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05 June 2025

Clerk of the National Assembly
Main Parliament Buildings
Parliament Road
P.O. Box 41842 – 00100
Nairobi

By email: financecommitteena@parliament.go.ke; cna@parliament.go.ke

Dear Sir,

**Memorandum: In the matter of consideration by the National Assembly on the Finance Bill, 2025
(National Assembly Bill No. 19 of 2025)**

We refer to the above subject matter where you invited interested members of the public and stakeholders to submit any representations that they may have on the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025) (“**the Bill**”).

These representations have been made pursuant to Article 118 (1) (b) of the Constitution and the National Assembly Standing Order 127 (3).

We hereby enclose our detailed submissions as an Appendix to this letter.

Please feel free to reach out to the undersigned on fomondi@deloitte.co.ke or Fredrick Kimotho on fkimotho@deloitte.co.ke or Patrick Chege on pchege@deloitte.co.ke should you require additional information or clarification regarding our submissions.

Yours faithfully,

For: Deloitte & Touche LLP

Fred Omondi
Partner, Tax & Legal Leader



Partners: D.M. Mbogho; A.N. Muraya; F. O. Aloo; B.W. Irungu; I. Karim; F. Okwiri; F.O Omondi; F. Mitambo; P. Seroney; D. Waweru; C Luo.

Deloitte & Touche, a partnership with registration No. 177912, converted to Deloitte & Touche LLP Registration No. LLP-A21DDP effective 14 June 2021.

Associate of Deloitte Africa, a Member of Deloitte Touche Tohmatsu Limited.

Appendix: Submissions by Deloitte & Touch LLP for consideration by the National Assembly on the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025)

No	Clause/Page of the Bill	Proposal	Justification
a) Income Tax- Corporate			
1.	Clause 8 (c) and (d) Limitation of period to carry forward tax losses	<ul style="list-style-type: none"> The Bill proposes to reintroduce limitation of the period of utilisation of tax losses through amendment of Section 15(4) of the Income Tax Act (“ITA”). As per the proposal, tax losses shall only be available for utilisation in the year of income in which they arise and the succeeding five years of income. The Bill has not provided room for extension of the period beyond the five years. Instead, the Bill proposes to repeal the provision that allowed the Commissioner to extend the tax loss utilisation period beyond 10 years pre-2022 in section 15(5), <p>We note that the limitation of the period for utilisation of tax losses had been repealed from the Income Tax Act through the Finance Act 2021 following the introduction of the now defunct minimum tax regime through the Finance Act, 2020, effective 1 January 2021.</p> <p>Recommendation <i>We recommend that section 15(4) of the ITA which provides for the indefinite carry forward of tax losses be retained, albeit with this amendment:-</i></p> <ol style="list-style-type: none"> <i>The current section 15(4) should be amended to allow taxpayers to utilise the tax losses in phases until exhaustion, when they revert to payable position. For instance, in a particular year of income, where the taxpayer reports a taxable profit, 50% of it should be used to utilise loss carried forward while the remaining 50% be subjected to corporate income tax.</i> <i>Further, we propose inclusion of a transitional provision for losses that may have arisen in prior years where accumulated losses will be</i> 	<p>It is our view that the five-year period may be quite short for capital intensive investments hence this proposal stands to impact certain taxpayers disproportionately and negatively, particularly those in capital-intensive sectors, such as manufacturing and the extractive industries, which often incur substantial tax losses over extended periods. This change may potentially stifle future investment in these vital sectors.</p> <p>To protect businesses that incur bona fide tax losses and require more than five years to utilise the same, the government should consider phased out approach to utilization of tax losses.</p> <p>For comparison we note that Tanzania has structured the utilization of tax losses in a manner that allows for eventual claim of all the losses but also payment of taxes in a year of income where the entity reports a taxable income. Under this regime, 40% of the taxable profit reported is taxed while 60% is utilized to offset outstanding tax losses. Further, Tanzania excludes key sectors of the economy e.g. agricultural</p>

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		<p><i>deemed to have been incurred in the year of income the provision comes into force.</i></p> <p>3) <i>A proviso that the limitation of carrying forward of losses will not apply to taxpayers engaging in extractive or agriculture activities.</i></p>	<p>sector from the restriction of utilization of tax losses.</p> <p>In Uganda, the taxpayer is allowed to claim the tax loss for seven consecutive year and any loss tax loss that remains unutilised thereafter, only 50% is considered claimable.</p> <p>Our proposal would lead to a level playground for potential investors eyeing to make investments in any of the three East African countries.</p> <p>We are further cognisant of the fact that players in the extractive industry may require not less than 10 years for exploration before making gainful return on their investment. As regards exemption of Agriculture activities, Agriculture Sector is and remains the key contributor to the country's GDP and most importantly provides food security for the citizenry as well as being the source of key raw materials for the manufacturing sector.</p>
2.	<p>Clause 8 (a) (v) & (vi)</p> <p>Deductibility of donations</p>	<ul style="list-style-type: none"> The Bill proposes to amend Section 15(2)(w) of the ITA to entitle a person to a deduction in respect of donations channelled towards construction of a public sports facility. 	<p>In as much as we recognise this proposal as a welcome move, we note that this proposal appears to limit the deduction to construction of a public sports facility which leaves out all the other forms of</p>

