



LAW SOCIETY OF KENYA
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MEMORANDUM

TO

THE NATIONAL ASSEMBLY OF KENYA

ON

THE FINANCE BILL 2025

23RD MAY 2025

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LAW SOCIETY OF KENYA

INTRODUCTIONS

The Law Society of Kenya as established by the Law Society of Kenya Act, 21 of 2014 is a statutory professional body with a mandatory membership of all Advocates in Kenya, the number currently stands at over 25,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President: Faith Odhiambo**
- **Vice-President: Mwaura Kabata**
- **General Membership Representatives: Tom K'opere, Teresia Wavinya, Hosea Manwa,**
- **Nairobi Representatives: Gloria Kimani, Irene Otto, Stephen Mbugua**
- **Upcountry Representatives: Vincent Githaiga, Lindah Kiome, Hezekiah Aseso, Zulfa Roble**
- **Coast Representative: Elizabeth Wanjeri**
- **Secretary/CEO: Florence Muturi**

One of the Law Society of Kenya (**LSK**) statutory objects as provided in section 4(a) of the Act is to assist the Government of Kenya and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to this statutory mandate, the LSK makes the following submissions on the **Finance Bill, 2025**.

A. LSK's COMMENTS ON THE FINANCE BILL 2025

1. The Tax Procedures Act (CAP. 469B) (the TPA)

Clause as per Bill	Amendment Provision	Issues & Justification	Proposed Amendment
Clause 47(m)(v)	The Bill proposes to delete Section 42(14)(e) of the TPA thus empowering the KRA to issue agency notices to third parties owing a taxpayer despite the tax assessments being subject to ongoing appeal before the Tax Appeals Tribunal or higher courts.	This proposal defeats the right to a fair hearing under Article 50(2) of the Constitution of Kenya where every person has the right to be deemed innocent until proven guilty. By empowering the Commissioner to issue agency notices despite an appeal being filed at the Tax Appeals Tribunal defeats the rationale of appealing against the Commissioner's decision. This would force taxpayers lodging an appeal to apply for stay orders to prevent the Commissioner from effecting an issued agency notice. Currently conditional stay is a given and by dint of the TAT being a court of first instance same should continue to apply.	LSK recommends deletion of this proposal.
Clause 52	The Bill proposes to delete Section 59A (1B) of the TPA which would allow the Commissioner to automatically access trade secrets and personal data information for integration into the electronic tax management system.	<p>This proposal poses a risk of data breaches for taxpayers. Fails to impose on KRA, the onus to provide technical and organizational safeguards to ensure that the personal data collected from taxpayers is well protected. Thus, it is contrary to the data protection principles under the Data Protection Act, 2019.</p> <p>This provision is overly broad as it gives KRA or any other authority undertaking tax enforcement a blanket mandate to access a wide range of data held by both private and public persons. The provision as it currently reads enables KRA to access virtually any database in Kenya. Processing of such big datasets would require artificial intelligence, technologies that require caution</p>	<p>LSK recommends deletion of this proposal.</p> <p>In the alternative, the LSK proposes that Parliament should create separate provisions under each tax law specifying the specific entities and thresholds under which KRA may request access for purposes of tax assessment, and or enforcement and incorporate protection of due process to avoid arbitrary demands. Undertake this in a dedicated process (as opposed to Finance Bill)</p>

