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The Chairman,
Committee on Finance and National Planning,
First Floor, Main Parliament Building,
P.O. Box 41842 – 00100,
Nairobi, Kenya.

30 May 2025

Attention: Clerk to the National Assembly

Dear Sir/Madam,

SUBMISSIONS ON THE FINANCE BILL, 2025

The above matter refers.

Pursuant to article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Departmental Committee on Finance and Planning is considering the Finance Bill, 2025 and we hereby submit our proposals in the enclosed memoranda for your consideration.

Our proposals outline several key tax issues within Finance Bill 2025 (the Bill) which we urge the committee to thoroughly scrutinize. We advocate for tax proposals that support and enable businesses to grow and prosper, rather than stifle the businesses with the proposed amendments to the Income Tax Act (Cap 470), Value Added Tax Act (Cap 476), Excise Duty Act (Cap 472), Miscellaneous Fees and Levies Act (Cap 469C), the Tax Procedures Act (Cap 469B) and the Stamp Duty Act (Cap 480).

We appreciate the opportunity to present our proposal and would be pleased to appear before the committee to further support and discuss our recommendations.

Yours faithfully,

For: SKM Africa LLP

Karaya Mokaya
Managing Partner

Proposed Amendments to the Income Tax Act				
	Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification
1.	Section 2 of the Finance Bill, 2025	<p>The Bill proposes to amend Section 2 of the Income Tax Act ("ITA") and expand the definition of royalty to include payments for the distribution of software where regular payments are made for the use of the software through the distributor.</p> <p>The proposed definition seeks to expand the ambit of royalty to all software-related payments and subject them to Withholding Tax ("WHT").</p>	Delete the clause.	<p>The proposed amendment contravenes international best practices, particularly Article 12 of the Organization for Economic Cooperation and Development Model ("OECD") Tax Convention Model, that require payment to be subjected to WHT if made for consideration for rights to the software's underlying Intellectual Property ("IP") rights.</p> <p>The amendment will increase the cost of doing business, as the additional tax burdens are likely to be passed on to the final consumer, ultimately affecting market competitiveness and economic growth.</p> <p>It is our submission that regular payment made to software distributors for use of software should not be subjected to WHT.</p>
2.	Section 8 of the Finance Bill, 2025	The Bill proposes to amend Section 15(4) of the ITA to introduce limitation of the period on the utilization of tax losses to 5 years.	Amend the clause to provide allow for extension of tax loss utilization period beyond the 5-year limit	<p>The proposal to cap utilization of tax losses to 5 years is detrimental to businesses with long investment cycles and huge capital-intensive investments where the businesses will not have broken even to recover the huge expenditure within 5 years resulting in forfeiture of unutilized losses beyond the 5-year period, potentially increasing their tax liability and reducing overall post-tax profitability. The proposal will potentially discourage long-term investment and affect cash flow planning for affected entities.</p> <p>Additionally, the Bill is silent on the provision to allow for extension to utilize tax losses beyond the 5-year limit. Further, we also note that the proposed amendment does not have a transitional provision for losses that may have arisen in prior years.</p>

3.	Section 27 of the Finance Bill, 2025	The Bill proposes to amend the Second Schedule to the ITA and repeal 100% and 150% investment allowances on capital expenditure outside Nairobi City County and Mombasa County.	Delete the clause.	<p>The proposed amendment will negatively affect capital investments in a special economic zone ("SEZ") and outside of Nairobi and Mombasa counties, which may have been undertaken in anticipation of recovering the cost in the first year from a tax perspective.</p> <p>Investors will no longer be economically motivated to absorb the higher costs of investing outside Nairobi and Mombasa counties if this proposal is enacted, leading to a significant negative impact on investment in those regions.</p>
4.	Section 28 (b)(ii) and (iii) of the Finance Bill, 2025	The Bill proposes to amend the Third Schedule to the ITA and repeal the preferential tax rate of 15% applicable to housing developers engaged in construction of at least 100 residential units in a year.	Delete the clause	<p>The proposed amendment to revoke the preferential tax rates will negatively impact investment and disincentivize potential investors in the real estate sector. The proposal deviates from the Government's agendas of the affordable housing program to meet the housing need for the citizens.</p> <p>We propose that the preferential income tax rate of 15% to companies that construct 100 residential units is retained. The right to housing is embedded in the Constitution of Kenya, which provides that every person has the right to accessible and adequate housing. With Kenya's growing economy and one of the fastest-growing urbanisation rates in the continent, the demand for housing has never been greater. In this regard, the government introduced the preferential income tax rate of 15% to companies that construct 100 residential units with the intent to facilitate the production of decent, safe and affordable housing for citizens of Kenya.</p> <p>Certainty is a key tenet in taxation. Investors who had already commenced construction and sale of residential units on the expectation that they will enjoy the reduced corporate income tax rate will incur losses since the determination of the selling price was premised on the availability of the reduced corporate income tax rate of 15%. As such, we appeal that the provision be retained or at worst there be a transition clause that allows investors at least 2 years from the effective date of the proposed amendment so that investors who had taken the incentive to take advantage of the same and thus avert a crisis or investors dumping ongoing projects because of viability. This is critical in earning the trust of investors on predictability and certainty of tax laws.</p>

