



East Africa Venture Capital Association (EAVCA)
Workify, 2nd Floor - ABC Place
Waiyaki Way
Nairobi

S. Njoroge, CBS
Clerk of the National Assembly
Main Parliament Buildings
Nairobi

27 May 2025

Attention: S. Njoroge, CBS

By Email: cna@parliament.go.ke

Dear Sir

**SUBMISSION OF EAST AFRICA VENTURE CAPITAL ASSOCIATION'S (EAVCA'S)
MEMORANDUM ON THE FINANCE BILL, 2025**

We write to submit the memorandum of our Association (East Africa Venture Capital Association) on the Finance Bill, 2025 (the "Bill"), for consideration by the National Assembly. Our Association has extensively reviewed the Bill and prepared a memorandum with a comprehensive set of comments. We have attached it for your reference.

The submission is in line with the principle of public participation in fulfilment of Article 118 of the Constitution of Kenya, 2010 and Standing Order 127(3) the National Assembly, which encourage stakeholders to provide their representations on Bills under consideration.

We are available to provide clarification during the Committee's hearings and remain committed to supporting the legislative process. The undersigned may be reached on the email address; christine@eavca.org

Kind regards

Christine Maina



SUBMISSION OF EAST AFRICA VENTURE CAPITAL ASSOCIATION'S (EAVCA'S) MEMORANDUM ON THE FINANCE BILL, 2025

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

INCOME TAX

Item	Tax Head	Topic	Current Provision of the Bill	EAVCA's Proposed Amendment	Justification of the proposed amendment
1.	Income Tax	Investing into the NIFC	<p>The Bill proposes the following incentives:</p> <p>For startups: 15% tax for first 3 years, then 20% for 4 years.</p> <p>For large investments (KES 3B+): 15% for 10 years, then 20% for 10 years.</p> <p>Dividends exempt if company reinvests KES 250M+ in Kenya.</p>	<p>This is a welcome move but with the following:</p> <ol style="list-style-type: none"> First, tax relief access should be broadened and made more flexible, with simplified eligibility criteria for startups and growth-stage ventures demonstrating innovation or SDG alignment. Second, Kenya should formalize support for blended finance structures—including concessional capital, subordinated instruments, and guarantee-backed vehicles—by providing them with targeted tax incentives, enhancing their catalytic role in financing development. 	<p>The Nairobi International Financial Centre (NIFC) is an ambitious step towards positioning Kenya as a regional financial hub and gateway for investment into Africa. However, in its current form, the NIFC risks falling short of this vision due to inflexible eligibility criteria, limited reach of tax incentives, and regulatory ambiguity. For instance, restrictions such as requiring full Kenyan ownership for certain tax reliefs and legal recognitions may exclude high-potential startups that involve foreign co-founders or investors, despite their potential contribution to innovation, job creation, and alignment with Sustainable Development Goals (SDGs). Moreover, the narrow application of tax exemptions—particularly for newly incorporated firms within the NIFC—overlooks the needs of early-stage and growth companies operating outside this zone. Expanding these incentives across a broader spectrum of startups, based on innovation, impact potential, or size thresholds, would democratize access</p>

				<p>iii. Third, investor confidence can be enhanced by clarifying regulatory issues, such as the treatment of Special Purpose Vehicles (SPVs) under the Alternative Investment Funds (AIF) regulations, and addressing cross-border fund ambiguity—especially for VC and angel investors navigating the Competition Authority of Kenya (CAK) and COMESA processes.</p> <p>iv. Operationally, the NIFC platform should evolve into a digital, investor-friendly gateway, modeled on best practices from Estonia, Singapore, and the UK. This includes integrating automated KYC/KYB and compliance systems across government databases (e.g., KRA, NTSA, CRB, NSSF), providing pre-vetted legal templates (e.g., SAFEs, convertible notes, ESOPs), and enabling personalized dashboards for startups and investors to track</p>	<p>to capital reliefs and foster wider economic inclusion.</p> <p>Simultaneously, the taxation of dividends and interest income poses disincentives for both saving and long-term investment. Dividends, already taxed at the corporate level, face unfair double taxation at the shareholder level, reducing net returns and investor appetite. Similarly, taxing interest earnings undermines incentives for savings in a country already grappling with low savings rates. These tax policies erode the attractiveness of Kenya’s capital markets and lower investor confidence—at a time when Kenya needs to deepen domestic capital formation and attract international finance.</p> <p>In short, while the NIFC is a promising framework, its success hinges on inclusivity, clarity, digital efficiency, and global alignment. Implementing these reforms will not only boost investor confidence but also cement Nairobi’s role as a genuine African financial powerhouse.</p>
--	--	--	--	---	--

