

**Our Ref: TAX/GEN/3/2025**

**Your Ref: NA/DDC/F&NP/2025/030**

**27 May 2025**

The Clerk of the National Assembly,  
The National Assembly,  
Parliament Buildings,  
Parliament Road,  
PO Box 41842 – 00100,  
Nairobi, Kenya.

Dear Sir,

**RE: SUBMISSION OF MEMORANDUM ON THE FINANCE BILL, 2025 TO THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

We refer to the above matter and Public Notice published by the National Assembly on 13 May 2025 inviting the public to submit their comments on the proposals contained in the Finance Bill, 2025 (the “**Bill**”).

Please see annexed to this letter a schedule setting out our comments and proposals relating to the Bill.

Should you require any clarifications, please do not hesitate to contact Wangoi Karuga ([wangoi@makadvocates.com](mailto:wangoi@makadvocates.com)) or myself ([wanguim@makadvocates.com](mailto:wanguim@makadvocates.com)).

Yours faithfully,

*Wangui Mwaniki*

**Wangui Mwaniki**  
**Partner & Head of Tax**  
**For and behalf of MAK & Partners Advocates**

## I. PROPOSED AMENDMENTS TO THE TAX PROCEDURES ACT, CAP 469B

NO.	CLAUSE	DESCRIPTION OF THE CLAUSE	PROPOSAL AND JUSTIFICATION
1.	<b>Clause 47(m)(v)</b>	<p>Deletion of Section 42(14)(e) of the Tax Procedures Act ("TPA") which prohibits the commissioner from issuing a notice unless the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.</p> <p>Section 42 empowers the Commissioner to collect tax from a person(s) owing money to a taxpayer.</p>	<p>We propose the deletion of this proposal from the Bill and retention of the provision as it is in the TPA.</p> <p>Article 40 of the Constitution of Kenya, 2010 ('CoK') prohibits the government from enacting any laws that arbitrarily deprive a citizen of property (interest in the property or a right of enjoyment).</p> <p>Further, Article 50(2) of the CoK provides that every person has a right to a fair hearing which includes the presumption of innocence until proven guilty.</p> <p>Permitting the Commissioner in law to issue agency notices where a taxpayer has lodged an appeal has the risk of rendering the appeal nugatory for the following reasons:</p> <ul style="list-style-type: none"> <li>● should a taxpayer be successful in appeal filed against the Commissioner and a 3<sup>rd</sup> party has complied with a notice, this would entail the taxpayer applying for a refund of the already remitted amount. Obtaining a refund from the Commissioner is a lengthy and rigorous process which entails the conduct of an audit;</li> <li>● refunds are further exacerbated by the government's lack of funds to enable timely refunds to taxpayers thus forcing many taxpayers to opt for a credit for future taxes (if any), despite the fact that the money remitted to the KRA by the third party was in the form of cash;</li> <li>● having to go through a refund process denies a taxpayer enjoyment of the fruits of the judgement.</li> </ul>

			<p>If for any reason the proposal is retained, then we propose to add a Section 42(15) of the TPA to read as follows:</p> <p><i>“Where the Commissioner has issued an agency notice, in the event of a successful appeal filed against the Commissioner, a taxpayer, where there has been compliance by a person(s) issued with a notice under this section, shall be entitled to a refund or offset together with interest at the prevailing bank rates from the date of the third-party compliance with the notice within thirty (30) days of delivery of the judgement.</i></p> <p><i>Provided that Section 47 of this Act shall not apply to such a refund.”</i></p>
2.	<b>Clause 52</b>	<p>Deletion of Section 59A (1B) of the TPA, which currently prohibits the Commissioner from requiring taxpayers to share their private or personal data held on behalf of or in the course of doing business with customers as well as trade secrets.</p>	<p>We propose the deletion of this proposal from the Bill.</p> <p>The right to privacy is well enshrined under Article 31 of the CoK. Additionally, the Data Protection Act, 2019 was enacted to give effect to the provisions of Articles 31 (c) &amp; (d) of the CoK.</p> <p>Deletion of Section 59A (1B) of the TPA allows the Commissioner to have unfettered access to taxpayers’ personal data (information relating to an identifiable natural person) and trade secrets (intellectual property – trademark, copyright, patent etc).</p> <p>In any event, Section 51(2)(c) of the Data Protection Act entitles the Commissioner to request for that information under a written law. The provision provides:</p> <p><i>“51. (2) The processing of personal data is exempt from the provisions of this Act if—</i></p> <p><i>(c) disclosure is required by or under any written law or by an order of the court.”</i></p> <p>If not checked or properly regulated, such powers would be subject to great abuse. Notably and speaking to data minimisation and purpose limitation set out in the Data Protection Act, this deletion lacks justification and has failed to provide or demonstrate the safeguards or their</p>

