

# FINANCE BILL, 2025

## Proposed Amendments to the Finance Bill, 2025

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# List of Abbreviations

Abbreviation	Meaning
APA	Advance Pricing Agreements
B2C	Business to Consumer
CAV	Credit Adjustment Voucher
CS	Cabinet Secretary
ETIMs	Electronic Tax Invoice Management System
ITA	Income Tax Act
MSMEs	Micro, Small and Medium-sized Enterprises
TPA	Tax Procedures Act
TOT	Turnover Tax
VAT	Value Added Tax
WHT	Withholding Tax

# Income Tax

We highlight our proposed amendments to the changes that the Finance Bill 2025 seeks to introduce to the Income Tax Act:

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	2 (a) (iii)	Section 2 of the Income Tax Act is amended— (a) in subsection (1)— (iii) in paragraph (b) of the definition of “royalty”, by inserting the words “and includes the distribution of software where regular payments are made for the use of the software through the distributor” immediately after the words “support fees”;	“royalty” means a payment made as a consideration for the use or the right to use—  (a) any copyright of a literary, artistic or scientific work;  (b) any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees;	We propose to delete this proposal	<p>The Bill seeks to expand the definition of a royalty by including software distribution where regular payments are made for the use of the software through the distributor.</p> <p>Generally, software distributors earn low margins on the distribution of their products, often below 5%. Therefore, by seeking to charge their revenues to withholding tax (“WHT”) (resident at 5% and non-resident at 20%) these distributors will be in a perpetual tax refund position since the WHT deducted from their income will exceed the taxable profit earned by the distributor.</p> <p>Royalties are paid to owners of the software, for the right to use the software. The distributor of the software is often not the same as the owner. Therefore, subjecting payments to distributors to WHT on royalties defeats the purpose of a royalty payment, as the distributors would not have the right to allow a person to use the software.</p>
2	5	Section 10 of the Income Tax Act is amended in subsection (1), by inserting the following new	10 (1) For the purposes of this Act, where a resident person or a person having a permanent	We propose the following amendment:	The Bill is currently proposing to introduce the sale of scrap and supply of goods to a public entity under Section 10. However, the making or facilitating

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		<p>paragraphs immediately after paragraph (k)–</p> <p>(l) supply of goods to a public entity;</p> <p>(m) sale of scrap.</p>	<p>establishment in Kenya makes a payment to any other person in respect of–</p> <p>(a) a management or professional fee or training fee;</p> <p>(b) a royalty or natural resource income;</p> <p>(c) interest and deemed interest;</p> <p>(d) the use of property;</p> <p>(e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or</p> <p>(f) an activity by way of supporting, assisting or arranging an appearance or performance referred</p>	<p>Section 10 of the Income Tax Act is amended in subsection (1), by adding the following paragraphs immediately after paragraph (k) –</p> <p>(l) supply of goods to a public entity;</p> <p>(m) sale of scrap;</p> <p><i>(n) making or facilitating payment over a digital marketplace.</i></p>	<p>payment on a digital marketplace is not being introduced under this proviso thus our proposal herein is to ensure there is alignment between Section 35 and Section 10 of the Income Tax Act.</p>

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			<p>to in paragraph (e) of this section;</p> <p>(g) winnings;</p> <p>(h) <i>deleted by Act No. 16 of 2014, s. 6(b);</i></p> <p>(i) <i>deleted by Act No. 23 of 2019, s. 6(a);</i></p> <p>(j) an insurance or reinsurance premium;</p> <p>(k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services;</p> <p>the amount thereof shall be deemed to be income which accrued in or was derived from Kenya:</p>		
3	8 (b) (ii)	Section 15 of the Income Tax Act is amended— (b) in subsection (3)— (ii) by deleting paragraph (f);	Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:	We propose to delete this provision	Currently, a person can offset a capital loss against a future capital gain. The proposal to delete this provision will tax a person's capital gains while ignoring their capital losses. This will leave taxpayers with unclaimable losses.