				<p>submissions, renewals, and engage with regulators in real time. Regulatory sandboxes should also be tiered and expanded beyond the CBK and CMA, offering structured flexibility for emerging ventures, especially fintechs and regional VC firms during early validation phases. Finally, Kenya should adopt a “red carpet” concierge model for onboarding top-tier investors and high-growth startups and maintain a transparent compliance and policy tracker on the NIFC portal to build trust and reduce regulatory uncertainty.</p>	
2.	Income Tax	Advance Pricing Agreements	The Bill proposes to introduce advance pricing agreements	<p>This is a welcome move and we propose its retention.</p>	<p>The introduction and operationalization of Advance Pricing Agreements (APAs) is a positive development in Kenya’s international tax policy landscape. APAs offer multinational enterprises (MNEs) an important avenue to proactively agree on transfer pricing methodologies with the Kenya Revenue Authority (KRA), thereby significantly reducing the risk of future disputes over the pricing of transactions between related entities. This is particularly beneficial in today’s globalized economy, where cross-border intra-group transactions are both common and complex. The move</p>

					<p>provides greater certainty, predictability, and stability for MNEs operating in or through Kenya, ultimately enhancing Kenya's competitiveness as a destination for foreign direct investment.</p> <p>In addition, the provision clarifying the due date for the payment of the Minimum Top-Up Tax under the Global Anti-Base Erosion (GloBE) rules is welcome. It introduces much-needed certainty and compliance guidance, especially for multinational groups subject to the OECD Pillar Two framework, by ensuring that timelines for additional tax obligations are transparent and predictable.</p> <p>However, the effectiveness of APAs in reducing cross-border tax risk hinges entirely on their design and implementation. To realize their full potential, there is an urgent need to publish draft APA rules that outline:</p> <ul style="list-style-type: none">i. Clear eligibility thresholds based on transaction size or entity profile;ii. Specific coverage for investment holding companies, regional fund structures, and blended capital models, which are often overlooked yet central to emerging market capital flows;iii. Provisions for group-level APA applications, particularly for early-stage ventures that operate through multiple subsidiaries or special purpose vehicles (SPVs) and require
--	--	--	--	--	--

					<p>consolidated treatment to reduce administrative complexity.</p> <p>These measures will not only make the APA regime more accessible but also ensure it is tailored to modern corporate structures used by MNEs and impact investors. Additionally, adopting a collaborative and transparent approach to APA administration—including timelines, dispute resolution mechanisms, and renewal procedures—will help build trust between taxpayers and the KRA.</p> <p>Recommendation: Finalize and release APA regulations in consultation with key stakeholders such as tax professionals, multinational investors, and regional investment platforms. The regime should be aligned with international best practices, while being sensitive to Kenya's specific economic and administrative context. A well-designed APA framework will not only prevent costly audits and prolonged disputes but also send a strong signal that Kenya is committed to transparent, investor-friendly tax administration, especially as global tax rules continue to evolve.</p>
3.	Income Tax	Widened Scope of significance economic presence tax	The bill proposes widening the scope to include services offered via internet/electronic networks. It also proposes to remove the KES 5M turnover threshold for non-residents.	Widening the scope to include services offered via the internet/electronic networks is reasonable as it expands the scope of charging SEPT. However, we recommend the KES 5 million threshold be maintained for non-residents.	The amendment expanding the scope of SEPT to explicitly cover services offered through the internet or electronic networks is a positive and reasonable development. This change reflects the evolving digital economy and aligns Kenya's tax policy with global trends, particularly those informed by OECD's work on taxing the