		<p>due to their being in the very early stages of experimentation</p> <p>The provision also goes against the objective of the Data Protection Act, which is to give effect to Article 31(c) and (d) of the Constitution. These provisions emphasise on protection of privacy against unnecessary disclosures. The question of necessity requires careful consideration from Parliament with particular thresholds under each tax law. Unless this is done, KRA is likely to use this provision to demand disclosures from entities and individuals in Kenya without due process.</p> <p>The provision also deviates from standard provisions of similar data protection laws worldwide. The General Data Protection Directive (GDPR) for example provides very limited exemptions for law enforcement and intelligence services on a case-by-case basis. Even then, the exemptions are subject to elaborate guides issued by Data Protection Authorities such as the UK ICO.</p> <p>Further to the above, deviation from global standards on data protection could affect Kenya's quest to be a digital economy with <i>adequacy</i> status under the GDPR. This goes against government efforts to attract digital business such as cloud computing services on data servers that are currently being constructed in various technology parks.</p>	<p>to enable proper discourse on Kenya's tax model</p>
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Clause 50 (b) and (c)	The Bill Proposes to extend timelines for ascertaining of tax overpayment claims from 90 days to 120 days, and review of the overpayment claims subject to audit from 120 days to 180 days.	This proposal is likely to result in delayed resolution of tax overpayment claims by taxpayers potentially affecting cashflow and financial planning.	LSK recommends deletion of this proposal.
Clause 54	The Bill proposes to delete Section 77(2) of the TPA which excludes weekends and public holidays in computation of statutory time for lodging Appeals and objections.	This proposal is likely to increase risks of missed filings due to shorter deadlines. The shorter timelines may effectively deny taxpayers fair justice. This also goes contrary to Article 50(2)(c) where every person has the right to have adequate time and facilities to prepare a defence.	LSK recommends deletion of this proposal.
Clause 50 (a)	The Bill proposes to delete part of Section 47(a) which provides for input VAT from categories of tax to be offset through overpaid tax.	While the proposes makes sense from a point of view that both input VAT and the overpaid taxes are credits available for utilization against VAT and forms of taxes, rather than a deletion of the provision, to enhance better compliance by the taxpayers, this should be amended to specifically capture VAT payable on imports.	LSK recommends deletion of this proposal in the alternative amend the current clause to specifically capture VAT payable on imports.

2. Income Tax Act (CAP 470) (the ITA)

Clause as per Bill	Amendment Provision	Issues & Justification	Proposed Amendment
Clause 2 (iii)	Section 2 of the ITA is amended in subsection (1)- (iii) in paragraph (b) of the definition of “ <i>royalty</i> ” by inserting the words “ <i>and includes the distribution of software where regular payments are made for the use of the software through the</i>	We note that a similar amendment was proposed in the Finance Bill, 2024 and the definition of the term Royalties was already expanded in the Tax Laws Amendment Act 2024. The impact of this proposal shall be to expand the definition of royalties to also include payments made	The LSK recommend that this proposal be deleted, and the current definition of royalty be maintained to ensure that it aligns with international best practice. This amendment is unfortunately aimed at overturning a High Court’s decision

	<p><i>distributor</i>” immediately after the word ‘<i>support fees</i>’</p>	<p>to distributors of the software where regular payments are made for the use of software to the distributors.</p> <p>We point out that the proposed amendments would not only contradict the current jurisprudence established by Kenyan courts but would also go against international best practice, including guidance from the Organisation for Economic Co-operation and Development (OECD), which provides that the distribution of software is not equivalent to exploitation of the software.</p>	<p>which was correct and sound in law, where the court rightly held that distributing software, as not the same as acquiring rights to copyright in software.</p> <p>Eg. A shopkeeper who sells goods that bear a copyright or trademark does not pay a royalty to the owner of the copyright as their role is limited to distribution and sale of the finished product and not exploiting of the intellectual knowledge or rights in the intellectual property. See Re: Seven Seas Technologies Limited v Commissioner of Domestic Taxes (Income Tax Appeal 8 of 2017) [2021] KEHC 358 (KLR) (Commercial and Tax) (10 December 2021) (Judgment)</p> <p>Due to the fact that no payment of royalty is made by distributors, no withholding tax can be charged by the distributor, and they would therefore bear a tax burden that is not lawfully theirs to bear. The amendment would cause an erroneous position in law and in fact.</p>
Clause 2 (Vii)	<p>Section 2 of the ITA is amended in subsection (1) –</p> <p>(vii) <i>by deleting the definition of “related person” and substituting therefore the following new definition-</i></p>	<p>The LSK notes that the term “related person” is defined in Section 2 of the ITA to mean (in the case of two persons), a person who participates directly or indirectly in the management, control or capital of the</p>	<p>This amendment is welcome.</p>