			<p>adequacy thereof such as internal access control or data encryption protocols in place to protect the taxpayer's data.</p> <p>Whilst the need for transparency in the collection and accounting for tax is required to maximise Revenue collection and tighten revenue leakages is understandable, this proposed deletion is premature as there is a need to reassess and put in place proper data protection measures before the budding of this proposal especially given the sensitivity of the data the Commissioner would be seeking to access.</p>
3.	<b>Clause 50(b) and (c)</b>	<p>Section 47 of the Tax Procedures Act is amended—</p> <p>(b) in subsection (2), by deleting 'ninety days' and substituting with 'one hundred and twenty days';</p> <p>(c) in subsection (4A), by deleting 'one hundred and twenty days' and substituting with 'one hundred and eighty days'.</p>	<p>We propose the deletion of this proposal from the Bill and retaining the 90 days under section 47(2) for the Commissioner to ascertain the overpayment and 120 days under Section 47(4A) to ascertain and determine the refund application.</p> <p>Whilst this proposal may be intended to give the Commissioner added time as a result of increased refund applications, the effect of it would be slowing down the refund application and offset process thus crippling a taxpayer's cashflow which means that in the interim they are forced to finance any existing tax debts or future tax liabilities pending determination by the Commissioner.</p> <p>This kind of lead time from 210 days to 300 days would negatively impact taxpayer's cashflows who have to potentially incur additional cost of credit to finance their operations notwithstanding monies owed by KRA from overpayment of taxes. Important to note that some of the overpayment is triggered by excess input VAT incurred or overpayment of instalment taxes.</p>

## II. PROPOSED AMENDMENTS TO THE INCOME TAX ACT (CHAPTER 470, LAWS OF KENYA)

NO.	CLAUSE	DESCRIPTION OF THE CLAUSE	PROPOSAL AND JUSTIFICATION
1.	<b>Clause 2(a)(iii)</b>	The Bill proposes to introduce an expanded definition to the term "royalty". It proposes to define it to now include payments as consideration of distribution of software where regular payments are made for the use of the software through the distributor.	<p>We propose deletion of this clause from the Bill.</p> <p>Should the proposed legislative amendment be enacted as it is currently penned, it would result in the blanket classification of all software-related payments as "royalties" for tax purposes, thereby rendering them subject to withholding tax ("WHT"). From a technical and policy standpoint, this approach would constitute a significant departure from internationally accepted norms governing the characterisation and taxation of cross-border payments for software.</p> <p>Payments made under software distribution agreements and end-user license agreements ("EULAs") typically do not entail the transfer of any proprietary intellectual property ("IP") rights. Rather, such payments are generally considered to be in the nature of business income or payments for services, and not royalties within the meaning of Article 12 of the Organization for Economic Co-operation and Development ("OECD") Model Tax Convention on Income and on Capital. This interpretation has been consistently upheld in jurisprudence across multiple common law jurisdictions, including Kenya, and is aligned with prevailing administrative practices in peer jurisdictions such as Uganda and Tanzania.</p> <p>To buttress the assertion above, it is settled in Kenyan common law as elucidated in the case of <i>Seven Seas Technologies Limited v Commissioner of Domestic Taxes (Income Tax Appeal 8 of 2017) [2021] KEHC 358 (KLR)</i> on what payments relating to software amount to royalties which are subject to withholding tax.</p> <p>The proposed recharacterization would therefore not only contravene established international tax standards but also risk undermining Kenya's fiscal competitiveness and attractiveness as a destination for digital and</p>