				<p>Alternatively, we recommend:</p> <ul style="list-style-type: none"> i. Reintroduce a turnover threshold for SEPT and apply progressive rates based on company size. ii. Allow early-stage fintechs and e-commerce players a two-year sandbox exemption to build traction before tax enforcement. 	<p>digital economy under Pillar One of the BEPS framework.</p> <p>This expansion helps close loopholes where non-resident digital service providers were able to generate substantial revenue from Kenyan users without being subject to local taxation. It also creates a more level playing field between resident and non-resident providers of digital services.</p> <p>However, the effective administration of this expanded scope will require clear definitions of covered services, guidance on nexus thresholds, and investment in enforcement capacity—particularly in the tracking of digital transactions and identification of non-resident entities.</p> <p>Conversely, the removal of the KES 5 million turnover threshold for non-resident entities subject to SEPT raises concerns. Previously, this threshold served as a safeguard to exclude small or incidental providers from SEPT obligations.</p> <p>The elimination of this threshold means that even low-revenue, non-resident digital service providers may now fall within the ambit of SEPT. This change:</p> <ul style="list-style-type: none"> i. Increases the compliance burden on smaller, often start-up, digital service providers, ii. May create disincentives for market entry, particularly for SMEs testing the Kenyan market, and
--	--	--	--	---	--

					<p>iii. Risks being seen as unfair or disproportionate, particularly if enforcement mechanisms are not calibrated to the scale and nature of the provider's operations.</p>
4.	Income Tax	<p>Clarification on exemption of Special Economic Zone entities from capital gains tax</p>	<p>Clause 26 (e) of the Bill proposes to clarify that only gains on transfer of property within a Special Economic Zone (SEZ) by a licensed SEZ developer, operator or enterprise qualify for exemption from capital gains tax.</p>	<p>We recommend the deletion of this proposal in its entirety.</p>	<p>The current law does not restrict the CGT exemption solely to licensed entities within the SEZ.</p> <p>This change may discourage some non-licensed investors who have been relying on the broad exemption, potentially affecting the flow of private investment into SEZs.</p> <p>Many investors do not themselves hold SEZ licences being non-SEZ entities but act as enablers of SEZ investments through acquisition, financing, or transfer of strategic property within SEZ zones. Removing their eligibility for CGT exemption will discourage private capital inflow into SEZ-linked developments, especially at early-stage investment when SEZ projects are capital intensive.</p> <p>The proposal introduces a fundamental shift in tax treatment with potential retroactive consequences. Investors who transacted based on the existing interpretation of the law—where all transfers within an SEZ zone were exempt from CGT—may now face unexpected tax liabilities or disputes.</p>
5.	Income Tax	<p>Removal of 100% investment allowance</p>	<p>Clause 27 of the Bill proposes removing the tax incentive that provided for 100% investment</p>	<p>We recommend the deletion of this proposal in its entirety.</p>	<p>The proposal to remove the Investment Deduction Allowance (IDA) for capital investments outside Nairobi and Mombasa</p>

			<p>deductions on hotel buildings, manufacturing sites and equipment for companies that:</p> <ul style="list-style-type: none"> • invested KES 250 million or more in a year, outside Nairobi or Mombasa counties; • made cumulative investments of at least KES 1 billion in the preceding three years; or • invested in SEZs. 		<p>raises serious concerns, particularly in light of the government's stated commitment to promoting inclusive regional development. The IDA has historically served as a vital incentive for encouraging large-scale investments in less developed regions, where infrastructure gaps and the absence of auxiliary services often deter private sector activity. Eliminating this allowance risks slowing economic growth and job creation in those areas, thereby entrenching regional disparities. While the policy may appear beneficial for capital-intensive sectors such as steel—potentially favoring large players like Devki—it is unclear how such benefits will translate into broad-based socio-economic gains for ordinary Kenyans, such as small-scale traders and informal sector workers. Without a robust cost-benefit analysis, the decision appears misaligned with inclusive development priorities. It is crucial that the government conduct a detailed evaluation of the revenue forgone through the proposed changes vis-à-vis the anticipated economic impact, including whether the removal of IDA will in fact spur growth or simply displace investment to urban centers. Additionally, there should be transparency on how the government plans to offset the potential revenue shortfall—whether through increased taxation on formal sector workers or other means. Rather than abolishing the IDA, efforts should focus on understanding the underlying reasons for its low uptake, which are likely linked to the lack of supporting infrastructure and services</p>
--	--	--	---	--	--

