

Memorandum to the National Assembly on Finance Bill 2025

May 2025



Att. Samuel Njoroge

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

Email: clerk@parliament.go.ke

23 May, 2025

Dear Sir,

RE: Memorandum to the National Assembly on Finance Bill 2025

We refer to the Finance Bill 2025 which intends to introduce a myriad of proposals for changes in the tax laws with a view of streamlining and cleaning up of various provisions in the tax acts.

Further to the publication of the bill on 6th May 2025, the amendments aim at amending the following Acts: Income Tax Act, the Value Added Act, the Excise Duty Act, Miscellaneous Fees, and Levies Act, the Tax Procedures Act among others.

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Further to the invitation for the submissions concerning ongoing public participation on the Finance Bill, we are glad to share our submissions concerning a few provisions which we believe could adversely affect the tax administration.

These include:

- a. Proposed changes in the Income Tax Act;
- b. Proposed changes in the Value Added Tax; and
- c. Proposed changes in the Excise Duty Act
- d. Proposed changes in the Miscellaneous Fees and Levies Act
- e. Proposed changes in the Tax Procedures Act

Income Tax Act

No.	Clause	Description of the Clause Proposal	Justification
01	<i>2. Section 2 of the income Tax Act is amended - (iii) in paragraph (b) of the definition of “royalty”, by adding the words “and includes the distribution of software where regular payments are made for the use of the software through the distributor” immediately after the words “support fees”</i>	<p>This clause proposes to include “the distribution of software where regular payments are made for the use of the software through the distributor” in the definition of royalty.</p> <p>The proposal should provide clarity on applicability of withholding taxes on payments to resident distributors and non-resident legal owners of the software. This is likely to increase compliance burden and erosion of economic benefits.</p>	This creates legal uncertainty, as it blurs the line between royalties for the intellectual property and routine payments for software access or services by conflating the two. It could potentially result into double taxation.
02	<i>3. Section 5 of the Income Tax Act is amended in item (iii) of the proviso to subsection (2)(a), by deleting the words “two thousand shillings” and substituting therefor the words “ten thousand shillings”</i>	<p>The clause proposes to increase the allowable cash benefit limit from KES 2,000 to KES 10,000 on amount received by an employee as reimbursement in respect of a period spent outside his usual place of work while on official duties.</p> <p>This proposal should be adopted. It provides relief to employees since this is commensurate with the current economic conditions and increased cost of living.</p> <p>We propose the commissioner to reconsider earlier provision by the finance bill 2024 to increase the tax free per diem allowance from KES 2,000 to no more than 5% of an employee’s monthly gross earnings.</p> <p>Similarly, this policy should be aligned to the tax free per diem allowance in the public sector to promote tax equity.</p>	<p>This provides financial relief to employees on the rising cost of living and inflation.</p> <p>Similarly, this higher threshold minimizes the need for excessive documentation and claims for minor expenses.</p> <p>That in the interest of equality and fairness the policy for public employees and private sector employees should be harmonised.</p>
03	<i>5. Section 10 of the Income Tax Act is amended in subsection (1), by adding the following new paragraphs immediately after paragraph (k)—(l) supply of goods to a public entity; (m) sale of scrap.</i>	<p>The clause proposes to include payments for the sale of scrap and supply of goods to a public entity under the ambit of withholding tax.</p> <p>This proposal should be adopted to align with section 35 of the Income Tax Act that provides clarity that income from such supplies and sale of scrap is subject to WHT tax.</p>	This will cure legal lacuna between the taxing Section 10 and enforcing Section 35 of the ITA.