			<p>technology-driven investment. It may also give rise to treaty override concerns and potential disputes under double taxation agreements, particularly where the source jurisdiction seeks to impose WHT in contravention of treaty provisions.</p> <p>In light of the foregoing, and in the interest of preserving alignment with global best practices and ensuring tax policy coherence, we strongly recommend that the proposed provision be withdrawn from the draft legislation.</p> <p>In our view, the expanded definition of royalty seems to be a knee jerk reaction from the recently decided High Court case which would be negatively impact taxpayers who routinely apply the use of software and digital applications.</p>
2	<b>Clause 8(b)(ii)</b>	<p>The Bill proposes deletion of section 15(3)(f) of the Income Tax Act, CAP 470, which provides that losses from taxable gains under section 3(2)(f) can only offset similar gains in the same year, or future years if not fully used.</p>	<p>We recommend that this proposal be deleted from the Bill and Section 15(3)(f) be retained as is in the Income Tax Act.</p> <p>The allowance for capital loss deductions serves a dual purpose. Firstly, it upholds the principle of equity in tax by ensuring that taxpayers are not disproportionately taxed on net gains without recognition of corresponding economic losses.</p> <p>Secondly, it fosters a more conducive investment climate by acknowledging the inherent risks of capital ventures and providing a mechanism for mitigating financial setbacks through the tax system.</p> <p><b>International Practices in Capital Loss Treatment</b></p> <ul style="list-style-type: none"> <li>● In the United Kingdom, the taxation framework permits capital losses to be offset against capital gains, with any unutilized losses eligible for indefinite carry forward, as stipulated under Section 2A of the Taxation of Chargeable Gains Act 1992.</li> <li>● Similarly, jurisdictions such as Tanzania and Uganda adopt a comparable approach, allowing taxpayers to offset capital losses</li> </ul>

			<p>against gains and to carry forward these losses into future tax periods.</p> <p><b>Alignment with Global Best Practices</b></p> <ul style="list-style-type: none"> <li>● Internationally, the recognition of deferred tax assets arising from capital losses is supported under the International Financial Reporting Standards, specifically International Accounting Standards (“IAS”) 12. This standard underscores the importance of symmetrical tax treatment, which is widely regarded as both equitable and efficient.</li> <li>● Such alignment with global norms reinforces the integrity and competitiveness of national tax systems.</li> </ul>
3	<b>Clause 8(c)</b>	<p>By inserting the following new subsection immediately after subsection (4) – ‘(4A) A person shall be allowed to carry forward a loss under subsection (1) for a period not exceeding five years immediately succeeding the year in which the loss was first made.’</p> <p>The Bill has not provided a transitional clause for businesses with existing tax losses.</p>	<p>We opine that this proposal should be deleted from the Bill to retain the indefinite carrying forward period for trading losses.</p> <p>This approach serves to safeguard enterprises operating within long-term investment horizons, particularly those in capital-intensive industries.</p> <p>The allowance of deferral of trading losses averts the imposition of undue burden on businesses during periods of initial capital outlay or cyclical downturns, thereby promoting economic resilience and sustainable growth.</p> <p><b>Alignment with Global Best Practice in the Treatment of Trading Losses.</b></p> <ul style="list-style-type: none"> <li>● The indefinite carrying forward of trading losses is endorsed by both the Organisation for Economic Co-operation and Development (“OECD”) and the International Financial Reporting Standards, specifically under IAS 12 This alignment ensures that tax policy reflects the economic realities of business cycles, fostering fairness and consistency in global tax administration.</li> <li>● In the United Kingdom, sections 45 through to 47 of the Corporation Tax Act, 2010 permit trading losses to be carried forward indefinitely, allowing businesses to offset these losses against future profits without temporal limitation.</li> </ul>

