

Finance Bill, 2025



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23rd May 2025

The Clerk
The National Assembly
Office of the Clerk
Main Parliament Building
Nairobi

Dear Sir,

Submission of Memoranda on The Finance Bill, 2025

We write to you in response to your invitation for public participation and submission of memoranda in line with your advert on May 13, 2025. We thank you for this opportunity and would like to put forth our submissions on the above Bill in the ensuing pages of this document for your consideration.

We trust that you will find our overall approach both comprehensive and compelling. If you have any questions or require more clarification, please do not hesitate to contact us.

Yours sincerely,

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INCOME TAX



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Clause 8 – Section 15: Repeal of Investment Deductions

Changes:

- Removes deductions for:
 - Timber replanting expenditure
 - Sports facility sponsorships
 - Regional headquarters of multinationals



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Our View:

- Weakens investment incentives in capital-intensive or socially valuable sectors.
- May discourage long-term, sustainability-linked or regional HQ investments.
- Particularly harsh on industries with long profitability timelines (e.g., infrastructure, energy).



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Clause 8

Amendments to Section 15(4) of the Income Tax Act

Finance Act, 2009	Finance Act, 2015	Finance Act, 2021	Finance Bill, 2025
2010–2014	2016–2020	From 2021	From 2025
5-Year Limit Tax losses could be carried forward for up to 5 years	10-Year Limit The number of years tax losses could be carried forward	Indefinite	5-Year Limit Proposed cap losses brought forward



Clause 8 | Reintroduction of 5-Year Loss Carry-Forward Cap | Section 15(4), Income Tax Act

- **Rollback on Policy Stability:** The reversion to a 5-year cap undermines investor confidence after four years of an indefinite carry-forward regime.
- **Undermines Legitimate Losses:** Losses incurred through valid, approved deductions from real business operations are arbitrarily time-limited.
- **Discourages Risk and Innovation:** Taxing away accumulated losses penalizes long-term ventures and distorts entrepreneurial risk-taking.
- **Policy Unpredictability:** Frequent reversals in tax policy diminish trust in Kenya's fiscal governance and investment climate.



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Justifications vs. Broader Risks of the Loss Carry-Forward Cap

Evaluating the Policy Trade-offs of Section 15(4) Amendment / Clause 8

- **Government Justification: Revenue Forecasting:** Predictable tax base improves fiscal planning, especially in high-deficit environments.
- **Government Justification: Anti-Abuse Measures:** Restricts indefinite deferral, addressing concerns over profit-shifting and avoidance by multinationals.
- **Risk: Discouragement of Capital-Intensive Investment:** Projects in sectors like clean energy and infrastructure may need more than five years to turn profitable.
- **Risk: Penalty on Post-Crisis Recovery:** Firms recovering from recent economic shocks may lose critical loss offsets, impeding turnaround efforts.



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Conclusion: Reconsider the 5-Year Loss Cap (Section 15(4) | Clause 8)

A Call for Tax Policy Aligned with Economic Reality

- **Substance Over Time:** Limiting loss utilization based solely on time disregards legitimacy of approved business expenses.
- **Losses Reflect Risk, Not Loopholes:** Tax policy must recognize that losses arise naturally from innovation, investment, and market volatility. For instance, initial investments in large scale agricultural farms (*e.g. avocado takes about 3-4 years for grafted sample*), mining where exploration can stretch to 5 years before actual mining begins. Also entities such as our country's national carrier will be greatly affected by this.
- **Neutrality in Taxation:** Penalizing delayed profitability disrupts sectoral growth cycles and distorts fair tax treatment.
- **Discourages Long-Term Planning:** Rigid timelines hurt sectors with extended break-even periods, like energy, tech, and manufacturing.



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Recommendation | Sec 35 (1) Understanding Withholding Tax (WHT)

Basics of WHT in Kenya

- **What is Withholding Tax?:** WHT is a government requirement for the payer of an income to withhold tax and remit it to the government on behalf of the recipient.
- **Purpose of WHT:** Ensures tax compliance by collecting revenue at the source of income generation.
- **Application in Kenya:** Applies to various payments to residents and non-residents, including dividends, interest, royalties, and service fees.



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Recommendation | Sec 35 (1) (a) | Current Tax Law – Scope and Exceptions



Scope of Section 35(1)(a)

Requires withholding tax on payments made to non-residents for management, professional, and technical services.



Limited Exemptions

Currently exempts only specific commissions paid by resident air operators to non-resident agents for ticket sales.



Impact on Non-Resident Services

Broad scope leads to taxation of essential foreign expertise even when such services are unavailable locally.



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Recommendation | Sec 35 (1) (a) | The Challenge for Kenya Airways – Cost Burden of International Expertise

- **Dependence on International Experts:** KQ must procure specialized services from abroad due to lack of local certified providers.
- **Scope of Services:** Includes engine overhauls, software support, safety audits, and international training.
- **Cost Impact of Net-of-Tax Contracts:** WHT on net-of-tax agreements increases operational expenses significantly.



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Recommendation | Sec 35 (1) (a) | Competitive Disadvantage

Impact of WHT on Kenya Airways vs Foreign Airlines

- **Inflated Costs for KQ:** WHT on net-of-tax contracts increases total expenses for essential foreign services.
- **Unequal Tax Treatment:** Foreign airlines operating in Kenya pay their service providers abroad without incurring Kenyan WHT.
- **Limited DTA Coverage:** Kenya's few Double Taxation Agreements rarely apply to KQ's foreign vendors, denying treaty relief.



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Recommendation | Proposed Amendment to Section 35(1)(a) – Supporting Specialized International Services

- **Proposal:**

We propose amending Section 35(1)(a) to insert this proviso:

"Provided that this paragraph shall not apply to payments made by the national carrier to a non-resident for specialized technical, maintenance, compliance, training, or digital systems support services, where— (i) such services are not available in Kenya; or (ii) the service provider is certified or accredited by an international regulatory, standard-setting, or licensing body."

- **Scope of Exemption:** Covers technical, maintenance, compliance, training, and digital system services requiring international certification.
- **Conditions for Relief:** Service must either be unavailable in Kenya or provided by internationally certified/accredited providers.

Benefits of the Amendment

Strategic Impact for Kenya Airways

- **Lower Operational Costs:** Relief from WHT would significantly reduce costs for essential foreign services.
- **Fair Competition:** Ensures a level playing field with foreign airlines not subject to similar domestic taxes.
- **Support for Safety and Compliance:** Enables access to critical services that uphold aviation safety and international standards.