No.	Clause	Description of the Clause Proposal		Justification
04	6. Section 12E of the Income Tax Act is amended—(a) in subsection (1), by inserting the words “the internet or an electronic network including through” immediately after the words “carried out over”;	The clause proposes to expand the scope of significant economic presence tax to include business carried out over the internet or an electronic network including through a digital marketplace	This proposal should be adopted to provide clarity to taxpayers subject to SEP Tax with respect to income earned through digital platforms.	Many multinational digital companies generate substantial revenue in jurisdictions where they lack a physical presence, avoiding tax liabilities. By including digital transactions under SEP tax, government will net in more revenue by ensuring these businesses pay taxes where they economically operate, not just where they are physically located.
05	6. Section 12E of the Income Tax Act is amended—(b) in subsection (3), by deleting paragraph (d).	The clause proposes to delete the provision exempting non-resident persons with an annual turnover of less than KES 5 million from Significant Economic Presence Tax.	This proposal should be dropped entirely since it will increase compliance costs for non-resident persons with minimal turnover and may potentially discourage businesses from providing digital services in the Kenyan market.	The exemption was introduced to avoid overburdening small-scale foreign businesses and digital service providers operating in Kenya since the cost of compliance may outweigh the economic benefits, making the tax inefficient. Higher compliance costs compared to the economic benefits realised may discourage foreign micro-businesses and startups from engaging with the Kenyan market.
06	7. Section 12G of the Income Tax Act is amended by inserting the following new subsection immediately after section (3)— (3A) Minimum top-up tax shall be payable by the end of the fourth month after the end of the year of income.	This clause proposes that taxpayers eligible for minimum top-up tax will be required to make payment by the end of the fourth month after the end of the year of income.	This proposal should be adopted.	This brings clarity on the due dates for payment of minimum top up tax introduced by the Tax Laws Amendment Act 2024, thus clarity on compliance requirements.

No.	Clause	Description of the Clause	Proposal	Justification
07	<p>8. Section 15 of the Income Tax Act is amended—(a) in subsection (2)—</p> <p>(i) by deleting paragraph (g) and substituting therefor the following new paragraph—</p> <p>(g) the amount considered as representing the diminution in value of any implement, utensil or similar article, employed in the production of gains or profits, not being machinery or plant in respect of which a deduction may be made under the Second schedule, at a rate of one hundred per cent in that year of income”;</p>	The clause clarifies on the percentage rate of allowance on any implement, utensil or similar article, employed in the production of gains or profits, not being machinery or plant deductible under the second schedule at 100% in that year of income.	This proposal should be adopted as it brings clarity to the actual capital allowances claimable on the non-machinery items by taxpayers.	This supports SMEs, farmers and manufacturers with limited capital that often rely on basic tools and implements for daily operations. Additionally, this simplifies tax compliance as it would be difficult to track depreciation over multiple years thereby increasing administrative burden .
08	<p>8. Section 15 of the Income Tax Act is amended—(a) in subsection (2)— (v) in paragraph (w), by inserting the words “expenditure incurred in the construction of a public sports facility” immediately after the word “Act”;</p>	The clause proposes to allow tax deduction of expenditure incurred in the construction of a public sports facility in such year of income.	This proposal should be adopted as it incentivizes taxpayers to contribute to the development of public sports facilities.	<p>This will encourage private investment in sports and sporting infrastructure thereby reducing reliance on strained government budgets.</p> <p>This development will create sustained revenue streams from tournaments, sport events hosted in Kenya that will ultimately lead to local business development.</p>
09	<p>8. Section 15 of the Income Tax Act is amended— (a) in subsection (2)—</p> <p>(vi) by deleting paragraph (z);</p>	This clause proposes deletion of the current provision allowing deduction of expenditure incurred by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports.	This proposal should be dropped in its entirety as this will discourage private sector investment in sports development in the country.	This undermines private investors contribution towards sports development which also contradicts government’s sports promotion agenda through the Sports Act that emphasizes private sector partnerships in sports development.