			<ul style="list-style-type: none"> <li>Within the East African Community, both Uganda and Tanzania adopt a similar stance, permitting indefinite carrying forward of trading losses, contingent</li> </ul> <p><b>Impact:</b></p> <p>Based on the foregoing, deletion of this provision would greatly impact businesses with long term recovery period and discourage investment in Kenya's economy. Limiting this carry forward of losses disproportionately affects businesses that make large capital investments such as large infrastructure projects.</p> <p>Additionally, the limiting of the carry forward of losses would translate to taxation of the business investment before the initial investment is recovered. By the time a company is making an investment, they have factored in the time it would require to recover the investment. Businesses will usually factor in this tax loss into the price of the goods or services.</p> <p>Restricting carry forward of tax losses to five (5) years translates to the tax asset becoming obsolete to the company which is far from ideal for business.</p> <p>This change would disproportionately affect capital-intensive and start-up businesses, which often take longer to become profitable going against Article 201(b)(i) of the Constitution Kenya, 2010 which provides that the tax burden be fairly shared among the people.</p>
4.	<b>Clause 27(a) and (b)</b>	This clause proposes the deletion of paragraph 1A and 1B of Second Schedule of the ITA which incentivises investments made outside Nairobi City County and Mombasa County as well investments made in a Special Economic Zone (SEZ) up to KES 1 billion cumulatively for the successive four year from 2022 or KES 250 million	<p>We are of the view that this proposal should be deleted from the Bill and the incentive retained in its current form.</p> <p>These spatially focused incentives are designed to foster regional development, alleviate urban congestion, and foster more equitable economic distribution.</p> <p>In the Kenyan context, such measures are aligned with the strategic objectives of Vision 2030 and the government's Bottom-up Economic Transformation</p>



		<p>Deletion of Paragraph 1B of the Second Schedule of the ITA which provides for 100% investment allowance for investments made with SEZ would create a lacuna in law as an alternative rate has not been provided for SEZs.</p>	<p>Agenda (“BETA”), both of which emphasize inclusive growth and regional equity.</p> <p>According to the <i>Kenya National Bureau of Statistics, Gross County Product Report 2022</i>, Kiambu County demonstrates the efficacy of regional tax incentives, having attracted substantial private-sector investment that boosted its GDP to over KES 550 billion, second only to Nairobi County. These investments have driven urbanization, employment, and infrastructure development. Repealing the incentive risks reversing this growth and redirecting investment to already congested urban centres.</p> <p><b>Alignment with Global Best Practices</b></p> <ul style="list-style-type: none"> <li>● International institutions—including the World Bank, the United Nations Conference on Trade and Development (“UNCTAD”), and the OECD—advocate for spatially targeted fiscal incentives as a means of achieving inclusive and sustainable development.</li> <li>● These practices are widely recognized for their role in addressing regional disparities and enhancing national economic cohesion.</li> </ul> <p><b>Impact</b></p> <ul style="list-style-type: none"> <li>● Removing this incentive undermines regional equity and contradicts Kenya’s own development agenda under Vision 2030 and the BETA</li> </ul> <p>Additionally, removal of the provision will greatly impact companies’ willingness to invest in areas outside the Nairobi and Special Economic Zones (“SEZ”), thus stagnating development as companies will be less willing invest outside the traditional City Centres.</p>
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### III. PROPOSED AMENDMENTS TO THE VALUE ADDED TAX ACT, 2013

