

IPF/CEO/SBM/03/-05-2025

27th May 2025

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P. O. Box 41842-00100,
Nairobi, Kenya.

RE: INSTITUTE OF PUBLIC FINANCE (IPF) AND KENYA WOMEN PARLIAMENTARY ASSOCIATION (KEWOPA MEMORANDUM ON THE FINANCE BILL, 2025)

This memorandum has been prepared by the Institute of Public Finance (IPF) in partnership with the Kenya Women Parliamentary Association (KEWOPA).

We begin by applauding the Finance and National Planning Committee of the National Assembly for giving the public the opportunity to air their views on this critical Bill, which is of great significance to the country. Before we discuss our submission in detail, we set the context.

Context: Revenue performance vis-à-vis target

The 2024 Budget Policy Statement projected that the withdrawn Finance Bill 2024 would raise KES 344 billion in revenue. Following its withdrawal, the Tax Laws (Amendment) Act 2024 was introduced with a more modest target of approximately Ksh 178 billion in additional revenues. However, the Exchequer Issue as of 30th April 2025 indicates that actual revenue collection continues to fall short of these targets, highlighting persistent gaps between projections and performance and raising concerns about their reliability and planning.

By April 2025, tax revenue was Ksh 1,800.8 billion, against an annual target of Ksh 2,400.7 billion, meaning that the government targets to collect Ksh 600 billion to meet its target, putting pressure on tax performance in the last two months. Meeting this target is unlikely as monthly tax collections have averaged Ksh 180.1 billion so far, even though April and June usually see higher revenues due to quarterly tax payments and increased business filings. Last year, collections averaged 209 billion in the last quarter. This year, the government will have to collect Ksh 300 billion in the last two months to meet the annual target.

For the FY 2025/26, the government targets to raise Ksh 2,757.0 billion in ordinary revenue, despite the clear reality that previous years' projections have consistently fallen short. According to the 2025 BPS, there were revenue shortfalls in both FY 2022/2023 and FY 2023/2024 of Ksh 173.7 billion and Ksh 367.9 billion, respectively. This raises important questions about the realism of the estimated additional revenue that the Finance Bill 2025 is expected to generate. It is thus our call that future revenue estimates should be based on a realistic assessment of our actual collection capacity as overestimating revenue targets has consistently resulted in higher-than-target fiscal deficits.

As indicated in the 2025 Budget Policy Statement, the Finance Bill 2025 aims to close loopholes and enhance tax administration efficiency. However, we continue to emphasize the need for the National Treasury to provide detailed information on the revenue impact of each proposed tax measure. This transparency is essential to enhance clarity and support informed decision-making.

Key challenges facing Kenya's tax system

1. Limited public trust

A key issue facing Kenya's current tax system is the limited support and trust from taxpayers, leading to low compliance levels. While citizens recognize the importance of taxes in funding public services, they remain uncertain whether new tax measures will lead to tangible improvements in service delivery. This underscores the need for credible, evidence-based policy decisions. Both the National Tax Policy and the Medium-Term Revenue Strategy (MTRS) emphasize the importance of using regular studies to guide tax reforms and legislation. More specifically, the government on the MTRS had committed to conducting studies and review on; implementation of rental income tax regime, tax exemptions and reliefs, implementation of a minimum tax, review personal income tax band, optimal taxation of petroleum products, tax structure of alcoholic and tobacco products, carbon taxation, and develop a tax expenditure framework to guide granting, monitoring and evaluation of tax incentives, among others.

The National Tax Policy (NTP) and Medium-Term Revenue Strategy (MTRS) outline broader tax policy goals beyond raising revenue, such as safeguarding local industries, aligning with global best practices, and fostering a stable and predictable business environment. While taxation serves both to fund public services and to shape investment decisions and social behavior, it remains unclear what research informed the Finance Bill, 2025, and whether such studies are publicly accessible. Additionally, the government has failed in the past to estimate the impact of the annual changes to its tax laws on revenue and the economy at large. This remains critical to ensure that government's decisions do not stifle economic growth and development.

2. Significant tax changes have resulted in an insignificant change in tax revenue

Kenya's revenue performance in relation to the Laffer Curve suggests that while tax rates have increased across various instruments such as VAT and excise duties, overall tax revenue has not grown proportionally indicating possible movement beyond the revenue-maximizing point of the curve. For example, despite various revisions, VAT revenue has declined from 4.6% of GDP in FY 2013/14 to 4.1% in FY 2023/24, highlighting the limits of rate-based strategies amid a shrinking tax base and rising tax expenditures.

Table 1: Revenue performance/growth/percent of GDP

| | Ksh Billion | | | | Growth% | | | | % GDP | | | |
|-------------------------------------|-------------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|
| | 2020/21 | 2021/22 | 2022/23 | 2023/24 | 2020/21 | 2021/22 | 2022/23 | 2023/24 | 2020/21 | 2021/22 | 2022/23 | 2023/24 |
| Total Revenue | 1,803.5 | 2,199.8 | 2,355.1 | 2,702.7 | 4.0 | 22.0 | 7.1 | 14.8 | 15.9 | 17.3 | 16.5 | 16.8 |
| Ordinary revenues(tax + non tax) | 1,562.1 | 1,918.0 | 2,041.1 | 2,288.9 | -0.7 | 22.8 | 6.4 | 12.1 | 13.7 | 15.0 | 14.3 | 14.2 |
| Income Tax | 694.1 | 876.7 | 941.6 | 1,042.8 | -1.8 | 26.3 | 7.4 | 10.7 | 6.1 | 6.9 | 6.6 | 6.5 |
| VAT | 410.8 | 523.1 | 550.4 | 645.5 | 7.1 | 27.3 | 5.2 | 17.3 | 3.6 | 4.1 | 3.8 | 4.0 |
| Import Duty | 108.4 | 118.3 | 130.1 | 133.9 | 10.6 | 9.1 | 10.0 | 2.9 | 1.0 | 0.9 | 0.9 | 0.8 |
| Excise Duty | 216.3 | 252.1 | 264.5 | 276.7 | 10.8 | 16.6 | 4.9 | 4.6 | 1.9 | 2.0 | 1.8 | 1.7 |
| Others(including investment income) | 132.5 | 147.8 | 154.5 | 190.0 | -30.1 | 11.5 | 4.5 | 23.0 | 1.2 | 1.2 | 1.1 | 1.2 |
| Appropriation-in-Aid | 241.5 | 281.9 | 313.9 | 413.7 | 50.7 | 16.7 | 11.4 | 31.8 | 2.1 | 2.2 | 2.2 | 2.6 |
| GDP | 11,370.3 | 12,752.0 | 14,299.2 | 16,106.0 | 0.1 | 12.2 | 12.1 | 12.6 | 100 | 100 | 100 | 100 |

Data source: Budget Review and Outlook Papers

3. Need for predictability

A third key challenge is an unpredictable tax environment that upsets investment decisions and increases compliance costs for businesses. Research evidence shows that a stable and predictable tax environment often has a greater impact on economic stability and investment decisions than tax incentives. The government of Kenya has failed to uphold predictability in its tax policy, despite commitments made in the MTRS and National Tax Policy. Whereas various measures highlighted in the guiding documents (MTRS and NTP 2024) have been included in the Bill, for instance, the inclusion of multi-national enterprises through the minimum Top up Tax and the significance economic presence tax, there still remains certain commitments highlighted within the MTRS implementation matrix that have not yet been implemented. These include; the review of the personal income tax bands, lowering of the corporate income tax to a rate of 25%, reviewing and rationalization of tax exemptions, and downward revision of the VAT rate, and review of the VAT registration threshold. In addition, some measures have been subject to annual revisions. For example, proposed changes to the Export and Investment Promotion Levy reflect unpredictability. In addition, the government has proposed to reclassify some goods from being exempt to being vatable and others from zero-rated to being exempt. This is without a framework to guide granting, monitoring and evaluation of tax incentives as proposed in the MTRS.

Growing tax expenditures

Tax incentives that result into tax expenditures estimated at Ksh 511 billion in 2023 continue to erode Kenya's tax base. While some are necessary (such as exemptions for basic commodities, health and education), it remains unclear how some have contributed to our economic goals as a country. In addition, some exemptions (such as exemptions of aircraft parts) benefit higher income earners by undermining the principle of equity in taxation. The National Tax Policy and MTRS call for a clear framework to guide the use and evaluation of tax incentives, but no such framework currently exists. While Tax Expenditure Reports by the National Treasury are a positive step, they lack critical details—such as the policy goals behind tax exemptions—needed to guide reforms. Research by the Institute for Public Finance highlights these shortcomings, which are evident in the Finance Bill, 2025, where proposed reclassification of some goods from being exempt to being vatable and others from zero-rated to being exempt lack justification.

The National Tax Policy on zero-rating indicates that the government goal will be to limit zero-rate to exports to conform with the destination principle and the government would provide a lower VAT than the general rate to cushion the economy against shocks occasioned by global trends leading to adverse effects of price increase of these products. In the Medium-Term Revenue Strategy (MTRS) the government proposes a downward revision of the standard VAT rate to 14 percent and rationalize exemptions to improve compliance and revenue collection. The MTRS mentions a joint study by the National Treasury and KRA to guide this review. It remains unclear if this study has been done. However, we note that there is selective implementation of the MTRS recommendations with rationalization of exemptions without the accompanying downward revision in the VAT standard rate.

Overview of Finance Bill, 2025

Some measures in the Bill are welcome, such as the clean-up of the VAT Act, the proposal to increase the tax-free per diem allowance from KES 2,000 to KES 10,000 per day is a welcome move that will enhance employees' take-home pay. Similarly, expanding the personal income tax deduction to cover interest on loans used for constructing residential houses, rather than limiting it to the purchase or improvement of such houses, is

commendable. We also commend the National Treasury for shifting focus away from introducing new tax measures and instead concentrating on improving tax administration.

