actions such as	If enacted, this measure would allow the enforcement of disputed tax assessments while the appeal process is ongoing. This could have significant consequences for taxpayers, including cashflow challenges and the risk of aggressive assessments, resembling a "pay now, argue later" approach seen in other jurisdictions. Moreover, should the taxpayer win the appeal, recovering the amounts already collected by the KRA may be difficult due to existing inefficiencies and delays in processing tax refunds. As such, it may be advisable for the government to reconsider or remove this proposal from the Bill to protect taxpayer rights and preserve the integrity of the appeals process. Recommendation We propose that Clause 47 (v) of the Finance Bill 2025 be deleted so that taxpayers can have a right to a fair trial.



recovering taxes through third parties even when a matter is still under appeal before a higher court.	
Clause 52 of the Finance Bill 2025 The Finance Bill 2025 proposes to repeal Section 59A(1B) of the Tax Procedures Act, which currently protects taxpayers from being compelled to share or integrate data with the Commissioner where it involves trade secrets or private and personal information.	If this amendment is enacted, taxpayers who are required to integrate their systems with the Kenya Revenue Authority (KRA) would be obligated to share a broader range of data, including sensitive commercial and personal information. This proposal is unnecessary. Kenya already has robust legal frameworks in place particularly the Data Protection Act, 2019 which outlines clear protocols for the lawful collection, processing, and sharing of personal data. The existing Section 59A(1B) of the Tax Procedures Act complements these protections and provides taxpayers with certainty that their confidential data will not be indiscriminately accessed by the tax authority. Recommendation We recommend that this proposal be deleted from the Finance Bill 2025 to maintain legal coherence with Kenya's data protection regime and to ensure that taxpayer rights are preserved in the context of increasing system integrations and digital tax administration.



Clause 54 of the Finance Bill 2025 The Finance Bill 2025 proposes to repeal Section 77(2) of the Tax Procedures Act, which currently excludes weekends and public holidays when calculating the statutory timelines for filing tax objections and appeals.	This effectively shortens the time available to taxpayers for preparing and lodging objections and appeals. The proposal is also in contradiction with the Interpretation and General Provisions Act which defines a day as excluding weekends and public holidays. Recommendation We propose keeping Section 77 (2) of the Tax Procedures Act and recommend adding timelines for refund appeals. We recommend that Section 77 (2) of the Tax Procedures Act reads as follows: (2) In computing the period for the lodging of an objection to the Commissioner under section 47, 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays. 1. The amendment will include refund appeals and harmonise appeal deadlines for all appeals.
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	2. Retaining the section with the amendment will allow taxpayers enough time for appeals. 3. The retention of the section will allow harmonisation with other court filing rules as well as The Interpretation and General Provisions Act Cap 2 of the laws of Kenya.
Clause 26 (e) of the Bill proposes to limit the exemption of capital gains made from the transfer of SEZs to licensed operators, enterprises or developers	- Although this is intended to reduce abuse where persons who are not licensed may enjoy the benefit, it still provides for opportunities for tax leakage. Considering SEZs already enjoy numerous tax incentives, we propose that the exemption be limited to those who reinvest the income in Kenya. Where the income is repatriated, the tax should apply so as to ensure that Kenya enjoys part of the revenue generated from its jurisdiction.
Clause 26(f) proposes to exempt dividends paid by a company certified by the Nairobi International Financial Centre Authority where the company reinvests at least Kshs 250 million in Kenya	Although this is a welcome improvement in tying incentives to certain conditions that are beneficial to the country, Kenya needs to balance attracting investors with generating revenue while providing an equal playing field with local players. Recommendation



	To secure revenue while making the incentive more equitable, we propose that the amount reinvested be a percentage of the profits of the entity.
	-

Proposals not in the bill

Issues	Impact & recommendations
Accounting for WHT within 5 days The Finance Act, 2023 introduced an amendment to the ITA and the Tax Procedures Act, 2015 which requires all taxpayers to remit WHT within five (5) working days.	This requirement is burdensome for taxpayers, as it necessitates the implementation of additional compliance measures to avoid penalties for non-compliance. Consequently, agency costs have risen, with some taxpayers being compelled to hire additional personnel to meet the obligations set out in this legislation. Recommendation We recommend that the WHT payment timelines be reverted back to the 20th day of the month following the month in which the deduction is made. We propose that section 35 (5) of the ITA be amended to read as follows: <i>Where a person deducts tax under this section he shall, on or before the twentieth day of the month following the month in which the deduction was made:</i> a) <i>remit the amount so deducted to the Commissioner together with a return in writing of the amount of the</i>