Proposed Amendments to the Value Added Tax Act				
	Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification
1.	Section 36 of the Finance Bill, 2025	<p>The Bill proposes to amend Part I of the First Schedule to the Value Added Tax Act ("VAT Act") to repeal VAT exemption on the following priority sectors:</p> <ul style="list-style-type: none"> i) Taxable goods for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of 50, approved by the Cabinet Secretary. ii) Taxable goods for direct and exclusive use in the construction of tourism facilities, recreational parks of 50 acres or more, and convention and conference facilities (upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks) iii) Taxable goods imported or purchased locally for direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing. iv) Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority 	Delete the clause affecting priority sectors	<p>The proposal to impose VAT on these goods purchased or imported to use in these critical sectors such as tourism, energy, housing and healthcare will lead to an increased cost as the VAT will be passed to the final consumers.</p> <p>The proposal goes against the government's efforts to promote these sectors and further discourage investors in the affected sectors.</p>

		<p>responsible for tourism promotion</p> <p>v) Taxable goods, excluding motor vehicles, that are imported or purchased for direct and exclusive use in geothermal, oil, or mining prospecting or exploration by companies granted relevant licenses under the Energy Act (Cap. 314), the Petroleum Act (Cap. 308), or the Mining Act (Cap. 306), upon the recommendation of the Cabinet Secretaries responsible for energy, petroleum, or mining, as applicable.</p> <p>vi) Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters, and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.</p>		
2.	Section 37 of the Finance Bill, 2025	<p>The Bill proposes to amend the Second Schedule to the VAT Act and subject the following supplies to VAT exemption:</p> <p>i) Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for the manufacturing of medicaments will be subject to approval from time to time by the Cabinet Secretary, in consultation with</p>	Delete the clause to retain zero-rated status	<p>The proposed change in status of these goods from zero rated to exempt means that the suppliers of these goods will not be able to claim the input VAT incurred in the production of these goods.</p> <p>The cost of the goods is likely to increase as the suppliers will now absorb the input VAT incurred. Additionally, these suppliers will not be entitled to claim any refunds arising from excess VAT input as they currently do.</p>

		<p>the Cabinet Secretary responsible for matters relating to health.</p> <p>ii) Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for Agriculture.</p> <p>iii) Transportation of sugar from farms to milling factories.</p> <p>iv) The supply of locally assembled and manufactured phones.</p> <p>v) The supply of motorcycles of tariff heading 8711.60.00.</p> <p>vi) The supply of solar and lithium-ion batteries.</p> <p>vii) The supply of electric buses of tariff heading 87.02.</p> <p>viii) Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).</p>		
Proposed Amendments on the Excise Duty Act				
	Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification
1.	<p>New Provision</p> <p>Deletion of the following paragraph under Part I of the First Schedule to the Excise Duty Act and substitution with the following paragraph:</p> <p>Proposed deletion:</p> <p><i>plastic of tariff heading 3923.30.00 and 3923.90.90</i></p>	Excise duty on locally manufactured plastics	Amend the Excise Duty Act for removal of excise duty on locally manufactured articles of plastics	<p>Currently, the Excise Act imposes excise duty on both locally manufactured and imported articles of plastic.</p> <p>Over 90% of household consumables in Kenya are packed in plastic containers.</p> <p>Among the key costs in plastics production/manufacturing is electricity. Unlike other countries that export plastics to Kenya, electricity cost in Kenya is significantly high and thus holding all other factors constant, local manufacturers of plastic cannot compete with imported plastics in terms of pricing.</p> <p>The electricity cost factor is further compounded by the imposition of excise duty on locally produced plastics which has increased the cost</p>

	Proposed substitution: <i>Imported plastic of tariff heading 3923.30.00 and 3923.90.90</i>			of locally manufactured articles of plastic further and thus making imported plastics cheaper and thus more viable for users of plastics If adopted, the proposal is likely to: <ul style="list-style-type: none"> i. Protect and grow local industry ii. Create more jobs and avert exporting jobs to other countries iii. Cushion consumers of plastics from high prices grow our GDP and protect our forex reserves.
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Proposed Amendments on the Tax Procedures Act

	Clause in the Finance Bill, 2025	Description of the clause	Our Proposal	Justification
1.	Section 47(m)(v) of the Finance Bill, 2025	The Bill proposes to amend Section 42 of the Tax Procedures Act ("TPA") to allow the Commissioner to issue an agency notice where a taxpayer has appealed against an assessment specified in a decision of the Tax Appeals Tribunal (TAT) or court of law.	Delete the clause	<p>The proposed amendment will empower the Commissioner to issue agency notices to taxpayers pending determination of an appeal before the High Court. Further, the Commissioner may misuse the provision to enforce adverse judgements against taxpayers resulting in cashflow constraints for taxpayers.</p> <p>Additionally, taxpayers will have challenges in recovering money paid to KRA after successful appeal before the High Court.</p>
2.	Section 52 of the Finance Bill, 2025	The Bill proposes to amend Section 59A of the TPA to allow the Commissioner to access trade secrets and private or personal data held on behalf of customers or collected in the course of business from taxpayers.	Delete the clause	The proposal will pose a huge risk in privacy and data protection rights of Kenyans. The Constitution protects an individual's right to privacy and any exemptions from this would need to be reasonable and justifiable. Further, confidentiality is a key cornerstone of professional ethics and deviating from this could erode trust between professionals and clients while at the same time negatively impacting fundamental rights and freedoms.
3.	Section 54 of the Finance Bill, 2025	The Bill proposes to amend Section 77 of the TPA to exclude Saturdays, Sundays and public holidays when computing the timeframes for lodging a tax objection or appeals to the TAT, High Court, or the Court of Appeal.	Delete the clause	<p>The proposal will reduce the time available to taxpayers to prepare and submit objections or appeals resulting in unfavorable ruling due to insufficient documentation and support for the appeal.</p> <p>Further, the amendment to exclude weekends and public holidays was introduced by the Tax Procedures (Amendment) Act, 2024 and therefore the taxpayers have not enjoyed the benefit.</p>