However, several proposals in the Bill remain contentious. These include the repeal of key data protection provisions, which would allow the Kenya Revenue Authority (KRA) to access personal data and trade secrets held by businesses raising significant privacy and confidentiality concerns. Additionally, the proposed extension of VAT refund timelines from 90 to 120 days for standard applications, and from 120 to 180 days for cases requiring audits, could severely strain business cash flows and erode trust in the tax refund system. The proposed reduction in the timeframe for taxpayers to seek legal redress further compounds these concerns by limiting access to fair and timely resolution of tax disputes.

Therefore, while some tax proposals as contained in the Finance Bill 2025 are welcome, some gaps still remain as detailed in the **attached matrix**. We hope that the issues and proposed interventions will be considered to enrich the Finance Bill 2025, and continuously ensure that our tax system is equitable, efficient and effective.

We are available to provide further information and discuss our recommendations on the proposed tax measures.

Sincerely,



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| Item/Clause | Previous Provision | Description of the Clause | Proposal | Justification |
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| Income Tax Act | | | | |
| Clause 2(a)(iii): Definition of royalty | The Income Tax Act defines the term royalty to mean payments made as a consideration for the use or the right to use copyrights, cinematograph films, patents, trademarks, designs or models, plans, formulas, or processes, and industrial, commercial, or scientific equipment, or for information concerning such equipment or experience. | The Bill proposed to amend the definition of royalty to include the words “and includes the distribution of software where regular payments are made for the use of the software through the distributor” | Reject the proposal to ensure consistency with the Court’s jurisprudence and the OECD Model Tax Convention, which Kenya is a party to. | The Finance Bill 2025 reintroduces, albeit in revised language, a provision previously critiqued in the Finance Bill 2024 and excluded in the Tax Laws Amendment Act 2024 due to its misalignment with established legal and international tax standards. Specifically, the Bill proposes that the distribution of software involving regular payments for its use be treated as royalty income. This position stands in direct contradiction to Kenyan jurisprudence, notably the decision in <i>Commissioner of Domestic Taxes v Dynasoft Business Solutions Limited (2024)</i> , where the courts drew a clear distinction between the mere use of software and the use of underlying copyright, only the latter being subject to withholding tax. Furthermore, the proposal is inconsistent with the OECD Model Tax Convention, which treats standard software distribution as the sale of goods rather than a royalty, unless the distributor acquires substantive rights such as reproduction, modification, or commercial exploitation of the software. Under both domestic case law and international standards, |

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| | | | | payments for standard-use software should not be classified as royalties. |
| Clause 2(a)(vii): Definition of related person | The Income Tax Act defines related person as; in the case of two persons where a person participates directly or indirectly in the management, control or capital of the business of another person. | <p>The bill proposes the deletion of the current definition of related person and replacing it with a broader definition adding criteria such as in the case of more than the two persons:</p> <p>Any other person who participates directly or indirectly in the management, control or capital of the business.</p> <p>Any other individual who is associated with the two persons by marriage or affinity</p> | Reject the proposal | <p>The proposed definition of a "related person" is overly broad, ambiguous, and lacks the clarity necessary for effective tax enforcement and compliance. Unlike internationally accepted standards such as the OECD Transfer Pricing Guidelines, which define related parties based on specific thresholds, typically a 25% ownership or voting control rule, the new definition in Kenya's law vaguely includes anyone who "participates directly or indirectly in the management, control, or capital" of another business, without defining what level of influence qualifies.</p> <p>Additionally, the inclusion of relationships based on marriage, consanguinity (blood relation), or affinity (relation by marriage) significantly expands the scope of related-party transactions, potentially capturing individuals and businesses that operate at arm's length, thereby imposing unnecessary compliance</p> |

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| | | | | <p>burdens on taxpayers and complicating enforcement for KRA. This lack of precision increases the risk of arbitrary tax assessments and administrative inefficiencies, as companies and individuals may find themselves subjected to complex transfer pricing regulations even when no real control or profit-shifting occurs. Furthermore, the broad nature of the definition creates uncertainty that could discourage both local and foreign investment, as businesses require clear, predictable tax rules to operate efficiently. By failing to align with global best practices, Kenya also risks conflicts in cross-border taxation, leading to double taxation disputes and potential treaty violations.</p> <p>To ensure fairness, efficiency, and consistency with international norms, the definition should be revised to include clear ownership thresholds (e.g., 25%), objective criteria for determining control, and a limited scope for family relationships, such as restricting it to first-degree relatives (spouses, parents, children). A well-defined related-party framework will help strengthen tax enforcement without stifling legitimate business</p> |
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| | | | | operations or deterring investment. This is especially remembering that the effectiveness of taxation in transfer pricing agreements is heavily hinged on clarity of its enforcement measure |
| Clause 3: Amendment of section 5 of the Income Tax Act | The Income Tax Act stipulates that any amount received by an employee as payment for subsistence, travel or entertainment in respect to a period spent outside their scope of work, the first two thousand shillings shall be deemed as reimbursement of the amount so expended thus making it non-taxable. | The bill proposes to raise the exempt amount from two thousand shillings to ten thousand shillings. | Adopt the proposal. | For employees more of their per-diem becomes tax free, which may lead to a small increase in disposable income. |
| Clause 4: Amendment of section 8 of the Income Tax Act | Section 8 of the Income Tax Act provides that any pension received by a resident individual from a pension fund or pension scheme established outside Kenya shall be deemed to have accrued in or to have been derived from Kenya to the extent to which it relates to employment or services rendered by the individual, | The bill proposes the change of the name “Husband” to “spouse” | Adopt the proposal. | This move essentially removes the explicit gender bias in the original wording which only recognised male partners as the source of pension benefits. It now acknowledges both male and female partners, so men and women receiving pensions linked to their spouse’s work regardless of gender are treated equally. |

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| | or the husband or parent of the individual, in Kenya. | | | From a tax administration point of view, it expands the scope of who may be taxed on a pension scheme. Now, anyone, regardless of gender, receiving foreign pension linked to the spouse's employment in Kenya can be taxed proportionately, enhancing horizontal equity. |
| Clause 5: Amendment of section 10 of the Income Tax Act | Section 10 of the Income Tax Act currently lists types of payments on which withholding tax rules apply. | The bill proposes to add new paragraphs which will see the supply of goods to a public entity and the sale of scrap added to the list of payments which withholding tax rules apply. | Adopt the proposal. | <p>This broadens the base of withholding tax at the following rates:</p> <p>supply of goods to a public entity at 0.5% for a resident and 5% for a non-resident.</p> <p>Sale of scrap at 1.5% for both residents and non-residents.</p> <p>This in turn strengthens the revenue collected on these transactions.</p> |
| Clause 6 (a): Expansion of Significance of Economic Presence Tax | Section 12E(1) of the Act provides that SEPT shall be payable by non-resident persons whose income is from the provision of services that are derived from or accruing in Kenya through a business carried out over a digital marketplace. | The Bill proposes the expansion of the income that is subject to SEPT to include businesses that not only derive income in Kenya from the digital marketplace but also over the internet or electronic networks. | Reject the proposal unless clear definitions are included on the definitions of "electronic networks" and "business over the internet," introduce minimum thresholds, and align | The Finance Bill's proposal to expand the scope of SEPT to include businesses that derive income not only from the digital marketplace but also "over the internet or electronic networks" introduces major legal, policy, and administrative concerns. Most notably, the terms <i>electronic networks</i> and <i>business over the internet</i> are not defined in the Bill or the Income Tax Act, leaving their scope |

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| | | | <p>the SEPT rules with international norms to ensure fair, effective, and administratively feasible taxation of the digital economy.</p> | <p>dangerously vague. This raises constitutional issues under Article 210, which requires tax laws to be clear, certain, and predictable. The absence of definitions could lead to overreach, where even incidental or minimal online activity is deemed taxable. It also exposes the provision to legal challenges and makes it difficult for businesses, especially non-resident ones, to assess whether and how the tax applies to them.</p> <p>From an administrative perspective, KRA may face similar implementation difficulties as experienced with the Digital Services Tax (DST), which suffered from unclear scope and poor compliance among non-resident service providers. Comparatively, Nigeria's framework offers a model of clarity, where its Finance Act precisely defines digital services, sets clear monetary thresholds (e.g., ₦25 million turnover), and imposes registration obligations on affected businesses.</p> |
| Clause 6(b): SEPT Now Applicable to Non-Residents With Annual Turnover of | Section 12E(3)(d) provides that a non-resident person with an annual turnover of less than five million | The Bill proposes the deletion of the section now allowing non-residents with turnover below 5 million to pay the SEPT. | Reject the proposal. | The proposed removal of the KES 5 million turnover exemption for SEPT in the Finance Bill effectively means that all non-resident persons conducting business in Kenya through |

