



KENGEN'S SUBMISSION TO NATIONAL ASSEMBLY'S DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING ON THE FINANCE BILL 2025

MAY 2025

NO.	Clause	Description of the Clause	Proposal	Justification
A. INCOME TAX				
1.	Clause 8(c)	Capping of carry forward losses to 5 years	We propose that the clause be deleted in full	<p>The Capping of losses to five years will have a significant impact on the capital-intensive businesses and industries such as manufacturing and energy. Such industries incur losses in the early years of operation due to the high investment and slow turning of profits. However, since they are long-term investments, the benefits/profits will be realized in later years and over a long period.</p> <p>KenGen incurs huge costs in setting up power plants and given that electricity tariffs are highly regulated, allowing carry forward of tax losses ensures that KenGen's profits will continue being cushioned from immediate payment of corporation tax. This enables the use of funds to pay other commitments such as repayment of loans, and this will go a long way in ensuring that affordable electricity is supplied to the economy.</p> <p>Therefore, we propose the deletion of clause 8(c) of the Finance Bill 2025 to retain the indefinite carry forward of losses.</p>
2.	Clause 27	Removal of 100% Capital Allowance incentive outside Nairobi City County and Mombasa City County	We propose that the clause be deleted in full	<p>Provision of 100% Capital allowances outside the Counties of Nairobi and Mombasa encourages companies to set up investments in non-urban areas uplifting the economic prospects of such places.</p> <p>KenGen has continued to incur very high capital expenditure in putting up power plants for generation of electricity. Most of KenGen's power plants are outside the city of Nairobi and Mombasa. Examples include Olkaria geothermal power plants, Sondu Miriu, Seven Folks hydro power plants, and Ngong wind farm. For these investments, KenGen is granted investment allowance under the Second Schedule to the Income Tax Act at the rate of 100% of the capital expenditure.</p> <p>The removal of this tax incentive will impede the economic multiplier effects such as employment and social infrastructural development that result from setting up projects outside major cities. This is because funds that could have been used for</p>

NO.	Clause	Description of the Clause	Proposal	Justification
				<p>expansion purposes will be diverted to paying corporation taxes for the existing projects.</p> <p>KenGen's major projects are set up in areas outside the major cities. Therefore, the tax change will curtail delivery of projects as the available tax incentive supported KenGen's mandate of supplying electricity at an affordable tariff for the benefit of the economy. We therefore propose deletion of Clause 27 of the Finance Bill to retain 100% Capital Allowances.</p>
B. VALUE ADDED TAX				
3.	Clause 36(b)	Removal of VAT exemption of fuels, lubricants and tyres for vehicles used in the implementation of official aid funded projects.	We propose that the clause be deleted in full	<p>The Bill proposes to impose VAT at a standard rate of 16% on fuels, lubricants and tyres supplied to official aided funded projects. Currently, these products are VAT exempt when supplied in the implementation of these projects.</p> <p>The removal of the exemption will increase the cost of delivery of the projects that are for public interest such as development of energy projects.</p> <p>In the energy industry, the costs of the projects are passed through to the final consumers through the electricity tariffs. The increased tariffs will make the already uncompetitive tariffs higher, which will inhibit investment and economic recovery.</p>
4.	Clause 36 (i)	Removal of exemption of goods used in Geothermal Prospecting.	We propose that the clause be deleted in full	<p>The Bill proposes to impose VAT at 16% on goods purchases locally or imported used for Geothermal Prospecting at a standard rate with a transition period valid up to 30th June 2026 for exemptions already granted.</p> <p>The cost of geothermal prospecting is huge, and power producers finance the projects through debt facilities. The removal of the exemption will lead to cash-flow constraints. Further, the introduction of VAT will increase the cost of geothermal prospecting which in turn will increase the cost of power since these costs are incorporated in the electricity tariff.</p> <p>Removal of VAT exemption will reverse the gains obtained through the Government's agenda of achieving 100% green energy. We therefore propose deletion of Clause 36(i) of the Finance Bill.</p>
5.	Clause 36(j)	Removal of Exemption of specialized equipment for the	We propose that the clause be deleted in full	The introduction of the VAT on Investment in Wind and Solar energy will inhibit the investment in these green energy sources potentially delaying Kenya's commitment

NO.	Clause	Description of the Clause	Proposal	Justification
		development and generation of solar and wind energy.		<p>to transition to 100% green energy by 2030 as pledged in the inaugural African Climate Summit hosted by Kenya in September 2023.</p> <p>KenGen joined the UN-backed global campaign to combat global warming, becoming the first public service agency in Kenya company to do so. By committing to this ambition, KenGen is expected to establish emission reduction targets through investments in green and clean energy that will go a long way in limiting the earth's warming to 1.5°C as per the Paris Agreement of 2015. The introduction of VAT on solar and wind energy will dampen this ambition.</p> <p>Further, the introduction of VAT will increase the cost of constructing power plants which in turn will increase the cost of power since these costs are incorporated in the electricity tariff.</p> <p>We propose that this clause is deleted to safeguard the gains achieved in the development of green energy.</p>
C. TAX PROCEDURES ACT				
6.	Clause 47(m)(v)	Issuance of agency notices against a filed appeal.	We propose that the clause be deleted in full	<p>This proposal empowers the Commissioner to issue agency notices in recovery of taxes from third parties owing a taxpayer despite the taxpayer appealing against the tax decision at the Tribunal or Court.</p> <p>We propose that this clause is deleted as it violates the rights of taxpayers to justice and it assumes that the rights to justice end at the Tribunal.</p>

CONTACTS

KenGen Pension Plaza II Kolobot Road, Parklands

P. O. BOX 47936, 00100, Nairobi

TEL:

+254 711 036-000

+254 732 116-000

+254 020 366-6000

Email: tax@kengen.co.ke