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			(f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;		<p>From a global perspective, the Organisation for Economic Cooperation and Development reports that most countries allow for a person to offset their capital losses against future capital gains (heading 3.4 of Taxing Capital gains: Country experiences and challenges).</p> <p>Our proposal will ensure that Kenya adheres to global best practices.</p>
4	8 (c)	<p>Section 15 of the Income Tax Act is amended—</p> <p>(c) in subsection (4), by inserting the word “five” immediately after the word “succeeding”</p>	(4) 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>We propose the following amendment:</p> <p><i>“(c) in subsection (4), by inserting the word “<del>five</del>” “ten” immediately after the word “succeeding””</i></p> <p><i>Provided the losses arising from investment allowances are carried forward indefinitely.”</i></p>	<p>Currently, a person may carry forward/claim a loss up to ten years after which they must seek the CS's permission to keep carrying forward the loss. This accommodates businesses whose losses are attributable to significant set-up costs/investment.</p> <p>The Bill proposes to reduce the currently indefinite window to carry forward/claim losses to 5 years from the date in which the loss was incurred, and further proposes to delete the CS's power to extend the loss carrying forward.</p> <p>We propose to extend the loss carrying forward period to 10 years and to retain the CS's power to extend this period. This will:</p>

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					<ol style="list-style-type: none"> <li>1. Create a sense of tax law stability for current and potential investors;</li> <li>2. Protect entities that are already benefiting from this provision from an abrupt change in law that may shock their cash flow; and</li> <li>3. Encourage high capital investments.</li> </ol> <p>In light of the current practice permitting the indefinite carry forward of tax losses, the introduction of a 10-year limitation would represent a more reasonable and balanced approach. This consideration is particularly pertinent, as a portion of the tax losses originates from investment allowances legitimately granted under the Income Tax Act. For capital-intensive projects, a five-year period is typically insufficient for the full utilization of such allowances, and as a result, companies are unlikely to have fully exhausted their tax losses within that timeframe.</p>
5	15	<p>Section 27 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1C)—</p> <p>(1D) Where the Commissioner does not comply with subsection (1C), the application shall be deemed allowed.</p>	27(1C) The Commissioner shall within six months from the date of receipt of the application communicate his decision in writing to the applicant.	<p>We propose the following inclusion to accompany the proposed amendment:</p> <p><i>Provided that, where a taxpayer has submitted a valid application for a change of year-end, the adjustment shall be automatically approved within the Commissioners system</i></p>	<p>Currently, the Commissioner is required to respond to an application for change of year end within six months.</p> <p>The Bill proposes that where the Commissioner fails to give a decision within six months from the date of application, the change is automatically deemed to have been accepted by the Commissioner.</p> <p>Although the proposal is a step in the right direction, its implementation in practice is hindered by the need for manual interventions, which are often time-consuming.</p>



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				<i>upon the expiration of the six-month period.</i>	It is therefore recommended that the approval process be automated within the iTax system, allowing for automatic approvals upon the expiry of the six-month period proposed in the Bill.
6	26(a)	The First Schedule to the Income Tax Act is amended in Part I—  (a) in subparagraph (B) of the first further proviso to paragraph 10, by deleting the word “sixty” and substituting therefor the word “ninety”;	(B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.	We propose the following inclusion to accompany the proposed amendment:  <i>Provided that for renewal applications, the taxpayer will remain exempt until an alternative decision on their application is issued by the Commissioner.</i>	The interim period between the expiration of an exemption and the decision on a renewal application often creates uncertainty regarding the taxpayer’s exemption status while the application is under review. This situation arises because, under iTax, a taxpayer can only submit a renewal application after the existing exemption has expired. Although the proposed 90-day review period would provide the Commissioner with additional time to assess exemption applications, taxpayers should not be left uncertain about their exemption status during this extended timeframe.

# Value Added Tax

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Value Added Tax Act.

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	32	Section 17 of the Value Added Tax Act is amended in subsection (5)— (a) by deleting paragraph (c);	Provided that any such excess shall be paid to the registered person by the Commissioner where—  (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;	We propose that this proposal be deleted.	Due to budgetary limitations, cash disbursements for refunds take a significant amount of time thereby negatively affecting taxpayers' cash flows. The ability to offset a refundable amount against other tax liabilities has improved business cash flows.  The Commissioner has not provided any justification as to why WHVAT refunds should not be available for offset.  If the offset provision in the Act is deleted, it may strain the cash flows of businesses whose customers are WHVAT agents.
2	32	Section 17 of the Value Added Tax Act is amended in subsection (5)—		We propose the following amendment:  Section 17 of the Value Added Tax Act is amended in subsection (5), by inserting the following paragraph immediately after paragraph (e):  <i>(f) such excess arising from making zero rated supplies</i>	Section 17 of the VAT Act entitles a person making zero-rated supplied to a refund of excess input VAT incurred in making such supplies. In order to implement this, Regulations under the VAT Act were gazetted in April 2017 (hereinafter "the 2017 Regulations"), which provided a formula to calculate the amount of input VAT refundable to registered persons making both standard-rated and zero-rated supplies.  However, the said formula was defective, resulting in companies making both zero-rated and standard-