	<p><i>“related person means in the case of two persons either of the persons who participates directly or indirectly in the management, control or capital of the business of the other person, and in the case of more than the two persons; or</i></p> <p><i>(a) Any other person participates directly or indirectly in the management, control or capital of the business of the two persons</i></p> <p><i>(b) is associated with the two persons by marriage, consanguinity or affinity; and</i></p> <p><i>(c) the two persons participate in the management, control or capital of the business of the individual.</i></p>	<p>business of the other person. A more expansive definition exists under Section 18 of the ITA.</p> <p>The Finance Bill proposes to delete both definitions and replace them with a broader definition in Section 2 as already set out.</p>	
Clause 4	<p>Section 8 of the ITA is amended- <i>(b) by deleting subsection (4)</i></p>	<p>The Finance Bill proposes to delete Section 8 (4) of the ITA which limited the exemption on pension income / withdrawals to the first KES 300,000 of the total pensions and retirement annuities received by a resident individual from a registered fund or the National Social Security Fund in a year of income.</p> <p>This aligns with the government's Medium-Term Revenue Strategy (MTRS), which aims to encourage long-term savings and retirement planning through favorable tax treatment. However, deleting Section 8(4) entirely may have unintended consequences:</p>	<p>The LSK proposes to maintain the tax free limits currently applicable to the first Kshs. 300,000 and Kshs. 600,000 on pensions withdrawals.</p>

		<p>The LSK notes that this could restrict access to partial exemptions for individuals who do not meet the 20-year membership requirement, including those who may have contributed diligently for a significant period but fall short of the 20-year mark due to job changes or retirement timing.</p> <p>As such, the deletion is unfair and shall be regressive.</p>	
Clause 6	<p>Section 12E of the ITA is amended –</p> <p>(a) in subsection (1) by inserting the words ‘<i>the internet or an electronic network including through</i>’ immediately after the words ‘<i>carried out over</i>’</p> <p>(b) in subsection (3), by deleting paragraph (d)</p>	<p>The Bill proposes to delete this provision with the effect that SEPT shall apply to all non-resident persons who derive income from Kenya through a business carried out over the internet, electronic network or a digital marketplace regardless of their annual turnover.</p> <p>This proposed amendment to the Significant Economic Presence Tax may undermine the current selective approach by not limiting the SEPT to non-residents with substantial economic activity in Kenya.</p> <p>The LSK is of the view that the absence of a threshold, the KRA’s administration of SEPT will be difficult and may discourage non-residents from operating in Kenya.</p> <p>Moreover, given that the SEPT regime was only introduced in December 2024 through the Tax Laws (Amendment) Act, the stability of Kenya’s tax framework is significantly compromised. This is particularly concerning as the supporting regulations have yet to be issued, and many non-residents previously advised that the regime did not apply to them due to the five-million-shilling threshold, may now unexpectedly fall within its scope.</p>	<p>The LSK recommends that the proposed deletion of the threshold for the application of the SEPT be reconsidered. Specifically, the LSK urges the retention of the minimum revenue threshold of five million shillings to ensure that the SEPT targets only non-resident entities with a substantial economic presence in Kenya.</p>

