

27 May 2025

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

Dear Sir

RE: INVITATION TO SUBMIT MEMORANDUM TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

BDO East Africa is please to share with you our comments to the proposed tax changes enshrined within the Finance Bill 2025 and additional proposals for your consideration.

Thank you.

No	Chapter	Proposed Change	Comments
1.	Income Tax Act - Section 15(4)	Proposal to insert the word “five” immediately after the word “succeeding”.	This give the indication of the Bill to cap losses carried forward to a period of 5 years should the Finance Act, 2025 crystalize as drafted in the Bill. This proposal is potentially detrimental for current and future capital intensive investments. The same goes against the agenda of promoting Kenya as an investment destination as well the drive to boost capital intensive sectors such as mining and manufacturing.
2.	Income Tax Act - Section 18 (G)	Proposal to introduce Section 18(G) in line with the Finance Bill, 2025	This is a welcome proposal from the Finance Bill 2025 speaking into Advance Pricing Arrangements (APA). This proposed section shall allow

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			<p>taxpayers to have APAs with the KRA relating to transfer pricing compliance in advance.</p> <p>This shall act as an additional incentive for multinational investors whose operations require arm's length pricing for related party transactions.</p>
3.	Income Tax Act - Third Schedule, Paragraph 1A (i)	Proposal to delete this section of the ITA in the Finance Bill 2025.	This proposal is to be rejected as the deletion of the same shall subject developers under the Affordable Housing Project (AHP) to a corporation tax rate of 30% as opposed to the current 15%. This shall injure the AHP by discouraging developer and subsequent investors who shall recoup a lower yield from their after tax profits.
4.	Income Tax Act - Third Schedule, Paragraph 14	Proposal to replace "fifteen" with "five"	This proposal is to reduce the Capital Gains Tax from the rate of 15% to 5% in order to encourage ease of liquidation of assets and equity investment. This not only increases cash flow within the economy but it also encourages direct investment into Kenyan business in line with the agenda of making Kenya a destination of

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			choice for investors in existing businesses.
5.	Tax Procedures Act - Section 42A	<p>Propose to introduce subsection 6 that shall read:</p> <p>Notwithstanding any other provisions of this section, the Commissioner shall exempt a taxpayer in the following industries, subject to the approval of their respective Cabinet Secretaries:</p> <p>Petroleum Sector and Energy Sector</p>	<p>Firms in these sectors operate on fixed regulated margins. WHVAT causes unnecessary liquidity strain causing economic pressure on the operators in these sectors. Therefore, this proposal is to elevate the same and further align with the cost-of-living agenda of the Government by allowing said operators further liquidity in order to provide Kenyans with apt, timey and higher quality services.</p>
6.	<p>Tax Procedures Act - Section 37E</p> <p>(2)</p> <p>(3)(a)</p>	<p>From:</p> <p>Where all the principal tax due shall not have been paid before the 31st December, 2023...</p> <p>To:</p> <p>Where all the principal tax due shall not have been paid before the 31st December, 2024...</p> <hr/> <p>From:</p> <p>From the purpose of Subsection 2 the amnesty shall be on interest, penalties or fines on the unpaid tax that have accrued up to the 31st December, 2023...</p> <p>To:</p> <p>the amnesty shall be on interest, penalties or fines on the unpaid tax that have accrued up to the 31st December, 2024</p>	<p>The extension of the tax amnesty program is a welcome proposal.</p>

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	(3)(b)(i)	<hr/> From: <p>The amnesty shall only be granted if the person - applies for amnesty and pays all the outstanding principal taxes not later than the 30th June, 2025</p> To: <p>The amnesty shall only be granted if the person - applies for amnesty and pays all the outstanding principal taxes not later than the 30th June, 2026</p> <hr/>	
	(4)	From: <p>Despite subsection 2, where a person has paid part of the principal tax due as on the 31st December, 2023, and has been granted amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June, 2025, shall attract interest and penalties for which no amnesty shall be granted.</p> To: <p>Despite subsection 2, where a person has paid part of the principal tax due as on the 31st December, 2024, and has been granted amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June, 2026, shall attract interest and penalties for which no amnesty shall be granted</p>	
7.	Tax Procedures Act	<p>Proposal to introduce Section 47(c) that shall read:</p> <p>The Commissioner may, upon approval by the Cabinet Secretary, refund of Input Value</p>	<p>This proposal improves working capital for exporters and large capital investors whose final</p>

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	Section 47(C)	Added Tax for net exporters every 3 months. This provision does not	product is solely for export.
8.	Value Added Tax Act - Section 17 (7) and (8)	Proposed reinstatement of these sections that were repealed by the Tax Laws Amendment Act, 2024.	This proposal is inspired primarily by the Affordable Housing Project. The repeal of the 90:10 rule acts as a disincentive for the AHP suppliers where they are unable to claim input vat on supplies made to AHP that are exempt from VAT. This in turn increased the cost of construction for the AHPs which acts as a cashflow hurdle for the AHPs.
9.	Excise Duty Act First Schedule Paragraph 1	The proposal is exempting excise duty on imported unsaturated polyester, imported alkyd, imported emulsion VAM, imported emulsion-styrene acrylic, imported homopolymer, imported emulsion B.A.M	<p>The prices of local paints have generally been up as compared to the prices of imported paint. These taxes have created a recession in the industry leading to loss of approximately 1000 jobs and loss of about 20% of local market to imports.</p> <p>Local manufacturers will gain a competitive advantage over importing manufacturers. The sector will have robust growth by lowering the barriers to production and bringing down the cost of production.</p>
10.	Tax Procedures Act-	Proposal to retain the prohibition of agency notices post Tax appeal tribunal ruling	This removal of the prohibition means that the taxpayer may face enforcement action

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	Section 42 (14) (e)		through agency notices immediately after a tribunal decision even if they intend to appeal. This underscores the importance of promptly seeking a stay of execution to prevent potential enforcement during the appeal process