NO.	CLAUSE	DESCRIPTION OF THE CLAUSE	PROPOSAL AND JUSTIFICATION
1.	<b>Clause 36(j)</b>	The Bill proposes to delete paragraph 113 of the First Schedule which provides for exemption of 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>We recommend that the exemption from VAT of 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 be retained.</p> <p>The renewable energy sector constitutes a cornerstone in the pursuit of national energy security and the mitigation of climate change impacts. According to the <i>Energy and Petroleum Statistics</i> for the fiscal year ending June 2024, published by the Energy and Petroleum Regulatory Authority ("EPRA"), Kenya has achieved an impressive renewable energy penetration rate of 79.89%.</p> <p>In a communiqué by the Kenya Power and Lighting Company ("KPLC") in February 2025, the Managing Director disclosed that the national electricity peak demand currently stands at 2,316 MW during peak consumption hours.</p> <p>When juxtaposed with EPRA's longitudinal data referenced to above, which indicates a progressive escalation in electricity demand from 2,000 MW in 2020 to present levels, the trend underscores a consistent upward trajectory in national energy consumption.</p> <p>Notably, the KPLC's February statement highlights an average monthly increment in electricity demand of approximately 14.5 MW for the 8 months preceding February 2025, reflecting sustained growth in demand for electricity.</p> <p>Given the ongoing expansion of Kenya's economy, it is anticipated that electricity demand will continue to rise. This trajectory necessitates the strategic incentivization of energy generation initiatives and the deployment of requisite infrastructure and technologies to support scalable, sustainable power production.</p> <p>VAT exemptions on solar and wind equipment reduce the initial cost burden for both private and public sector projects, particularly in off-grid and marginalized areas where energy poverty is high.</p>

			<p>This exemption was curated to bolster the uptake of renewable sources of energy and reduce reliance on fossil fuels, whose net impact is to reduce global warming. This is also in line with the United Nations' SDG 7.</p> <p>Further and in accordance with Article 5 of the Paris Agreement, Kenya agreed to incentivise the energy sector to encourage uptake and adoption of renewable sources of energy as a way of mitigating climate impact.</p> <p>Additionally, Kenya's renewable energy sector, particularly solar and wind, is actively supported by Public-Private Partnerships (PPPs) to achieve a goal of 100% renewable electricity by 2030. The country boasts a robust portfolio of renewable resources including geothermal, wind, solar, and hydropower, with nearly 90% of its electricity already generated from these sources. The Public Private Partnerships Act of 2021 provides a framework for procuring public projects, including utility-scale power projects, further incentivizing investment in renewable energy.</p> <p>VAT incentives in exempting from VAT of 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 is aimed at:</p> <ol style="list-style-type: none"> <li>Increasing investments through PPP in the renewable energy sector with an effort to meet the increasing electricity demand in the country from renewable source;</li> <li>Providing alternative sources of energy that are renewable and sustainable.</li> </ol> <p><b>Impact</b></p> <ul style="list-style-type: none"> <li>Eliminating the exemption would significantly increase equipment costs (by 16% as a result of standard rating the inputs), discouraging investment, slowing down electrification targets, and negatively impacting Kenya's commitment under the Paris Agreement.</li> <li>Most of the already negotiated PPP had factored in VAT exemption in the cost of tariff sold to KPLC. Clawing back the VAT exemption would increase the cost of electricity with the PPP having to renegotiate upwards the cost of electricity tariffs.</li> </ul>
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			<ul style="list-style-type: none"> <li>The proposed change also contradicts the global shift towards green fiscal policy, where taxation is used to incentivize clean energy and discourage fossil fuels.</li> </ul>
2.	<b>Clause 36(d)</b>	<p>The Bill proposes to delete of paragraph 62 of the First Schedule which provides for exemption of taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.</p>	<p>We propose that the exemption from VAT on goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities be retained.</p> <p>The tourism sector is a cornerstone of Kenya's economic strategy, contributing over 10% to GDP and employing over 1 million Kenyans directly and indirectly. The tourism sector remains to be one of Kenya's top foreign exchange (forex) earner alongside diaspora remittances and agricultural exports.</p> <p>Tax incentives in this sector play a catalytic role in attracting both local and foreign direct investment. The VAT exemption under Paragraph 62 has been instrumental in lowering entry barriers for developers of large-scale tourism and conference facilities, which also support ancillary sectors like transport, hospitality, and agriculture.</p> <p><b>Impact</b></p> <ul style="list-style-type: none"> <li>Maintaining the exemption aligns Kenya with international development strategies and makes the country more competitive as a regional tourism and convention hub. Removing this exemption would likely slow down capital-intensive tourism projects that are vital to regional development, cultural promotion, and economic diversification.</li> </ul>
3.	<b>Clause 36(e)</b>	<p>The Bill proposes to delete paragraph 63 of the First Schedule which provides for exemption of taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption</p>	<p>We recommend that the exemption from VAT on goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty be retained.</p> <p>Access to quality healthcare remains a national priority as outlined in Kenya's BETA and Vision 2030 through the Universal Health Coverage ("UHC") whose goal is ensuring that all individuals and communities have access to essential health services without financial hardship</p> <p>Specialized hospitals serve as referral centres and are often the only providers of critical care for serious conditions. Such hospitals include the Spinal Injury hospital and Mathari National Teaching and referral hospitals.</p>