Clause 7	<p>Section 12G of the ITA is amended by inserting the following new subsection immediately after section (3)-</p> <p><i>(3A) Minimum top-up tax shall be payable by the end of the fourth month after the end of the year of income.</i></p>	<p>The Minimum Top-Up Tax provisions were introduced by the Tax Laws (Amendment) Act, 2024, but without guidance on the due date for the same. The Bill proposes to offer clarity to taxpayers on the due date which shall be the end of the fourth month after the end of the relevant year of income.</p>	<p>The amendment is welcomed as it provides clarity on the due date for minimum top-up tax.</p>
Clause 8 (c)	<p>Section 15 of the ITA is amended in subsection (4), by inserting the word “five” immediately after the word “succeeding”</p>	<p>The Bill proposes limiting the carry-forward period for tax losses from an indefinite period to five years thus restricting taxpayers’ ability to offset future taxable income with older losses.</p> <p>If enacted, losses over five years old from the effective date may become unusable, impacting businesses, especially in capital-intensive or slow-recovery sectors like startups and manufacturing.</p>	<p>The LSK recommends that the proposal to limit the carry-forward period for tax losses to five years be shelved.</p> <p>Given the current economic turmoil, this proposal would impose an undue burden on businesses that are still recovering. The LSK advises that this measure be revisited only when the country’s economic outlook has significantly improved</p>
Clause 12	<p>The Income Tax Act is amended by inserting the following new section immediately after section 18F-</p> <p><i>‘18G (1)- 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></p> <p><i>(2) The amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm’s length</i></p>	<p>The Bill proposes to introduce provisions for Advance Pricing Agreements (APAs), which empower the Commissioner to enter into binding agreements with taxpayers regarding the application of transfer pricing rules to related party transactions. These agreements will be valid for a period of five years and may be rendered void in instances where a taxpayer is found to have misrepresented material facts during the negotiation process.</p> <p>The Bill further grants the Cabinet Secretary the authority to issue regulations for the effective implementation of the APA regime.</p>	<p>The LSK welcomes this proposal as a progressive step toward fostering a more predictable and business-friendly tax environment.</p> <p>APAs are expected to enhance tax certainty, reduce transfer pricing disputes, and align Kenya’s tax framework with international best practices and regional standards, as already implemented in jurisdictions such as Rwanda, Uganda, and Tanzania.</p>

	<p><i>contemplated under section 18 (3) or section 18A shall be determine in accordance with the advance pricing agreement entered into under subsection (1).</i></p> <p><i>(3) The advance pricing agreement entered into under subsection (1) shall be valid for a period not exceeding five consecutive years.</i></p> <p><i>(4) Where the Commissioner determines that the person referred to in subsection (1) entered into an 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></p>	<p>The LSK notes that in other East African jurisdictions, the implementation of APAs has been hindered by capacity constraints within tax administrations. It is therefore imperative that, upon enactment of this provision, the Cabinet Secretary expedites the issuance of comprehensive guidelines to support the Kenya Revenue Authority (KRA) in efficiently rolling out the APA framework.</p>	
Clause 26 (e)	<p>The First Schedule to the Income Tax Act is amended in Part I—</p> <p>by deleting paragraph 72 and substituting therefor the following new paragraph— 72. ‘<i>Gains on transfer of property within a special economic zone by a licensed special economic zone developer, enterprise or operator.</i>’</p>	<p>The Bill proposes to amend the current exemption on transfer of assets in an SEZ with new wording which provides for an exemption on gains on transfer of property within an SEZ by a licensed SEZ developer, enterprise or operator to another licensed SEZ developer, enterprise or operator.</p> <p>The proposed amendment will provide the much-needed clarity on the application of the exemption.</p>	<p>The proposal is welcomed as it provides clarity on the exemption.</p>