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		<ul style="list-style-type: none"> The Bill also proposes to repeal Section 15(2)(z) of the ITA, which entitles a person to a deduction in respect of expenditure incurred in sponsoring sports with the prior approval of the Cabinet Secretary responsible for Sports. <p>Recommendation</p> <p>While we recognise that this is a positive move that will eliminate the administrative costs and time spent in seeking approval from the Cabinet Secretary for Sports and Youth Affairs, we recommend that</p> <p>1) <i>the deduction of donations is extended to include construction of all sports facilities and any other expenditure incurred by a person in sponsoring sports activities for entities registered under the respective sports' governing bodies.</i></p>	<p>expenditure for sponsoring sports activities.</p> <p>There may be need to widen the scope of this measure to cover other expenditure that is vital for development of sports to encourage both individual and corporate sponsors to participate in nurturing talent.</p> <p>Currently, some companies are key sponsors of sports as part of their CSR activities. Allowing the deduction would act as an incentive and may encourage companies to allocate higher budget for sports sponsorship.</p>
3.	Clause 28(b)(iv) Incentives to companies certified by the Nairobi International Financial Centre Authority	<p>The Bill proposes a raft of amendments aimed at incentivizing entities certified by the Nairobi International Financial Centre Authority ("NIFCA"). They include:-</p> <ul style="list-style-type: none"> Introduction of a reduced corporate tax rate of 15% for companies certified by NIFCA for the first ten years and 20% for the subsequent 10 years, if; <ul style="list-style-type: none"> a) The company invests at least three billion shillings in the first three years of operation; b) The company is a holding company with at least 75% of the top management being citizens of Kenya; and c) The regional headquarters of the company are in Kenya and at least 60% of the top management are Kenyan citizens. 	<p>In our view the two clauses are mutually exclusive and therefore the drafting of the Bill could be an error. Our recommendation is therefore to align the two clauses and provide clarity.</p> <p>We are of the view that restricting the preferential tax rate to startup companies will lock out any other entities registered by NIFCA from benefiting from this incentive which may directly hamper investments that would contribute to the overall economic growth of the country.</p>

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		<ul style="list-style-type: none"> A reduced corporate tax rate of 15% for start-up companies certified by NIFCA for the first three years and 20% for the succeeding four years. <p>Recommendation</p> <p><i>We recommend that:</i></p> <ol style="list-style-type: none"> <i>the conjunction “and” appearing in (b) be replaced with “or” since the two clauses appear to be mutually exclusive.</i> <i>the wording “startup companies” be “replaced with any other company certified by NIFCA”</i> <i>a proviso to indicate that any company that qualify for benefits under this subsection shall continue to apply the rates therein for the years indicated in the event of repeal of the subsections.</i> 	<p>Given the magnitude of the cash outlay required to qualify for this incentive, it is necessary to assure the would-be investors of predictability of the tax regime in the event of repeal of the subsection before the lapse of the 20 years/ 7 years term prescribed in the law</p>
4.	Clause 27 (a) &(b) Repeal of the accelerated investment allowances	<p>The Bill proposes to repeal Paragraphs 1A and 1B of the ITA’s Second Schedule, which provide for accelerated investment allowance in the year of first use where :</p> <ul style="list-style-type: none"> The investment value outside Nairobi and Mombasa counties is at least KES 1 billion in the preceding three years of income; The investment value outside Nairobi and Mombasa counties is at least KES 250 million in the year of income under consideration; or The investment is incurred in a special economic zone (“SEZ”). <p>Recommendation</p> <p><i>We recommend that this proposal:</i></p> <ol style="list-style-type: none"> <i>be amended to the effect that the accelerated investment allowance for a special economic zone (“SEZ”) is retained in the Income Tax Act.</i> 	<p>The proposal may negatively affect capital investments outside of Nairobi and Mombasa counties, which may have been undertaken in anticipation of recovering the cost in the first year from a tax perspective.</p> <p>The proposal may also adversely impact ongoing and prospective capital influx into the SEZ, which has recently been actively promoted by the government as a preferable investment destination.</p> <p>These frequent changes are not in tandem with the object of the National Tax Policy and create an unpredictable tax</p>

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		<p>2) We recommend that a transition clause be introduced as follows in relation to investment in the manufacturing activities and investment in hotel buildings:-</p> <p><i>“Provided that where the cumulative value of investment for the preceding three years was over 1 Billion on or before 31st December 2025 or investment was over 250 million in a year of income on or before 31st December 2025 and the investment is outside Nairobi City County and Mombasa County, the investment deduction rate of one hundred percent shall be continue to apply</i></p>	environment. The frequent changes serve as a disincentive for investment in critical sector of the economy being the manufacturing sector. The manufacturing sector plays a significant role in job creation, value addition of raw materials sourced locally and increase in exports thereby reducing the balance of trade.
5.	<p>Clause 28 (b) (ii & iii)</p> <p>Repeal of preferential tax rates</p>	<p>The Bill seeks to amend the Third Schedule to the ITA to repeal the preferential tax rate of 15% applicable to:</p> <ul style="list-style-type: none"> - Companies engaged in construction of at least 100 residential units in a year; and - Businesses engaged in the local assembly of motor vehicles. <p>Recommendation</p> <p><i>We recommend:</i></p> <p><i>the retention of paragraph 2(j) of the Third Schedule of the Income Tax Act relating to businesses engaged in the local assembly of motor vehicles.</i></p>	The proposal to repeal the preferential tax rate for local assemblers of motor vehicles is counterproductive since locally assembled vehicles would reduce imports, thus reducing the balance of trade and creates job opportunities for the citizenry.
6.	<p>Clause 11</p> <p>Country by country reporting on behalf of other related parties</p>	<ul style="list-style-type: none"> • The Bill proposes to delete the words “as a surrogate parent entity” and replace with the following words “to file a country-by-country report and notify the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify”. <p>We note that the provision as framed may cause confusion regarding the deadline of filing the country-by-country report as provided for under Section</p>	For clarity, consistency, and to avoid confusion on the country-by-country compliance requirements.