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				<p>during the period between 2017 and August 2019 that was not recovered by the registered person within two years as a result of the Commissioner's reliance on the apportionment formula under Paragraph 8(2) of the Value Added Tax Regulations, 2017.</p> <p>Section 17(5) of the Value Added Tax Act, is amended by adding the following proviso immediately after the provisos to Subsection (5):</p> <p><i>Provided further that, notwithstanding any other provision of this Act, a registered person may apply for a refund under Section 17(5)(f) within two years from the commencement of this provision.</i></p>	<p>rated supplies not receiving the full refunds as envisaged under Section 17 of the VAT Act. To correct this, the refund formula was amended through Regulations gazetted in July 2019 (hereinafter "the 2019 Regulations").</p> <p>Nonetheless, taxpayers who made refund applications prior to the gazettment of the 2019 Regulations received Credit Adjustment Vouchers ("CAVs") for amounts not refunded (despite being refundable). These CAVs cannot be utilized to settle outstanding, current or future VAT liabilities, or other tax liabilities for that matter.</p> <p>This has negatively affected taxpayers' liquidity and cash flows, as they are required to pay any tax liabilities, despite having unpaid but approved refunds, in the form of CAVs.</p> <p>We therefore propose to amend Section 17 (5) of the VAT Act to entitle taxpayers with CAVs to a refund of the CAVs.</p> <p>We also propose an amendment to the Tax Procedures Act, to allow the same. This amendment is discussed below, under the Tax Procedures Act.</p>
3		New Clause	<p>(1) A person who in the course of a business—</p> <p>(a) has made taxable supplies or expects to make taxable supplies, the value of which is</p>	<p>We propose the below new amendment</p> <p>Section 34 of the Value Added Tax Act is amended in subsection (1)–</p>	<p>It would be prudent to increase the VAT registration to factor in inflationary changes.</p> <p>The increase in the VAT threshold will also align it with the TOT threshold after 3 years and remove the requirement for taxpayers to register for both VAT and</p>

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
			<p>five million shillings or more in any period of twelve months; or</p> <p>(b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months,</p>	<p>(a) By deleting the words "five million shillings" and substituting therefor the words "fifteen million effective from 1<sup>st</sup> July 2024, twenty million effective from 1<sup>st</sup> July 2025 and twenty-five million effective from 1<sup>st</sup> July 2026."</p> <p>(b) in paragraph (b), by deleting the words "five million shillings" and substituting therefor the words "fifteen million effective from 1<sup>st</sup> July 2024, twenty million effective from 1<sup>st</sup> July 2025 and twenty-five million effective from 1<sup>st</sup> July 2026."</p>	<p>TOT. It is important to understand that the purpose of the TOT regime was to simplify tax administration, by requiring traders not to maintain full records. The new ETIMs also have a simplified option for traders not to keep stock records up to 25M.</p> <p>ETIMs was introduced to ensure that all B2C transactions are compliant. However, the VAT regime would require the trader to maintain extensive records, to support the VAT charged, and the VAT claimed. This would defeat the purpose of the TOT regime, and increase the burden of compliance to MSMEs, who accommodate those under the TOT regime. Therefore, it is important to have the VAT registration threshold to align with the TOT threshold.</p> <p>The rationale behind 25M of TOT was such businesses have a margin of 5% to 10% giving an average net profit per month between KES 100,000 to KES 200,000.</p>

# Tax Procedures Act

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Tax Procedures Act

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	1(a)	<p>This Act may be cited as the Finance Act, 2025 and shall come into operation as follows –</p> <p>(a) sections 12 and 56, on the 1<sup>st</sup> of January, 2026; and</p> <p>(b) all other sections, on 1<sup>st</sup> July, 2025.</p>	N/A	<p>This Act may be cited as the Finance Act, 2025 and shall come into operation as follows –</p> <p>(c) sections 12 <del>and 56</del>, on the 1<sup>st</sup> of January, 2026; and</p> <p>(d) all other sections, on 1<sup>st</sup> July, 2025.</p>	<p>Clause 56 of the Bill pertains to waiver of penalties and interest arising due to errors with the Commissioner's electronic system. This will come into force in January 2026. Our proposal seeks to have this provision come into force on 1<sup>st</sup> July 2025.</p> <p>Earlier enactment of this provision will enable taxpayers to remove the erroneous penalties and interest from their iTax ledgers and obtain tax compliance certificates ("TCC") faster as TCCs are essential for business.</p>
2	47 (m) (v)	<p>Section 42 of the Tax Procedures Act is amended—</p> <p>(m) in subsection (14)—</p> <p>(v) by deleting paragraph (e).</p>	<p>(14) The Commissioner shall not issue a notice under this section unless –</p> <p>(e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.</p>	We propose to delete this proposal	<p>Paragraph (e) provides clarity on the prohibition of agency notices while a tax dispute is at the High Court, Court of Appeal or Supreme Court.</p> <p>The deletion of paragraph (e) may create uncertainty on the power to issue agency notices especially where a taxpayer appeals from the Tribunal to the High Court.</p> <p>We propose to delete the amendment as retention of clause (e) will not cause any harm to the Commissioner.</p>