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| Below Million | Kshs | 5 | shillings are exempt from paying SEPT. | | | <p>the digital marketplace, internet, or electronic networks will now be subject to SEPT, regardless of their scale of operations. This blanket application resurrects the very issues that plagued the former DST, particularly the lack of proportionality, administrative complexity, and the imposition of burdensome compliance obligations on small and low-revenue businesses.</p> <p>If the purpose of SEPT is to align with OECD best practices on taxing the digital economy, then reintroducing a clear and reasonable threshold is critical to ensure that the tax only applies to entities with a demonstrable and significant economic presence. Jurisdictions like Nigeria have adopted such thresholds to balance revenue collection with ease of doing business and legal clarity. Without a threshold, Kenya risks deterring smaller global service providers, increasing enforcement burdens, and potentially undermining the tax's effectiveness. Therefore, to preserve fairness and international credibility, it is imperative that a minimum turnover threshold be retained.</p> |
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| <p>Clause 8 (a)(i): Deductions allowed on Utensils and Articles</p> | <p>Section 15(2)(g) of the Income Tax Act provides that the depreciated value of any utensil or article other than machinery or plant in the production of gains or profits is considered as a tax deductible in the determination of the taxable net profit, subject to consideration by the Commissioner.</p> | <p>The Bill proposes to amend the same and include that the rate applicable shall be 100% of the year's income and shall not require the consideration of the commissioner.</p> | <p>Adopt the proposal</p> | <p>The Bill introduces a clear and standardized rule for claiming deductions on implements, utensils, and similar articles used in generating income. Specifically, it provides that such assets will now be eligible for a 100% deduction in the year they are first put into use and eliminates the previous requirement for discretionary approval by the Commissioner.</p> <p>Under the current law, the deduction lacked a defined rate and was subject to the Commissioner's interpretation and valuation, creating ambiguity, administrative delays, and inconsistencies across taxpayers. The proposed amendment brings much-needed certainty, predictability, and administrative efficiency, as businesses will now know in advance the tax treatment of these items. Importantly, it offers a substantial incentive for investment, particularly in small tools and equipment, by allowing immediate full write-offs in the year of acquisition, which particularly benefits the manufacturing sector and newly established small businesses</p> |
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| <p>Clause 8 (a)(ii)(iii): Deductions on sale or felling of standing timber</p> | <p>The Income Tax Act provides for specific deductions when calculating taxable income from the sale or felling of standing timber still rooted in the ground, distinguishing between two key scenarios. First, landowners selling timber are permitted to deduct an amount reflecting either the portion of the purchase price attributable to the timber or, in cases of inheritance or gifts, the value of the timber at the time of acquisition, both of which are subject to determination by the Commissioner. Second, individuals who purchase timber rights (i.e., the right to fell trees on land they do not own) can claim deductions based on a proportion of the purchase price paid for those rights. This deduction is calculated according to the volume of timber felled and sold during the year of income, using a just and reasonable apportionment as assessed by the Commissioner.</p> | <p>The Bill proposes the deletion of this clause</p> | <p>Reject the proposal</p> | <p>The deletion of these provisions would significantly and adversely impact individuals and businesses engaged in the timber industry. Previously, these rules allowed for deductions tied to the cost of acquiring timber, either through direct purchase, inheritance, or acquisition of timber-felling rights, thereby ensuring that income tax was only applied to the net profits derived from timber sales. Without such deductions, taxpayers would be required to pay tax on the full gross receipts from timber sales, irrespective of the actual investment or acquisition costs incurred. This undermines a foundational principle of income taxation: that tax should apply to gains, not gross revenue. The removal of these deductions is likely to lead to unjust tax assessments, where legitimate business costs are disregarded, effectively penalizing timber traders and forest-related enterprises. It could also result in legal and constitutional challenges on the grounds of unfairness, as it violates the principles of equity and horizontal fairness in taxation. The disproportionate impact on sectors heavily reliant on upfront investment, such as forestry, may also discourage</p> |
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| | | | | further investment and formalization in this area, undermining tax compliance and broader economic objectives. |
| Clause 8(a)(iv) | The Income Tax Act provides a special tax concession in the form of a one-third exemption on the employment income of certain non-citizen employees, effectively excluding that portion of their income from taxation in Kenya under specific conditions. This applies where the employee is hired by a non-resident employer engaged in profit-making activities in Kenya and is assigned to perform duties exclusively for the employer's regional office, provided that the regional office is formally approved by the Commissioner. Additionally, the employee must be absent from Kenya for at least 120 days in the year due to work obligations performed outside the country, and the employer must not claim the employee's income as a | The Bill proposes the deletion of this clause | Revise the deduction by reducing the allowable portion rather than eliminating the deduction entirely, preserving some tax relief while still broadening the tax base. | The proposed deletion of the one-third tax deduction for certain non-citizen employees would mean that individuals who previously benefited from this relief will now be subject to income tax on their entire earnings in Kenya, thereby increasing their effective tax liability. For multinational and regional offices operating out of Kenya, this change could lead to higher employment costs, especially if they are compelled to offer higher gross salaries to offset the lost tax benefit for affected employees. This could, in turn, make it less attractive for such entities to base their regional operations in Kenya, which has traditionally been a preferred hub due in part to favourable tax treatment for expatriate staff. The policy shift may thus undermine Kenya's competitive edge as a regional headquarters destination. While the amendment may result in increased short-term tax revenues and reduce the fiscal incentives tied to foreign personnel, it risks deterring long-term investment. A more balanced approach could involve scaling down the exemption |

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| | deductible business expense for Kenyan tax purposes. | | | rather than removing it entirely, thereby preserving Kenya's attractiveness for regional offices while still improving revenue mobilization. |
| Clause 8(a)(v): Deductions of expenditure incurred in the construction of a public sports facility | The Act provides for the allowable deductions of any donation in the year of income to a charitable organisation whose income is exempt by the CS Treasury | The Bill proposes the addition of the exemption of expenditure incurred in the construction of a public sports facility | Adopt the proposal | This move is geared towards promoting the construction of public sports facilities in Kenya by deducting expenditure incurred in the calculation of taxable income, which is an initiative that is aligned with the Bottom-Up Economic Transformation Agenda (BETA). |
| Clause 8(a)(z): Deductions of Expenditure Incurred by a Person Sponsoring Sports | The Act provides that expenditure incurred in that year of income by a person sponsoring sports with the prior approval of the Cabinet secretary responsible for sports shall be an allowable deduction. | The Bill proposes the deletion of the clause. | Adopt the proposal but ensure that other incentives are still created to enhance corporate investment in sports. | The removal of this provision could have both positive and negative implications. On the one hand, it eliminates some of the deductions and exemptions previously available to corporations, leading to an increase in corporate tax liability and DRM. On the other hand, by removing the allowance for deductions related to corporate investments in sports, it may discourage businesses from sponsoring sports activities, potentially reducing overall investment in this area. This shift could lead to a decline in corporate engagement with sports sponsorship, which may have broader implications for the industry. |

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| <p>Clause 8(b): Personal Income Tax Deduction on Home Loan Interest now Extended to Construction</p> | <p>The Income Tax Act allows an individual to claim a deduction of up to Kshs 360,000 per year of interest paid on a mortgage loan borrowed from specified financial institutions, provided the loan is used to purchase or improve a residential property that the individual occupied during that year.</p> <p>The deduction is proportionately reduced if the property was occupied for only part of the year and may only be claimed for one residence.</p> | <p>The Bill proposes the inclusion of the construction of houses as well to apply to the deduction.</p> | <p>Adopt the proposal</p> | <p>The recent tax provisions align with and actively support the government's BETA, particularly in the housing sector. Under the revised framework, interest paid on loans used not only for the purchase or improvement of a residential property but also for its construction now qualifies as a deductible expense against an individual's taxable income.</p> <p>This expansion means that individuals constructing their own homes using mortgage financing can claim an annual deduction of up to KES 360,000, limited strictly to the interest component of the loan repayment. The principal amount repaid does not qualify for this deduction. This measure is a targeted form of tax relief designed to reduce the overall tax liability of individuals undertaking self-financed housing projects.</p> <p>By easing the financial burden on taxpayers engaged in home construction, the provision incentivizes private home ownership and enhances access to affordable housing. It further strengthens the government's commitment to making home ownership more attainable,</p> |
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| | | | | thereby contributing to broader social and economic development goals. |
| Clause 8(b)(ii): Disallowing Loss Offsets in CGT Computation | The Income Tax Act allows a deduction for taxpayers to offset capital losses against capital gains that are chargeable to tax under section 3(2)(f) of the Income Tax Act. Thus, if a loss is realised in a particular year when computing chargeable CGT under paragraph 5(2) of the Eighth schedule, that loss can be deducted only against capital gains in the same year. If full loss is not used up, it can be taken or carried forward to the next year of income | The Bill now proposes the deletion of the clause. | Reject the proposal | <p>The proposed removal of the provision allowing the offsetting of capital losses against capital gains in the computation of CGT would have significant negative implications for investors and the broader economy. Under the current framework, taxpayers are permitted to deduct capital losses incurred in the same year or carried forward from previous years when calculating their CGT liability. Eliminating this relief would mean that investors must pay CGT on gross gains, regardless of any corresponding losses incurred within the same tax period or prior years.</p> <p>This change would disproportionately affect investors and property owners operating in highly volatile markets such as real estate and the stock exchange, where asset values frequently fluctuate. Without the ability to offset losses, taxpayers would face an increased and often inequitable tax burden, particularly in cases where their net investment position is neutral or negative. The disincentive created by such a regime could suppress investment activity, as taxpayers may become more risk-</p> |

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| | | | | <p>averse, knowing that unsuccessful ventures will not receive any tax relief.</p> <p>Moreover, the deletion of the loss offset provision undermines a fundamental principle of fair taxation: taxing net income or net economic gain. Tax systems that recognize only gains while disregarding losses introduce asymmetry and distort the treatment of taxpayers. Such an approach deviates from established norms of equity and efficiency in taxation, ultimately weakening investor confidence and potentially hampering economic growth.</p> |
| <p>Clause 8(c): Allowable Deduction on Deficits on Personal Income for only Five Years</p> | <p>Section 15(4) of the Act provides that where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding years of income.</p> | <p>The Bill proposes to introduce a 5-year cap in the reliance of the deduction.</p> | <p>Reject the proposal, unless a balance is struck between safeguarding the tax base and supporting genuine business development. Specifically, the Bill should provide for an extension of the carry-forward period where a taxpayer can substantiate, to the satisfaction of the Commissioner, that the failure to utilize the losses within five</p> | <p>This provision has traditionally provided flexibility for businesses, allowing them to manage fluctuations in profitability over time, particularly in capital-intensive or cyclical industries.</p> <p>However, the proposed amendment seeks to introduce a five-year cap on the carry-forward period for such losses. This will mean that taxpayers will only be able to offset losses against future profits for up to five years from the year in which the loss was incurred. After the lapse of this period, any unutilized losses will expire and will no longer be available</p> |