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		<p>18D (2) which provides for filing of the country-by-country report within twelve months from the financial year end. This provision addresses notification to the Commissioner but has been improperly worded.</p> <p>Recommendation</p> <p>We propose Section 18D (8) of the ITA to be amended as follows:</p> <p>1) <i>Delete the words “as a surrogate parent entity” and replace with the following words “to file a country-by-country report notification with the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify”.</i></p>	
Proposals not in the Bill			
1.	<p>Third Schedule to the ITA</p> <p>Corporate tax rate</p>	<p>We propose a reduction of corporation income tax rate for locally incorporated entities from 30% to 28%.</p> <p>This proposal aligns with Annex I (Implementation Matrix- Page 44) of the Medium-Term Revenue Strategy (MTRS) wherein a similar proposition was propounded for FY25/26</p> <p>On account of the proposition, we recommend amendment of Head B – Rates of Tax specifically paragraph 2 a (ix) of the Third Schedule to the Income Tax Act (ITA) to ensue and read as follows;</p> <p>2. <i>“The corporation rate of tax shall be –</i> <i>(a) In the case of a resident company –</i></p> <p><u><i>Rates in each twenty shillings</i></u></p>	<p>It is our considered view that a 28% corporation income tax rate will strategically position Kenya as a preferred investment destination for foreign direct investments by the fact that it will be below the Africa average of 29% and will be comparable to the Global average of 23%.</p> <p>The reduction will also serve to deter aggressive tax planning strategies and lobbying for tax exemptions that work to increase tax expenditure. Laffer Curve illustrates the relationship between tax rates and government revenue, suggesting that there is an optimal tax rate that maximizes revenue without discouraging economic activity.</p>

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		<i>(ix) for the year of income 2025 and each subsequent year of income.....KES 5.60.”</i>	In addition, this will enhance the spending power of taxpayers and can increase aggregate demand, leading to higher economic growth and collection of consumption taxes.
2.	Section 15 (2) (a) Bad debts of capital nature	<p>We recommend the introduction of a new proviso under Section 15 (2) (a) to read as follows:</p> <p><i>“Provided that in the case of persons involved in money lending business, a bad debt which has been deemed to have become uncollectible under the guidelines shall include both the principal and interest amount.”</i></p>	<p>The primary reason for the inclusion of this is to ensure that taxpayers only claim bad debts arising from circumstances which bear to their income earning activities. If the bad debt is an ordinary incident of the taxpayer's income earning activities, then the debt would be in their revenue account. For example, a bad debt incurred by a money lending institution would generally be expected to be a revenue loss and would therefore be allowable for income tax purposes.</p> <p>We note that while the foregoing understanding is consistent across multiple Commonwealth jurisdictions, the provision as per Paragraph 4 of the Legal Notice No 37 is still ambiguous and often susceptible to varied subjective interpretations. Specifically, some quarters hold the position that for financial institutions and other taxpayers involved in lending, only the interest portion of the bad debt is deductible, on account of its</p>

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			<p>recognition as income in the entities' profit and loss accounts. The principal element of the bad debt, however, is deemed to be non-deductible, on the understanding that it is capital in nature. This is notwithstanding the fact that the loans advanced are part of these entities' core income generating business.</p> <p>In our considered view, bad debts incurred by such businesses are a direct consequence of lending, which is their core business. Such bad debts should therefore be allowable, inclusive of both the principal and interest elements. We note that this is also the practice in several other Commonwealth jurisdictions, including the United Kingdom, Australia and Malta. As such, to provide certainty not just for our members but also for other money lending businesses, we recommend that the law be amended to clarify that qualifying bad debts shall be allowed in full for income tax purposes, and not partially by only considering the interest portion of the debts.</p>
3.	Section 4A	We propose the amendment of Section 4A of the ITA to substitute the word "company" with the word "person" in the definitions provided under subsection (4).	The Finance Act, 2023 amended Section 4A to delete the word "company" wherever it appeared and substituted it with "person". However, one of the definitions provided

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	Realized foreign exchange losses or gains		under subsection (4) still refer to “company”. We therefore propose that this is also substituted with “person” for purposes of clarity.		
b) Income Tax- Personal					
Proposals not in the Bill					
1.	Clause 26 (c) Payments of gratuity and other allowances under pension schemes	<p>The Bill proposes to amend proviso to paragraph 53 of the First Schedule to the Income Tax Act by deleting subparagraph (a) and substituting it with the following subparagraphs:</p> <p>(a) Payment of gratuity (aa) Other allowances paid under a public pension scheme.</p> <p>We propose proviso to Paragraph 53 of the First Schedule to the Income Tax Act be amended by substituting it with the following subparagraphs:</p> <p>(a) Payment of gratuity (aa) Other allowances paid under a pension scheme.</p>	<p>In our view, the current proposal in the bill is welcome to the extent that gratuity paid out of public and private schemes will not be exempt from tax. However, the discrimination between public and private pension schemes is perpetuated by the proposal to exempt only other allowances paid out of a public pension scheme.</p> <p>We recommend that the current proposal in the Bill be amended as suggested to extend the exemption of other allowances paid out of a public pension scheme to private pension schemes to address this discrimination.</p>		
2.	Paragraph 1, Head B, Third Schedule to the ITA Expansion of PAYE bands	<p>We recommend that the government expands the bands, introduces lower rates within the structure of the bands to facilitate progressivity, and revises the top rate of PAYE to match the corporate income tax rate.</p> <p>More specifically, we recommend the amendment of Paragraph 1 in Head B of the Third Schedule to the ITA to provide for progressive bands of 10%, 17.5%, 25%, 27.5% and 30% as follows:</p> <table><tr><td>Current PAYE rates</td><td>Proposed PAYE rates</td></tr></table>	Current PAYE rates	Proposed PAYE rates	Head B of the Third Schedule to the ITA specifies the rates at which income earned by individuals is to be subjected to PAYE. The rates progress from 10%, to 25%, to 30%, 32.5% and the top rate of 35%. Not only are the bands narrow particularly at the lower rates, but the progression is also steep when assessed against comparable countries. In addition, the marginal PAYE tax rate is high for our context.
Current PAYE rates	Proposed PAYE rates				