	<i>payment, the amount of tax deducted, and such other information as the Commissioner may specify; and</i> b) <i>furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.</i> We propose that section 42 (4B) of the TPA be amended to read as follows: <i>The tax withheld under this section shall be remitted to the Commissioner by the 20th day of the subsequent month after the deduction was made.</i>
Expansion of PAYE Bands to Cushion Low-Income Earners. The current PAYE tax bands are too narrow, causing individuals with modest incomes to be taxed at disproportionately high marginal rates. As a result, many Kenyans face reduced disposable	Kenya's current PAYE structure imposes a significant tax burden on low and middle-income earners, with minimal differentiation across income levels. In recent years, the rising cost of living, stagnant wage growth, and persistent inflation have eroded household purchasing power—particularly among lower-income groups. This has exacerbated inequality and constrained consumer spending, which negatively affects economic growth. Recommendation We recommend an expansion of the tax bands as follows;



income and are unable to meet basic needs. The current structure also disincentivizes formal employment and contributes to high levels of informality in the labour market.	Income Band (Monthly)	Proposed Rate (%)
	0 – KES 30,000	(tax-free band)
	KES 30,001 – 60,000	10%
	KES 60,001 – 100,000	20%
	KES 100,001 – 150,000	25%
	Above KES 150,000	30%
The Finance Bill should consider making amendments to the e-Tims regulations. As it stands, they do not take into account certain expenses for which an eTims invoice cannot be provided. Such include apportioned costs in the case of persons who work from home, mileage and such other costs, yet these are necessary for the running of a business	In line with the government's bottom-up agenda and to cater to hustlers and gig workers, the eTims rules should be amended to take into account expenses such as apportionment of costs, especially for entrepreneurs who often work from home and incur costs.	
Deduction of expenses. Under Section 16 (1)(c) of the Income Tax Act,	Whereas the Income Tax Act provides that only expenses supported by eTIMS invoices can be deducted, the amendment introduced by the Tax Procedures Amendment	



expenses which are not supported by Etims invoices.	Act 2024 requires only businesses with a turnover of more than Kshs 5 million to issue eTIMS invoices. This creates a conflict as businesses with a turnover of Kshs 5 million and below, and who purchase from other such small businesses, will not be able to deduct their expenses. Recommendation - Section 16 (1)(c) should be amended to take into account the threshold provided in the Tax Procedures Act.
Recommendations on how to increase revenue	- Reduce/eliminate tax expenditures that take the form of incentives and exemptions especially those targeted at entities that do not employ a certain number of Kenyans or that do not reinvest their returns in Kenya. Alternatively set a minimum number of local persons who must be employed by persons who enjoy exemptions with a minimum wage. - Reduce expenditure. - Widen tax base. - Curb corruption

We trust the above adequately address our views and recommendations on the Finance Bill. However, we would be grateful to appear before you to further deliberate with your members on our proposals and recommendations.



Strathmore
UNIVERSITY

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Catherine Mutava'.

Catherine Mutava,

Director

Strathmore Tax Research Centre

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FINANCE BILL, 2025

Proposed Amendments to the
Finance Bill, 2025

19 May 2025



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List of Abbreviations

Abbreviation	Meaning
APA	Advance Pricing Agreements
B2C	Business to Consumer
CAV	Credit Adjustment Voucher
CS	Cabinet Secretary
ETIMs	Electronic Tax Invoice Management System
ITA	Income Tax Act
MSMEs	Micro, Small and Medium-sized Enterprises
TPA	Tax Procedures Act
TOT	Turnover Tax
VAT	Value Added Tax
WHT	Withholding Tax



Income Tax

We highlight our proposed amendments to the changes that the Finance Bill 2025 seeks to introduce to the Income Tax Act:

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	2 (a) (iii)	Section 2 of the Income Tax Act is amended— (a) in subsection (1)— (iii) in paragraph (b) of the definition of "royalty", by inserting the words "and includes the distribution of software where regular payments are made for the use of the software through the distributor"	"royalty" means a payment made as a consideration for the use or the right to use— (a) any copyright of a literary, artistic or scientific work; (b) any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees;	We propose to delete this proposal	The Bill seeks to expand the definition of a royalty by including software distribution where regular payments are made for the use of the software through the distributor. Generally, software distributors earn low margins on the distribution of their products, often below 5%. Therefore, by seeking to charge their revenues to withholding tax ("WHT") (resident at 5% and non-resident at 20%) these distributors will be in a perpetual tax refund position since the WHT deducted from their income will exceed the taxable profit earned by the distributor. Royalties are paid to owners of the software, for the right to use the software. The distributor of the software is often not the same as the owner. Therefore, subjecting payments to distributors to WHT on royalties defeats the purpose of a royalty payment, as the distributors would not have the right to allow a person to use the software.
2	5	Section 10 of the Income Tax Act is amended in subsection (1), by inserting the following new	10 (1) For the purposes of this Act, where a resident person or a person having a permanent	We propose the following amendment:	The Bill is currently proposing to introduce the sale of scrap and supply of goods to a public entity under Section 10. However, the making or facilitating

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
		paragraphs immediately after paragraph (k) – (l) supply of goods to a public entity; (m) sale of scrap.	establishment in Kenya makes a payment to any other person in respect of – (a) a management or professional fee or training fee; (b) a royalty or natural resource income; (c) interest and deemed interest; (d) the use of property; (e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or (f) an activity by way of supporting, assisting or arranging an appearance or performance referred	Section 10 of the Income Tax Act is amended in subsection (1), by adding the following paragraphs immediately after paragraph (k) – (l) supply of goods to a public entity; (m) sale of scrap; <i>(n) making or facilitating payment over a digital marketplace.</i>	payment on a digital marketplace is not being introduced under this proviso thus our proposal herein is to ensure there is alignment between Section 35 and Section 10 of the Income Tax Act.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
			to in paragraph (e) of this section; (g) winnings; (h) <i>deleted by Act No. 16 of 2014, s. 6(b);</i> (i) <i>deleted by Act No. 23 of 2019, s. 6(a);</i> (j) an insurance or reinsurance premium; (k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services; the amount thereof shall be deemed to be income which accrued in or was derived from Kenya:		
3	8 (b) (ii)	Section 15 of the Income Tax Act is amended— (b) in subsection (3)— (ii) by deleting paragraph (f);	Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:	We propose to delete this provision	Currently, a person can offset a capital loss against a future capital gain. The proposal to delete this provision will tax a person's capital gains while ignoring their capital losses. This will leave taxpayers with unclaimable losses.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
			(f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;		From a global perspective, the Organisation for Economic Cooperation and Development reports that most countries allow for a person to offset their capital losses against future capital gains (heading 3.4 of Taxing Capital gains: Country experiences and challenges). Our proposal will ensure that Kenya adheres to global best practices.
4	8 (c)	Section 15 of the Income Tax Act is amended— (c) in subsection (4), by inserting the word “five” immediately after the word “succeeding”	(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.	We propose the following amendment: <i>“(c) in subsection (4), by inserting the word “five” “ten” immediately after the word “succeeding””</i> <i>Provided the losses arising from investment allowances are carried forward indefinitely.”</i>	Currently, a person may carry forward/claim a loss up to ten years after which they must seek the CS's permission to keep carrying forward the loss. This accommodates businesses whose losses are attributable to significant set-up costs/investment. The Bill proposes to reduce the currently indefinite window to carry forward/claim losses to 5 years from the date in which the loss was incurred, and further proposes to delete the CS's power to extend the loss carrying forward. We propose to extend the loss carrying forward period to 10 years and to retain the CS's power to extend this period. This will:

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
					1. Create a sense of tax law stability for current and potential investors; 2. Protect entities that are already benefiting from this provision from an abrupt change in law that may shock their cash flow; and 3. Encourage high capital investments. In light of the current practice permitting the indefinite carry forward of tax losses, the introduction of a 10-year limitation would represent a more reasonable and balanced approach. This consideration is particularly pertinent, as a portion of the tax losses originates from investment allowances legitimately granted under the Income Tax Act. For capital-intensive projects, a five-year period is typically insufficient for the full utilization of such allowances, and as a result, companies are unlikely to have fully exhausted their tax losses within that timeframe.
5	15	Section 27 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1C)– (1D) Where the Commissioner does not comply with subsection (1C), the application shall be deemed allowed.	27(1C) The Commissioner shall within six months from the date of receipt of the application communicate his decision in writing to the applicant.	We propose the following inclusion to accompany the proposed amendment: <i>Provided that, where a taxpayer has submitted a valid application for a change of year-end, the adjustment shall be automatically approved within the Commissioners system</i>	Currently, the Commissioner is required to respond to an application for change of year end within six months. The Bill proposes that where the Commissioner fails to give a decision within six months from the date of application, the change is automatically deemed to have been accepted by the Commissioner. Although the proposal is a step in the right direction, its implementation in practice is hindered by the need for manual interventions, which are often time-consuming.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
				<i>upon the expiration of the six-month period.</i>	It is therefore recommended that the approval process be automated within the iTax system, allowing for automatic approvals upon the expiry of the six-month period proposed in the Bill.
6	26(a)	The First Schedule to the Income Tax Act is amended in Part I— (a) in subparagraph (B) of the first further proviso to paragraph 10, by deleting the word "sixty" and substituting therefor the word "ninety";	(B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.	We propose the following inclusion to accompany the proposed amendment: <i>Provided that for renewal applications, the taxpayer will remain exempt until an alternative decision on their application is issued by the Commissioner.</i>	The interim period between the expiration of an exemption and the decision on a renewal application often creates uncertainty regarding the taxpayer's exemption status while the application is under review. This situation arises because, under iTax, a taxpayer can only submit a renewal application after the existing exemption has expired. Although the proposed 90-day review period would provide the Commissioner with additional time to assess exemption applications, taxpayers should not be left uncertain about their exemption status during this extended timeframe.

Value Added Tax

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Value Added Tax Act.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	32	Section 17 of the Value Added Tax Act is amended in subsection (5)– (a) by deleting paragraph (c);	Provided that any such excess shall be paid to the registered person by the Commissioner where– (c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act, 2015;	We propose that this proposal be deleted.	Due to budgetary limitations, cash disbursements for refunds take a significant amount of time thereby negatively affecting taxpayers' cash flows. The ability to offset a refundable amount against other tax liabilities has improved business cash flows. The Commissioner has not provided any justification as to why WHVAT refunds should not be available for offset. If the offset provision in the Act is deleted, it may strain the cash flows of businesses whose customers are WHVAT agents.
2	32	Section 17 of the Value Added Tax Act is amended in subsection (5)–		We propose the following amendment: Section 17 of the Value Added Tax Act is amended in subsection (5), by inserting the following paragraph immediately after paragraph (e): (f) such excess arising from making zero rated supplies	Section 17 of the VAT Act entitles a person making zero-rated supplies to a refund of excess input VAT incurred in making such supplies. In order to implement this, Regulations under the VAT Act were gazetted in April 2017 (hereinafter "the 2017 Regulations"), which provided a formula to calculate the amount of input VAT refundable to registered persons making both standard-rated and zero-rated supplies. However, the said formula was defective, resulting in companies making both zero-rated and standard-

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
				during the period between 2017 and August 2019 that was not recovered by the registered person within two years as a result of the Commissioner's reliance on the apportionment formula under Paragraph 8(2) of the Value Added Tax Regulations, 2017. Section 17(5) of the Value Added Tax Act, is amended by adding the following proviso immediately after the provisos to Subsection (5): <i>Provided further that, notwithstanding any other provision of this Act, a registered person may apply for a refund under Section 17(5)(f) within two years from the commencement of this provision.</i>	rated supplies not receiving the full refunds as envisaged under Section 17 of the VAT Act. To correct this, the refund formula was amended through Regulations gazetted in July 2019 (hereinafter "the 2019 Regulations"). Nonetheless, taxpayers who made refund applications prior to the gazette of the 2019 Regulations received Credit Adjustment Vouchers ("CAVs") for amounts not refunded (despite being refundable). These CAVs cannot be utilized to settle outstanding, current or future VAT liabilities, or other tax liabilities for that matter. This has negatively affected taxpayers' liquidity and cash flows, as they are required to pay any tax liabilities, despite having unpaid but approved refunds, in the form of CAVs. We therefore propose to amend Section 17 (5) of the VAT Act to entitle taxpayers with CAVs to a refund of the CAVs. We also propose an amendment to the Tax Procedures Act, to allow the same. This amendment is discussed below, under the Tax Procedures Act.
3	New Clause	(1) A person who in the course of a business— (a) has made taxable supplies or expects to make taxable supplies, the value of which is	We propose the below new amendment Section 34 of the Value Added Tax Act is amended in subsection (1)–	It would be prudent to increase the VAT registration to factor in inflationary changes. The increase in the VAT threshold will also align it with the TOT threshold after 3 years and remove the requirement for taxpayers to register for both VAT and	