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Income Tax Rates in Kenya: An Overview

Comparing Tax Regimes for Salaried Individuals and Companies

- **Graduated Rates for Individuals:** Income tax for salaried individuals in Kenya progresses from 10% up to 35% depending on income bands.
- **Flat Rates for Companies:** Local companies are taxed at 30%, while foreign companies with a permanent establishment pay 32.5%.
- **Effective Burden Disparity:** A salaried individual faces a 37.6% effective tax burden, higher than both local (27%) and foreign companies (29.25%).



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Legal and Ethical Concerns in Kenya's Tax Policy

Disparities Between Individual and Corporate Taxation



Violation of Horizontal Equity

Taxing individuals more than equally capable companies contradicts the principle that similar incomes should bear similar tax burdens.



Distortion of Economic Neutrality

Current tax rates incentivize incorporation purely for tax relief, undermining natural economic choices.



Inequitable Deduction Rights

Employees cannot deduct genuine work-related costs, unlike businesses, amplifying the inequality.



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Comparison: Salaried Individual vs Company – KES 20 Million Gross Income (2025)

Metric	Salaried Individual	Local Company (30%)	Foreign Company (32.5%)
Gross Income	20,000,000.00	20,000,000.00	20,000,000.00
Expenses/Deductions	NIL (No expense deduction under PAYE)	2,000,000 (10% allowable expenses)	2,000,000 (10% allowable expenses)
Taxable Income	19,145,680 (after SHIF/NSSF/etc.)	18,000,000	18,000,000
PAYE/Corporate Tax	6,660,871.35 (PAYE only)	5,400,000	5,850,000
Other Mandatory Levies	854,320 (SHIF, NSSF Tier I & II, Housing)	0	0
Total Tax + Deductions	7,515,191.35	5,400,000	5,850,000
Net Income	12,484,808.65	14,600,000	14,150,000
Effective Tax Burden	37.6%	27%	29.25%

Statutory Deductions Breakdown (Salaried Employee with KES 20,000,000 Annual Gross Pay)

Deduction Type	Amount (KES)	Applicable Rate or Formula	Notes
PAYE	6,660,871.35	Graduated rates up to 35% (see below)	Applies on net taxable income after allowable reliefs
NSSF Tier I	480.00	Fixed monthly: KES 720/month shared equally (employee pays KES 360)	For our calculation, assumed employer withheld lower portion only
NSSF Tier II	3,840.00	6% of salary above Tier I band (KES 18,000 cap) × 12 months	Subject to upper limits prescribed in the NSSF Act
SHIF (formerly NHIF)	550,000.00	2.75% of gross salary (as proposed in the SHIF framework)	Flat % of income without upper limit, based on current bill projections
Housing Levy	300,000.00	1.5% of gross pay	Employer matches 1.5% (but not part of employee's deduction)
Personal Relief	(2,400.00)	Fixed KES 2,400 annually	Minimal effect at high-income brackets



Critique of Kenya's 35% Top Individual Tax Rate

Implications for Equity, Efficiency, and Compliance



Penalizing Success

The top rate disproportionately affects high-earning individuals, discouraging income declaration and productivity.



Encourages Avoidance

Leads to artificial restructuring and incorporation to access lower tax rates, undermining tax compliance.



Misaligned with Global Trends

Kenya's wide gap between individual and corporate rates contrasts with flatter systems in developed economies.



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Tax Treatment of Employee Expenses

Ineligible Deductions Deepen Inequity for Salaried Workers



No Relief for Work Essentials

Employees bear costs like commuting, CPD, laptops, and Wi-Fi—all nondeductible despite being income-related.



Corporate Deductibility Advantage

Businesses deduct virtually all comparable expenses as operational costs, reducing their taxable income.



Inequity Embedded in Legislation

Tax laws systematically exclude individual employment costs while accommodating corporate outlays.



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Policy Recommendation for a Fairer Tax System

Aligning Equity and Efficiency in Kenya's Income Tax



Rate Harmonization

Align top marginal individual tax rate with corporate rate at 30% to restore equity.



Incentivize Compliance

Fairer taxation would encourage voluntary compliance and reduce tax avoidance through incorporation.



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VALUE ADDED TAX

Clause 32 | Section 17(c) | Removal of Offset for VAT Withheld

VAT Amendments in Finance Bill, 2025

- **Revocation of Offset Option:** Deletes right to offset excess VAT withheld by appointed agents against other tax liabilities.
- **Liquidity Pressure on Suppliers:** Suppliers to government and large institutions face increased cashflow strain awaiting refunds.
- **Complex Refund Reliance:** Heightens dependence on Kenya's notoriously slow refund system, risking working capital bottlenecks.
- **Our View:** While it streamlines KRA administration, the reform burdens honest taxpayers. Recommend revisiting refund acceleration mechanisms.



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Clause 32 | Section 17(d) | VAT Refund Claim Period Cut to 12 Months

VAT Amendments in Finance Bill, 2025



Halved Claim Window

Reduces the period for lodging VAT refund claims from 24 to 12 months.



Disproportionate SME Impact

Sectors with long payment cycles—agriculture, construction—may struggle to comply within shorter deadline.



Administrative Simplicity for KRA

Supports audit alignment and caps liability exposure for older claims.