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| | | | <p>years was due to legitimate commercial or economic circumstances beyond their control.</p> | <p>to reduce taxable income in future years.</p> <p>While this proposal is intended to curb potential abuse of the indefinite loss carry-forward provision, where some entities might perpetually report losses to avoid taxation, it raises significant concerns, particularly for businesses with long gestation periods or those operating in capital-intensive sectors such as manufacturing, infrastructure, and energy. These industries often take several years before they become profitable, and limiting the carry-forward loss period may result in them being unable to fully recover their initial losses. Consequently, such entities may face a higher effective tax rate, which could discourage long-term investment and stifle growth.</p> <p>Moreover, the imposition of a strict five-year limit may place undue pressure on emerging businesses to become profitable within a short timeframe, potentially leading to unsustainable financial practices or underinvestment in strategic growth</p> |
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| | | | | initiatives. It may also reduce Kenya's competitiveness as an investment destination, particularly when compared to jurisdictions that offer more flexible tax loss treatment. |
| Clause 8(d) | This previous provision provides that the CS Treasury may, on recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period | The Bill proposes the deletion of the clause | Reject the proposal. | This is related to the previous clause which seeks to ensure that persons with losses utilise them within five years. However, this would negatively impact capital-intensive and genuine making losses corporations and thus justifying the need for an extension based on genuine circumstances. |
| Clause 10: Proposes Deletion of Related Party in Transfer Pricing | The previous provision under section section 18(6) provides a related party in cases of transfer pricing to be: One that directly or indirectly participates in the management, control or capital of the other's business | The bill proposes the deletion of the current definition of related person and replacing it with a broader definition adding criteria such as in the case of more than the two persons: Any other person who participates directly or indirectly in the management, control or capital of the business. | Reject the proposal. To ensure fairness, efficiency, and consistency with international norms, the definition should be revised to include clear ownership thresholds (e.g., 25%), objective criteria for determining control, and a limited scope for family | The proposed definition of a "related person" is overly broad, ambiguous, and lacks the clarity necessary for effective tax enforcement and compliance. Unlike internationally accepted standards such as the OECD Transfer Pricing Guidelines, which define related parties based on specific thresholds, typically a 25% ownership or voting control rule, the new definition in Kenya's law vaguely includes anyone who "participates directly or indirectly in the management, control, or capital" of |

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| | <p>A third party controls both entities directly or indirectly</p> <p>Individuals managing or controlling the two businesses are related by family ties that by blood or marriage.</p> | <p>Any other individual who is associated with the two persons by marriage or affinity</p> | <p>relationships, such as restricting it to first-degree relatives (spouses, parents, children). A well-defined related-party framework will help strengthen tax enforcement without stifling legitimate business operations or deterring investment. This is especially remembering that the effectiveness of taxation in transfer pricing agreements is heavily hinged on clarity of its enforcement measure.</p> | <p>another business, without defining what level of influence qualifies.</p> <p>Additionally, the inclusion of relationships based on marriage, consanguinity (blood relation), or affinity (relation by marriage) significantly expands the scope of related-party transactions, potentially capturing individuals and businesses that operate at arm's length, thereby imposing unnecessary compliance burdens on taxpayers and complicating enforcement for KRA. This lack of precision increases the risk of arbitrary tax assessments and administrative inefficiencies, as companies and individuals may find themselves subjected to complex transfer pricing regulations even when no real control or profit-shifting occurs. Furthermore, the broad nature of the definition creates uncertainty that could discourage both local and foreign investment, as businesses require clear, predictable tax rules to operate efficiently. By failing to align with global best practices, Kenya also risks conflicts in cross-border taxation, leading to double taxation</p> |
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| | | | | disputes and potential treaty violations. |
| Clause 11: Filing of Country-by-Country Report, Master File and Local File | <p>Section 18D(8) and (9) of the Income Tax requires that where there is more than one constituent entity of the same multinational enterprise group resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity.</p> <p>The surrogate entity vide subsection 9 would not be required to file a country-by-country report with the Commissioner with respect to the report of the financial year of the group if;</p> <p>The ultimate parent entity is obligated to file the report in its jurisdiction of tax residence</p> <p>The jurisdiction in which the ultimate parent entity is resident for purposes has an international agreement and</p> | <p>The Bill proposes the removal of the designation of a surrogate parent entity and rather provides that such multinational enterprise groups shall designate a constituent entity that will file a country-by country report and notify the Commissioner by the last date of the reporting financial year of that group in for prescribed by the Commissioner.</p> <p>It further proposes the deletion of section 9 which provided for when a surrogate parent entity would be required to file the country to country reports</p> | Adopt the proposal | <p>The proposed amendments represent a significant step toward enhancing financial transparency and corporate accountability, particularly with respect to MNE groups operating in Kenya. The repeal of Section 9 of the Income Tax Act and the introduction of provisions requiring the designation of a constituent entity within an MNE group to file Country-by-Country Reports (CbCR) locally, irrespective of the jurisdiction in which the ultimate parent entity is resident.</p> <p>This reform aligns with Kenya's obligations under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), to which Kenya is a signatory. Specifically, it reflects the implementation of BEPS Action 13, which mandates that large MNEs (typically with consolidated group revenue above EUR 750 million) file detailed CbCRs outlining the allocation of income, taxes paid, and other economic indicators across the jurisdictions in which they operate. The objective is to give tax authorities greater visibility into the global</p> |

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| | <p>a competent authority agreement in force</p> <p>The Commissioner has notified the resident constituent entity in Kenya of a systemic failure if any</p> | | | <p>operations of MNEs and to curb profit-shifting practices that exploit mismatches between domestic tax systems.</p> <p>By requiring the local filing of CbCR, even when the parent entity is domiciled outside Kenya, the amendment ensures that KRA has direct access to critical financial data for tax risk assessment for minimum top up tax and transfer pricing oversight. This not only strengthens Kenya's capacity to enforce its domestic tax laws more effectively but also enhances cooperation and information exchange in accordance with international best practices.</p> <p>Furthermore, these measures are anticipated to deter aggressive tax planning strategies and foster a fairer tax environment by compelling MNEs to disclose economic substance and profit allocation more transparently.</p> |
| Clause 12: Advance Pricing Agreement (APA) | | The Bill proposes the following clause with regards to advance pricing agreement which include: | Adopt the proposal and require the National Treasury and KRA to provide a clear mechanism for transparency and | The proposal to operationalize APAs marks a notable advancement in Kenya's transfer pricing regime and reflects the country's growing alignment with international tax standards. By providing a mechanism |

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| | | <p>That the commissioner may enter into APA with a person who undertakes a transaction either through transfer pricing or through a preferential tax regime</p> <p>The amount which would have been expected to accrue if that business had been conducted by an independent person dealing at an arm's length shall be determined in accordance with the APA entered into.</p> <p>The APA entered shall be valid for a period not exceeding 5 years</p> <p>The APA can be revoked where it is ascertained that it was entered into through misrepresentation of facts, the same shall be declared void by issuance of notice</p> <p>The CS shall make regulations for better implementation</p> | <p>accountability; and a clearer definition of related persons.</p> | <p>for pre-approval of transfer pricing arrangements, APAs are expected to significantly reduce the frequency and intensity of disputes, audits, and litigation between taxpayers and KRA. This reform aligns Kenya with global trends, especially following its accession to the OECD Inclusive Framework on BEPS in late 2023, and is consistent with the OECD Transfer Pricing Guidelines, which form the basis for APA frameworks worldwide.</p> <p>Despite these positive developments, the proposal leaves certain critical gaps that may undermine its overall effectiveness. A key concern is the absence of provisions requiring the publication or public disclosure of APA arrangements. The lack of transparency may create opportunities for opaque dealings between tax authorities and corporations, potentially facilitating sweetheart deals or tax avoidance practices further undermining public trust.</p> <p>Moreover, the Bill's current definition of "related persons" remains vague and lacks the clarity needed for consistent interpretation and</p> |
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| | | | | <p>enforcement. As highlighted in prior analyses, this ambiguity may hinder the effective administration of APAs, as the scope of qualifying transactions and entities remains uncertain.</p> <p>Netherlands have taken more progressive steps by implementing measures that promote transparency within their APA systems. For example, the Dutch tax authority publishes anonymized summaries of APA rulings, including the rationale and transfer pricing methodology applied. This approach, while protecting confidential taxpayer information, fosters greater public accountability and enables scrutiny of the consistency and fairness of tax rulings.</p> |
| Clause 16(a): Expansion of Taxable Income | | Introduces a withholding tax at the rate of 3% (on payments made to non-resident persons conducting businesses in respect of gains or profits which are chargeable to tax under section 9(1) derived from the business of a ship owner or charterer | Adopt the proposal | The proposed amendment introduces a requirement that any person transacting with a shipping company subject to tax under Section 9(1) of the Income Tax Act must withhold tax on payments made to that company or charter. This measure aims to enhance compliance and improve tax collection from non-resident shipping entities operating in Kenya's territorial waters or engaging in cross-border transactions with local businesses. |

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| | | | | <p>From a public interest perspective, the measure promotes fairness and accountability by ensuring that foreign shipping companies contribute their fair share to the national tax base, consistent with the principles of equity and source-based taxation. It also strengthens the enforcement of tax obligations in sectors where compliance has historically been difficult to monitor.</p> <p>While it may result in a marginal increase in the cost of shipping services, given that shipping companies may attempt to pass on the tax burden to importers or exporters, this impact is not expected to be significant. Moreover, such compliance costs are justifiable in light of the broader objective of creating a transparent and equitable tax system. To minimize adverse effects, it would be prudent for the government to engage stakeholders and explore transitional mechanisms that smooth implementation and protect small-scale traders.</p> |
| Clause 17 Requirement Employer | (a) by to | | The Bill now proposes that an employer shall, before computing the tax deductible in | <p>Adopt the proposal; however, there is a need to consider</p> <p>The proposed amendment requires that, prior to the computation of PAYE, employers must first apply all</p> |