<p>Clause 27 (a) & (b)</p>	<p>The Second Schedule to the Income Tax Act is amended in paragraph 1</p> <p>(a) by deleting subparagraph (1A);</p>	<p>Since July 2022, investors undertaking substantial capital projects outside Nairobi City County and Mombasa County—or within designated Special Economic Zones—have benefited from a 100% investment deduction on qualifying capital expenditures.</p> <p>This incentive effectively deferred corporate tax obligations until the full value of the investment deduction was utilized, thereby enhancing cash flow and encouraging regional investment.</p> <p>The Bill proposes to abolish this incentive entirely. Should this proposal be enacted in its current form, new investors may be required to begin paying corporate income tax from their first year of operation, regardless of the scale of their capital outlay. This shift could significantly diminish Kenya’s competitiveness as an investment destination, particularly when compared to neighbouring jurisdictions that continue to offer more robust tax incentives for new entrants.</p> <p>The practical implication is that businesses previously eligible for the full investment deduction would now only qualify for the standard capital allowances under the ITA, which range between 10% and 50% depending on the asset class. This would result in higher taxable income and increased tax liabilities during the critical early years of operation—precisely when businesses are most vulnerable.</p>	<p>LSK recommends deletion of the proposal.</p>
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Clause 28 (d)	<p>The Third Schedule to the ITA is amended in Head B –</p> <p>in paragraph 13, by deleting the words “three percent “ and substituting therefore the words “one point five percent”.</p>	<p>The Bill proposes to reduce the tax rate in respect of digital assets tax from 3% of the transfer or exchange value of the digital asset to 1.5% in what appears to be a move to encourage increased market activity in the digital asset market sector.</p>	<p>The LSK welcomes this proposal.</p>
Clause 28 (b)	<p>The Third Schedule to the Income Tax Act is amended in Head B—</p> <p><i>(B)in paragraph 2—</i></p> <p><i>(ii) by deleting subparagraph (i);</i></p> <p><i>(iii) by deleting subparagraph (j);</i></p>	<p>The Bill proposes to eliminate the 15% income tax rebate for companies building at least 100 residential units annually, a measure introduced on 1 January 2017 to support affordable housing under the previous government’s Big Four Agenda.</p> <p>The LSK notes that given Kenya’s significant housing shortage (approximately 200,000 units annually) and the government’s struggle to meet demand through the Affordable Housing Scheme, retaining the 15% tax rebate is advisable to encourage real estate developers to invest in addressing the housing deficit and provide affordable homes.</p> <p>Additionally, the Bill seeks to abolish the 15% preferential corporate tax rate for local motor vehicle assemblers in their first five years of operation, extendable for another five years if they achieve 50% local content in the ex-factory value of vehicles. If passed, this would subject assemblers to standard corporate tax rates, potentially hindering the nascent local motor vehicle assembly industry.</p>	<p>The LSK recommends that this proposal be shelved.</p>

<p>Clause 28 (b)</p>	<p>The Third schedule to the ITA is amended in Head B-</p> <p>(iv) by inserting the following new subparagraphs immediately after subparagraph (n)—</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>(a) the company invests at least three billion shillings in Kenya in the first three years of operation;</i></p> <p><i>(b) the company is a holding company, at least seventy per cent of its Amendment of the Second Schedule 10 Cap, 470. The Finance Bill, 2025 employees in senior management are citizens of Kenya; and</i></p> <p><i>(c) 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>The proposes the introduction of a preferential corporate tax regime for companies operating under the Nairobi International Financial Centre (NIFC). Under the proposed framework, qualifying companies would benefit from a reduced corporate tax rate of 15% for the first ten years of operation, followed by a 20% rate for the subsequent ten years, subject to the following conditions:</p> <p>a) The company must invest a minimum of KES 3 billion in Kenya within its first three years of operation;</p> <p>b) In the case of a holding company, at least 70% of senior management positions must be held by Kenyan citizens; and</p> <p>c) Where the company establishes its regional headquarters in Kenya, at least 60% of senior management roles must be occupied by Kenyan citizens.</p> <p>These incentives are designed to enhance the attractiveness of the NIFC regime and stimulate foreign direct investment into the country.</p> <p>For start-ups certified by the NIFC Authority (NIFCA), the Bill proposes a reduced corporate tax rate of 15% for the initial three years, followed by a 20% rate for the next four years</p>	<p>This proposal is welcomed as it promotes investments in the country and enhances the use of the NIFC regime which has historically seen limited uptake among foreign investors.</p>
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	<i>(Nb) in the case of a startup certified by the Nairobi International Financial Centre Authority, fifteen percent for the first three years and twenty percent for the succeeding four years.</i>		
Clause 29 (b)	<p>Part I of the Eighth Schedule to the Income Tax Act is amended—</p> <p>in paragraph 6(2)(h)(v), by inserting the words “<i>an individual</i>” immediately after the word “<i>where</i>”.</p>	<p>The Bill proposes to amend the Eighth Schedule to the ITA to introduce a CGT exemption on the transfer of assets to a company in which an individual holds 100% of the shareholding.</p> <p>This proposed amendment is a welcome development, as it will allow individuals who wish to hold their assets through a company, whether for personal or estate planning purposes, to do so without triggering CGT.</p> <p>However, it is important to note that while the proposal seeks to exempt such transfers from CGT, there is currently no corresponding exemption from stamp duty. As a result, any transfer of assets by an individual to a wholly owned company would still attract stamp duty, which ranges from 1% to 4% of the property's value, depending on the type of asset involved.</p>	<p>The LSK welcomes this proposed amendment as a progressive and facilitative measure. It will enable individuals to restructure their personal or estate holdings by transferring assets into wholly owned corporate vehicles without incurring CGT liabilities.</p> <p>The LSK proposes that a corresponding stamp duty exemption is also brought.</p>