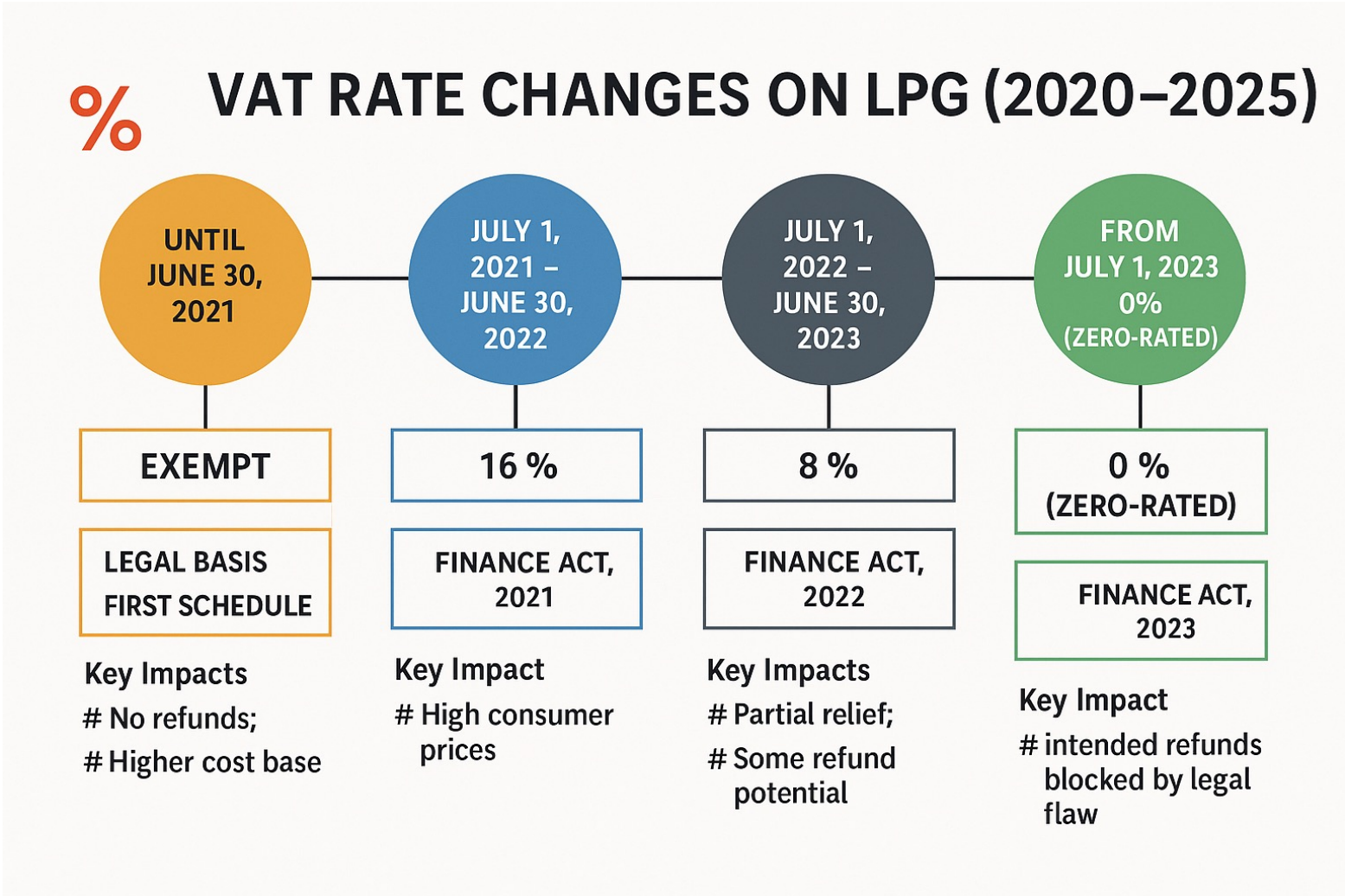
Our View

This move aids tax enforcement, but risks disenfranchising compliant firms.



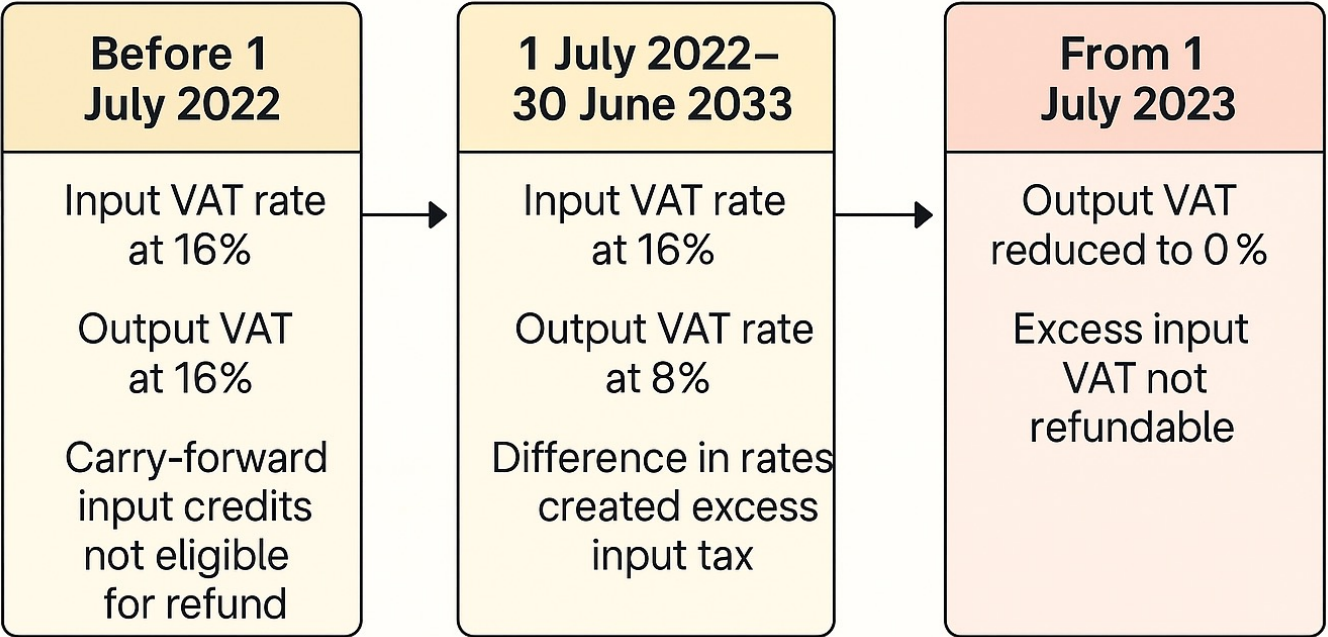
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Section 17(5)(ea) – Credit for Input Tax Against Output Tax (Perpetual Credits) – *Brief Background*



Section 17(5)(ea) – Credit for Input Tax Against Output Tax (Perpetual Credits)

How Businesses Ended Up in Perpetual Input VAT Credit



Section 17(5)(ea) – Credit for Input Tax Against Output Tax (Perpetual Credits)– *Root Cause*

Scenario 1: Pre–1 July 2022 – Legacy Input Credits Before Zero-Rating

- During this period, LPG was subject to **16% VAT**, and businesses incurred standard input VAT on equipment, meters, logistics, etc.
- In many cases, **input VAT exceeded output VAT** — creating **carry-forward credits**, especially for businesses with thin margins or uneven billing cycles.
- These credits **remained on the books** and were not refunded because **LPG was not zero-rated**, and VAT law only allows refunds for zero-rated supplies.
- Then, when LPG was **subsequently zero-rated**, these legacy credits became **stranded** — they could no longer be offset or refunded, since the zero-rating left no output VAT against which to apply them.