			<p>A joint report on the state of Kenya's health market published in 2024 by Kenya's Ministry of Health and the USAID's public sector engagement program highlights the need for more specialized hospitals and care centres such as oncology centres for cancer patients.</p> <p>VAT exemption on construction and medical equipment for these facilities directly reduces capital costs, enabling more institutions to scale and improve the quality of healthcare offered.</p> <p>Additionally, removal of this exemption in Kenya would increase the cost of building specialized hospitals, undermining UHC goals which forms part of the government's BETA.</p> <p>Internationally, VAT exemptions for healthcare align with WHO recommendations and the UN's SDG 3. Further IAS 20 supports government assistance for public health infrastructure.</p> <p><b>Impact</b></p> <ul style="list-style-type: none"> <li>• Medical services are currently exempt from VAT which makes them accessible and affordable to the citizens. Charging VAT at the standard rate of 16% on the input used in construction of specialised hospitals will increase the cost of construction of the hospitals. Since the provision of medical services is exempt from VAT, the cost of construction would indirectly be passed on to the consumers, increasing the cost of access to medical services.</li> <li>• Given the significant disease burden in Kenya and the growing demand for specialized care (e.g. oncology, cardiology), removing the VAT exemption would increase the cost of care, limit investment in underserved regions, and contradict the nation's UHC goals.</li> <li>• Further, Article 43(1)(a) of the Constitution of Kenya, 2010 provides that it is the right of every person to access healthcare services. Also, and as part of aligning with the United Nations SDG 3.</li> </ul> <p>Deletion of the VAT exemption to standard rate the input used in construction of specialized hospitals will ultimately increase cost of construction of these facilities which will be passed onto the consumer.</p>
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4.	<b>Clause 36 (h)</b>	<p>The Bill proposes to delete paragraph 109 which provides for exemption on goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters related to housing.</p>	<p>We recommend that the exemption from VAT on goods imported or purchased locally for direct and exclusive use in the construction of houses under an affordable housing scheme.</p> <p>We further propose that the VAT exemption framework be aligned with the corporate tax incentive model. Specifically, we recommend that the approvals process be designated to the Kenya Revenue Authority (KRA) or the State Department for Housing to administer and verify exemption claims based on clearly defined eligibility criteria.</p> <p>Affordable housing has been one of the key arms of not just the current government's BETA but also its predecessors and the UNs SDG 11 on making cities and human settlements inclusive, safe, resilient and sustainable by eliminating slums.</p> <p>Specifically in Kenya, the goal of creating affordable housing was to address the significant housing deficit especially in urban areas where the demand outweighs the supply of housing units.</p> <p>To attract private sector participation and reduce the cost of construction in order to realize one of its agenda, the government introduced incentives in this sector and specifically the exemption from VAT vide the Section 21 of the Finance Act, 2019.</p> <p>The VAT provision lowers the cost of inputs such as steel and cement for developers who participate in the construction of government approved affordable housing units.</p> <p>Pursuant to <b>Article 43(1)(b)</b> of the Constitution, every Kenyan has the right to accessible and adequate housing. <b>Article 21(2)</b> further mandates the State to take legislative and policy measures to progressively realize this right. Parliament, as the chief legislative organ, has a pivotal role in ensuring that fiscal policy reflects and supports these constitutional imperatives.</p> <p>Retaining the VAT exemption on affordable housing inputs is a concrete, non-cash contribution by the State towards realizing this right and addressing Kenya's housing deficit.</p>

