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** |
| --- | --- | --- | --- |
|  | 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.  Tax losses realised in COVID 19 and subsequent economic and regulatory storms eroded capital of many companies. The deficit carry forward is a mechanism to avoid erosion of capital. Otherwise, the shareholders have to look for funds to recapitalize. |
|  | 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. |
|  | Value Added Tax Act – Section 17 (7) and (8)  First Schedule of VAT Act Paragraph 109 | Proposed reinstatement of these sections that were repealed by the Tax Laws Amendment Act, 2024.  Re recommend this paragraph be shifted to effect to the Second Schedule. | 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.  This proposal shall move supplies made to AHP from exempt supplies to zero-rate allowing suppliers of AHPs to claim input VAT charged to them in the course of generating sales to AHPs. This move shall elevate economic pressure on the suppliers to pass on this VAT cost to AHPs as they shall be able to claim the input VAT, a state of affairs that is currently not applicable. This shall positively encourage further investments in the AHPs both as suppliers as well as reducing the cost of construction. |
|  | Tax Procedures Act – Section 42A | Propose to introduce subsection 6 that shall read:  Notwithstanding any other provisions of this section, the Commissioner may issue a private ruling to exempt a taxpayer from withholding value added tax if:   1. The taxpayer operates in a sector whose retail prices are determined by a government agency under a law or regulation, or 2. The taxpayer operates in an industry whose gross profit margin are less than 5%, or 3. The taxpayer has significantly input VAT credit which would not be fully utilized within six months based on their normal business operations, or   Any other reasonable grounds that the Commissioner deems reasonable. | Firms in these sectors operate on fixed regulated margins. WHVAT causes unnecessary liquidity strain, causing economic pressure on the operators in these sectors. WVAT is not reasonable for sectors with thin margins. |
|  | 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 choice for investors in existing businesses. |
|  | Tax Procedures Act – Section 37E  (2)  (3)(a)  (3)(b)(i)  (4) | From:  Where all the principal tax due shall not have been paid before the **31st December, 2023**…  To:  Where all the principal tax due shall not have been paid before the **31st December, 2024**…  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **From:**  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**…  **To:**  the amnesty shall be on interest, penalties or fines on the unpaid tax that have accrued up to the **31st December, 2024**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **From:**  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**  **To:**  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**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **From:**  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.  **To:**  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 | The extension of the tax amnesty program is a welcome proposal. |
|  | 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 | 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.  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. |
|  | Tax Procedures Act-  Section 42 (14) (e) | 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 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 |