● *Result: Carried forward input credits from before July 2022 became unclaimable once LPG became zero-rated.*



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Section 17(5)(ea) – Credit for Input Tax Against Output Tax (Perpetual Credits)– *Root Cause*

Scenario 2: 1 July 2022 – 30 June 2023 – Input/Output VAT Rate Mismatch

- In this window, LPG was taxed at 8% (Finance Act 2022), but **key inputs** — remained **taxed at 16%**.
- Businesses therefore faced a **built-in VAT imbalance**: input tax at 16%, output tax at only 8%.
- This mismatch meant **excess VAT credits built up every month** with no way to offset them fully.
- The situation worsened when LPG was **zero-rated on 1 July 2023** — now, **no output VAT at all**,

● *Result: An additional layer of VAT credits was generated in this period — from a legal rate mismatch*



Section 17(5)(ea) – Credit for Input Tax Against Output Tax (Perpetual Credits) – *Introduction of s. 17(5)(ea) and the Challenge*

Section 18 of the Tax Laws (Amendment) Act, 2024

The 2024 Amendment

- Section 17(5)(ea) was introduced to allow refunds where **permanent credits** arose from rate changes between 1st July 2022 and the date a supply became zero-rated or exempt.
- It requires taxpayers to apply to the Commissioner for **relief** within six months of the provision's commencement.

Why It Has Not Worked

- The term “relief” is **undefined and unsupported** in the VAT refund framework.
- As a result, **KRA lacks a legal mechanism** to process claims under this section, and **no refunds have been paid** to date.
- Credits have continued to accumulate, **locking up liquidity** in a sector that serves low-income households and depends heavily on upfront capital investment.



Section 17(5)(ea) – Credit for Input Tax Against Output Tax

- **Pre-2024 credits remain stranded**, with no practical remedy under the current law.

Our Proposal

Delete current provision and replace with:

Excess Credit on the date a taxable supply became a zero rated supply

*“Provided that notwithstanding the provisions of subsection (5), a registered person who incurred such a credit shall apply to the Commissioner for **refund** within six months after the commencement of this provision and in any case, on or before 31st December 2025.”*

- **Removes ambiguity** by replacing “relief” with “refund” — a term with legal and administrative recognition in VAT practice.
- **Supports liquidity and business continuity** for affected businesses.
- **Preserves the spirit of the law** and ensures that past credits are not permanently trapped due to a technical drafting flaw.
- The **six-month window with a firm deadline of 31st December 2025** provides a **balanced approach between compliance management and revenue planning**.



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Clause 34 – Section 66A (New Anti-Abuse Provision)

- Provision imposes VAT on goods initially supplied as exempt/zero-rated but later used for other purposes.
- Parallels: Mirrors Section 119 of the EACCMA – clawback provision for misused relief.
- Gap Identified:
 - No exemption for in case of death, in the case of individuals.
- Recommendation:
 - Introduce an exclusion under Section 66A for cases involving transfer of goods or property to heirs or surviving dependents to ensure continuity of tax-neutral treatment as intended under the original exempt or zero-rated status.

119. (1) Where any goods liable to import duty have been imported, or purchased prior to entry for home consumption, by or on behalf of any person, either free of import duty or at a reduced rate of import duty and such goods are subsequently disposed of in any manner inconsistent with the purpose for which they were granted any relief from import duty, the goods shall on disposal be liable to import duty at the rate applicable to goods of that class or description at the time of disposal:

Provided that such duty on disposal shall not be payable (in the case of a natural person) where that person dies and the ownership of such goods is transferred by way of bequest to or inheritance by another person.



First Schedule | Healthcare Sector | Repeal of VAT Exemptions

Sectoral VAT Impact – Finance Bill, 2025



Hospital Infrastructure Cost Rise

VAT exemptions removed on imported building materials and equipment for hospitals—raising capital requirements for new facilities.



Tax on Diagnostic & Patient Equipment

Items like patient scales, diagnostic kits and health ICT tools lose VAT relief, raising operational expenses.



Public Health Policy Contradiction

Undermines Universal Health Coverage goals by deterring private and NGO sector health investments.



Our View

Recommend reinstating targeted exemptions tied to health investment thresholds or underserved regions to sustain UHC momentum.



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First Schedule | Agriculture Sector | Reclassification to VAT-Exempt

Sectoral VAT Impact – Finance Bill, 2025



Zero-Rated to Exempt Shift

Key agricultural inputs and outputs reclassified from zero-rated to VAT-exempt—losing input VAT recovery eligibility.



Reduced Export Competitiveness

Exporters unable to claim refunds on inputs face higher net costs, undermining global price competitiveness.



Cashflow Impact on Large Farms

Commercial farms operating at scale lose liquidity buffer from VAT refunds, risking output decline.



Our View

Recommend dual policy: retain zero-rating for export-bound/commercial output; exempt smallholders with capped turnover.



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Clause 36(h) Finance Bill 2025 | VAT Reform for Affordable Housing

From Exemption to Input Tax Recovery



Input Tax Credit Access

Allows developers to recover VAT on construction inputs, reducing effective costs and improving cash flow.



Formalisation Incentive

Requires proper documentation for VAT recovery, encouraging sector compliance and transparency.



Transitional Relief

Existing exemptions remain valid until June 2026, giving developers time to adjust.



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Leveling the Field | Boosting Local Industry via VAT Reform

Clause 36(h) Promotes Competitive Neutrality

- **Removes Import Bias:** Previously exempted imports often undercut local products embedded with non-recoverable VAT.
- **Stimulates Local Manufacturing:** Neutral tax treatment promotes demand for locally sourced materials, supporting jobs and industry.
- **Advances Industrial Policy:** Aligns with Vision 2030 and BETA by strengthening domestic supply chains in housing.



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Policy Efficiency Through VAT Reform

Why Clause 36(h) is Good Tax Policy



Administrative Simplification

Reduces classification disputes and VAT misuse by standardizing treatment of inputs.



Fiscal Integrity

Maintains the VAT chain integrity, ensuring clear input-output tax matching.



Investor Confidence

A stable, predictable VAT framework attracts long-term investments into affordable housing.



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First Schedule | Renewable Energy Sector | VAT Relief Repealed

Sectoral VAT Impact – Finance Bill, 2025



Repeal of VAT Exemption

Solar panels, wind turbines and related equipment no longer VAT-exempt, raising project capital costs.



Barrier to Rural Electrification

Higher costs may slow deployment of off-grid systems in underserved communities.



Climate Commitments Undermined

Contradicts Kenya's Nationally Determined Contributions (NDCs) and net-zero pathway.



Our View

Advocate for milestone-linked incentives or reinstatement of exemptions for projects aligned with SDG 7 and energy equity.



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First Schedule | Tourism Sector | VAT on Tour Vehicles Reinstated

Sectoral VAT Impact – Finance Bill, 2025



Tour Vehicle Relief Removed

VAT exemption on specialized safari/tour vehicles repealed—raising capital costs for operators.



Barrier to SME Participation

Small tour companies may be priced out of fleet expansion, reinforcing market concentration.



Impact on Recovery Momentum

Sector still recovering from COVID shock now faces higher investment thresholds for fleet upgrade.



Our View

We propose reinstating targeted relief for new entrants and eco-certified operations under tourism recovery framework.