No.	Clause	Description of the Clause	Proposal	Justification
10	8. Section 15 of the Income Tax Act is amended-(b) in subsection (3)— (ii) by deleting paragraph (f);	The clause proposes to delete the provision that allows taxpayers to deduct any capital loss realized in accordance with the provisions of the Eighth Schedule against any future capital gains realized.	This proposal should be discarded since it restricts taxpayers from carrying forward any losses incurred on transfer of property against future gains.	This will create tax inequity where capital gains realized are taxed while capital losses cannot be deducted. This unfairly penalizes taxpayers for losses outside their control. While this proposal appears to increase short term collection, it will automatically dampen overall investment activities and create tax distortions through aggressive tax planning such as delaying property sales to avoid loss realization now and preferring short term speculative trades over long-term investments. The commissioner should consider adopting different policies that prevents abuse while preserving economic efficiency.
11	8. Section 15 of the Income Tax Act is amended- (c) in subsection (4), by inserting the word “five” immediately after the word “succeeding”;	The clause proposes to limit carryover of tax losses back to 5 years.	This proposal should not be adopted in its entirety. Businesses with substantial capital expenditure incur huge tax losses, the utilisation of which can take longer, especially if the business does not generate adequate profits within the 5 years.	The government should maintain flexible tax loss relief rules to support Kenya’s private sector and economic ambitions from taxpayers. Such proposals threaten business viability, discourages investments and hampers economic resilience especially for capital-intensive projects taking more than 5 years to be commercially viable. This doesn't foster growth-oriented tax reforms.
12	11. Section 18D of the Income Tax Act is amended—(a) in subsection (8), by deleting the words “as a surrogate parent entity” and substituting therefor the words “to file a country-by-country report and notify the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify”	The clause proposes to provide clarity on CbCR filing where there are more than one constituent entities of an MNE who are resident in Kenya, by stating that the MNE Group may designate one of the entities to file a CbCR in Kenya.	This proposal should be adopted to bring clarity on the obligations of filing of CbCR in Kenya for resident entities.	This aligns Kenya with international tax transparency standards by clarifying filing process, making Kenya’s tax regime more predictable easing tax compliance.

No.	Clause	Description of the Clause	Proposal	Justification
13	11. <i>Section 18D of the Income Tax Act is amended—(b) by deleting subsection (9)</i>	The clause proposes to delete CbCR filing exemptions for resident surrogate parent entities.	This proposal should be adopted to provide clarity on the wording of the law with intent to align to the exemption criteria per BEPS Action 13.	Kenya's actions demonstrate its commitment to international tax standards as an Inclusive Framework member by aligning to BEPS Action 13. However, the commissioner should consider aligning definition of surrogate parent entity to the OECD guidelines that do not restrict filing of the country-by-country report in that constituent entity's jurisdiction of tax residence.
14	12. <i>The Income Tax Act is amended by inserting the following new section immediately after section 18F—18G.</i> (1) <i>The Commissioner may enter into an advance pricing agreement with a person who undertakes a transaction contemplated under section 18(3) or section 18A.</i> (2) <i>The amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length contemplated under section 18(3) or section 18A, shall be determined in accordance with the advance pricing agreement entered into under subsection (1).</i> (3) <i>The advance pricing agreement entered into under subsection (1) shall be valid for a period not exceeding five consecutive years.</i> (4) <i>Where the Commissioner determines that the person referred to in subsection (1) entered into the advance pricing agreement through misrepresentation of facts, the Commissioner shall declare the agreement void and issue a notice of the declaration in writing, to the person.</i> (5) <i>The Cabinet Secretary may make regulations for the better implementation of this section.</i>	The clause proposes to allow a taxpayer to enter into an advance pricing agreement with the commissioner on the amount expected to accrue to the business at arm's length price subject to a maximum period of 5 consecutive years.	This proposal should be adopted to reduce the administrative tax burdens for taxpayers on transfer pricing between related parties by minimizing costly and time-consuming litigation or adjustments by agreeing on arm's length pricing upfront.	Adopting this APA provision will enhance tax certainty, attract investment, reduce disputes, and align Kenya with global tax standards. The 5-year limit ensures that pricing methods remain fair and adaptable to changing market conditions while providing businesses with much-needed stability.