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| Compute deductions, reliefs and exemptions provided as tax deductibles | | respect of payment of emoluments shall grant an employee all applicable deductions, reliefs and exemptions provided in the Act | more reliefs and relaxation of sector-specific deductions that can be given to ensure that the employees take much more net income home. | <p>relevant deductions, reliefs, and exemptions as provided for under the Income Tax Act. This procedural shift is intended to ensure that employees receive the full benefit of available tax reliefs upfront, thereby modestly increasing their net (take-home) pay.</p> <p>While this measure is a step in the right direction toward improving employees' disposable income, the actual financial impact may be marginal and may not significantly alleviate the broader cost-of-living pressures faced by most workers.</p> <p>To meaningfully improve employee welfare and purchasing power, more targeted and substantive reforms are needed. These may include expanding the scope and thresholds of existing reliefs, reducing the rates of sector-specific deductions (e.g., affordable housing levy and social health insurance), or revising tax bands to reflect current economic realities. According to the MTRS, it was to be conducted in this financial year.</p> |
| Section 19: Final Return with Self-Assessment | Section 52B(4) of the Income Tax Act provides that every company liable to tax shall include within its self-assessment and return | The Bill proposes that every company liable to tax under the Act shall include within the self-assessment and return of income, an assessment and | Reject the proposal. | This removes the requirement of including within the self-assessment and return of income of a company, the compensating tax required to be paid. As previously argued in previous |

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| | of income an assessment and return of any compensating tax due with respect to such tax year, and the compensating tax so calculated shall be payable at the date for the self-assessment. | 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 self-assessment | | parts, this removal of a compensating tax may encourage companies to exploit loopholes to avoid taxation on distributed profits, undermining overall revenue mobilization. As observed in the Institute of Public Finance analysis <i>"Is Minimum Tax Still a Viable Option for Kenya?"</i> , the introduction of tax measures that enable the non-taxation of actual profits, particularly among profitable companies, would erode tax equity and further incentivize avoidance strategies. A more balanced approach would involve reforming, rather than abolishing, the compensating tax to target abuse while protecting genuine commercial scenarios. |
| Clause 20: Supply of Information Upon Change in particulars | Section 54B of the Income Tax Act provides that every person carrying on a business shall notify the Commissioner of any changes in the following particulars within 30 days of the occurrence of the change: The place of business, trading name and contact address; in the case of an | The Bill proposes the deletion of this clause | Reject the proposal | Notification of changes with the KRA is quite important towards ensuring that the Authority has an effective database of records of its taxpayers. |

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| | | <p>incorporated person of the persons, of the persons with shareholding of 10% or more of the issued share capital;</p> <p>a nominee ownership to disclose the beneficial owner of the shareholding;</p> <p>a trust, full identity and address of trustees, settlors and beneficiaries of the trust;</p> <p>a partnership, the identity and address of all partners or cessation or sale of business,</p> <p>all relevant information regarding liquidation or details of new ownership</p> | | | |
| Clause 25(a): Exemption from stamp duty | | <p>Section 131 provides for exemptions from stamp duty for any security over property, movable or immovable, and all transfers of such property in favour of or by the commissioner.</p> | <p>The Bill proposes to repeal section.</p> | <p>Reject the proposal</p> | <p>The deletion of Section 131 would eliminate the current exemption from stamp duty on securities and property transfers involving the Commissioner, thereby subjecting such transactions to standard stamp duty charges. This change could increase the cost of tax enforcement actions, such as when KRA secures or transfers property in the course of recovering tax debts. For taxpayers, it may raise compliance</p> |

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| | | | | costs in cases where property is used to secure tax obligations or settle liabilities. While the move could expand the stamp duty tax base and generate additional revenue, it may also introduce delays and administrative burdens in transactions involving the Commissioner, potentially affecting the efficiency of tax recovery processes. |
| Clause 26(a): Application for tax exemptions | Paragraph 10 of the First Schedule to the Income Tax Act requires that, where an applicant has complied with all the requirements of the paragraph, a certificate or approval shall be issued within sixty days of lodging the application | The bill seeks to extend the timelines for issuing approval or a certificate from 60 days to 90 days. | Reject the proposal unless the Bill proposes mandatory communication on the application status | On the positive side, this could lead to more thorough reviews and reduce administrative pressure on KRA, potentially improving accuracy and compliance oversight. However, it may also cause delays for applicants, particularly investors or businesses who rely on timely approvals for planning and operations. The extended waiting period could affect investment decisions, project timelines, and ease of doing business, especially in sectors where tax incentives or exemptions are critical. |
| Clause 26(d): tax incentives for the manufacture of human vaccines | Paragraph 63 grants compensating tax benefits to companies engaged in the manufacture of human vaccines. | The bill proposes the deletion of that paragraph | Reject proposal | The removal of this provision would eliminate a key tax incentive aimed at supporting local vaccine production. This could lead to increased operational costs for manufacturers, potentially discouraging investment in the sector and undermining efforts to |

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| | | | | strengthen domestic vaccine supply chains. While the move may result in modest short-term revenue gains for the government, it risks weakening the country's public health resilience and long-term pharmaceutical development goals. |
| Clause 26(f)(75): Dividend exemptions from Nairobi Financial centre (NIFC)-certified companies | | The bill proposes to add a new paragraph immediately after paragraph 73; Dividends paid by a company certified by the Nairobi International Financial Centre (NIFC) Authority shall be exempt from tax, provided the company reinvests at least two hundred and fifty million Kenyan shillings in Kenya during that year of income. | Reject the proposal. | <p>The proposed dividend tax exemption for companies certified by the Nairobi International Financial Centre (NIFC) that reinvests at least KES 250 million annually has the potential to stimulate substantial foreign and domestic investment in key sectors of the economy. By linking tax incentives to tangible reinvestment, the measure promotes long-term capital retention and supports economic growth. Nonetheless, effective oversight will be essential to ensure genuine compliance and to guard against manipulation, such as the inflation of reinvestment figures to unjustly benefit from the exemption.</p> <p>Despite its potential, the policy introduces a preferential regime that creates a stark contrast between NIFC-certified entities and ordinary domestic businesses subject to standard tax rates. This disparity risks</p> |

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| | | | | undermining domestic resource mobilization and could fuel perceptions of inequity within the tax system. Moreover, the high investment threshold restricts access to the incentive to large-scale investors, raising concerns about vertical equity. Without stringent anti-avoidance safeguards, there is a heightened risk of tax base erosion through round-tripping, where domestic capital is funneled through NIFC entities without contributing to real economic activity. In the context of ongoing fiscal consolidation and expenditure cuts, such preferential tax treatments may also lead to short-term revenue losses, potentially contradicting broader public finance goals. |
| Clause 27(a)(b); special (100%) rates of investment allowances | Paragraph 1, subparagraph 1A and 1B provide for a claim of investment allowances at the rate of 100% of the capital expenditure in a particular year of income where: (a) the cumulative investment value (of a hotel building or a building used for manufacture or of machinery used for manufacture) in the | The bill proposes the deletion of that part | Reject the proposal, if there is evidence that this incentive has not resulted in investment outside of Nairobi and Mombasa over and above what would have taken place without the incentive. | The removal of this provision eliminates a key tax incentive aimed at encouraging regional investment and industrial decentralization. This may reduce the attractiveness of investing in less developed regions, slow down efforts to promote balanced economic growth across the country and potentially deter capital-intensive investments that would have qualified for the higher deduction rates. |

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| | preceding three (3) years outside Nairobi City County and Mombasa County is at least KES 1 billion; and (b) the cumulative investment in the year that a person is claiming the investment allowances is at least KES 250 million; or (c) the person has incurred investment in a special economic zone. | | | |
| Clause 28(b)(iv) | <p>The Income Tax Act dictates in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first ten years from the year of commencement of its operations.</p> | <p>The bill proposes to amend subparagraph (n) by inserting the following:</p> <p>In respect of a company certified by the Nairobi International Financial Centre Authority, fifteen percent for the first ten years from the year of commencement of its operations and twenty percent for the subsequent 10 years of its operation where:</p> <p>The company invests at least 3 billion shillings in Kenya in the first three years of its operation.</p> <p>The company is a holding company, at least 70 percent of the employees in senior</p> | <p>Adopt the proposal but ensure periodic assessments are done to ensure that the tax incentive creates economic benefits for Kenya.</p> | <p>The proposed amendment will see all companies certified by the Nairobi International Financial Centre get a 15% tax rate not just those companies operating a carbon market exchange or emission trading system. This broadens Kenya's tax incentive regime to attract a wide range of international firms not only those in climate finance.</p> <p>While the initial tax rate remains 15%, the proposal suggests that qualified companies after the first ten years the rate becomes 20% for the next ten years while for startups the rate is 15% for 3 years, then 20% for the next 4 years. This will encourage long term commitment to Kenya.</p> <p>The proposal also stipulates that for companies to qualify for the tax</p> |

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| | | <p>management are Kenyan citizens.</p> <p>The regional headquarters of the company is in Kenya and 60 percent of the employees in senior management are Kenyan citizens.</p> <p>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.</p> | | <p>benefits; 70% (holding company) or 60% (regional HQ) of senior management must be Kenyan citizens. This ensures skills are transferred, boosts localization while also maintaining inclusion for Kenyan professionals.</p> <p>The proposal of having the regional headquarters in Kenya strengthens Kenya's position as a financial powerhouse in East and Central Africa.</p> <p>Introducing a tax regime for startups promotes innovation and investment in the early stages making Kenya a more attractive tech hub in Africa and aligns Kenya's vision 2030 goals.</p> |
| Clause 28(c)(i)(ii): withholding tax on qualifying dividends | The Income Tax Act provides for the imposition of a withholding tax of 5% on qualifying dividends without explicitly stating that it is a final tax. | <p>The bill proposes to amend Subparagraph (e) under Paragraph 5 by inserting the words "which is a final tax" immediately after the word "payable."</p> <p>The bill proposes to amend Subparagraph (h) under Paragraph 5 by inserting the</p> | Adopt the proposal | The proposed amendment seeks to clarify that the 5% withholding tax on qualifying dividends is a final tax. This means that once the tax is deducted at source, the recipient will not be required to declare the dividend income in their annual tax return or pay any additional tax on it. The change simplifies tax compliance for investors, reduces administrative burdens for both taxpayers and the Kenya Revenue Authority, and aligns |