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Proposal | VAT Exemption for Lubricant Export Inputs | *VAT Impact on Kenya's Lubricant Blending Sector*

Economic Strain from Non-Refundable VAT on Export Inputs

- **Blending Sector Overview:** Kenya hosts 3 lubricant blending firms; 50% of production is exported within the EAC.
- **VAT Refund Challenge:** Base oils and additives imported at 16% VAT generate large refundable credits due to zero-rated exports.
- **Economic Fallout Risk:** Unpaid refunds push firms toward relocating or shifting to importing finished goods, risking job losses and tax base erosion.



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Proposal | VAT Exemption for Lubricant Export Inputs

A Targeted Policy Solution to Stimulate Local Industry

- **Exemption Scope:** Exempt VAT on base oils and additives used in lubricants solely for export, subject to Energy CS approval.
- **Controlled Access Mechanism:** Eligibility contingent on verifiable export production volumes and strict regulatory compliance.
- **Sectoral Benefits:** Boosts local blending viability, curbs potential job losses, and maintains domestic industrial activity.



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Proposal: VAT Exemption for Lubricant Export Inputs | *Stakeholder Benefits & Policy Safeguards*

Ensuring Integrity and Impact of VAT Exemption for Lubricant Exports

- **Industry Stabilization:** Prevents offshoring of blending operations, safeguarding employment and local tax contributions.
- **Export Competitiveness:** Enhances price and operational competitiveness of Kenyan lubricants across the EAC market.
- **Compliance Framework:** Incorporates CS-level oversight and audit trails to ensure only qualifying inputs receive exemption.



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Aviation Sector | Sectoral VAT Impact – Finance Bill, 2025



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AMENDMENT TO THE FIRST SCHEDULE OF THE VAT ACT

ISSUE: Exemption of aircraft spare parts and goods under Chapter 88

Recommendation: Extend the exemption to include aircraft/aeroplane engines covered under Chapter 84

Justification: Aircraft engines are a critical component for the aviation sector and are primarily imported

RETENTION OF EXISTING VAT EXEMPTIONS

ISSUE: Deletion of the exemption on direction-finding compasses

Recommendation: Retain the exemption on direction-finding compasses

Justification: These compasses are essential navigation instruments used in aviation

INCLUSION OF CARGO UNDER ZERO RATING

ISSUE: Current VAT zero rating provision applies to transportation of passengers on international flights

Recommendation: Amend the provision to include cargo: “Transportation of passengers and cargo by air carriers on international flight.”

Additional Input: Aligning tax treatment with global best practices can enhance Kenya’s competitiveness as a regional aviation and logistics hub

ZERO-RATING OF SUPPLIES TO INTERNATIONAL CARRIERS

ISSUE: Zero-rating currently limited to taxable services to international carriers

Recommendation: Broaden the provision to cover taxable supplies rather than only taxable services

Justification: Extending zero-rating to both goods and services supports international carriers and streamlines tax compliance

Strategic Aviation Tax Amendments – Finance Bill 2025

Rationale for Policy Adjustments in VAT and Levies

- **Include Aircraft Engines in Exemptions:** Engines under Chapter 84 are essential for maintenance but excluded from Chapter 88. Exempt to reduce costs.
- **Protect Safety Equipment Access:** Restore VAT exemption on direction-finding compasses—crucial for navigation and compliance with ICAO standards.
- **Clarify Cargo Flight VAT Status:** Amend law to zero-rate both passengers and cargo on international flights for legal clarity.



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Reform VAT on Supplies to International Carriers

Amending Scope from Services Only to All Taxable Supplies

- **Current Limitation:** VAT zero-rating applies only to services supplied to international air/sea carriers—goods excluded.
- **Broaden Scope to Goods:** Amend to cover all taxable supplies, including fuel, parts, and operational goods supplied at airports.
- **Regional Competitiveness:** Reduces operational costs and aligns with incentives in peer aviation hubs across Africa.



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Why Strategic Aviation Reform Matters

Enabling Kenya's Vision 2030 as a Logistics and Aviation Hub

- **Air Logistics Hub Potential:** Tax clarity and operational cost efficiency are vital to attract investment in Maintenance, Repair and Overhaul and cargo handling.
- **Not Revenue-Losing—Revenue-Shifting:** Exemptions help local carriers remain viable, expand fleets, and retain taxable economic activity in Kenya.
- **Global Compliance, Local Impact:** Aligns with ICAO and IATA norms, boosting international trust and regional trade participation.



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EXCISE DUTY



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Page 1



Clause 2: Amendments to Definitions – Digital Lender & Marketplace

Finance Bill 2025 – Clarifying Scope & Compliance Under Excise Duty Act

- **Digital Lender Redefined:** Now excludes banks, Saccos, and microfinance institutions – focuses on non-institutional digital lenders.
- **New Definition of Digital Marketplace:** Covers any online platform enabling users to transact goods or services – expands compliance net.
- **Tariff Classification Alignment:** Amends Act to classify goods per EAC Customs Union Annex I with standard interpretation rules.
- **Compliance Impact:** Streamlines scope, lowers burden for formal lenders, but imposes new demands on tech platforms.



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Excise Duty Shift on Float Glass (Tariff 7005)

Finance Bill 2025 Proposal and Impact

- **Expanded Tax Base:** Replaces 'customs value' with 'excisable value,' capturing additional cost layers like insurance and handling.
- **Higher Import Tax Burden:** Broader base increases effective duty, raising costs for all float glass importers.
- **Risk to Local Processors:** Processors are not final users—taxing raw glass penalizes value-added local industries.



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Proposed Exemption for Registered Float Glass Processors

Safeguarding Value Addition and Local Manufacturing

- **Targeted Exemption Model:** Excise exemption for registered processors importing float glass under recommendation of the Cabinet Secretary in charge of matters of Industry and Trade.
- **Supports Industrial Policy:** Keeps raw inputs affordable, enabling continued production of laminated, tempered, and solar glass.
- **Traceability Maintained:** Exemption would be tightly regulated through approvals from the Ministry responsible for Industry