Sr No.	Section No. (as in Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
		five million shillings or more in any period of twelve months; or (b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months,	(a) By deleting the words "five million shillings" and substituting therefor the words "fifteen million effective from 1st July 2024, twenty million effective from 1st July 2025 and twenty-five million effective from 1st July 2026." (b) in paragraph (b), by deleting the words "five million shillings" and substituting therefor the words "fifteen million effective from 1st July 2024, twenty million effective from 1st July 2025 and twenty-five million effective from 1st July 2026."	TOT. It is important to understand that the purpose of the TOT regime was to simplify tax administration, by requiring traders not to maintain full records. The new ETIMs also have a simplified option for traders not to keep stock records up to 25M. ETIMs was introduced to ensure that all B2C transactions are compliant. However, the VAT regime would require the trader to maintain extensive records, to support the VAT charged, and the VAT claimed. This would defeat the purpose of the TOT regime, and increase the burden of compliance to MSMEs, who accommodate those under the TOT regime. Therefore, it is important to have the VAT registration threshold to align with the TOT threshold. The rationale behind 25M of TOT was such businesses have a margin of 5% to 10% giving an average net profit per month between KES 100,000 to KES 200,000.

Tax Procedures Act

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Tax Procedures Act

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	1(a)	This Act may be cited as the Finance Act, 2025 and shall come into operation as follows – (a) sections 12 and 56, on the 1 st of January, 2026; and (b) all other sections, on 1 st July, 2025.	N/A	This Act may be cited as the Finance Act, 2025 and shall come into operation as follows – (c) sections 12 and 56, on the 1 st of January, 2026; and (d) all other sections, on 1 st July, 2025.	Clause 56 of the Bill pertains to waiver of penalties and interest arising due to errors with the Commissioner's electronic system. This will come into force in January 2026. Our proposal seeks to have this provision come into force on 1 st July 2025. Earlier enactment of this provision will enable taxpayers to remove the erroneous penalties and interest from their iTax ledgers and obtain tax compliance certificates ("TCC") faster as TCCs are essential for business.
2	47 (m) (v)	Section 42 of the Tax Procedures Act is amended – (m) in subsection (14) – (v) by deleting paragraph (e).	(14) The Commissioner shall not issue a notice under this section unless – (e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.	We propose to delete this proposal	Paragraph (e) provides clarity on the prohibition of agency notices while a tax dispute is at the High Court, Court of Appeal or Supreme Court. The deletion of paragraph (e) may create uncertainty on the power to issue agency notices especially where a taxpayer appeals from the Tribunal to the High Court. We propose to delete the amendment as retention of clause (e) will not cause any harm to the Commissioner.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
3	52	Section 59A of the Tax Procedures Act is amended by deleting subsection (1B)	(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.	We propose to delete this amendment	Trade secrets are an important aspect of intellectual property and are the key drivers of various businesses. Globally, trade secrets are respected. Further, personal and private data is sensitive and the disclosure of such information would infringe on persons' right to privacy. Currently, the Commissioner has not demonstrated: i. why it needs access to information; ii. information security measures it has in place to ensure the security of such information; iii. an risk impact assessment on how events of data leaks; iv. the Commissioner's ability to compensate persons for a data breach; v. an analysis of the risk of businesses leaving Kenya to avoid having to disclose trade secrets; vi. the impact such a clause may have on Kenya's ranking as a suitable place to set up a business;
4	54	Section 77 of the Tax Procedures Act is amended by deleting subsection (2)	In computing the period for the lodgement of an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under	We propose to delete this amendment	This provision was introduced vide the Tax Procedures (Amendment) Act, 2024, which came into force on 27 th December 2024. Deleting this provision now, when 6 months have not even passed since it came into force, would create uncertainty and unpredictability in tax laws, which not

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
			section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays.		only goes against the canons of taxation, but also the National Tax Policy. Further, taxpayer's generally have limited resources and time to handle a tax dispute. The current computation on the basis of working days aims to level the playing field.