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| | | following proviso immediately after item (iii): “Provided that the tax paid under this paragraph is a final tax. | | with international best practices by treating dividend income as passive income subject to final withholding. |
| Clause 28(d): reduction of the digital asset tax | paragraph 13 provides that the rate of tax in respect of digital asset tax shall be three per cent of the transfer or exchange value of the digital asset. | The bill therefore proposes to reduce the Digital Assets Tax rate from 3% to 1.5% | Reject the proposal | This reduction implies a more favourable tax environment for individuals and businesses engaged in digital asset transactions, such as cryptocurrencies or Non-fungible tokens (NFTs). The lower rate may encourage greater participation in the digital economy, promote compliance by reducing the tax burden, and potentially stimulate innovation and investment in digital assets. However, it could also lead to a short-term reduction in government revenue from this tax source. In the midst of fiscal constraints, the government should be limiting potential sources of domestic revenue mobilisation such as withholding tax on digital assets. |
| Value Added Tax (VAT) Act | | | | |
| Clause 30- Section 2: Definition of tax invoice | New definition | “tax invoice” includes an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act. | Adopt the proposal | The amendment seeks to align the definition of a ‘tax invoice’ with Tax Procedures Act |

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| Clause 31: Place of supply of services and definition of electronic services | If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person— | If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person <u>and</u> | Adopt the proposal as it provides clarity in interpretation of the section. | The bill proposes addition of the word ‘and’ which means that this Section will be read together with other subsections. |
| | the services are radio or television broadcasting services received at an address in Kenya; | deleted | Adopt the proposal. | Amendment to Section 8 (3) covers definitions of electronic services offered through broadcasting. |
| | political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television. | in subsection (3), by deleting the words “broadcast television” appearing in paragraph (g) and substituting therefor the words “internet, radio or television broadcasting services”. | Adopt the proposal. | The expanded definition covers services offered over other media including the internet and reclassifies radio and television broadcast as electronic services meaning they will subject to digital service tax. |
| Clause 32: Input VAT Section 17 | 5 (c) 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, 2015; | Deleted | Reject the proposal; instead, retain the current provision. | The current provision allows taxpayers to apply for refunds against excess withholding VAT and to offset credits against other tax liabilities owed by the taxpayer. If passed, removing this provision will mean that taxpayers can only offset excess withholding tax against their |

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| | | | | VAT liability, and have the option of applying for excess credits. This will take us back to where some taxpayers were in a perpetual refunds position with no recourse. |
| | the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable. | the registered person lodges the claim for refund of the excess tax within twelve months from the date the tax becomes due and payable; | Adopt the proposal | This amendment harmonizes the application period for tax refund with the Tax Procedures Act. |
| | Such excess arises from input tax under subsection (8): Provided that a registered person who, since the commencement of subsection (8) but before the commencement of this provision, has a credit arising from input tax under subsection (8) may apply for the refund of excess tax within twelve months from 1st July 2022; | Delete 5 (e) | Adopt the proposal The provision is no longer applicable in light of the amendment introduced by the Tax Law (Amendment) Act, 2024. | The subsection makes reference to section 8 that has since been deleted. The provision allowed manufacturers to deduct input tax with respect to taxable supplies made to an official aid funded project. |
| Clause 33: Refund of tax on bad debts | Where a registered person has made a supply and has accounted for and paid tax on that supply but has not | in paragraph (a), by deleting the words “three years” and | Adopt the proposal as a shorter timeframe for VAT refunds on bad debts | The Bill proposes to reduce the timeline within which taxpayers should apply for refund of VAT paid if the taxpayer has not received |

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| | received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may refund the tax: | substituting therefor the words “two years”; ca) the amount may be used to offset any other value added tax liability, upon approval by the Commissioner; | and allowing businesses to use the amount to offset any other VAT liability will unlock working capital for businesses The amendment also addresses a current contradiction in the VAT Act by defining time to remit recoveries from previously refunded VAT on bad debts to the Commissioner | payment from the buyer to two (2) years from the date of the supply instead of the current three (3) years. In addition, the Bill proposes that: (a) any such VAT as refunded by the KRA may be used to offset any other VAT liability upon approval by the KRA; and (b) the timeline for taxpayers to pay the recovered VAT to the KRA is thirty (30) days. |
| Clause 34: Issuance of tax invoices | Subject to subsection (2), a registered person who makes a taxable supply shall, at the time of the supply furnish the purchaser with the tax invoice containing the prescribed details for the supply. | Delete the word “taxable”. | Adopt the proposal as it will allow KRA to have access to information on all supplies made to a registered VAT taxpayer. | The bill proposes issuance of tax invoices for all supplies, taxable and non-taxable in line with the provisions of the Tax Procedures Act that requires issuance of tax invoices for all transactions except those exempted from the requirements of Electronic Tax Invoice Management System (eTIMS) |
| Clause 35: VAT on the disposal or use of goods or services that are tax-exempt | New paragraph | Where a person imports or purchases goods or services which are exempt or zero-rated and the person subsequently | Adopt the proposal and define what constitutes ‘inconsistent’ use | Whereas the proposal seeks to prevent abuse of tax exemptions by ensuring that exempt goods and services are exclusively used for purpose for which |

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| or zero-rated in a manner inconsistent with the purpose of the VAT exemption or zero-rating | | 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, the person shall be liable to pay tax on the goods or services at the applicable rate at the time of disposal or inconsistent use. | | they were exempt or zero-rated, it is likely to result in tax disputes as it does not define what constitutes 'inconsistent' use. |
| Clause 36: Section A of Part I of the First Schedule | Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury. | by inserting the words "excluding fuels, lubricants and tyres for vehicles" immediately after the words "funded project"; | Adopt the proposal. | It is difficult to ascertain that consumables if exempt will be used exclusively in the implementation of official aid funded projects, therefore this amendment will safeguard against abuse of exemption. |
| | Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation | in paragraph 89, by deleting the words "other aircraft spare" and substituting therefor the word "aircraft"; | Delete paragraph 89 in its entirety | A stable tax environment is more critical in protecting Kenya's aviation sector than giving tax incentives |
| Clause 36 Reclassification from exempt to vatiable at 16 percent | The below items were previously exempt; All goods and parts thereof of chapter 88 (Aircraft, spacecraft and parts thereof) | The Bill proposes to subject these items to VAT at the rate of 16% | Adopt the proposal. We nonetheless stress on the need for Kenya to develop a framework to guide introduction and | We recognize the need to reduce tax expenditures and therefore, we agree these items should be vatiable at 16 percent especially because businesses do not transfer the benefit of these exemptions to final consumers. |

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| | <p>Direction-finding compasses, instruments and appliances for aircraft</p> <p>Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference</p> <p>Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty</p> <p>Specially designed locally assembled motor vehicles for transportation of tourists</p> <p>Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme</p> <p>Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal,</p> | | <p>removal of tax incentives because some of items (such as Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty) have been subject to frequent amendments</p> | <p>In addition, a stable tax environment of more critical in protecting Kenya's aviation sector than giving tax incentives</p> |
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| | <p>oil or mining prospecting or exploration</p> <p>Specialized equipment for the development and generation of solar and wind energy</p> <p>Discs, tapes, solid-state non-volatile storage devices, “smartcards” and other media for the recording of sound</p> <p>Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals</p> <p>Inputs and raw materials used in the manufacture of passenger motor vehicles</p> <p>Locally Manufactured passenger motor vehicles</p> | | | |
| Clause 36: Exemption of Packaging materials for tea and coffee | New provision | The bill proposes exemption of packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture. | While welcome, Kenya needs a framework to guide introduction of tax incentives. | The provision is aimed at reducing the cost of processed tea and coffee to improve its competitiveness within the international market and cheaper locally. |

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| <p>Clause 37: Reclassification from zero-rated to exempt</p> | <p>The below items were previously zero-rated:</p> <p>Inputs or raw materials supplied to pharmaceutical manufacturers</p> <p>Transportation of sugar cane</p> <p>The supply of locally assembled and manufactured mobile phones</p> <p>The supply of electric bicycles.</p> <p>The supply of motorcycles of tariff heading 8711.60.00.</p> <p>The supply of solar and lithium ion batteries.</p> <p>The supply of electric buses of tariff heading 87.02.</p> <p>Inputs or raw materials locally purchased or imported for the manufacture of animal feeds</p> | <p>The bill proposes that the items be exempted.</p> | | <p>We recognize the need to reduce tax expenditures and therefore, we agree these items should be vatable at 16 percent especially because businesses do not transfer the benefit of these exemptions to final consumers.</p> <p>In addition, a stable tax environment of more critical in protecting Kenya's aviation sector than giving tax incentives</p> |
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| | Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 | | | |
| Excise Duty Act | | | | |
| Clause 38: Amendment of Section 2. (Definition of a digital lender) | <p>The existing definition of "digital lender" includes persons providing credit via digital platforms but lacks explicit exclusions for regulated financial institutions, leading to ambiguity.</p> <p>No definition of "digital marketplace" exists, limiting the Act's ability to tax e-commerce platforms explicitly.</p> <p>Goods classification is based on tariff codes, but there is no explicit reference to EAC protocols, causing potential</p> | <p>The definitions have been updated together with a new subsection.</p> <p>"Digital lender": Redefined to mean a person extending credit via electronic means, excluding banks (Banking Act), Sacco societies (Co-operative Societies Act), or microfinance institutions (Microfinance Act).</p> <p>"Digital marketplace": New definition as an online platform enabling users to sell goods or services.</p> <p>New Subsection (3): Goods classification to use tariff codes from Annex 1 of the East</p> | Adopt the proposal | <p>The Bill revises the definition of "digital lender" to exclude licensed banks, SACCOs, and microfinance institutions, clarifying the tax obligations for electronic credit providers.</p> <p>The definition of a digital marketplace aligns with the definition provided or in the VAT Act and reinforces the Government's broader strategy to tax the digital and platform economy consistently across tax statutes. Harmonization with the EAC tariff classification establishes a legal link between Kenya's excise duty structure and the EAC Common External Tariff (CET) framework. This ensures that the same product classification criteria used for customs and import duties also apply to excise taxes,</p> |