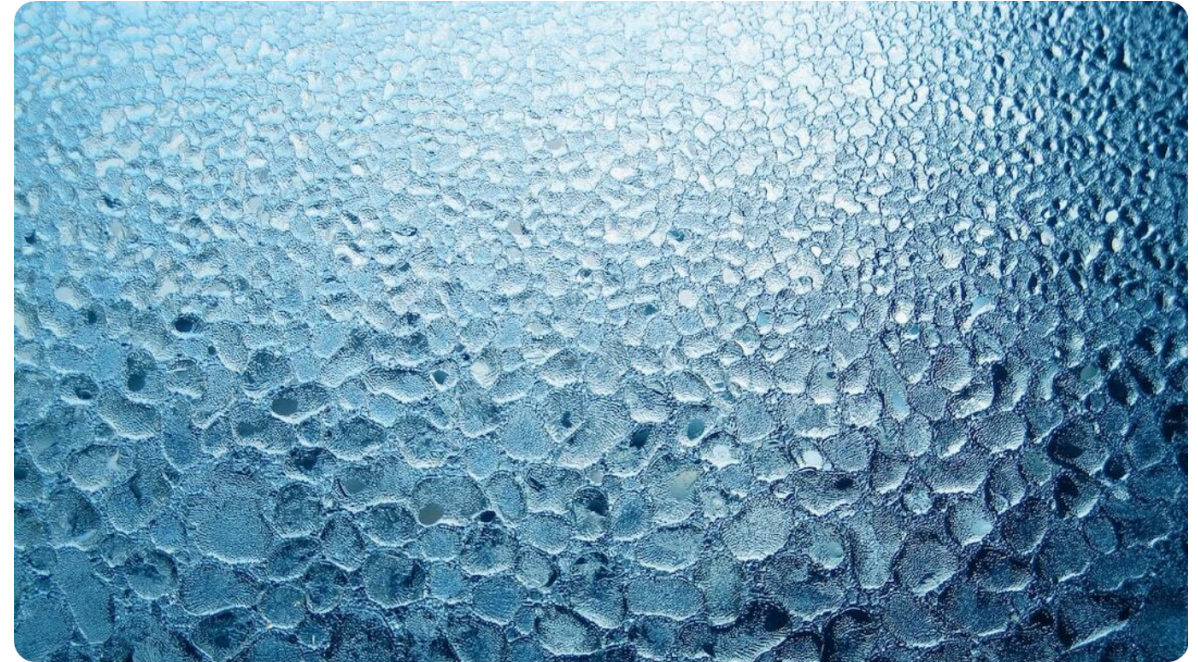


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Specific Excise for Imported Safety Glass of Tariff 7007.19.00 and 7007.29.00

Addressing Market Distortion from Imports



Market Protection

Imported safety glass of tariff 7007.19.00 and 7007.29.00 is available locally and needs protection from unfair competition.



Switch to Specific Rate

Propose a 35% or a fixed duty rate per square meter to neutralize pricing manipulation at import instead of kilograms to be in line with the EACCET and global standards.



Rate Calibration Required

Duty level must reflect domestic production cost structure—balancing protection and fairness.



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Policy Recommendations on Glass Excise Reforms

Aligning Finance Bill 2025 with Industrialization Goals

- **Float Glass Relief:** Exempt licensed processors from float glass excise to protect value-adding domestic industries.
- **Adopt Specific Duty for Safety Glass:** Replace value-based duty with per square meter rate to prevent under-valuation and boost local fairness.
- **Support Vision 2030 and BETA:** Amendments align with national goals for industrial development, job creation, and market integrity.



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Aligning Excise Units with Regional Standards

Correcting Glass Tax Measurement to Square Meter



Current Misalignment

Kenya taxes glass per kg, unlike EAC partners using per m², causing inconsistency and confusion.



Recommended Amendment

Shift from KES 200/kg to KES [X]/m² for excise on float and safety glass to match regional standards.



Improved Transparency

Glass is dimension-priced; taxing per m² reflects commercial practice and eases customs valuation.



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New Proposal | Methanol as a Controlled Item | Section 15 of the Excise Duty Act

- **Current Legal Gap:** Methanol, unlike ethanol, is unregulated under the Excise Duty Act despite its growing misuse in illicit brews.
- **Urgent Public Health Threat:** Over 120 deaths in early 2024 linked to methanol-laced alcohol in Central Kenya highlight the crisis.
- **Proposed Legislative Action:** Amend Section 15 to classify methanol as a controlled substance and require import/distribution licenses.



NEWS ALERT

Two more people die after consuming suspected illicit brew in Kandongu village in Mwea, Kirinyaga County; a day after a man died and his wife left partially blind.

www.citizen.digital



NEWS ALERT

Six people killed, 5 others go blind after consuming illicit brew at Kangai village in Mwea, Kirinyaga County.

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NEWS ALERT

Death toll in Kirinyaga illicit brew incident rises to 13 after 5 more reported to succumb in Kangai and Kandongu villages.

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New Proposal | Regulating Methanol Through Licensing | Why Licensing Methanol Matters

Improving Traceability and Enforcement

- **Centralized Oversight:** Licensing creates a registry of all methanol importers and distributors, enabling robust tracking.
- **Enforcement Readiness:** Unlicensed methanol handling becomes a punishable offense, deterring diversion into illicit alcohol.
- **Proven Regulatory Model:** Aligns with successful ethanol regulation under Section 15, enhancing policy coherence.



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New Proposal | Methanol Regulation as a Public Health Imperative

Safeguarding Lives Through Smart Policy

- **Prevent Mass Poisonings:** Methanol ingestion causes blindness, organ failure, and death—especially in diluted illicit brews.
- **Support for Interagency Action:** Licensing facilitates collaboration among KRA, NACADA, Ministry of Interior, and counties.
- **Global Best Practice:** WHO endorses methanol regulation as vital for low- and middle-income countries combating illicit alcohol.



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Policy Recommendation: Amend Section 15 to License Methanol

A Preventive Strategy for Enforcement and Safety

- **Close Legal Loopholes:** Include methanol under Section 15(1) to prohibit unlicensed handling and ensure legal parity with ethanol.
- **Strengthen Public Health Safeguards:** Licensing empowers authorities with tools for proactive monitoring and rapid intervention.
- **Demonstrate Governance Commitment:** Shows the government's responsiveness to emerging health crises and enhances rule-of-law legitimacy.



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TAX PROCEDURES



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Clause 43 | Section 23A | Exemptions from eTIMS Invoicing

Tax Procedures Act – Finance Bill, 2025

- **Exempting Low-Risk Transactions:** Empowers the Commissioner to exempt transactions from electronic tax invoicing under prescribed criteria.
- **Administrative Discretion Introduced:** Reduces compliance burden for sectors or activities not suited for e-invoicing—e.g. public entities, exempt suppliers.
- **Supports Tailored Rollout:** Allows flexible eTIMS implementation without stalling operations in low-volume or non-commercial sectors.
- **Our View:** Endorse this discretion with transparent criteria and publish exemption registers to enhance trust.



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Clause 44 | Section 31 | Reason Disclosure in Amended Assessments

Tax Procedures Act – Finance Bill, 2025



Mandatory Justification

KRA must now provide reasons for amended assessments, not just the amended amount.



Supports Taxpayer Rights

Aligns with constitutional principles of fair administrative action and disclosure.