No.	Clause	Description of the Clause	Proposal	Justification
15	<i>15. Section 27 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1C)—(1D) Where the Commissioner does not comply with subsection (1C), the application shall be deemed allowed.</i>	The clause proposes that a taxpayer's application for change of the accounting period shall be deemed to have been approved if the commissioner does not revert within a period of six (6) months.	This proposal should be amended where it will require the Commissioner to get back within 3 months and not 6 months as proposed as it provides certainty to taxpayers on approval of change of accounting period.	This prevents administrative delays and unfair penalties
16	<i>16. Section 35 of the Income Tax is amended— (a) in subsection (1), by adding the following new paragraph immediately after paragraph (t)— (u) gains or profits which are chargeable to tax under section 9(1) derived from the business of a ship owner or charterer;</i>	The clause proposes to subject gains or profits derived from the business of non-resident ship owner or charterer other than transshipment, to withholding tax.	This proposal should be dropped entirely since it will lead to higher cost of doing business and possible re-routing of shipping activity.	This will increase costs for domestic exporters and importers since foreign ship owners will pass on the tax burden through higher freight charges. This will also disrupt supply chain with Kenya having a trade-dependent economy as non-resident traders will reduce willingness to operate in local ports.
17	<i>17. Section 37 of the Income Tax Act is amended—(a) by inserting the following new subsection immediately after subsection (1)— (1A) An employer shall, before computing the tax deductible under subsection (1), grant an employee all applicable deductions, reliefs and exemptions provided under this Act.</i>	The clause proposes to grant employees all applicable deductions, exemptions and reliefs under the Income Tax Act, before computation of PAYE.	This proposal should be adopted to ensure employers effect deductions, exemptions and reliefs on the employee's taxable income before deducting PAYE.	This will reduces instances of employees seeking refunds from the Kenya Revenue Authority where employers failed to apply all the relevant deductions, reliefs and exemptions at the point of PAYE computation

No.	Clause	Description of the Clause	Proposal	Justification
18	<p>19. Section 52B of the Income Tax Act is amended—(a) by deleting subsection (4) and substituting therefor the following new subsection—</p> <p>(4) Every company liable to tax under this Act shall also include with the self-assessment and return of income, an assessment and return of any dividend distributed out of untaxed gains or profits due with respect to such tax year and the tax so calculated shall be payable at the due date for the self-assessment.</p>	The clause proposes that every company shall in its return include details of any dividend distributed out of untaxed gains in a particular year of income.	This proposal should be adopted to bring clarity on declaration of dividend distributed out of untaxed gains, which will be made through the income tax return.	This streamlines tax compliance as tax authorities can easily identify discrepancies between reported income and dividend sources, reducing administrative costs.
19	<p>26. The First Schedule to the Income Tax Act is amended in Part I -</p> <p>(f) by adding the following new paragraphs immediately after paragraph 73—</p> <p>74. Gains on transfer of securities traded on any securities exchange licensed by the Capital Markets Authority is not chargeable to tax under section 3(2)(f);</p>	The clause proposes to exempt gains from the transfer of securities traded on any securities exchange licensed by the Capital Markets Authority.	This proposal should be adopted as it attracts foreign investment through securities.	This will attract foreign portfolio investment as it encourages more participation in the stock market, and beneficial for financial market growth.
20	<p>26. The First Schedule to the Income Tax Act is amended in Part I -</p> <p>(f) by adding the following new paragraphs immediately after paragraph 73—</p> <p>75. Dividends paid by a company certified by the Nairobi International Financial Centre Authority where the company reinvests at least two hundred and fifty million shillings in Kenya, in that year of income.</p>	The clause proposes to exempt dividends paid by a company certified by the Nairobi International Financial Centre Authority where the company reinvests at least KES 250 million in that year of income.	This proposal should be adopted to incentivize companies to reinvest more than KES 250 million to qualify for the exemptions. This will balance tax incentives with economic development.	<p>This policy will ensure profits are channelled back into expansion, job creation and innovation rather than being distributed as passive income which promotes the country's economic growth. This will attract foreign direct investment since the returns are not eroded by multiple layers of taxation.</p> <p>The commissioner should restrict this benefit to certified companies only to prevent abuse by shell companies considering offshore structures for profit shifting.</p>