					outside major cities. A more effective approach would be to retain the IDA while simultaneously investing in essential enablers—such as transport, energy, and ICT infrastructure—to make peripheral regions more attractive to investors. This would not only uphold the spirit of the IDA but also align with Kenya’s broader goals of spatial equity, industrialization, and inclusive economic transformation.
6.	Income Tax	Re-introduction of the limit of carrying forward of tax losses	Clause 8 (c) of the Bill amends section 15(4) that allows taxpayers to carry forward their tax losses. The Bill proposes an amendment to restrict the carrying forward of tax losses to five years. The ITA currently allows tax losses to be carried forward indefinitely.	We propose the deletion of this proposal. We recommend that the government retain the indefinite carry-forward period for tax losses, at least for startups and SMEs, to foster entrepreneurship, promote growth in high-potential sectors, and support Kenya’s broader ambitions to become a regional innovation and investment hub	The proposed limitation on the carry-forward of tax losses to five years, replacing the current provision that allows for an indefinite period, presents significant challenges—particularly for startups and venture capital (VC)-backed companies. These entities typically operate at a loss during their formative years due to heavy investments in research and development, product innovation, and market acquisition. Restricting the carry-forward period to five years would undermine their ability to offset early losses against future profits, resulting in premature and elevated tax liabilities just as they begin to achieve profitability. This not only places an undue burden on emerging businesses but also sends discouraging signals to investors, especially those in the VC ecosystem who depend on stable and predictable tax frameworks when evaluating long-term return potential. The uncertainty introduced by this proposal could therefore erode investor confidence, making Kenya a less attractive destination for early-stage and innovation-driven capital.

Departmental Committee for Finance and National Planning
28 May 2025

7.	Income Tax	Removal of preferential rate for construction of up to 100 residential units	Clause 28 (b) (ii) of the Bill proposes scrapping the 15% preferential rate for companies that construct at least 100 residential units annually.	We recommend the deletion of this proposal in its entirety.	This is a negative move as it will result in the corporation tax rate relating to the construction of residential units under large scale development projects being 30%. This has been an incentive available for developers within the affordable housing sector. It will therefore stifle the growth of the housing sector at a time when it has just begun to gain traction to bridge the housing deficit in Kenya.
8.	Income Tax	Removal of preferential rate for local motor vehicle assemblers	Clause 28 (b) (iii) of the Bill proposes scrapping the preferential CIT rate for the local motor vehicle assemblers applicable for the first five years from the commencement of operations and which can be extended for another five years.	We recommend the deletion of this proposal.	<p>This preferential rate was reinforced under the Finance Act, 2023 as part of Kenya's broader industrialisation and import-substitution strategy</p> <p>The removal of this incentive could discourage investment in Kenya's automotive assembly industry, which has been a focus area for manufacturing sector growth and local job creation.</p> <p>Investors who committed substantial capital based on the assurance of a stable 10-year incentive period are now being subjected to midstream policy reversal, potentially before they have begun to earn a return on investment.</p> <p>The expected short-term increase in tax revenue from withdrawing the 15% rate is likely to be marginal compared to the long-term economic value created by the industry through employment, downstream supply chains, and technology adoption. Tax policy should consider holistic economic outcomes beyond immediate collections.</p>