Enhances Audit Transparency

Improves taxpayer understanding and supports informed decision-making and dispute resolution.



Our View

Strongly endorse this as a taxpayer rights safeguard.
Recommend monitoring compliance with disclosure quality standards.



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Clause 44 | Finance Bill 2025 | Amendment to Section 31 of the Tax Procedures Act

- **Mandatory Disclosure of Assessment Reasons:** New Subsection 8A requires the Commissioner to provide written reasons when notifying taxpayers of amended assessments.
- **Enhanced Transparency and Accountability:** The change aligns with global best practices and promotes fairness by informing taxpayers of assessment bases.
- **Identified Procedural Gap in Subsection 3:** Despite the new provision, there is no recourse if the Commissioner fails to reject within the 30-day timeline.
- **Proposed Legal Remedy:** A suggested proviso: if no reasons for rejection are issued within 30 days, the amended return is deemed accepted.

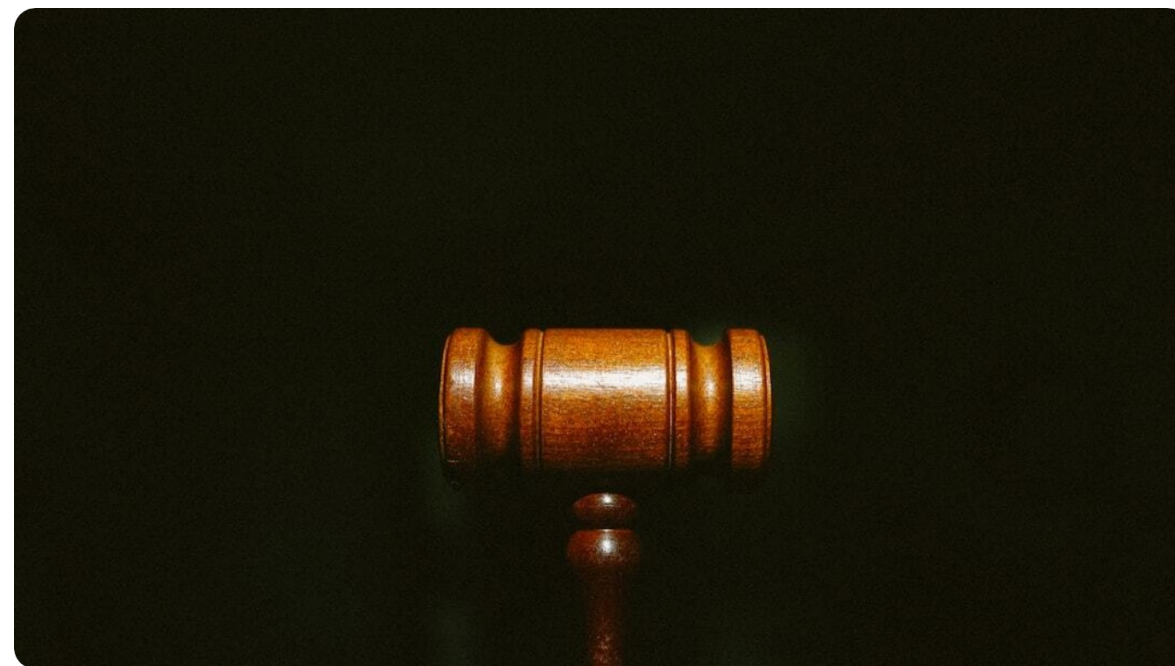


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Clause 44 | Finance Bill 2025 Amends Section 31(8A) | New Procedural Obligation Introduced



Commissioner's Duty to Disclose

Requires inclusion of written reasons when notifying taxpayer of an amended self-assessment return.



Improved Administrative Clarity

Aims to ensure transparency and better communication between taxpayers and the tax authority.



Alignment with Global Standards

Reflects best practices in tax governance, enhancing taxpayer rights and procedural fairness.



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Our Proposal for Enhanced Taxpayer Protection | Addressing the Legislative Gap in Section 31(3)



Current Limitation

Section 31(3) mandates a 30-day response window but lacks enforcement if Commissioner fails to act.



Legal Uncertainty

Absence of consequences for non-response creates ambiguity and delays in resolution of amended returns.



Proposed Proviso

Introduce clause deeming amended return accepted if no reasons for rejection are issued within 30 days.



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Clause 45 | Section 39A | Penalty Relief for Withholding Failures

Tax Procedures Act – Finance Bill, 2025

- **Conditional Penalty Waiver:** Penalty waived where withholding agent fails to deduct tax but the recipient has paid it in full.
- **Prevents Double Penalty:** Corrects prior punitive outcomes where both payer and payee were penalized for the same tax.
- **Supports Voluntary Disclosure:** Encourages agents to come forward without fear of penalty where there's no revenue loss.
- **Our View:** Sound reform. Recommend broader application to other duplicative tax penalty cases in future revisions.



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Clause 46 | Section 40 | Property Registration & Security for Tax

Tax Procedures Act – Finance Bill, 2025

- **Expanded Tax Security Tools:** Allows KRA to register taxpayer property as security for unpaid tax, including through third-party disclosures.
- **Stamp Duty Waiver:** Transactions related to securing unpaid tax through property registration are exempt from stamp duty.
- **Enhances Collection Enforcement:** Improves KRA's ability to secure revenue while avoiding litigation over asset attachments.
- **Our View:** Supports proactive enforcement. Recommend safeguards to protect property rights and ensure due process. **Recommend provision be captured under the Stamp Duty Act amendments instead**



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Clause 47 of the Finance Bill 2025 | Expanded Tax Collection Powers under Section 42

- **Inclusion of Non-Residents:** Allows issuance of agency notices for non-residents subject to tax in Kenya, targeting their local payers.
- **Cross-Border Enforcement Strengthened:** Aligns with efforts to improve compliance in international transactions and tackle tax evasion.
- **Operational Implications:** May impact commercial contracts and create compliance challenges for Kenyan entities dealing with non-residents.
- **Need for Clear Guidance:** Effective implementation will require administrative clarity to prevent unintended legal or business disruptions.



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Clause 47 | Defending Taxpayer Rights and Due Process | Deletion of Section 42(14)(e)

- **Subsection 14(e) Provided Safeguard:** Prevented agency notices while a taxpayer appeal is under review, protecting against premature enforcement.
- **Erosion of Due Process:** Deletion allows enforcement before conclusion of appeals, undermining fair hearing rights.
- **Risk of Business Disruption:** Premature freezing or garnishment could damage cash flows and contractual obligations.
- **Recommendation: Retain Subsection:** Maintains balance between revenue collection and legal recourse, ensuring procedural integrity.