No.	Clause	Description of the Clause	Proposal	Justification
21	<i>27. The Second Schedule to the Income Tax Act is amended in paragraph 1—(a) by deleting subparagraph (1A); (b) by deleting subparagraph (1B).</i>	<p>The Bill proposes to delete the 100% and 150% investment deduction rates for investments in a particular year of income where:</p> <p>the cumulative investment value in the preceding 3 years outside Nairobi City County and Mombasa County is at least KES 1 billion; the cumulative investment in the year that a person is claiming the investment allowances is at least KES 250 million; or the person has incurred investment in a special economic zone.</p>	<p>This proposal should be dropped in its entirety as Investors will no longer be economically motivated to absorb the higher costs of investing outside Nairobi and Mombasa counties.</p>	<p>The government will suffer loss in foreseeable revenue that would be generated from large scale and long-term investments both locally and from foreign investors. This will significantly impact the economic growth of the country by the private sector investors.</p>
22	<p><i>28. The Third Schedule to the Income Tax Act is amended in Head B -</i></p> <p><i>(b) in paragraph 2-</i></p> <p><i>(iv) by inserting the following new subparagraphs immediately after subparagraph (n)—</i></p> <p><i>(na) in respect of a company certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations and twenty per cent for the subsequent ten years of its operation where—</i></p> <p><i>(i) the company invests at least three billion shillings in Kenya in the first three years of operation;</i></p> <p><i>(ii) the company is a holding company, at least seventy per cent of its employees in senior management are citizens of Kenya; and</i></p> <p><i>(iii) the regional headquarters of the company is in Kenya, at least sixty per cent of its employees in senior management are citizens of Kenya;</i></p> <p><i>(nb) in the case of a start-up company certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first three years and twenty per cent for the succeeding four years;</i></p>	<p>The clause proposes to reduce corporate income tax rate for companies certified by the Nairobi International Financial Centre Authority to 15% for the first 10 years and 20% for the subsequent 10 years where such company:</p> <p>invests at least KES 3 billion shillings in the first 3 years of operation;</p> <p>is a holding company and at least 70% of its employees in senior management are employees of Kenya; and</p> <p>the regional headquarters of the company is in Kenya and at least 60% of the employees in senior management are citizens of Kenya.</p> <p>In the case of start-ups certified by NIFCA, the Bill proposes to reduce the corporate income tax rate to 15% for the first 3 years and subsequently 20% for the succeeding 4 years.</p>	<p>This proposal should be adopted as it encourages investors to setup companies within the Nairobi International Financial Centre while attracting foreign direct investment and help startups preserve cash flow for growth.</p>	<p>This attracts large-scale foreign direct investment that boost long-term tax revenue through economic expansion.</p>

No.	Clause	Description of the Clause	Proposal	Justification
23	28. The Third Schedule to the Income Tax Act is amended in Head B - (d) in paragraph 13, by deleting the words “three per cent” and substituting therefor the words “one point five per cent”;	The clause proposes to reduce the digital asset tax rate from 3% to 1.5% of the transfer or exchange value of the digital asset.	This proposal should be adopted to reduce tax burden for businesses engaging in digital asset transfers and a further stimulation of higher trading volumes in Kenya’s digital asset market by making transactions more cost effective.	This will stimulate/attract blockchain investments and formalize crypto economy since higher taxes pushed traders into informal peer to peer markets. This fosters digital entrepreneurship as the government earns more revenue in the long run.
24	28. The Third Schedule to the Income Tax Act is amended in Head B - (e) by adding the following new paragraph immediately after paragraph 14— The rate of tax on fringe benefits provided by an employer shall be the resident corporate rate of tax for that year of income.	The clause proposes to tax fringe benefit at the prevailing resident corporate income tax rate.	This proposal should be adopted since it reinstates fringe benefits back to the third schedule.	The reinstatement of fringe benefits tax will provide coherence on applicable tax rate.