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		<table><tr><th>Monthly Pay Bands (Ksh.)</th><th>Annual Pay Bands (Ksh.)</th><th>Rate of Tax (%)</th><th>Monthly Pay Bands (Ksh.)</th><th>Annual Pay Bands (Ksh.)</th><th>Rate of Tax (%)</th></tr><tr><td>On the first Shs. 24,000</td><td>On the first Shs. 288,000</td><td>10</td><td>On the first Shs. 24,000</td><td>On the first Shs. 288,000</td><td>10</td></tr><tr><td>On the next Shs. 8,333</td><td>On the next Shs.100,000</td><td>25</td><td>On the next Shs. 8,333</td><td>On the next Shs.100,000</td><td>17.5</td></tr><tr><td>On the next Shs. 467,667</td><td>On the next Shs. 5,612,000</td><td>30</td><td>On the next Shs. 167,667</td><td>On the next Shs. 5,612,000</td><td>25</td></tr><tr><td>On the next Shs.300,000</td><td>On the next Shs. 3,600,00</td><td>32.5</td><td>On the next Shs.300,000</td><td>On the next Shs. 3,600,00</td><td>27.5</td></tr><tr><td>On all income above Shs. 800,0000</td><td>On all income above Shs. 9,600,000</td><td>35</td><td>On all income above Shs. 500,0000</td><td>On all income above Shs. 9,600,000</td><td>30</td></tr><tr><td>Personal Tax Relief</td><td></td><td></td><td>Personal Tax Relief</td><td></td><td></td></tr><tr><td>2 400</td><td>28 800</td><td></td><td>2 400</td><td>28 800</td><td></td></tr></table>	Monthly Pay Bands (Ksh.)	Annual Pay Bands (Ksh.)	Rate of Tax (%)	Monthly Pay Bands (Ksh.)	Annual Pay Bands (Ksh.)	Rate of Tax (%)	On the first Shs. 24,000	On the first Shs. 288,000	10	On the first Shs. 24,000	On the first Shs. 288,000	10	On the next Shs. 8,333	On the next Shs.100,000	25	On the next Shs. 8,333	On the next Shs.100,000	17.5	On the next Shs. 467,667	On the next Shs. 5,612,000	30	On the next Shs. 167,667	On the next Shs. 5,612,000	25	On the next Shs.300,000	On the next Shs. 3,600,00	32.5	On the next Shs.300,000	On the next Shs. 3,600,00	27.5	On all income above Shs. 800,0000	On all income above Shs. 9,600,000	35	On all income above Shs. 500,0000	On all income above Shs. 9,600,000	30	Personal Tax Relief			Personal Tax Relief			2 400	28 800		2 400	28 800						<p>Comparable countries have better progression in their PAYE rates. For instance, Ghana has 0%, 5%, 10%, 17.5%, 25%, 30%, and 35%. Nigeria has 7%, 11%, 15%, 19%, 21%, and 24%. Ethiopia has 0%, 10%, 15%, 20%, 25%, 30%, and 35%.</p> <p>With regards to expansion of the tax bands, the higher rates in Kenya apply at relatively low incomes leading to excessive taxation of low-income earners. In Kenya, the PAYE rate of 30% in Kenya applies to individuals earning over KES 32,333 per month, compared to the equivalent of KES 255,000 in Ghana, and approximately KES 237,000 in South Africa. This excessive taxation erodes individuals’ purchasing power, and their ability to save and invest to spur economic growth. It also reduces Kenya’s attractiveness as a destination for top talent who transfer skills to Kenyans, making it ultimately detrimental to our country.</p> <p>Further, the marginal rate of 35% is 5% higher than the corporate income tax rate of 30%. This means that not only are individuals taxed at rates higher than corporations, but also have a higher tax base considering that individuals are taxed on their gross earnings, while corporations</p>
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		We further recommend that Paragraph 1 in Head B of the Third Schedule should be amended to empower the Cabinet Secretary, National Treasury, to amend the above bands within 10% every three years to account for inflation.																																																					

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			<p>can claim deductions for the expenses incurred in the production of their income.</p> <p>We therefore recommend expansion of tax bands, introduction of lower rates of taxation within the PAYE bands for progressivity and capping of the marginal tax rate for individuals so that it remains below the corporate income tax rate.</p> <p>Finally, our recommendation to amend the PAYE bands within 10% every three years is aimed at accounting for inflation, which has a determinable impact on the real wages of taxable individuals. Such impact, in our view, should be considered in the tax rates, hence our recommendation to allow the Cabinet Secretary to make inflationary adjustments to the tax rates.</p> <p>Sources: Nigeria Personal Income Tax Act Ghana Revenue Authority website</p>
3.	<p>Section 5, 22A and 22B of the ITA</p> <p>Increase in the limit of allowable pension contributions.</p>	<p>We recommend the amendment of sections 5, 22A and 22B of the ITA to increase the allowable deduction for pension contributions to either the lower of actual contributions or 6% of pensionable income.</p> <p>In the alternative, we propose an increase in the current allowable limit from KES 360,000 per annum to KES 480.000 per annum.</p>	<p>An increase in the pension/provident fund deduction rates will result in increased savings in pension schemes and promote a saving culture, which would align with the government's agenda to ensure a stable retirement and boosting our savings rate.</p>

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4.	Section 4(2) and 5(2) of the Affordable Housing Act, 2024 Affordable Housing Levy rate	<p>We recommend the amendment of Section 4(2) of the Affordable Housing Act to reduce the applicable rate of the affordable housing levy from 1.5% of gross income to 0.5% of the gross income earned.</p> <p>In the alternative, we recommend the introduction of a cap of KES 10,000 per individual per month; or KES 120,000 per annum. For employees, the cap of KES 10,000 per month should apply to the matching contribution made by employers under Section 5(2) of the Affordable Housing Act.</p>	<p>Since the introduction of the affordable housing levy in 2023, and in the wake of increased social security and health insurance contributions, wage earners have encountered significant hardships on reduced incomes. Our proposal will help alleviate this difficulty by increasing disposable income. This outcome would also be favourable for the government, as it would lead to higher spending and more taxes on consumption.</p> <p>In addition, we note that the current collections are not being absorbed in a timely manner. Further, the government is already collecting funds from the sale of the completed houses. As such, there is no need for the current high rate of the levy, and the levy contributed from the reduced rate can be used as a revolving fund.</p>
c) Income Tax- Withholding			
1.	Clause 16 (a) Withholding tax on freight charges to ship owners or charterers ship	<p>The Bill proposes to amend Section 35(1) of the ITA to bring payments of freight charges to non-resident ship owners and charterers within the ambit of WHT.</p> <p>Recommendation</p> <p>We recommend retention of the self-declaration regime under which tax chargeable vide Section 9(1) of the Income Tax Act (commonly referred to as freight tax) is administered.</p>	<p>The retention of the self-declaration regime is anchored in the following rationale:</p> <ul style="list-style-type: none"> A move to a withholding tax regime would decentralize compliance from a limited number of maritime agents to thousands of traders and individuals who ship their wares. This not only