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Clause 50 | Section 47 | Offset and Refund of Overpaid Tax

Changes to Tax Refunds and Offsets

Proposed amendment to limit and extend tax refund and offset mechanisms

EXCLUSION OF INPUT VAT



Input VAT will be ineligible for offset against overpaid tax

EXTENDED REFUND PERIOD



Refund application period **extended** from **90 days** to **120 days**

EXTENDED REFUND AUDIT TIME



Period for auditing refunds extended from **120 days** to **180 days**



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Clause 50 | Exclusion of Input VAT from Offsets

Clarifying Scope and Strengthening Administrative Boundaries

- **Separation of Tax Regimes:** Input VAT claims must now be processed solely under the VAT Act, not offset against income tax.
- **Enhances Audit Trails:** Prevents obfuscation of tax liabilities by removing cross-tax head offsets.
- **Preserves VAT Refund Rights:** Refund claims for input VAT are still valid under Section 17(5) of the VAT Act.



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Clause 50 | Refund Timeline Extension: Aligning Law with Practice

Extends Refund Periods for KRA



Extended Review Time

Refund processing timeline extended from 90 to 120 days; audit-related claims now 180 days.



Operational Alignment

Reflects KRA's current administrative capacities and enhances audit integrity.



Fraud Risk Mitigation

Supports deeper scrutiny for complex claims, minimizing erroneous or fraudulent refunds.



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Clause 50 | Impact on Taxpayer Liquidity & Compliance

Navigating Refund Delays Post-Clause 50

- **Working Capital Pressure:** Delayed refunds can disrupt cash flow, especially for high input VAT sectors like manufacturing and exports.
- **Need for Digital Transparency:** Calls for KRA to adopt real-time tracking systems and publish refund statuses.
- **Balancing Reform with Support:** Risk-based fast-track refund channels can ease pressure on compliant large taxpayers.



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Clause 51 | Section 51 | Clarification on Late Objections

Tax Procedures Act – Finance Bill, 2025

- **Timelines Clarified:** Specifies that the Commissioner must respond within 60 days of receiving the late objection application—not the objection itself.
- **Promotes Predictable Dispute Handling:** Enhances certainty for taxpayers and advisors managing dispute timelines.
- **Reduces Administrative Disputes:** Eliminates ambiguity around when countdown to response starts for late objections.
- **Our View:** Sound amendment that supports procedural clarity. **Recommend digital system updates to automate deadline tracking.**



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Clause 52: Deletion of Section 59A(1B) – Implications for Data Privacy

Finance Bill, 2025 – Tax Procedures Act

- **Repeal of Protection Clause:** Section 59A(1B), which prevented the Commissioner from compelling disclosure of trade secrets and personal data, is proposed for deletion.
- **Data Privacy Vulnerability:** The repeal raises concerns about compliance with the Data Protection Act, 2019, potentially infringing on constitutional privacy rights.
- **Legal and Administrative Risks:** Without clear limitations, KRA may face legal challenges and diminished public trust in its data handling practices.



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Clause 54: Deletion of Section 77 (2) – Computation of Time

REPEAL OF EXCLUSION OF WEEKENDS AND HOLIDAYS FROM OBJECTION AND APPEAL TIMELINES

CLAUSE 54 AMENDMENT OF SECTION 77(2) OF THE TAX PROCEDURES ACT



IMPLICATIONS



PROCEDURAL FAIRNESS
UNDERMINED



INCREASED RISK OF
TECHNICAL NON-COMPLIANCE



REVERSES A RECENT
REFORM



ADMINISTRATIVE
UNCERTAINTY



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MISCELLANEOUS FEES AND LEVIES

Clause 58 | Aircraft Exemptions Limited to Specific Categories

Miscellaneous Fees and Levies Act – Finance Bill, 2025



Exemptions Now Limited

IDF & RDL exemptions restricted to aircraft >2,000kg under HS codes 8802.30.00/8802.40.00.



Light Aircraft and Helicopters Affected

Private, emergency and service aircraft now attract import levies—raising operational costs.



Risk to Remote Connectivity

Higher costs for regional aviation could impair health, food supply and rural mobility services.



Our View

Relief should be retained for aircraft with certified humanitarian, medical or ASAL service mandates.



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Clause 59 | Levy on Steel Reduced to Spur Manufacturing

Miscellaneous Fees and Levies Act – Finance Bill, 2025



Levy Cut from 17.5% to 5%

Applies to select steel imports used in local manufacturing and construction.



Support for Housing Agenda

Reduces costs in housing, infrastructure and industrial projects under the Bottom-Up Economic Transformation Agenda (BETA).



Boost to Local Industrial Output

Encourages import substitution and competitiveness of Kenyan-made steel products.



Our View

This is a well-targeted reform. Recommend expanding relief to include input steel for SMEs and labor-intensive producers.



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Rethinking Kenya's Levy Structure: IDF and RDL Reform

Why the Current Flat-Rate Approach Falls Short

- **Uniform Levy Burden:** 2.5% IDF and 2% RDL apply to all imports, penalizing raw material users and productive sectors.
- **No Incentive for Manufacturing:** Lack of differentiation between inputs and finished goods discourages local value addition.
- **Strategic Blind Spot:** Imports of essential goods—fertilizers, machines, pharmaceuticals—are taxed like consumer goods.



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Proposed Tiered Levy Framework for Kenya

Strategic Support for Industrial Growth and Exports



Lower Rate for Inputs

Apply 1.5% - 2% IDF/RDL for raw materials, capital goods, and strategic imports like fertilizer, medicine and petroleum



Standard/Higher Rate for Finished Goods

Retain or increase rate to 5% for, finished products and imports that compete with domestic production.



Economic Alignment

Supports value addition, re-industrialization, and regional trade competitiveness.



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Reforms to Support Export Growth and KRA Modernization

Unlocking Trade Competitiveness and Tax Efficiency



Export Levy Adjustment

Reduce the Export Promotion Levy from 10% to 5% for export-inputs to enhance global competitiveness.

Propose further to allow for refunds of the levy on exported goods that have incurred the levy to make our exports competitive against global markets where other countries have even provided export subsidies to encourage exports from their markets.



Reinvest IDF into Revenue Integrity

Allocate 20% of IDF collections to Revenue Enhancement Measures like technology promotion. *For instance support KRA's digital systems*



Promote Exports

Lower costs for exporters integrating into export supply chains.



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Strategic Alignment of Levy Reform

Supporting Kenya's Long-Term Economic Vision

- **Vision 2030 Goals:** Strengthens domestic production, trade expansion, and global competitiveness.
- **BETA Framework:** Empowers MSMEs through reduced import costs and encourages industrial linkages.
- **Regional Trade Synergies:** Harmonizes Kenya's import policies with EAC and AfCFTA trade facilitation objectives.



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