Tax Procedures Act

No.	Clause	Description of the Clause	Proposal	Justification
25	<p>43. Section 23A of the Tax Procedures Act is amended by deleting subsection (4) and substituting therefor the following new subsection —</p> <p>(4) The electronic tax invoice referred to in subsection (3) may exclude payments of emoluments, payments for imports, payments of interest, transactions for accounting for investment allowances, airline passenger ticketing, and payments subject to withholding tax that is a final tax.</p>	<p>The bill proposes to expand the transactions excluded from invoicing under e-tims in section Section 23A(4) where a resident person or the permanent establishment of a non-resident issues an etims invoice to ascertain tax payable to include</p>	<p>We propose that the provision be retained.</p> <p>And also introduce a threshold for transactions that are exempt from e-tims invoicing rules we recommend that the minimum be set up at Kes 1,000,000</p>	<p>We encourage that the provision is retained as it provides the much needed clarity in respect to transactions expressly excluded from e-tims requirement.</p> <p>We note that there is no threshold that has been set and that all transactions require an e-tims invoice. Not all businesses have been able to adopt to e-tims especially the small businesses we recommend that transactions below Kes 1,000,000 be exempted from e-tims requirements.</p>
26	<p>50. Section 47 of the Tax Procedures Act is amended — (a) in subsection (1)(a) by deleting the words "and input value added tax"; (b) in subsection (2), by deleting the words "ninety days" and substituting therefor the words "one hundred and twenty days"; (c) in subsection (4A), by deleting the words "one hundred and twenty days" and substituting therefor the words "one hundred and eighty days".</p>	<p>This clause proposes to amend section 47(2) where a taxpayer makes an application for refund overpaid tax or offset overpaid tax against other tax debts the commissioner shall ascertain the application within 120 days up from 90 days.</p>	<p>We propose that this proposal should not be adopted.</p>	<p>This clause lengthens the tax refund and offset framework unecessarily hampering taxpayers from getting their valid tax refunds. Given that most businesses are currently cash strapped it is in the interest of business to have their funds easily availed.</p>

No.	Clause	Description of the Clause	Proposal	Justification
27	52. Section 59A of the Tax Procedures Act is amended by deleting subsection (1B).	The bill proposes to delete Section 59A(1B) in its entirety where the bill now gives power to the Commissioner to integrate its systems with that of a taxpayer without the protections afforded to trade secrets and private or personal data held on behalf of customers or collected in the course of business.	This proposal should be dropped and status quo in relation to the data protection provisions be retained as they currently are.	The deletion of this provision will result in the exposure of unnecessary information to the authority primarily trade secrets and customer personal data. That have no direct relation to revenue collecting measures. That this provision is in contravention of Article 31(the right to privacy) and would result in litigation between the Authority and taxpayers, while some customer might also sue businesses for sharing non-relevant information with the Authority.
28	54. Section 77 of the Tax Procedures Act is amended by deleting subsection (2).	The bill proposes to delete Section 77(2) in respect of computing period for which one can lodge an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54. Where the computation did not include weekends and public holidays.	This proposal should be dropped in its entirety. The current provision should be retained as is.	The proposal should be dropped given that this amends a provision just introduced in December 2024 by the Tax Procedures Amendment Act. Legislation should not be changed within such a short time space. Further to the above the exclusion of public holidays and weekends enabled taxpayers and authorities time to properly prepare the objection documents and also allows the Commissioner to come up with watertight cases as they have time to draw up proper responses.
29	(5A) The Cabinet Secretary may, on the recommendation of the Commissioner, waive the whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest was due to— (a) an error generated by an electronic tax system; (b) a delay in the updating of an electronic tax system; (c) a duplication of a penalty or interest due to a malfunction of an electronic tax system; or (d) the incorrect registration of the tax obligations of a taxpayer.	The Bill proposes to provide a formal relief mechanism for taxpayers affected by the errors associated with the finance bill. It recognizes that their might be technological errors or human errors that might result in adverse tax demands for tax payers.	The provision should be adopted however we recommend that it comes into effect from 1st January 2025.	The provision should be adopted and that it should come into effect from 1st January 2025. This is in line with the spirit of the tax amnesty provisions.