VALUE ADDED TAX					
9.	VAT	Change in VAT status of the supply of locally assembled motor vehicles for transportation of tourists.	Clauses 36 (h) of the Bill propose to change the supply locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority	We recommend the retention of the exempt status of these supplies	<p>The Tourism Research Institute, in its 2023 Annual Tourism Sector Performance Report, highlights a 34% growth of the tourism sector from 2022. This signals that the tourism sector has rebounded from the ravages of the Covid-19 pandemic and a global recession.</p> <p>The exemption was introduced as a targeted fiscal incentive to support the growth of Kenya's tourism sector and promote local vehicle assembly and advancing the local manufacturing agenda under the "Buy Kenya, Build Kenya" policy framework.</p> <p>Accordingly, the Bill's proposed standard rating of locally assembled cars for the transportation of tourists, as well as goods used in the construction of tourism facilities, seems to be counterintuitive and ill-advised, as it will increase the costs for operators in the tourism sector. Given that the sector has just recently recovered and is finally on an upward trajectory, the enactment of these proposals would risk reversing these gains, and with them, the reversal of the tourism sector's contribution to Kenya's economy. It is therefore our recommendation that this proposal should not be enacted into law.</p> <p>The exemption contributes to localisation and industrialisation goals by encouraging the purchase of vehicles assembled in</p>

					Kenya, thereby supporting job creation and technology transfer within the automotive sector.
10.	VAT	Change in VAT status of the supply of goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme.	Clauses 36 (i) of the Bill propose to change the supply of 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 from exempt to standard rate.	We recommend the retention of the exempt status of these supplies	<p>The exemption was introduced as a deliberate fiscal measure to support the Government's Affordable Housing Programme — a key pillar of the national development agenda aimed at addressing the housing deficit and improving access to decent, affordable shelter for low- and middle-income households. By exempting inputs used in the construction of approved affordable housing projects, the policy sought to lower development costs, attract private sector participation, and ultimately ensure affordability for end-users.</p> <p>Reinstating VAT on these construction inputs would have the opposite effect: it would significantly increase the cost of delivering affordable housing units, undermine pricing targets, and reduce the economic feasibility of such projects for developers. These cost increases are likely to be passed on to prospective homeowners or tenants, thereby making affordable housing less accessible to the intended beneficiaries.</p>
11.	VAT	Change in VAT status of the supply of specialized equipment for the development and generation of solar and wind energy.	Clauses 36 (k) of the Bill propose to change the supply of specialized equipment for the development and generation of solar and wind energy from exempt to standard rate.	We recommend the retention of the exempt status of these supplies	The proposal to apply standard-rated VAT to inputs used in solar, wind, and geothermal energy production is deeply counterproductive to Kenya's green transformation agenda. Such a move would likely result in a significant increase in the cost of renewable energy infrastructure, at a time when energy costs are already among the highest in the region. This shift not only undermines

					<p>efforts to transition away from fossil fuels, but also threatens to reverse progress in achieving national energy security. Maintaining zero-rated VAT on renewable energy inputs is essential to incentivize substitution of fuel-based power sources with cleaner, more sustainable alternatives. Moreover, this change could deter both domestic and international investment in Kenya’s renewable energy sector, especially as momentum is building around blended finance models to support climate-aligned infrastructure. Standard-rating VAT on these critical inputs sends a regressive policy signal just as Kenya is positioning itself as a hub for green finance and innovation.</p> <p>To mitigate these risks, it is recommended that the government reverse this decision or, alternatively, introduce green investment tax credits for projects that are demonstrably aligned with Sustainable Development Goals (SDGs) Such credits could serve as powerful incentives, particularly for attracting blended finance, provided projects clearly demonstrate financial viability and impact. These measures would also align with the draft National Green Fiscal Incentives Policy Framework, which envisions a suite of tools—including carbon taxes, subsidies, tax exemptions, green banks, concessional loans, and ecological fiscal transfers—to support a low-carbon, climate-resilient economy. The government should also ensure that renewable-focused startups and SMEs are</p>
--	--	--	--	--	---