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
3	52	Section 59A of the Tax Procedures Act is amended by deleting subsection (1B)	<p>(1B) The Commissioner shall not require a person to integrate or share data relating to—</p> <ul style="list-style-type: none"> <li>(a) trade secrets; and</li> <li>(b) private or personal data held on behalf of customers or collected in the course of business.</li> </ul>	We propose to delete this amendment	<p>Trade secrets are an important aspect of intellectual property and are the key drivers of various businesses. Globally, trade secrets are respected. Further, personal and private data is sensitive and the disclosure of such information would infringe on persons' right to privacy. Currently, the Commissioner has not demonstrated:</p> <ul style="list-style-type: none"> <li>i. why it needs access to information;</li> <li>ii. information security measures it has in place to ensure the security of such information;</li> <li>iii. an risk impact assessment on how events of data leaks;</li> <li>iv. the Commissioner's ability to compensate persons for a data breach;</li> <li>v. an analysis of the risk of businesses leaving Kenya to avoid having to disclose trade secrets;</li> <li>vi. the impact such a clause may have on Kenya's ranking as a suitable place to set up a business;</li> </ul>
4	54	Section 77 of the Tax Procedures Act is amended by deleting subsection (2)	In computing the period for the lodgement of an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under	We propose to delete this amendment	<p>This provision was introduced vide the Tax Procedures (Amendment) Act, 2024, which came into force on 27<sup>th</sup> December 2024.</p> <p>Deleting this provision now, when 6 months have not even passed since it came into force, would create uncertainty and unpredictability in tax laws, which not</p>

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			section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays.		<p>only goes against the canons of taxation, but also the National Tax Policy.</p> <p>Further, taxpayer's generally have limited resources and time to handle a tax dispute. The current computation on the basis of working days aims to level the playing field.</p>

# Excise Duty

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Excise Duty Act

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	39 (b)	<p>Section 5 of the Excise Duty Act is amended—</p> <p>(b) by inserting the following new subsection—</p> <p>(4) For the purposes of this section—</p> <p>“non-resident person” means a person outside Kenya.</p>	N/A	<p>We propose the deletion of this section, and replace it with the following:</p> <p><i>“Section 2 (1) of the Excise Duty Act is amended by introducing the following definition in alphabetical order:</i></p> <p><i>“resident” in relation —</i></p> <p><i>(a) To an individual means a person who offers services from within Kenya;</i></p> <p><i>(b) To a body of persons shall take the meaning provided under Section 2 (1) of the Income Tax Act</i></p>	We propose to align the definition of a resident company for both excise duty and income tax perspectives. This will provide certainty on persons affected by excise duty.



# Miscellaneous Fees & Levies

We highlight our proposed amendments to the changes that the Finance Bill, 2025 seeks to introduce to the Miscellaneous Fees & Levies Act

Sr No.	Section No. (as in Bill)	Current Clause (as in the Bill)	Current Clause (as in the Act)	Proposed Amendment	Rationale and Justification
1	NA	NA	<b>7A. Export and investment promotion levy</b>  (1) There shall be paid a levy to be known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use.  (2) The levy shall be at the rates specified in the Third Schedule and shall be paid by the importer of such goods at the time of entering the goods into the country for home use.  (3) The purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign	We propose the deletion of this provision	<p>The Export and Investment Promotion Levy (“EIPL”) was introduced through the Finance Act, 2023, to protect local industries. However, the same has adversely affected the cost of raw materials and intermediate products used in manufacturing and construction as the local supply of such goods may not meet the purchaser’s quality or quantity requirements. This has led to a higher cost of finished goods and increased construction costs.</p> <p>We therefore propose to delete this provision, more so in line with the Government’s affordable housing programme, such that the construction costs can be reduced.</p>

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			<p>exchange and promote investments.</p> <p>(4) The export and investment promotion levy shall not be charged on goods originating from East African Community Partner States that meet the East African Community Rules of Origin.</p> <p>(5) The funds collected from the levy shall be paid into a fund established and managed in accordance with the Public Finance Management Act (Cap. 412A).</p>		

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