Value Added Tax Act

No.	Clause	Description of the Clause	Proposal	Justification
30	<i>Section 2 of the Value Added Tax Act is amended in subsection (1), by inserting a new definition in proper alphabetical sequence</i>	This clause proposes to provide the Definition of “Tax Invoice” and issuance of tax invoices mandated for exempt supplies.	The proposal is welcomed.	The proposal is to help streamline the ETIMS implementation changes.
31	<i>Amendment of section 17 of Cap.476. Deletion of section 17 (5) (c)</i>	<ul style="list-style-type: none"> The Bill proposes to reduce the timeframe to allow taxpayers to apply for a refund of VAT paid from twenty-four months to twelve months from the date the tax becomes due and payable. The bill proposes to delete the provision of allowing for WVAT refund “such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act (Cap. 469B);” 	<ul style="list-style-type: none"> The proposed changes will limit the time businesses have to claim VAT refunds. This proposal should be dropped in entirety as this does not favour the taxpayer. 	<ul style="list-style-type: none"> While this is aligned with the government’s goal to improve efficiency. This proposal should be dropped as the taxpayer may be hurt by the increase in compliance timeline pressures and the potential loss of legitimate refunds deadlines. The proposal denies one a chance when they have vat credit from WVAT from utilizing same to offset against any other tax-addressed.
32	<i>Section 31 of the Value Added Tax Act is amended in subsection (1)</i>	<p>The Bill seeks to shorten the period within which taxpayers can claim a refund of VAT on unpaid invoices—from the current three years to two years from the date of supply. Additionally, the Bill introduces two key provisions:</p> <p>(a) Any VAT refunded by the Kenya Revenue Authority (KRA) may, with KRA approval, be applied to offset other outstanding VAT liabilities;</p>	This is a welcome move for taxpayers as it reduces the timeline for claiming VAT on bad debts which ensures taxpayers are able to recover taxes paid for bad debts within a shorter period reducing, hence increasing cash-flows for the business.	This will afford adequate time within which taxpayers can make their VAT refund claims.

No.	Clause	Description of the Clause	Proposal	Justification
33	66A <i>Insertion of a new section 66A in Cap. 476</i>	The bill proposes to introduce a tax Liability Arises for Misuse of Exempt or Zero-Rated supplies	The new section states that if a person imports or purchase goods and services that are exempt or zero-rated and later uses or disposes of them in a way that goes against the original purpose for the exemption or zero-rating, they will be liable to pay tax on the goods or services at the applicable rate at the time of disposal or inconsistent use.	This proposal should be dropped until further definition is provided on what constitutes 'misuse' of the exempt and zero-rated supplies. This is to avoid any allowance for implied meanings, as this change could lead to disputes between taxpayers and the tax authority on the intended purpose of goods.
34	<i>Amendment of the First Schedule to Cap. 476. (a) by deleting the tariff number and substituting therefor the following new tariff number "2106.90.30"</i>	<p>The Bill proposes to subject to VAT;</p> <ul style="list-style-type: none"> Food supplements of Harmonized System Code tariff classification 2106.90.91 (which provides for food preparations specially prepared for infants). Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale. 	<p>The proposal is to replace the tariff 2106.90.91 with tariff 2106.90.30 (which only provides for food supplements). Accordingly, products falling under tariff code 2106.90.91 will be subject to VAT on importation;</p> <p>The proposal is to subject them to VAT.</p>	The proposal should be dropped as this will lead to increase in the cost of accessing healthcare services in the country.
35	<i>Amendment of the Second Schedule to Cap. 476. (a) by deleting paragraph 49</i>	<p>The Bill proposes to subject to VAT at the rate of 16% the following items:</p> <ul style="list-style-type: none"> a) all goods and parts thereof of chapter 88 (which provides for aircraft, helicopters, spacecraft and parts thereof); and b) direction-finding compasses, instruments and appliances for aircraft. 	This proposal will negatively impact the industry. Imported aircraft spare parts could hinder Kenya's goal of positioning itself as a regional center for aircraft maintenance.	The proposal should be dropped as this move may drive airlines to seek repair services in neighboring countries where such parts remain VAT-exempt. As such, the proposal appears to conflict with the broader aviation policy objectives and may need to be revisited.