Excise Duty

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Excise Duty Act

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	39 (b)	Section 5 of the Excise Duty Act is amended— (b) by inserting the following new subsection— (4) For the purposes of this section— "non-resident person" means a person outside Kenya.	N/A	We propose the deletion of this section, and replace it with the following: <i>"Section 2 (1) of the Excise Duty Act is amended by introducing the following definition in alphabetical order:</i> <i>"resident" in relation –</i> (a) <i>To an individual means a person who offers services from within Kenya;</i> (b) <i>To a body of persons shall take the meaning provided under Section 2 (1) of the Income Tax Act</i>	We propose to align the definition of a resident company for both excise duty and income tax perspectives. This will provide certainty on persons affected by excise duty.

Miscellaneous Fees & Levies

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Miscellaneous Fees & Levies Act

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	NA	NA	7A. Export and investment promotion levy (1) There shall be paid a levy to be known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use. (2) The levy shall be at the rates specified in the Third Schedule and shall be paid by the importer of such goods at the time of entering the goods into the country for home use. (3) The purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign	We propose the deletion of this provision	The Export and Investment Promotion Levy ("EIPL") was introduced through the Finance Act, 2023, to protect local industries. However, the same has adversely affected the cost of raw materials and intermediate products used in manufacturing and construction as the local supply of such goods may not meet the purchaser's quality or quantity requirements. This has led to a higher cost of finished goods and increased construction costs. We therefore propose to delete this provision, more so in line with the Government's affordable housing programme, such that the construction costs can be reduced.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
			exchange and promote investments.		
			(4) The export and investment promotion levy shall not be charged on goods originating from East African Community Partner States that meet the East African Community Rules of Origin.		
			(5) The funds collected from the levy shall be paid into a fund established and managed in accordance with the Public Finance Management Act (Cap. 412A).		

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The Chairman,
Committee on Finance and National Planning,
First Floor, Main Parliament Building,
P.O. Box 41842 – 00100,
Nairobi, Kenya.

30 May 2025

Attention: Clerk to the National Assembly

Dear Sir/Madam,

SUBMISSIONS ON THE FINANCE BILL, 2025

The above matter refers.

Pursuant to article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Departmental Committee on Finance and Planning is considering the Finance Bill, 2025 and we hereby submit our proposals in the enclosed memoranda for your consideration.

Our proposals outline several key tax issues within Finance Bill 2025 (the Bill) which we urge the committee to thoroughly scrutinize. We advocate for tax proposals that support and enable businesses to grow and prosper, rather than stifle the businesses with the proposed amendments to the Income Tax Act (Cap 470), Value Added Tax Act (Cap 476), Excise Duty Act (Cap 472), Miscellaneous Fees and Levies Act (Cap 469C), the Tax Procedures Act (Cap 469B) and the Stamp Duty Act (Cap 480).

We appreciate the opportunity to present our proposal and would be pleased to appear before the committee to further support and discuss our recommendations.