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		<p>Further, we recommend amendment of Section 9(1) of the TPA to provide as below:</p> <p><i>Section 9 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1):</i></p> <p><i>(1A): Tax chargeable under subsection (1) shall be payable monthly at a date not later than the twentieth day of the month succeeding that in which the income is earned.</i></p> <p>We further recommend amendment of Section 47 of the TPA to provide as below:</p> <p><i>Section 47 of the Income Tax Act is amended by inserting a proviso immediately after subsection (2):</i></p> <p><i>Provided that the owner of any ship may elect to use his shipping agent as an agent for purposes of collection and remittance of tax under Section 9(1) in place of the master of the ship. The owner of the ship shall notify the Commissioner, not later than thirty days after the appointment of his shipping agent as agent for purposes of collection and remittance of tax under Section 9(1). The notification referred to shall be made to the Commissioner in such form as the Commissioner may specify.</i></p>	<p>creates compliance and enforcement challenges on KRA's part but also a high likelihood of revenue leakage;</p> <ul style="list-style-type: none"> A move to a withholding tax regime creates additional internal administrative challenges and costs on the part of shipping lines and their agents. For instance, not all persons shipping cargo out of Kenya would necessarily understand the administration of withholding tax upon payment. This would not only necessitate maintenance regular reconciliations for taxpayers but could also pose negative cashflow implications. <p>The new proposed amendments, on the other hand, create a legal framework for the administration of freight tax under a self-declaration regime. It eases compliance requirements for exporters and safeguards government revenue by ensuring maritime agents can effectively collect and remit freight tax.</p>
2.	Clause 28	We propose the revision of Clause 28 of the Bill, which proposes to amend the Third Schedule to the ITA in Head B, as follows:	Clause 28 of the Bill proposes to amend the Third Schedule to explicitly provide that

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	Taxation of dividends	<p>a) An amendment to Clause 28(a) of the Bill to read as follows: “<i>in paragraph 1, by inserting the words “other than that of the total income comprising fringe benefits, dividends and qualifying interest” immediately after the word tax</i>”.</p> <p>b) An amendment to Clause 28(b) of the Bill by introducing item (v) to read: “<i>in paragraph 2 by inserting the words “other than that of the total income comprising fringe benefits, dividend, and qualifying dividend immediately after the word “tax</i>”.</p> <p>c) An amendment to Clause 28(c) of the Bill by:</p> <p>a. including item (iii), which reads “<i>in subparagraph (a), by inserting the following proviso immediately after the subparagraph - provided that the tax paid under this subparagraph is final tax.</i>”</p> <p>b. including item (iv), which reads “<i>in subparagraph (e), by inserting the following proviso immediately after the subparagraph - provided that the tax paid under this subparagraph is final tax.</i>”</p>	<p>WHT on qualifying interest is final tax. This partly cures the issues introduced by the repeal of Section 34 by the Tax Laws Amendment Act, 2024. Although welcome, the Bill is silent on the taxation of dividends, which leaves a glaring gap in the law.</p> <p>In this regard, our proposed amendments seek to clarify that WHT on dividends (whether qualifying or otherwise) is a final tax.</p>
d) Capital gains tax			
1.	Clause 8 (b) (ii) Limitation on the deductibility of capital losses arising from the disposal of assets subject to capital gains tax (“CGT”)	<p>The Bill proposes to delete Section 15(3)(f) of the ITA, which currently allows transferors to deduct any capital losses arising from the disposal of assets subject to CGT under the Eighth Schedule to the ITA.</p> <p>We note that section 15 (3)(f) of the ITA was ineffective since it was referring to paragraph 5(2) of the Eighth Schedule which does not deal with computation of gains rather it provides for “dealings by nominees, trustees and liquidators and for the enforcement of securities.”</p> <p>Recommendation</p>	<p>We are of the view that deletion of this section would mean that capital losses are no longer deductible against future capital gains which would adversely affect taxpayers and in turn violate the canon of taxation on fairness.</p>

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		<p>We recommend that instead of deleting the entire section 15(3)(f), the same should be amended to make reference to the correct paragraph in the Eighth Schedule to read as follows: -</p> <p><i>“..the amount of any loss realized in computing, in accordance with paragraph 4(3), 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.”</i></p>	
e) Value Added Tax			
1.	<p>Clause 32 (a)</p> <p>Application of excess VAT credits arising from tax withheld by appointed withholding VAT agents</p>	<p>The Bill proposes to amend Section 17(5) of the VAT Act by deleting paragraph (c) which allows taxpayers to offset excess withholding VAT credits against other tax liabilities.</p> <p><i>“(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”.</i></p> <p>We recommend that this proposal be shelved and the retention of Section 17(5)(c) as presently drafted.</p>	<p>The proposed change implies that taxpayers who do not apply for a refund of excess withholding VAT credits will only be able to utilise the credits against future VAT liabilities.</p> <p>Taxpayers will not be able to automatically apply the excess withholding VAT credits against any other tax payable other than VAT, unless they apply to the Commissioner to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities or for a refund under Section 47 of the TPA.</p> <p>Some taxpayers may be in a perpetual credit position without the option of offsetting the withholding VAT credits against other tax liabilities.</p>