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| | misalignment with regional standards. | African Community (EAC) Customs Union Protocol, with interpretation per the Annex's rules. | | thereby enhancing consistency and transparency in tax administration. |
| Clause 39: Expansion of scope of services offered by a non- resident. | Section 5(1) of the Act stipulates that excisable services provided in Kenya by a non-resident through a digital platform are subject to tax. | The Finance Bill, 2025 proposes an amendment by deleting the words “digital platform” and replacing it with "over the internet, an electronic network, or through a digital marketplace.” | Adopt the proposal. | <p>The proposition expands the scope of taxable services that are offered by non- residents to include all electronic transactions, not limited to specific platforms.</p> <p>However, the terms <i>electronic networks</i> and <i>business over the internet</i> are not defined in the Bill, leaving their scope dangerously vague. This raises constitutional issues under Article 210, which requires tax laws to be clear, certain, and predictable. The absence of definitions could lead to overreach, where even incidental or minimal online activity is deemed taxable. It also exposes the provision to legal challenges and makes it difficult for businesses, especially non-resident ones, to assess whether and how the tax applies to them.</p> |

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| Clause 40: Place of supply of excisable services | <p>Subject to this section, a supply of excisable services shall be deemed to be made in Kenya if the services are supplied from a place of business of the supplier in Kenya.</p> <p>This does not explicitly address non-resident services consumed in Kenya, leaving a gap in taxing cross-border digital services.</p> | The proposition seeks to add a new subsection that states that Services supplied by non-residents are deemed made in Kenya if consumed locally via the internet, an electronic network, or a digital marketplace. | Adopt the proposal as it aligns with the definition under the income tax act. | Again, there is need to provide a succinct definition of a <i>electronic networks</i> and <i>business over the internet</i> . |
| Clause 41: Issue of license for activities requiring licensing. | Section 17 (1) does not specify a processing timeline by the commissioner after an application for a license. | Amends Section 17(1) to require the Commissioner to process the license applications within 14 days of receiving all required documents. | Adopt the proposal. | The proposal will enhance regulatory certainty by providing a clear timeframe for licensing decisions. This will reduce delays in starting or expanding operations, especially to sectors that rely on timely regulatory approvals. |
| Clause 42: Amendments of the first schedule. Change in Excise Duty base and rates | The bill proposes changes to applicable excise duty rate and base. | <ul style="list-style-type: none"> Shift in tax base for coal and imported float glass-The taxation method for coal and imported float glass from "customs value" to "excisable value." The new base (customs value plus import duty) will result to an increase in the payable excise duty. | | <p>The proposal increases the minimum payable rate and expands the tax base , aligning with excise duty treatment of other commodities.</p> <p>The proposal is however likely to raise the costs for packaging materials, which will impact the manufacturing and food and beverage sectors.</p> |

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| | | <ul style="list-style-type: none"> • Increase in excise duty rates from 25% or KES 75 per kg, to 25% or Ksh 200 per kilogram, whichever is higher, on self-adhesive plastics, printed polymers of ethylene, printed cellular plastics, printed self-adhesive paper and gummed paper and paperboard are set at excluding those goods of EAC origin; • Introduction of Ksh 500 per liter excise duty on Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages. | | |
| Tax Procedures Act Cap.469B | | | | |
| Clause 43 - Refined Invoice Exemptions | Section 23A (4) allowed certain transactions to be excluded from the requirement to issue an electronic tax invoice. These included emoluments, imports, interest, investment allowances, airline ticketing, and withholding tax payments, without distinguishing the nature of | The proposed amendment restructures the subsection and expressly limits the withholding tax exemption to payments where the tax is final. It retains the exclusions for emoluments, imports, interest, investment allowances, and airline ticketing, but in a more defined and orderly phrasing. The change narrows the exemption scope and adds | Adopt, but with safeguards. Include a grace period within which businesses particularly SMEs to comply. | The more restrictive wording could place an added burden on compliant taxpayers—especially SMEs—that previously benefited from broader exemptions to ease their reporting obligations. |

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| | the tax. The language was general, leaving room for broad interpretation and inconsistent application. | precision to how invoicing requirements apply. | | |
| Clause 44 - Mandatory Assessment Reasons | <p>Section 31(8) of the Tax Procedures Act obliges the Commissioner to notify the taxpayer in writing of any amended assessment.</p> <p>The notice must specify the assessed tax, penalties, interest, the reporting period, due date for payment, and the objection procedure.</p> <p>However, it does not require the Commissioner to explain <i>why</i> the assessment was amended.</p> | <p>The amendment introduces subsection (8A), which requires the Commissioner to include reasons for the amended assessment in the notice.</p> <p>This change imposes a statutory duty to justify the amendment beyond just stating figures and deadlines. It embeds transparency into the tax assessment process, aligning notice obligations with principles of fairness and accountability.</p> | Adopt the proposal. | <p>This requirement will promote transparency, reduces tax disputes, and builds trust in the KRA's processes.</p> <p>When taxpayers understand the basis of assessments, they are less likely to object unnecessarily, and administrative efficiency improves.</p> |
| Clause 45 – Relief for withholding omissions | <p>Section 39A imposes full liability on a person who fails to deduct or withhold tax, treating the amount not withheld as tax due from that person.</p> <p>The person becomes liable not just for the principal amount, but also for penalties and interest, regardless of whether the recipient paid their tax.</p> | <p>The amendment restructures the section and introduces a new subsection (2) that offers a relief mechanism.</p> <p>It provides that where the tax recipient has already paid the full principal tax, the person who failed to withhold or deduct will not be liable for that principal amount.</p> <p>However, it does not exempt</p> | <p>Adopt with caution</p> <p>The amendment brings much-needed proportionality to the law, but it must be applied cautiously, with adequate checkFs.</p> <p>KRA should establish a</p> | <p>This reform helps focus KRA's enforcement efforts on actual revenue loss, rather than penalizing technical failures where no tax has been lost.</p> <p>It introduces a fairer approach to tax enforcement, reduces unnecessary litigation, and encourages voluntary compliance.</p> |

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| | This provision created a strict liability regime with no room for equitable relief, even in cases of honest mistakes. | liability for penalties or interest related to the failure. | verification process before granting relief to ensure the recipient's tax compliance is confirmed. | |
| Clause 46 - Stamp Duty Relief on Tax Security | Section 40 allows the Commissioner to register a security over a taxpayer's property for unpaid taxes and restrict its disposal. Once the tax remains unpaid for two months, the Commissioner may auction or dispose of the property. A proviso under subsection (5) allowed the Commissioner to lift the notification upon settlement of the liability through an agreed payment plan—but did not address stamp duty obligations. | <p>The amendment introduces two key changes:</p> <p>It expands subsection (2) to exempt stamp duty on registering the Commissioner's notification.</p> <p>It replaces the proviso in subsection (5) with two parts: (a) confirms that the agreed plan must be completed before the notification is lifted, and (b) exempts the transfer of the restrained property from stamp duty.</p> | Adopt the proposal. | The proposed provision seeks to exempt the Commissioner's notification from stamp duty at the point of its registration and also grants stamp duty exemption on the transfer of the property where it is disposed of by the Commissioner following their failure to pay the tax liability. |
| Clause 47 - inclusion non-resident | The original Section 42 of the Tax Procedures Act | The amended Section 42 retains all enforcement powers granted | Adopt the proposal. | The amendment to Section 42 has significant implications: positively, it |

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| persons subject to tax in Kenya | empowered the Commissioner of the Kenya Revenue Authority (KRA) to recover unpaid taxes from a taxpayer by appointing third parties—such as banks, employers, or other entities holding or owing money to the taxpayer—as agents responsible for remitting funds to the KRA. This provision allowed the Commissioner to target salaries, accounts (including joint accounts), and other financial relationships where money was due to or held for the taxpayer, with safeguards including notice to both the agent and the taxpayer, and the ability for agents to dispute or explain their inability to comply. The section applied solely to persons resident in Kenya and explicitly excluded non-resident taxpayers. | under the original provision but expands their scope by explicitly including non-resident persons who are subject to tax in Kenya. All references to “taxpayer” now also cover such non-residents, meaning KRA can appoint agents to recover tax from funds owed to or held for non-residents, enforce against their joint accounts, and require disclosures from third parties dealing with them. This closes a legal gap, brings non-residents into the compliance framework, and aligns Kenya’s enforcement capacity with global tax enforcement standards. | | strengthens the Kenya Revenue Authority’s capacity to enforce tax compliance by enabling the recovery of unpaid taxes from non-resident persons, thereby expanding the tax base, closing enforcement loopholes, and aligning Kenya with international tax transparency standards. It also enhances revenue collection from cross-border transactions and offshore entities operating in Kenya. |
| Clause 48 - Deletion of Conviction-Based Penalty | Read strictly, Section 42A(4C) imposed a 10% penalty on persons who, without reasonable cause, failed to withhold or remit tax as required. | Strictly interpreting the previous provision means that the proposed amendment by Clause 48 which is the deletion of subsection (4D), removes the penalty that follows criminal | Adopt the proposal | The proposed amendment will allow KRA to enforce the 10% penalty by removing the procedural hurdle of obtaining a conviction. It therefore strengthens the KRA’s ability to take |

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| | Subsection 4D provided an additional penalty — upon conviction — of 10% of the amount involved. This effectively created dual liability: an administrative penalty under 4C and a court-imposed penalty under 4D upon successful prosecution. | conviction for failure to withhold or remit tax under 4C. This narrows the legal consequences to only administrative penalties, without additional criminal penalty upon conviction. | | swift enforcement action once non-compliance is established. |
| Clause 49 - Repeal of DST Agent Appointment | Section 42B empowered the Commissioner to appoint and revoke agents responsible for collecting and remitting Digital Service Tax (DST). This allowed the Kenya Revenue Authority (KRA) to operationalize DST by creating a compliance mechanism through designated intermediaries. It was a necessary administrative tool under the DST regime. | Clause 49 proposes to completely repeal Section 42B of the Act. This aligns with the repeal of DST and its replacement with the Significant Economic Presence Tax (SEPT) under a previous Finance Act. As such, the section is now redundant and no longer has legal utility. | Adopt but consider that though the repeal is necessary from a legal drafting perspective, it raises the question of whether sufficient administrative structures now exist for effective SEPT enforcement. | This enhances legislative clarity and coherence, by removing obsolete provisions that no longer serve the current tax framework. It signals that the government is committed to modernizing its tax code in alignment with policy shifts. |
| Section 50 - Extended Timeframes for Tax Refunds and Offset Processing | Section 47 allowed taxpayers to apply for refunds or offsets for overpaid taxes, including input VAT, subject to specific conditions. | Clause 50 of the Bill seeks to: Delete "input VAT" from the scope of taxes that can be offset against overpaid tax. | Do not adopt. | The removal of input VAT from eligible refunds or offsets may lead to cash flow problems, especially for businesses heavily reliant on input VAT claims for liquidity. Additionally, extended refund |