No.	Clause	Description of the Clause	Proposal	Justification
36	<i>Amendment of the Second Schedule to Cap. 476. (a) by deleting paragraph 51</i>	This clause proposes to impose VAT (16%) on fuels, lubricants and tyres for vehicles imported or purchased for direct and exclusive use in implementation of official aid funded projects are exempt	This proposal will negatively impact on the Official Aid projects and should be dropped.	Despite the government efforts to broaden the tax base, this proposal may discourage the companies undertaking the official aid projects.
37	<i>The Second Schedule to the Value Added Tax Act is amended in Part A by deleting paragraph 30,31,32,33</i>	<p>This clause provides inter alia that supply of electric cars, buses and motorcycles, solar and lithium ion batteries will be removed from zero rated VAT status to exempt status.</p> <p>This clause provides for change of VAT status of locally assembled mobile phones from zero rated status to exempt</p>		<p>The reclassification of the goods from zero-rated to exempt means that local assemblers and manufacturers will lose the ability to claim input VAT on costs incurred in producing these goods. Consequently, they will also be unable to seek refunds for input VAT related to such supplies. To compensate for the unrecoverable VAT, manufacturers are likely to raise their prices, effectively shifting the tax burden to consumers.</p> <p>The effect of this proposal is that this will likely increase retail prices, reduce affordability, and undermine local manufacturing competitiveness due to the inability to recover input VAT</p>
38	<i>The Second Schedule to the Value Added Tax Act is amended in Part A by deleting paragraph 21</i>	This clause proposes that transportation of sugarcane from farms to milling factories should be Exempt.	This proposal should be dropped as it means taxpayers will no longer be eligible to claim refunds on input VAT incurred in transporting sugarcane.	Sugar is a key commodity in various manufacturing industries in Kenya. The proposal aligns with the government's aim to limit VAT refund claims. However, reclassifying the goods from zero-rated to exempt means that taxpayers will no longer be allowed to claim input VAT on costs related to producing these supplies.

Excise Duty Act

No.	Clause	Description of the Clause	Proposal	Justification
39	<i>in subsection (1), by deleting the words “through a digital platform” and substituting therefor the words “over the internet, an electronic network or through a digital marketplace” appearing in paragraph (d); and; “non-resident person” means a person outside Kenya.</i>	The clause offers clarity on imposition of excise duty on excisable services offered in Kenya.	This proposal should be adopted.	The proposal also aims to address the current imbalance by extending excise duty to non-resident companies offering digital services in Kenya. This creates a more level playing field for Kenyan providers who were previously disadvantaged.
40	<i>by inserting the following new subsection— (2) If the place of business of the supplier is outside Kenya, the supply of services shall be deemed to be made in Kenya if the services are consumed by a person in Kenya through the internet, an electronic network or a digital marketplace.</i>	This clause proposes to increase in Excise duty on excisable services provided through the internet, electronic network or digital marketplace.	We propose the introduction of regulations that outline the assessment framework.	The proposal does not explicitly clarify the criteria for determining whether a service has been consumed in Kenya. To address this ambiguity, it would be essential to introduce regulations that outline the assessment framework, similar to the existing VAT regulations for comparable supplies.
41	<i>Section 17 of the Excise Duty Act is amended in subsection (1), by inserting the following words “within fourteen days of receipt of the required documents” immediately after the words “the Commissioner shall”.</i>	This clause proposes to introduce a fourteen (14)-day timeline for the Commissioner to grant or refuse an application for the issuance of a license for importation or manufacture of excisable goods.	This proposal should be adopted.	This proposal aims at providing a definite time frame within which applications for licenses will be granted or refused by the Commissioner. The proposal will make the process of issuing licenses more efficient and eliminate the delays and uncertainty that shrouded the process of obtaining licenses due to the indefinite timelines.

Miscellaneous Fees & Levies Act

No.	Clause	Description of the Clause	Proposal	Justification
42	<i>The Miscellaneous Fees and Levies Act is amended in section 9B – (a) by deleting the words “excess tax refunds and expression “provisions of section 47”</i>	The Bill proposes that for the purposes of refunds of overpaid levies will now be governed by the Tax Procedures Act in its entirety.	This proposal ought to be implemented.	This is a positive development, as it aligns the procedures with those used for other tax categories and eliminates uncertainty around enforcement and dispute resolution processes.
43	<i>The Miscellaneous Fees and Levies Act is amended in third schedule – (a) by deleting the words “Seventeen point five” and substituting with the expression “ten ”for goods under tariff 7207.11.00, 7213.91.10 and 7213.91.90</i>	The Bill proposes to reduce the EIPL rate applicable to bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than fourteen millimetres (14 mm) in diameter, classified under tariff heading 7213.91.90, from seventeen point five percent (17.5%) to ten percent (10%) of the customs value.	This proposal should be adopted.	This amendment is a welcome move as this lowers the import cost of certain hot-rolled steel products commonly used in construction, fabrication, and light manufacturing. The adjusted rate aims to promote local value addition by making essential industrial inputs more affordable.

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