3. The Value Added Tax Act, 2013 (CAP. 476)

Clause as per Bill	Amendment Provision	Issues & Justification	Proposed Amendment
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Clause 35	The Bill proposes to charge tax at the applicable rate where a person imports or purchases goods or services which are exempt or zero-rated under VAT preferential treatment, and the person subsequently disposes of, or uses, the goods or services supplied in a manner inconsistent with the purpose for which the goods or services were exempted or zero rated.	While this clause intends to prevent potential tax leakages arising from change of use of goods or services purchased with VAT preferential treatment, it may be misused to the discharge of taxpayers similar to the VAT Special Table which has become a huge hurdle for taxpayers and their businesses. Additionally, this grants the commissioner extremely subjective powers which are prone misuse.	The LSK recommends this proposal to be deleted.
Clause 36(o)	The Bill proposes to introduce Paragraph 156 and 157 to the 1 st Schedule to the VAT Act, 2013 that is moving transportation of sugarcane from farms to milling factories, as well as inputs or raw materials, whether locally purchased or imported, or the manufacture of animal feeds from being zero-rated to being exempt.	Changing the VAT status of transportation of sugarcane from farms to milling factories, as well as inputs or raw materials, whether locally purchased or imported, or the manufacture of animal feeds from zero-rated to exempt is likely to have a significant impact on the agriculture sector due to increased production costs for suppliers, who may pass these costs on to farmers, leading to higher food prices.	The LSK recommends this proposal to be deleted and the current status that is zero-rating to be maintained.
Clause 36(o)	The Bill proposes to introduce Paragraph 155 to the 1 st Schedule to the VAT Act, 2013 that is moving all inputs and raw materials whether produced locally or imported, supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments from zero-rated to exempt.	Changing the VAT status of all inputs and raw materials whether produced locally or imported, supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments from zero-rated to exempt is likely to have a significant impact on the general healthcare in the country leading to higher medicine prices, thus undermining affordability and access to healthcare.	The LSK recommends this proposal to be deleted and the current status that is zero-rating to be maintained.

Clause 36(d) and (g)	The Bill proposes to delete Paragraph 62 and 91 of the 1st Schedule to the VAT Act, 2013 that is moving taxable supplies for use in construction of tourism facilities, recreational parks, convention, and conference facilities and specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles are exclusively used for transportation of tourist, licensed under the Tourism Vehicle Regime from exempt to standard rating.	Changing the VAT status of taxable supplies for use in construction of tourism facilities, recreational parks, convention, and conference facilities and specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles are exclusively used for transportation of tourist, licensed under the Tourism Vehicle Regime will impact tourism sector negatively due to introduction of VAT that shall be transferred to the end user.	The LSK recommends this proposal to be deleted and the current status that is exempt to be maintained.
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4. The Excise Duty Act (CAP 472) (the EDA)