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| | <p>It required the Commissioner to process such applications within 90 days, or 120 days if an audit was conducted, after which the application would be deemed approved. It promoted taxpayer rights by setting statutory deadlines to prevent indefinite delay and ensured refunds were not subject to bureaucratic abuse.</p> | <p>Extend the Commissioner's decision period from 90 to 120 days for non-audited cases.</p> <p>Extend the audit resolution period from 120 to 180 days before an application is deemed approved.</p> | | <p>timelines increase taxpayer uncertainty, weaken business planning, and undermine the principle of timely redress.</p> |
| <p>Clause 51 - Clarifying Timelines for Objection Decision after Late Objection Approval</p> | <p>Under the current framework:</p> <p>A taxpayer has 30 days to lodge a notice of objection after a tax decision.</p> <p>A late objection may be permitted by the Commissioner under subsection (7) for good cause (e.g., sickness, absence).</p> <p>The Commissioner must notify the taxpayer of that decision within 14 days under subsection (7A).</p> | <p>Clause 51 proposal adds a new subsection (7B):</p> <p>“Where the Commissioner has allowed the application for late objection and the objection has been validly lodged, the period within which the Commissioner may make an objection decision shall be computed on the day the objection is lodged.”</p> | <p>Adopt the proposal.</p> | <p>The amendment provides clarity on how to compute the 60-day window in cases where late objections are allowed has been unclear, potentially causing administrative confusion or unfairness.</p> |

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| | <p>Once a valid objection is lodged, the Commissioner must make an objection decision within 60 days, or the objection is deemed allowed (subsection 11).</p> <p>However, the starting point of the 60-day window in cases where late objections are allowed has been unclear, potentially causing administrative confusion or unfairness.</p> | | | |
| <p>Clause 52 – Requirement to share private and personal data.</p> | <p>Section 59A(1B) of the TPA currently prohibits the Commissioner from requiring taxpayers to integrate or share:</p> <p>(a) Trade secrets;</p> <p>(b) Private or personal data held on behalf of customers or collected in the course of business.</p> | <p>Clause 52 proposes to delete Section 59A(1B) of the TPA, effectively removing the legal protection that currently prohibits the Commissioner from requiring taxpayers to share:</p> <p>(a) Trade secrets;</p> <p>(b) Private or personal data held on behalf of customers or collected in the course of business.</p> | <p>Do not adopt.</p> <p>This clause prioritizes tax surveillance over fundamental rights. It undermines constitutionalism. Revenue collection must be pursued within the confines of the law, not at the expense of privacy, trust, and due process.</p> | <p>The proposed repeal of section 59A(1B) of the Tax Procedures Act poses serious risks to data privacy, constitutional rights, and business confidentiality.</p> <p>It violates Article 31 of the Constitution, which guarantees the right to privacy.</p> <p>It undermines international privacy standards domesticated under Article 2(5) and (6).</p> <p>It threatens commercial innovation by exposing proprietary business information, discouraging investment, and increasing the risk of industrial espionage.</p> |

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| Clause 53- Deletion of Section 66(1)(a)(iii). | Currently, the Commissioner may refuse a private ruling if the matter has already been addressed in a ruling published under section 69. | Clause 53 proposes that Section 66(1)(a)(iii) be deleted. | Adopt the amendment. It does not alter substantive taxpayer rights or obligations. | The proposed amendment is a <i>technical clean-up</i> intended to align section 66 with the current legislative framework by removing a reference to a repealed provision. Since section 69 was repealed by the Finance Act, 2020, retaining a ground for refusal based on rulings under it is outdated and legally redundant. The amendment ensures legal clarity and eliminates obsolete language from the statute. |
| Clause 54 – Deletion of Section 77(2) of the Tax Procedures Act | Section 77(2) provides that when computing the timelines for lodging tax disputes—whether objections to the Commissioner or appeals to the Tax Appeals Tribunal, High Court, or Court of Appeal—Saturdays, Sundays, and public holidays are excluded. | Clause 54 proposes that Section 77(2) be deleted, shortly after its amendment to exclude Saturdays, Sundays and public holidays. | Reject the proposed deletion. Section 77(2) plays a critical role in ensuring that time computation for dispute resolution is fair and consistent with constitutional and administrative law standards. Instead, the provision should be retained. | This proposed deletion reduces the number of days available to a taxpayer, especially in instances where the response or appeal periods are already tight (e.g., 30 days under sections 51 and 52). |
| Clause 55 - Expanding Administrative Penalties | Section 83(1) only imposes penalties on a person who submits a tax return <i>after</i> the due date. | Clause 55 seeks to insert the words “fails to submit a tax return or” immediately after the words “person who”. | Adopt the amendment with modifications. A clarifying provision should be added to specify: | This amendment expands the scope of Section 83(1) to also penalize a person who <i>completely fails</i> to submit a tax return, not just those who file late. While non-submission is already an offence under Section 94 of the Act , this amendment brings that infraction |

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| | | | <p>That the penalty structure applicable to late submission shall also apply to non-submission.</p> <p>That a person shall not be penalized under both Sections 83 and 94 for the same infraction. This will promote compliance while upholding legal certainty and fairness.</p> | into the administrative penalty regime, allowing KRA to impose penalties directly without needing to prosecute under criminal provisions. |
| Clause 56 – Waive of penalties and interests based on issues with e-TIMS. | Section 89 consists of general provisions relating to penalty. | Clause 56 proposes to introduce a new subsection (5A) empowering the Cabinet Secretary (CS), on the Commissioner's recommendation, to waive penalties or interest arising from issues caused by the KRA's electronic tax system. | Adopt with clarifying regulations. The amendment is welcome and long overdue, particularly in an increasingly digitized tax environment. | While the provision promotes fairness, it also leaves room for discretion, which could lead to inconsistent application or potential abuse. Without clear guidelines on how the Cabinet Secretary should determine the appropriateness of waivers, there could be discrepancies in how waivers are granted. This might lead to some taxpayers being unfairly denied relief, while others might benefit from waivers due to subjective interpretations of the rules. |
| Miscellaneous and Fees Levies | | | | |

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| Clause 57(a)(b): | 9B. Application of Tax Procedures Act (Cap. 469B) to excess tax refunds The provisions of section 47 of the Tax Procedures Act (Cap. 469B) shall apply for the purposes of application for refunds, ascertainment and determination by the Commissioner of penalties and interests on fees and levies that remain unpaid. | Deleting the words “to excess tax refunds” and “provisions of section 47 of the” | Adopt the proposal | The proposed amendment aims to clean up the Act for administrative coherence. |
| Clause 58(a)(b): reduced IDF/RDL exemptions for aircrafts | Previously both Part A and Part B of the Second Schedule to the Miscellaneous Fees and Levies Act provided exemptions for aircraft and related imports. Specifically, paragraph (xv) under Part A and paragraph (xiii) under part B exempted goods and parts classified under Chapter 88 which covers aircrafts , spacecraft and associated components. In addition, paragraph (xva) under Part A and paragraph (xvi) under part B granted exemptions for aircraft spare parts, including engines, by aircrafts operators or entities engaged in aircraft | The bill therefore seeks to amend part A and part B of the second schedule by deleting paragraph xva and paragraph xiii under Part A as well as paragraph xv and xvi under Part B. these provisions are to be replaced with a new paragraph xva under part A and a new paragraph xvi under Part B, both of which provides an exemption limited to all parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00. | Adopt the Proposal as it aligns with VAT Act and supports Kenya’s fiscal strategy to reduce tax expenditure. | A stable tax environment is more critical in making Kenya a regional aviation hub than giving tax incentives. Therefore, the government should work towards assuring investors in the aviation sector of a stable macro-economic environment. |

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| | <p>maintenance, subject to recommendation by the competent civil aviation authority.</p> | | | |
| <p>Clause 59(a)(b)(c): Export and Investment promotion Levy</p> | <p>Previously under the Third schedule the following products attracted an export and investment promotion levy rate of 17.5% of the custom value:</p> <p>Part A: Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness</p> <p>Part B: Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm (both at 17.5 %)</p> <p>Part C: Bars and rods of iron or non-alloy steel, hot-rolled</p> | <p>This bill seeks to reduce this rate from 17.5% to 10%.</p> | <p>While lowering of the Export and Investment promotion Levy rate is welcome; the government should also monitor local availability of these products and adjust the rate upwards once the local market is able to meet the local demand.</p> | <p>Being intermediary products, lowering the Export and Investment Promotion Levy will lower the cost of production of final products.</p> |

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| | in irregularly wound coils of circular cross-section measuring less than 14mm in diameter, other. | | | |
| Clause 60: Exemption from stamp duty | | <p>The Bill proposes an amendment to Section 117 of the Stamp Duty Act by adding a new paragraph (r) to subsection (1). This amendment exempts the transfer of property by a company to its shareholders as part of an internal reorganization, provided that:</p> <p>(a) The property is distributed to shareholders in proportion to their shareholding in the company immediately before the transfer.</p> <p>(b) If the transferred property consists of shares, those shares must belong to a subsidiary of the transferring company.</p> | Adopt proposal. | The amendment promotes efficient corporate restructuring by reducing tax burdens while fostering flexibility and investment, while maintaining regulatory oversight. However, it raises concerns about potential tax avoidance if misused. |

*****End*****