					explicitly included in any tax exemption or credit schemes, thereby promoting innovation and expanding off-grid connectivity through decentralized renewable installations. Overall, aligning fiscal policy with Kenya's green development goals is critical to sustaining momentum toward a just and inclusive energy transition.
12.	VAT	Change in VAT status of the supply of inputs and raw materials used in the manufacture of passenger motor vehicles and locally manufactured passenger motor vehicles	Clauses 36 (k) of the Bill propose to change the supply of inputs and raw materials used in the manufacture of passenger motor vehicles and locally manufactured passenger motor vehicles from exempt to standard rate.	We recommend the retention of the exempt status of these supplies	<p>The exemption was introduced as a strategic incentive to stimulate local vehicle manufacturing, support industrialisation, and reduce Kenya's dependence on imported vehicles. It aligns with the government's "Buy Kenya, Build Kenya" initiative, which aim to promote value addition, create employment, enhance skills transfer, and build a globally competitive automotive industry.</p> <p>Removing the exemption would raise production costs for local manufacturers and increase the final cost of locally assembled vehicles, making them less competitive against imported alternatives. This would not only discourage investment in local assembly plants but also risk reversing the gains made in nurturing the domestic automotive value chain.</p>
13.	VAT	Exempting supply of motorcycles, electric bicycles and electric buses	Clause 36 (p) of the Bill proposes to exempt supply of motorcycles, electric bicycles and electric buses that was introduced through Finance Act, 2023 as zero-rated supplies	<p>We recommend the deletion of this proposal. Alternatively, we recommend the following:</p> <p>i. Reinstate favorable tax rates for EV-related manufacturing to keep EV costs low for consumers and</p>	The proposal to exempt the sale of electric bicycles and buses from VAT may appear beneficial on the surface—particularly from a consumer affordability standpoint—but it poses several negative long-term implications for the growth and sustainability of the local electric mobility sector. Most critically, the exemption status means that businesses involved in the sale of these

				<p>align with Kenya's climate commitments of promoting cleaner transportation options.</p> <p>ii. Adopt a green transition pathway that scales fiscal incentives based on emissions reduction and local content, similar to Tanzania's CRDB Bank and NMB Bank bond frameworks. For example, International Finance Commission (IFC) Invested \$20M USD in CRDB Bank's First Green Bond to Finance Climate-friendly Development in Tanzania in 2023. IFC's support includes a performance-based incentive from the UK-IFC Market Accelerator Program for the Green Construction program to help cover the costs associated with greening Tanzania's affordable housing developments. At least 40% of IFC's bond investment will be dedicated to supporting green buildings. Such</p>	<p>vehicles will not be able to claim refunds on input VAT incurred on their purchases and related operational expenses. This breaks the input-output VAT chain, increasing the effective cost of doing business and discouraging investment in the local assembly and distribution of electric vehicles (EVs). For a sector that is still nascent and requires significant capital outlay—especially among local vehicle assemblers—this policy design could undermine growth, discourage market entry, and limit the development of a domestic EV manufacturing ecosystem. Furthermore, the shift from zero-rating to exemption has negative fiscal consequences in the long run: while it may temporarily lower consumer prices, it erodes the tax base and reduces overall tax income over time, particularly as the sector scales. From a developmental perspective, exempting electric bicycles and buses without corresponding input relief runs counter to Kenya's ambitions for green industrialization, climate action (SDG 13), and sustainable urban transport (SDG 11). Rather than shifting to an exemption model, the government should consider retaining zero-rated VAT status or introducing targeted VAT refund mechanisms for manufacturers and dealers of electric vehicles. This would ensure that the tax system supports, rather than stifles, local innovation and private sector participation in the green transport transition. A consistent, forward-looking fiscal policy is essential to stimulate investment, generate skilled jobs, and promote Kenya as a hub for sustainable mobility solutions in the region.</p>
--	--	--	--	--	---