Clause as per Bill	Amendment Provision	Issues & Justification	Proposed Amendment
Clause 38	<p>Section 2 of the EDA is amended in subsection (1)—</p> <p><i>(i) by deleting the definition of “digital lender” and substituting therefor the following new definition— “digital lender” means a person extending credit through an electronic medium but does not include a bank licenced under the Banking Act, a Sacco society registered under the</i></p>	<p>This amendment is a further amendment to the term “digital lender” introduced to the EDA via the Tax Laws (Amendment) Act, 2024, effective 27 December 2024, which described a “digital lender” as a person with a valid digital credit provider’s license from the Central Bank of Kenya.</p> <p>The proposed amendment also specifies that digital lenders do not include conventional financial institutions, such as banks licensed under the Banking Act, Sacco societies registered under the Sacco</p>	Further clean ups are required on this provision.

	<i>Cooperative Societies Act or a microfinance institution licensed under the Microfinance Act</i>	<p>Societies Act, or microfinance institutions licensed under the Microfinance Act.</p> <p>However, the amendment mistakenly refers to Saccos as registered under the Cooperative Societies Act instead of the Sacco Societies Act, 2008. Additionally, the Bill's current wording leaves ambiguity about whether Co-operative Societies registered under the Co-operative Societies Act (CAP 490) are excluded.</p> <p>We recommend that cleanup on this are done</p>	
Clause 38	<p>Section 2 of the EDA is amended by:</p> <p>inserting the following new subsection immediately after subsection (2)—</p> <p><i>(3) In this Act, goods shall be classified by reference to the tariff codes set out in Annex 1 to the Protocol on the Establishment of the East African Community Customs Union and in interpreting that Annex, the general rules of interpretation set out in the Annex shall apply.</i></p>	<p>The proposed provision provides that the general rules of interpretation contained in the EAC Common External Tariff will apply when interpreting the classification of goods under the EDA.</p> <p>This amendment is welcome as it provides clarity on how goods are to be classified under the EDA.</p>	The LSK welcomes this proposal.
Clause 39	<p>Section 5 of the EDA is amended –</p> <p>in subsection (1) by deleting the words “<i>through a digital platform</i>” and substituting therefore the words “<i>over the internet, an electronic network or through a digital marketplace</i>” appearing in paragraph (d).</p>	<p>The import of this amendment is to capture a wide range of digital transactions into the taxing net. This is on the basis that the term “<i>over the internet, an electronic network or through a digital marketplace</i>” ensures that any digital service accessed or delivered online regardless of the infrastructure or medium used, falls within the scope.</p>	The LSK recommends the proposal to be retained.

Clause 41	Section 17 of the EDA is amended in subsection (1), by inserting the following words ‘ <i>within fourteen days of receipt of the required documents</i> ’ immediately after the words ‘ <i>the Commissioner shall</i> ’	<p>The Bill proposes to introduce a 14-day timeline within which the Commissioner must issue a decision on applications for excise duty licences, from the date of receipt of the required documents.</p> <p>This amendment is welcome and is aimed at enhancing administrative efficiency and providing certainty to businesses seeking to operate within the excise duty regime.</p>	The LSK welcomes this proposal.						
Clause 42 (vi)	<p>The Bill proposes to subject various items to excise duty as listed below</p> <table><tr><th>Product</th><th>Proposed Excise Duty Rate</th></tr><tr><td>Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from the EAC that meet the EAC Rules of Origin.</td><td>25%of excisable value or Kshs. 200 per Kg, whichever is higher</td></tr><tr><td>Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly</td><td>25%of excisable value or Kshs. 200 per Kg, whichever is higher.</td></tr></table>	Product	Proposed Excise Duty Rate	Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from the EAC that meet the EAC Rules of Origin.	25%of excisable value or Kshs. 200 per Kg, whichever is higher	Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly	25%of excisable value or Kshs. 200 per Kg, whichever is higher.	<p>The Bill proposes to introduce excise duty on a variety of imported materials, including printed polymers, plastic films, and paper products used by licensed manufacturers. This move is expected to raise production costs, which will likely translate into higher prices for finished goods.</p> <p>Given the prevailing economic challenges, including inflationary pressures and reduced consumer purchasing power, the LSK is of the view that this proposal is ill-timed and the National Assembly may consider shelving these proposals.</p>	The LSK recommends that the proposed excise duty measures be shelved . These proposals should be revisited at a later date, once the economic outlook has improved and businesses are better positioned to absorb additional tax obligations without compromising affordability or operational viability.
Product	Proposed Excise Duty Rate								
Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from the EAC that meet the EAC Rules of Origin.	25%of excisable value or Kshs. 200 per Kg, whichever is higher								
Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly	25%of excisable value or Kshs. 200 per Kg, whichever is higher.								