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2.	Clause 32 (b) Time application for VAT refund	<p>The Bill proposes to amend Section 17(5) by deleting paragraph (d) which allows taxpayers to apply for a refund within 24 months from the date the tax becomes due and payable and replacing it with a new paragraph (d) which allows taxpayer to apply for a refund within 24 months from the date the tax becomes due and payable.</p> <p><i>“(d) 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;”</i></p> <p>We recommend the retention of Section 17(5)(d) as presently drafted.</p>	<p>Limiting the VAT refund application period to 12 months will negatively impact taxpayers who experience challenges obtaining certain support documentation such as Certificate of Exports from the KRA.</p> <p>Taxpayers eligible for a refund by virtue of exporting goods are required to produce Certificate of Exports, which the KRA in some cases, take time to process and issue to taxpayers. The current 24 months period allows taxpayers time to follow up with KRA for such support documents and still manage to apply for the VAT refund.</p>
3.	Clause 35 Application of excess VAT credits arising from tax withheld by appointed withholding VAT agents	<p>The Bill proposes to introduce Section 66A as follows:</p> <p><i>“66A. Where a person imports or purchases goods or services which are exempt or zero-rated and the person subsequently disposes of, or uses, the goods or services supplied in a manner inconsistent with the purpose for which the goods or services were exempted or zero rated, 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.”</i></p> <p>We recommend the deletion of this proposal in its entirety.</p>	<p>The proposed new Section is likely to create ambiguity in its implementation since it is not clear which mischief it seeks to cure. The goods or services listed in the First and Second Schedule to the VAT Act retain the same exempt and zero-rating status irrespective of the number of times they are supplied, so long as the goods or services meet the VAT exempt, or zero-rating conditions provided under the VAT Act.</p> <p>If the intention is to prevent on-selling of certain project goods bought for projects granted exempt/or zero-rating status, then</p>

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			there already exists safeguards within the VAT Act to address this as only goods/services purchased for official use of such project enjoy the availed VAT relief in terms of exemption or zero-rating.
4.	Clause 36(j) Subjecting specialized equipment for development and generation of solar and wind energy to VAT at 16%	<p>The Bill proposes to delete Paragraph 113 of Part I of the First Schedule to the VAT Act which exempts specialized equipment for the development and generation of solar and wind energy.</p> <p><i>113. Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.</i></p> <p>We recommend the retention of Paragraph 113 of Part I of the First Schedule to the VAT Act.</p>	The proposal is likely to impact Kenya's goal to generate 100% of its electricity from clean energy sources by 2030. It will also increase the cost of accessing solar energy and negatively impact the many parts of the country that are not connected to the national grid and rely on solar energy.
Proposals not in the Bill			
1.	Section 17(5)(a) of the VAT Act. Refund of input VAT arising from making zero-rated supplies	<p>We propose the amendment of the Section 17(5)(a) of the VAT Act to introduce the phrase/proviso:</p> <p><i>"... Provided that all input tax directly attributable to making zero-rated supplies shall be refundable in full and shall be excluded from the formula under Regulation 8 of the VAT Regulations."</i></p>	Sectors like the agricultural sector that largely export their products are seasonal in nature where the produce takes time to mature and get harvested. During this period, the taxpayers continue incurring input VAT which is directly related to the produce to be exported. Before maturity and harvesting of the produce, it is not possible to declare zero rated sales in the VAT return. However, input VAT incurred

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			<p>will be included in the VAT returns for the periods with no exports.</p> <p>Therefore, when the KRA applies Regulation 8 in determining the refundable VAT amount for these months with no zero-rated sales, the resultant refundable amount is zero/nil. This is unfair and disadvantages taxpayers with seasonal zero-rated sales due to the nature of their crops or the production process and favours taxpayers who make continuous monthly zero-rated sales.</p> <p>Note that Section 17(5) of the VAT Act entitles taxpayers to refund of excess input tax arising from making zero-rated supplies.</p> <p>Section 17(6) of the VAT Act further provides that if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows:</p> <ul style="list-style-type: none"> • <i>full deduction of all the input tax attributable to taxable supplies;</i>

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			<ul style="list-style-type: none"> no deduction of any input tax which is directly attributable to other use; and deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula: $A * (B / C)$ where: <p>A: is the total amount of input tax that relate partly to making taxable supplies and partly for another use;</p> <p>B: is the value of all taxable supplies made by the registered person during the period; and</p> <p>C: is the value of all supplies made by the registered person during the period in Kenya.</p> <p>However, Regulation 8 of the VAT Regulations which provides a formula for determining VAT amount refundable to taxpayers does not consider the – ‘direct attribution principle’ espoused under Section 17(6) of the VAT Act. The formula is $R = (Z/T) * i$ where:</p> <p>R: is the value of input tax relating to zero rated supplies;</p>

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			<p>Z: is the total value of the zero-rated supplies;</p> <p>T: is the total value of the taxable supplies; and</p> <p>i: is the deductible input tax for the month of supply.</p> <p>The above formula requires taxpayers who make partly zero-rated supplies and partly standard rated supplies to apportion all input tax incurred for VAT refund purposes instead of allowing full refund of all the input tax directly attributable to zero-rated supplies.</p> <p>Our proposed amendment will therefore:</p> <ul style="list-style-type: none"> - eliminate the unfairness under Regulation 8 of the VAT Regulations. - ensure that the VAT Regulation aligns with the direct attribution principle' espoused under the principal legislation, being Section 17(6) of the VAT Act.
2.	Paragraph 146 of Part I of the First Schedule to the	We propose amendment of Paragraph 146 of Part I of the First Schedule to the VAT Act as follows:	Paragraph 146 of Part I of the First Schedule to the VAT Act reads as:

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	VAT Act which exempts capital goods promote investment in the manufacturing sector where the investment is two billion and above.	<p>Deleting the proviso and replacing it with a new proviso which reads as follows:</p> <p><i>“Provided that the value of such investment is not less than two billion shillings, and the exemption was granted before 27th December 2024 and shall continue to apply for twelve months from 27th December 2024”.</i></p>	<p><i>146. Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector:</i></p> <p><i>Provided that the value of such investment is not less than two billion shillings, <u>and the exemption was granted before 1st January 2024 and shall continue to apply for twelve months after this date.</u></i></p> <p>Please note that the underlined part of the proviso was introduced by Tax Laws Amendment Act, 2024 (TLAA) on 27 December 2024.</p> <p>The TLAA sought to introduce a transitional proviso to this Paragraph to allow taxpayers who had been granted VAT exemption on capital goods to continue benefiting from the VAT exemption for a period of 1 year from the date of amendment of the provision.</p> <p>However, as currently drafted there is no transition period since the TLAA came into effect on 27 December 2024, yet the proviso indicates the transition period to be a twelve-months period from 1st January 2024. This renders the transitional period nugatory, which could not have been the intention of the legislature.</p> <p>Our proposal will correct the drafting error included in the TLAA and allow taxpayers</p>

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			who were genuinely granted the exemption before 27 December 2024 to utilize them during the transition period.
f) Tax administration			
1.	Clause 42(v) Agency notices	<p>Clause 42(v) of the Bill proposes to amend Section 42 of the Tax Procedures Act, Cap. 469B Laws of Kenya (“TPA”) to allow the Commissioner to issue an agency notice where a taxpayer has appealed against an assessment specified in a decision of the Tax Appeals Tribunal (“TAT”) or court of law.</p> <p>We recommend the deletion of this proposal in its entirety as it will lead to untold financial burden on taxpayers.</p>	<p>If enacted into law, this proposal will empower the Commissioner to enforce adverse judgements against taxpayers through agency notices, even in cases where an appeal has been filed at higher courts.</p> <p>This would be a negative development in our view, which would not only result into unnecessary cashflow problems for taxpayers, but also threaten taxpayers’ rights to access to justice and a fair trial. There is also the risk of encouraging unreasonably inflated assessments from the Commissioner as witnessed in jurisdictions which have adopted the ‘pay first, argue later’ policy.</p> <p>There is also the challenge of recovering money collected by the Kenya Revenue Authority (“KRA”) should the taxpayers’ appeals prevail in court. Due to the existing administrative inefficiencies and cashflow limitations, obtaining refunds from the KRA is problematic. If passed, this proposal would increase the refunds budget which the Government is currently trying to</p>

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			<p>reduce. The government should therefore consider dropping this proposal from the Bill.</p> <p>It is also noteworthy that there is already a mechanism at the High court where a deposit can be made if the Court deems it necessary to protect revenue and the KRA is at liberty to ask for such deposit.</p>
2.	Clause 50 Offset or refund of overpaid tax	<p>Clause 50 of the Bill proposes to amend Section 47 of the TPA to increase the timeline for the Commissioner to determine a refund or offset application from 90 days to 120 days.</p> <p>We recommend the revision of this proposal to further amend subsection (3) to read as follows:</p> <p><i>“(3) Where the Commissioner fails to ascertain and determine an application under subsection (1) within one hundred and twenty days, the same shall be deemed ascertained and approved.”</i></p>	<p>Our proposed amendment aims to align the proposed increase of days for the Commissioner to determine refund applications with the safeguard provided to taxpayers in subsection (3). Specifically, subsection (3) provides the assurance that where a refund application is not determined within the statutory timelines, it is deemed to be approved.</p> <p>Should subsection (3) remain unchanged, refund applications will be deemed to be automatically approved within 90 days, which would be misaligned with the proposed timelines for the Commissioner to review refund applications (120 days).</p>
3.	Clause 52 Sharing of data through the data	<p>Clause 52 of the Bill proposes to repeal Section 59A(1B) of the TPA, which presently provides that taxpayers shall not be required to integrate or share data with the Commissioner relating to trade secrets and private or personal data.</p>	<p>The proposed amendment, if enacted into law, will imply that taxpayers who integrate their systems with KRA will be required to share almost all data, including that</p>

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	management and reporting system	<p>We recommend the deletion of this proposal in its entirety.</p> <p>In the alternative, we propose the retention of subsection (1B) but with the introduction of a new proviso to read as follows:</p> <p><i>“Provided that any trade secrets and private or personal data shared with the Commissioner shall be handled in accordance with the provisions of any other written law in respect of intellectual property rights and data protection.”</i></p>	<p>relating to sensitive trade and personal data.</p> <p>Due to potential data security and confidentiality breaches, we recommend that this proposal should be dropped from the Bill. In the alternative, we opine that there may be need to incorporate specific provisions in tax law that would commit the KRA to secure such data, hence our proposed introduction of a proviso to subsection 1B.</p>
4.	Clause 54 Computation of time for the lodgement of objections and appeals	<p>Clause 54 of the Bill proposes to repeal Section 77(2) of the TPA, which currently provides that in computing the period for the lodgement of appeals and objections, the computation shall not include weekends and public holidays.</p> <p>We recommend the deletion of this proposal in its entirety.</p> <p>Further, Section 77(2) should be amended to also include objection decisions issued by the Commissioner.</p>	<p>The current Section 77(2), which excludes non-working days from the computation of time for taxpayers to lodge objections and tax appeals, was introduced into the TPA in December 2024 by the Tax Laws (Amendment) Act, 2024.</p> <p>Repealing the provision less than half a year later without any apparent justification signals a lack of certainty in our tax administration regime. Such uncertainty runs against the tenets of an effective tax system and is also contrary to the policy objectives in the National Tax Policy and the Medium Term Revenue Strategy (“MTRS”), which both speak to our aspiration as a nation to have a stable and predictable tax system.</p>