Yours faithfully,

For: SKM Africa LLP

Karaya Mokaya
Managing Partner

Proposed Amendments to the Income Tax Act

	Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification
1.	Section 2 of the Finance Bill, 2025	The Bill proposes to amend Section 2 of the Income Tax Act ("ITA") and expand the definition of royalty to include payments for the distribution of software where regular payments are made for the use of the software through the distributor. The proposed definition seeks to expand the ambit of royalty to all software-related payments and subject them to Withholding Tax ("WHT").	Delete the clause.	The proposed amendment contravenes international best practices, particularly Article 12 of the Organization for Economic Cooperation and Development Model ("OECD") Tax Convention Model, that require payment to be subjected to WHT if made for consideration for rights to the software's underlying Intellectual Property ("IP") rights. The amendment will increase the cost of doing business, as the additional tax burdens are likely to be passed on to the final consumer, ultimately affecting market competitiveness and economic growth. It is our submission that regular payment made to software distributors for use of software should not be subjected to WHT.
2.	Section 8 of the Finance Bill, 2025	The Bill proposes to amend Section 15(4) of the ITA to introduce limitation of the period on the utilization of tax losses to 5 years.	Amend the clause to provide allow for extension of tax loss utilization period beyond the 5-year limit	The proposal to cap utilization of tax losses to 5 years is detrimental to businesses with long investment cycles and huge capital-intensive investments where the businesses will not have broken even to recover the huge expenditure within 5 years resulting in forfeiture of unutilized losses beyond the 5-year period, potentially increasing their tax liability and reducing overall post-tax profitability. The proposal will potentially discourage long-term investment and affect cash flow planning for affected entities. Additionally, the Bill is silent on the provision to allow for extension to utilize tax losses beyond the 5-year limit. Further, we also note that the proposed amendment does not have a transitional provision for losses that may have arisen in prior years.

3. Section 27 of the Finance Bill, 2025	The Bill proposes to amend the Second Schedule to the ITA and repeal 100% and 150% investment allowances on capital expenditure outside Nairobi City County and Mombasa County.	Delete the clause.	The proposed amendment will negatively affect capital investments in a special economic zone ("SEZ") and outside of Nairobi and Mombasa counties, which may have been undertaken in anticipation of recovering the cost in the first year from a tax perspective. Investors will no longer be economically motivated to absorb the higher costs of investing outside Nairobi and Mombasa counties if this proposal is enacted, leading to a significant negative impact on investment in those regions.
4. Section 28 (b)(ii) and (iii) of the Finance Bill, 2025	The Bill proposes to amend the Third Schedule to the ITA and repeal the preferential tax rate of 15% applicable to housing developers engaged in construction of at least 100 residential units in a year.	Delete the clause	The proposed amendment to revoke the preferential tax rates will negatively impact investment and disincentivize potential investors in the real estate sector. The proposal deviates from the Government's agendas of the affordable housing program to meet the housing need for the citizens. We propose that the preferential income tax rate of 15% to companies that construct 100 residential units is retained. The right to housing is embedded in the Constitution of Kenya, which provides that every person has the right to accessible and adequate housing. With Kenya's growing economy and one of the fastest-growing urbanisation rates in the continent, the demand for housing has never been greater. In this regard, the government introduced the preferential income tax rate of 15% to companies that construct 100 residential units with the intent to facilitate the production of decent, safe and affordable housing for citizens of Kenya. Certainty is a key tenet in taxation. Investors who had already commenced construction and sale of residential units on the expectation that they will enjoy the reduced corporate income tax rate will incur losses since the determination of the selling price was premised on the availability of the reduced corporate income tax rate of 15%. As such, we appeal that the provision be retained or at worst there be a transition clause that allows investors at least 2 years from the effective date of the proposed amendment so that investors who had taken the incentive to take advantage of the same and thus avert a crisis or investors dumping ongoing projects because of viability. This is critical in earning the trust of investors on predictability and certainty of tax laws.

Proposed Amendments to the Value Added Tax Act			
Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification
1. Section 36 of the Finance Bill, 2025	The Bill proposes to amend Part I of the First Schedule to the Value Added Tax Act ("VAT Act") to repeal VAT exemption on the following priority sectors: i) Taxable goods for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of 50, approved by the Cabinet Secretary. ii) Taxable goods for direct and exclusive use in the construction of tourism facilities, recreational parks of 50 acres or more, and convention and conference facilities (upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks) iii) Taxable goods imported or purchased locally for direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing. iv) Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority	Delete the clause affecting priority sectors	The proposal to impose VAT on these goods purchased or imported to use in these critical sectors such as tourism, energy, housing and healthcare will lead to an increased cost as the VAT will be passed to the final consumers. The proposal goes against the government's efforts to promote these sectors and further discourage investors in the affected sectors.