				initiatives can be mirrored in the EV industry and potentially become key growth drivers of these industries.	
EXCISE DUTY					
14.	Excise Duty	Imposition of Excise Duty on services provided by non-residents through a digital platform.	Clause 22 of the Bill proposes to charge Excise Duty on excisable services offered in Kenya by a non-resident through a digital platform and mandates the payment to be made by the non-resident person offering the service.	We propose the complete deletion of this clause	<p>This proposal could be viewed as excessive, particularly for non-residents funds with no PE in Kenya, since their services are still subject to tax under other regimes such as Withholding Tax, Digital Service Tax and the proposed SEP tax.</p> <p>Regionally, we also note that none of our neighbours in the EAC have imposed excise duty on digital services therefore Kenya may drive itself out of benefits derived from non-resident's digital services. Accordingly, we aver that this proposal, which would be unfair and difficult to enforce if enacted, should be dropped from the Bill.</p>
TAX PROCEDURES					
15.	Tax Procedures	Enforcement mechanisms to non-residents	The Bill proposes to empower the Commissioner to be able to issue agency notices to non-residents.	We recommend that the Commissioner to publish clear guidelines on the enforcement mechanisms applicable to non-resident entities subject to tax obligations under Kenyan law.	While the inclusion of non-residents is a necessary step to enhance compliance in an increasingly digital and cross-border economy, there is currently no clarity on how these enforcement powers will be exercised against non-resident entities with no physical presence in Kenya.

					<p>This ambiguity creates legal uncertainty, increases compliance risk for affected entities, and may lead to disputes over jurisdictional overreach or procedural fairness. Additionally, the absence of clear enforcement modalities may undermine the effectiveness of the intended policy, as non-resident taxpayers may not understand their obligations or how enforcement will be carried out.</p> <p>To ensure legal certainty, transparency, and fairness, the Commissioner should be required to develop and publish detailed regulations or guidelines outlining:</p> <ul style="list-style-type: none"> i. The legal basis for cross-border enforcement; ii. Mechanisms for mutual administrative assistance or cooperation with foreign jurisdictions; iii. Procedural safeguards for non-resident taxpayers; iv. Available remedies or appeals in cases of enforcement action. <p>Providing such clarity will not only promote voluntary compliance but also enhance Kenya's credibility and consistency in international tax matters, aligning with global best practices under frameworks such as the OECD's Base Erosion and Profit Shifting (BEPS) initiatives.</p>
--	--	--	--	--	---

Departmental Committee for Finance and National Planning
28 May 2025

16.	Tax procedures	Commissioner to issue agency notices even when a taxpayer has lodged an appeal.	Clause 47 proposes to delete the provision which restricts the Commissioner from issuing agency notices to a taxpayer even where a taxpayer has lodged an appeal on the disputed tax either at the Tax Appeals Tribunal or in Court.	We recommend that the proposal be deleted in its entirety.	<p>The deletion of this restriction would grant the Commissioner powers to enforce collection of disputed taxes even while the matter is still under appeal, effectively undermining the taxpayer's right to due process and appeal. It would subject taxpayers to premature enforcement action, without the benefit of an independent determination on the merits of the case and limit the taxpayer's right to access justice. This could lead to serious cashflow constraints and potentially irreversible harm—especially where the tax is ultimately found not to have been due. The timing is also wrong considering the current problematic scenario of lack of cash for refunds.</p> <p>Separately, the process could be abused without giving the taxpayer access to recourse especially where tax assessments are grossly overstated and erroneous.</p>
17.	Tax procedures	Extension of tax refund/offset processing timelines.	Clause 50 proposes extending the period within which the Commissioner must determine an application for offset or refund of overpaid tax from 90 days to 120 days.	We propose to retain the current timeline of 90 days.	<p>Delays in processing tax refunds or offsets can place significant financial strain on taxpayers, particularly SMEs, exporters, and capital-intensive businesses that depend on prompt VAT or income tax refunds to maintain their cash flow and meet operational obligations.</p> <p>Extending the statutory refund period from 90 to 120 days would further increase this strain, leading to tighter liquidity positions. At a macroeconomic level, such delays constrain the circulation of funds within the</p>