			<p>According to the <i>2023/24 Kenya Housing Survey Basic report</i> by the Kenya National Bureau of Statistics, Kenya faces an acute housing shortage. The annual demand stands at over <b>250,000 housing units</b>, yet only about <b>50,000 units are delivered</b>, leaving a persistent shortfall of over <b>200,000 units</b>. Additionally, over <b>60% of Nairobi residents</b> live in slums and informal settlements, reflecting the urgency of increasing affordable housing supply (<i>UN-Habitat, Kenya Urban Housing Sector Profile, 2022</i>).</p> <p>Subjecting housing inputs to VAT would raise construction costs, making homes less affordable and thereby further widening the housing gap.</p> <p>Beyond the constitutional and humanitarian concerns, the housing sector is a key economic driver. According to the <i>Kenya National Bureau of Statistics, Economic Survey 2023</i>, it contributes <b>more than 7% to Kenya's GDP</b> and supports a wide array of industries in the value chain—such as <b>steel and cement manufacturing, transport and logistics, and professional services</b> including architecture, engineering, quantity surveying, and legal services.</p> <p>The sector also generates <b>thousands of jobs</b>, both skilled and unskilled. Maintaining VAT exemptions for housing inputs therefore serves not just a social good but also an economic imperative.</p> <p>However, despite the VAT exemption's importance, its effectiveness has been significantly undermined by a complex multifaceted approval process. Currently, developers must seek approval from the <b>National Treasury</b>, a process that is widely reported as <b>bureaucratic, slow, and opaque</b>. Consequently, according to the <i>Kenya Property Developers Association, Policy Brief 2024</i> very few developers—estimated at <b>less than 5% of those eligible</b>—have successfully accessed the benefit. This undermines the incentive and creates uncertainty in the market.</p> <p>In contrast, the <b>15% corporate tax incentive</b> for affordable housing—administered under the Income Tax Act—has proven more accessible, with clearer eligibility criteria and a more streamlined implementation.</p> <p>This change will ensure that tax incentives are <b>predictable, accessible, and effective</b>—thereby increasing uptake, reducing housing production costs, and encouraging more private sector participation. Moreover, this will foster investor confidence and facilitate long-term planning in the capital-intensive housing sector.</p>
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			<p><b>Impact</b></p> <p><b>Support for Affordable Housing:</b> Retaining the VAT exemption is crucial for reducing construction costs, thereby making housing more affordable for low- and middle-income earners.</p> <p><b>Alignment with Government Initiatives:</b> The Affordable Housing Act, 2024, which introduces a 1.5% levy on gross income to fund affordable housing, complements the VAT exemption. Removing the exemption could undermine these efforts,</p> <p><b>Encouragement for Private Sector Participation:</b> The VAT exemption incentivizes private developers to invest in affordable housing projects, increasing the supply of such units.</p> <p>Economic and Social Impact: Affordable housing projects contribute to job creation and economic growth. Removing the VAT exemption could slow down these developments, negatively impacting the broader economy.</p>
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