



Date: 15th May 2025

To: The Clerk of the National Assembly,
Main Parliament Building,
P. O. Box 41842-00100,
NAIROBI.

E-mail: cna@parliament.go.ke
financecommitteena@parliament.go.ke

RE: **MEMORANDUM IN RESPECT TO THE FINANCE BILL, 2025**
(NATIONAL ASSEMBLY BILL NO. 19 OF 2025)

We, submit this memorandum to Parliament regarding the proposed amendments in the Finance Bill, 2025, with particular reference to Sections 27 and 50 of the Bill. The recommendations herein aim to enhance the ease of doing business, support cash flow management for taxpayers, and promote balanced regional development.

1. Proposed Amendment to Section 47 (1) (a) of the Tax Procedures Act

Proposed Change

Section 50(a) of the Finance Bill, 2025 seeks to amend Section 47 (1) (a) by deleting the phrase "and input value added tax".

Recommendations

Rather than deletion, we propose the amendment should substitute "and input value added tax" with "including VAT payable on imports".

Justification

1. **Business Sustainability:** The ability to offset overpaid taxes against liabilities, including VAT on imports, is essential for business continuity, especially in sectors that heavily rely on imported raw materials and capital goods.
2. **Enhanced Compliance and Administration Efficiency:** Taxpayers are more likely to comply when tax credits can be applied across multiple tax heads, eliminating the need for cumbersome and protracted refund claims.
3. **Liquidity Support for the Private Sector:** Given the current economic challenges, businesses require flexibility in cash flow management. Restricting offsets would strain their working capital, slow down economic activity, and stifle growth.
4. **Policy Coherence:** The proposed deletion contradicts broader government objectives of easing the cost of doing business and supporting local manufacturers. The deletion will undermine Kenya's objective of becoming an export-led economy under the Africa Continental Free Trade Area (AfCFTA), Vision 2030, and the Bottom-Up Economic Transformation Agenda.
5. **Exports, Global Competitiveness, and Foreign Exchange Stability:** Exporters are particularly vulnerable to cash flow bottlenecks as they are required to pay VAT upfront on imported inputs, yet exported goods are zero-rated for VAT purposes. Delays in recovering VAT through refunds increase exporters' cost of production, erode their global competitiveness, and risk loss of export markets. By allowing set-offs against VAT on imports, exporters can maintain liquidity, produce more competitively priced goods, and increase exports. This translates to higher foreign exchange inflows for the country, which support:
 - a. Stabilization of the Kenyan shilling, reducing currency volatility.
 - b. Lower import costs for the government and private sector.
 - c. Reduced debt service costs for the government on foreign-denominated loans.

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- d. Stronger balance of payments position, lessening pressure on foreign exchange reserves and the need for costly interventions by the Central Bank of Kenya.
- e. Enhanced investor and global market confidence in Kenya as a stable, export-friendly economy.

This amendment would encourage compliance by allowing taxpayers to offset overpaid taxes against all types of outstanding liabilities, including VAT on imports, which is a major cost for corporations.

Encouraging set-offs rather than cash refunds would streamline the refund process and enhance liquidity for businesses, many of which are ongoing concerns with significant tax obligations such as corporation tax, instalment tax, import tax, and PAYE.

2. Proposed Amendment to Section 47 (2) and Section 47 (4A) of the Tax Procedures Act

Proposed Changes

Section 50(b) of the Finance Bill, 2025 seeks to increase the period within which the Commissioner determines refund applications from 90 to 120 days while Section 50(c) of the Finance Bill, 2025 seeks to increase the period for ascertaining applications subject to audit from 120 to 180 days.

Recommendations

We strongly recommend the retention of the existing timelines of 90 and 120 days respectively.

Justification

1. **Cash Flow Crisis for Taxpayers:** The existing refund timelines are already significantly long, yet practical experience shows that even these statutory periods are rarely honoured. Extending them further would deepen the cash flow crisis for many businesses, forcing them to incur additional borrowing costs.
2. **Macroeconomic Impact:** Delays in refunds deny businesses critical liquidity, which, in turn, affects their ability to pay employees, suppliers, and lenders on time, potentially triggering a ripple effect of defaults and job losses.
3. **Erosion of Taxpayer Trust:** Extended refund timelines risk undermining the trust and goodwill between the tax authority and taxpayers, further aggravating compliance risks and fostering an adversarial tax environment.
4. **Global Best Practice:** In competitive jurisdictions, refund processes are increasingly being automated and accelerated. Kenya risks losing its investment attractiveness if it adopts policies that make tax refunds even more cumbersome and uncertain.

This is therefore a call upon Parliament to uphold the current timelines and require Kenya Revenue Authority (KRA) to enhance efficiency in processing refund claims within the legally stipulated periods.

3. Proposed Deletion of Paragraphs 1A and 1B of the Second Schedule to the Income Tax Act

Proposed Changes

Section 27 of the Finance Bill, 2025 seeks to delete these provisions which grant a 150% investment deduction for investments of at least KES 1 billion outside Nairobi and Mombasa counties.

Recommendations

We strongly oppose this deletion and urge Parliament to retain the provision as is.

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Justification

1. **Promoting Balanced Regional Development:** The current incentive has been instrumental in attracting large-scale industrial investments to counties outside Nairobi and Mombasa, directly supporting the government's efforts in decongesting these cities and promoting equitable development across all counties.
2. **Job Creation and Economic Upliftment:** The incentive has created jobs and supported the establishment of critical social amenities, improving the livelihoods of citizens in underserved regions.
3. **Reducing Urban Overcrowding and Infrastructure Pressure:** By encouraging industries to establish operations in other counties, the pressure on urban transport, housing, and social infrastructure in Nairobi and Mombasa has been mitigated.
4. **Alignment with the Bottom-Up Economic Transformation Agenda:** The incentive aligns with the government's Bottom-Up Economic Model by fostering industrialization at the county level, promoting SMEs, and stimulating local economies.
5. **Investor Confidence:** Repealing this incentive would send a negative signal to investors, potentially stalling industrial development in other counties and reversing the economic gains already achieved.

In summary, we urge Parliament to safeguard this critical incentive to maintain momentum on regional development, industrialization and inclusive growth.

Conclusion

We reiterate that these proposals, if passed as currently framed, will significantly disrupt business operations, undermine tax compliance, and derail the country's regional economic growth strategies.

In view of the above, we respectfully urge Parliament to consider:

1. Amending Section 47 (1) (a) to include VAT on imports in the set-off mechanism.
2. Retaining the current timelines of 90 days and 120 days as provided under Sections 47 (2) and 47 (4A) respectively.
3. Retaining the investment deduction incentive under the Second Schedule to the Income Tax Act to continue promoting investments in other counties.

Thank you for the opportunity to participate in the legislative process. We remain committed to engaging further with Parliament and the Departmental Committee on Finance and National Planning to support the development of a tax framework that is fair, predictable, and supportive of economic growth.

Yours faithfully,

For: Kapa Oil Refineries Limited


Nitin Shah
Chief Executive Officer

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