	combined with other materials of tariff number 3920.43.90, but excluding those originating from the EAC that meet the EAC Rules of Origin.				
	Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of lastics, noncellular and not reinforced, laminated, supported or similarly of tariff number 3920.6290, but excluding those originating from EAC that meet the EAC Rules of Origin.	25 %of excisable value or Ksh. 200 per Kg whichever is higher.			
	Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from EAC that meet the EAC Rules of Origin.	25%of excisable value or Kshs. 200 per Kg, whichever is higher.			
	Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from EAC that meet the EAC Rules of Origin.	25%of excisable value or Ksh. 200 per Kg, whichever is higher.			

	Gummed paper and paperboard of tariff number 4811.49.00 but excluding those originating from EAC that meet the EAC Rules of Origin.	25% of excisable value or Ksh. 200 per Kg, whichever is higher.			
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5. The Miscellaneous Fees and Levies Act

Clause as per Bill	Amendment Provision	Issues & Justification	Proposed Amendment
Clause 58	<p>The Second Schedule to the Miscellaneous Fees and Levies Act is amended —</p> <p>(a) in Part A—</p> <p>(i) by deleting paragraph (xv);</p> <p>(ii) by deleting paragraph (xva) substituting therefor the following new paragraph—</p> <p style="padding-left: 40px;"><i>(xva) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00;</i></p> <p>(b) in Part B—</p> <p>(i) by deleting paragraph (xiii); (ii) by deleting paragraph (xvi) and substituting therefor the following new paragraph—</p> <p style="padding-left: 40px;"><i>(xvi) all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00.</i></p>	<p>The Bill proposes to restrict the current exemption from the Import Declaration Fee (IDF) and Railway Development Levy (RDL) for goods classified under Chapter 88 of the EAC Common External Tariff, which includes aircraft, spacecraft, and related parts.</p> <p>Under the proposed changes, the exemption would be limited to parts of Chapter 88 and items under tariff codes 8802.30.00 and 8802.40.00. These cover aeroplanes and other aircraft with an unladen weight exceeding 2,000 kg but not exceeding 15,000 kg, and those exceeding 15,000 kg, respectively.</p> <p>This narrowing of scope may increase the cost of acquiring a broader range of aircraft and related goods, potentially impacting the aviation sector and related industries. This will in particular affect the Kenya's national carrier Kenya Airways.</p>	The LSK recommends deletion of the proposal, and the current exemptions are retained.

Clause 59	The Third Schedule to the Miscellaneous Fees and Levies Act is amended to reduce the Investment Promotion Levy on various goods from 17.5% to 10%.	The goods include semi-finished products of iron or non-alloy steel and bars and rods of iron or non-alloy steel. This reduction is intended to promote investment and enhance the competitiveness of locally manufactured products in export markets.	The LSKs proposes that this proposed amendment is retained.
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Yours faithfully,



Faith Odhiambo

President Law Society of Kenya.