		responsible for tourism promotion v) Taxable goods, excluding motor vehicles, that are imported or purchased for direct and exclusive use in geothermal, oil, or mining prospecting or exploration by companies granted relevant licenses under the Energy Act (Cap. 314), the Petroleum Act (Cap. 308), or the Mining Act (Cap. 306), upon the recommendation of the Cabinet Secretaries responsible for energy, petroleum, or mining, as applicable. vi) Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters, and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.			
2.	Section 37 of the Finance Bill, 2025	The Bill proposes to amend the Second Schedule to the VAT Act and subject the following supplies to VAT exemption: i) Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for the manufacturing of medicaments will be subject to approval from time to time by the Cabinet Secretary, in consultation with	Delete the clause to retain zero-rated status	The proposed change in status of these goods from zero rated to exempt means that the suppliers of these goods will not be able to claim the input VAT incurred in the production of these goods. The cost of the goods is likely to increase as the suppliers will now absorb the input VAT incurred. Additionally, these suppliers will not be entitled to claim any refunds arising from excess VAT input as they currently do.	

		the Cabinet Secretary responsible for matters relating to health. ii) Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for Agriculture. iii) Transportation of sugar from farms to milling factories. iv) The supply of locally assembled and manufactured phones. v) The supply of motorcycles of tariff heading 8711.60.00. vi) The supply of solar and lithium-ion batteries. vii) The supply of electric buses of tariff heading 87.02. viii) Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).			
Proposed Amendments on the Excise Duty Act					
	Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification	
1.	New Provision Deletion of the following paragraph under Part I of the First Schedule to the Excise Duty Act and substitution with the following paragraph: Proposed deletion: <i>plastic of tariff heading 3923.30.00 and 3923.90.90</i>	Excise duty on locally manufactured plastics	Amend the Excise Duty Act for removal of excise duty on locally manufactured articles of plastics	Currently, the Excise Act imposes excise duty on both locally manufactured and imported articles of plastic. Over 90% of household consumables in Kenya are packed in plastic containers. Among the key costs in plastics production/manufacturing is electricity. Unlike other countries that export plastics to Kenya, electricity cost in Kenya is significantly high and thus holding all other factors constant, local manufacturers of plastic cannot compete with imported plastics in terms of pricing. The electricity cost factor is further compounded by the imposition of excise duty on locally produced plastics which has increased the cost	

Proposed substitution: <i>Imported plastic of tariff heading 3923.30.00 and 3923.90.90</i>			of locally manufactured articles of plastic further and thus making imported plastics cheaper and thus more viable for users of plastics If adopted, the proposal is likely to: i. Protect and grow local industry ii. Create more jobs and avert exporting jobs to other countries iii. Cushion consumers of plastics from high prices grow our GDP and protect our forex reserves.	
Proposed Amendments on the Tax Procedures Act				
Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification	
1. Section 47(m)(v) of the Finance Bill, 2025	The Bill proposes to amend Section 42 of the Tax Procedures Act ("TPA") to allow the Commissioner to issue an agency notice where a taxpayer has appealed against an assessment specified in a decision of the Tax Appeals Tribunal (TAT) or court of law.	Delete the clause	The proposed amendment will empower the Commissioner to issue agency notices to taxpayers pending determination of an appeal before the High Court. Further, the Commissioner may misuse the provision to enforce adverse judgements against taxpayers resulting in cashflow constraints for taxpayers. Additionally, taxpayers will have challenges in recovering money paid to KRA after successful appeal before the High Court.	
2. Section 52 of the Finance Bill, 2025	The Bill proposes to amend Section 59A of the TPA to allow the Commissioner to access trade secrets and private or personal data held on behalf of customers or collected in the course of business from taxpayers.	Delete the clause	The proposal will pose a huge risk in privacy and data protection rights of Kenyans. The Constitution protects an individual's right to privacy and any exemptions from this would need to be reasonable and justifiable. Further, confidentiality is a key cornerstone of professional ethics and deviating from this could erode trust between professionals and clients while at the same time negatively impacting fundamental rights and freedoms.	
3. Section 54 of the Finance Bill, 2025	The Bill proposes to amend Section 77 of the TPA to exclude Saturdays, Sundays and public holidays when computing the timeframes for lodging a tax objection or appeals to the TAT, High Court, or the Court of Appeal.	Delete the clause	The proposal will reduce the time available to taxpayers to prepare and submit objections or appeals resulting in unfavorable ruling due to insufficient documentation and support for the appeal. Further, the amendment to exclude weekends and public holidays was introduced by the Tax Procedures (Amendment) Act, 2024 and therefore the taxpayers have not enjoyed the benefit.	