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			<p>In addition, the exclusion of non-working days is in line with the practice in other civil disputes, as articulated in the Interpretation and General Provisions Act and in the Civil Procedure Rules. Having the same rule applying to tax disputes will therefore help harmonise the administration of justice.</p> <p>The proposed amendment to include the objection decisions issued by the Commissioner will provide ample time for review of the objection and this would accelerate resolution of tax disputes since the taxpayer and the Commissioner will have more time to engage on the tax issues in dispute.</p>
Proposals not in the Bill			
1.	Section 23A Electronic tax invoices	<p>The Tax Laws (Amendment) Act, 2024 amended Section 23A of the TPA to provide for “reverse invoicing”, through which purchasers shall issue electronic tax invoices (“eTIMS invoices”) where they receive supplies from small businesses or small-scale farmers whose turnover does not exceed KES 1 million.</p> <p>We propose that this provision be amended to read as follows:</p> <p><i>“(3A) Without prejudice to subsection (3), where a supply is received from a small business or a small-scale farmer, whose annual turnover does not</i></p>	<p>The reverse invoicing option was introduced with the presumed intention to improve compliance by shifting the burden to generate eTIMS invoices from the small traders and farmers to their customers.</p> <p>However, in our view, the provision as presently drafted is ambiguous in certain key aspects. Our recommendation therefore seeks to cure this gap by addressing the following issues;</p>

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		<p><i>exceed five million shillings, the purchaser shall issue a tax invoice for the purpose of ascertaining tax liability.</i></p> <p><i>Provided that:</i></p> <p><i>(i) The purchaser shall acquire and retain proof of the supplier's PIN issued under sections 8, 11 and 12 of this Act;</i></p> <p><i>(ii) The purchaser shall enter into an agreement with the supplier that the supplier shall not issue an electronic tax invoice under this section;</i></p> <p><i>(iii) The purchaser shall lodge with the Commissioner, not later than the end of each financial year, a return in the prescribed form indicating the suppliers with whom they have concluded an agreement to issue electronic tax invoices under this subsection.</i></p> <p><i>(iv) This subsection shall only apply to purchasers with an annual turnover of at least five million shillings.</i></p> <p><i>(v) This subsection shall come into force on 1 January 2026.</i></p> <p><i>(3B) The Cabinet Secretary shall, by notice in the Gazette, make regulations for the better carrying out of the provisions of subsection 3A."</i></p>	<ol style="list-style-type: none"> 1. To prevent the incidence of both the supplier and the purchaser of the same supply issuing eTIMS invoices, we propose that the purchaser and supplier should conclude an agreement that the responsibility to issue a tax invoice shall lie on the purchaser. This recommendation is also in line with the practice in other jurisdictions with self-invoicing regimes, such as South Africa. 2. Given that the overall aim of this provision is to expand the tax base, we also propose that purchasers should only issue reverse or self-invoices to suppliers with tax PINs. This will aid in capturing more small businesses and small-scale farmers who might not be registered for tax purposes, yet they engage in taxable and income-generating activities in the country. 3. In the same breath as the point above, we also recommend that, for each year, purchasers who issue reverse invoices should declare their suppliers and their tax PINs to the KRA. This will help in further expanding the tax base and bring more taxpayers into the fold. 4. In addition, to prevent the imposition of reverse invoicing requirements to other

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			<p>small traders and individuals as well, we propose that this provision should only apply to larger purchasers with an annual turnover of at least KES 5 million.</p> <p>5. Given the less-than-optimal uptake of eTIMS in the country, we also recommend that the reverse invoicing provisions should commence in January 2026 to allow adequate time for the programme to be rolled out by the Government before its implementation by law.</p> <p>6. Finally, we recommend that the CS Treasury should be empowered to make regulations for the better implementation of the reverse-invoicing regime. Given that it will be a novel introduction into Kenya's tax administration, this would afford the Government the chance to modify and enhance its implementation based on the challenges encountered and lessons learnt along the way.</p> <p>Elsewhere on the continent, we note that such reverse invoicing or self-invoicing regimes exist in countries such as South Africa and Cape Verde. We urge the KRA to draw on lessons from these countries in further implementing this measure.</p>

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2.	Section 47(13) of the TPA Offset or refund of overpaid tax	We propose that Section 47 (13) of the TPA be amended to have refund decisions treated as tax decisions, rather than appealable decisions.	<p>This would clear the ambiguity in the law introduced by Section 47 of the TPA, as amended by the Finance Act, 2022. This provision empowers taxpayers to challenge refund decisions before the TAT.</p> <p>Appealing refund decisions is administratively cumbersome and inefficient for the taxpayers and the TAT. This is especially so in the context of transactional taxes like VAT which have monthly obligations, where a taxpayer may be required to submit numerous appeals to the TAT monthly.</p> <p>Due to the limited time a taxpayer has in canvassing the refund issues with the Commissioner, these cases are finding their way back to the same Commissioner through the ADR which is time consuming. The taxpayers should be allowed to engage the Commissioner through the objection process from the onset.</p>
3.	Section 51(11) of the TPA Objection to tax decisions	We recommend the amendment of Section 51(11) to increase the timelines within which the Commissioner should respond to an objection to ninety days from the current sixty days.	The legislative intent of Section 51(11), as currently drafted, was to prescribe a specific timeframe within which the Commissioner is required to issue an objection decision, in the interests of

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			<p>justice and fairness for both taxpayers and the KRA.</p> <p>However, given the growing number and complexity of tax disputes, the current 60-day period is proving difficult for the Independent Review of Objections (“IRO”) team within the KRA to evaluate all the information shared by taxpayers and to issue well-considered decisions within 60 days. As a result, the IRO may sometimes be compelled to issue a decision that does not take into account all relevant information, resulting into a miscarriage of justice and an unnecessary backlog of cases at the TAT. Neither of these outcomes were the desired effect of Section 51(11) of the TPA upon its enactment.</p> <p>As such, we propose that the timeline for the issuance of an objection decision be extended from 60 days to 90 days, to afford both taxpayers and the IRO sufficient opportunity to close out tax disputes at the objection level, without the need for recourse to the judicial system.</p> <p>We can also observe that many decisions at the TAT are based on non-provision of records by a taxpayer. This is primarily</p>

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			occasioned by limitation in time the Commissioner grants taxpayers to support their case.

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