					economy, potentially slowing down business activity and investment, thereby undermining broader economic growth objectives.
18.	Tax procedures	Extension of refund audit timelines.	Clause 50 proposes extending the timeline for determining the application from 120 days to 180 days in cases where a tax refund application is subjected to an audit	<p>We propose that Clause 50 be deleted to retain the 120-day period as the general maximum.</p> <p>Alternatively, if an extension is considered necessary, the provision should:</p> <ul style="list-style-type: none"> a) Limit the extended period to an additional 30 days (total 150 days), and b) Require the Commissioner to notify the taxpayer in writing within the initial 120 days, specifying: <ul style="list-style-type: none"> i. That the refund is under audit, ii. The reason for the extension, and iii. The expected timeline for completion. 	<p>Extending the refund determination period from 120 days to 180 days in audit cases poses significant challenges to taxpayers and undermines the principles of fair tax administration and efficient revenue management.</p> <p>Timely refunds are critical to taxpayer cash flow, particularly for businesses operating on thin margins, and any prolonged delay can disrupt operations and discourage compliance. Moreover, an open-ended or extended timeline erodes predictability and certainty—key pillars of Kenya’s tax policy framework that are essential for fostering investor confidence and voluntary compliance.</p> <p>The proposed extension also creates the risk of arbitrary or excessive delays, especially where no statutory safeguards or obligations exist to require the Commissioner to justify or communicate such delays. A more balanced approach would be to retain the 120-day limit or allow only a modest, conditional extension—subject to written notice and justification by the Commissioner—to protect taxpayer rights while preserving administrative flexibility.</p>
19.	Tax procedures	Removal of restriction on data sharing relating to trade secrets and customer information	Clause 52 proposes to remove the current limitation on the KRA from requiring a person to integrate or share data relating to trade secrets	We propose to delete this clause in its entirety.	The proposed waiver allowing the sharing of trade secrets and personal data raises significant concerns. From a data protection standpoint, such a waiver

			and private or personal data held on behalf of customers or collected in the course of business	<p>Alternatively, if Clause 52 is retained, the law should be amended to provide that:</p> <ul style="list-style-type: none"> i. The Commissioner may only require access to personal or commercially sensitive data subject to a judicial warrant or Tribunal order; and ii. The request must be proportionate, specific, and justifiable, with strict safeguards against misuse or unauthorized disclosure. 	<p>appears to conflict with the safeguards established under the Data Protection Act, 2019. The Act imposes strict conditions on the collection, processing, and disclosure of personal data, including the principles of necessity, proportionality, and purpose limitation. Any provision that purports to waive these protections without a compelling legal basis or adequate safeguards undermines the statutory regime.</p> <p>From a commercial perspective, the blanket waiver of confidentiality over trade secrets is equally problematic. Trade secrets are often critical to a business's competitive advantage, and their disclosure—especially without clear justification, limited scope, or procedural safeguards—poses a substantial risk to proprietary interests. The lack of clarity around the criteria under which the Commissioner may access or require such information only exacerbates these risks, specifically, for foreign capital providers may be particularly concerned about the treatment of sensitive business information and compliance with international data transfer standards.</p>
--	--	--	---	---	---

Other Proposals:

1. **A coherent startup and blended finance strategy-** To enhance Kenya's competitiveness as a hub for innovation and investment, we propose the introduction of a dedicated Kenya Startup Act, drawing lessons from successful models across the continent. Such legislation should establish clear legal definitions for startups, provide targeted tax incentives, and facilitate access to blended finance instruments tailored to early- and growth-stage companies. The Act should also embed protections for foreign investors and introduce graduated investment thresholds, particularly for startups seeking to benefit from preferential corporate tax rates under NIFCA certification. In parallel, Kenya must pursue regulatory alignment within the region's capital markets by formally recognizing venture capital fund structures, the use of Special Purpose Vehicles (SPVs), and convertible instruments, all of which are critical tools for modern startup financing. Without founder-friendly, investor-transparent, and blended-finance-compatible reforms, Kenya risks being outpaced by regional peers such as Rwanda, Ethiopia, and Tanzania, all of which are aggressively updating their private equity and venture capital regulations, digital economy policies, and green investment frameworks to attract global capital and foster entrepreneurial ecosystems.