

**MEMO**

**Institute of Economic Affairs’ Submissions on the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025)**

Date:May 27th, 2025

**The Institute of Economic Affairs (IEA Kenya**) is a think-tank that provides a platform for informed discussions in order to influence public policy in Kenya. We seek to promote pluralism of ideas through open, active and informed debate on public policy issues. We undertake research and conduct public education on key economic and topical issues in public affairs in Kenya and the region, and utilize the outcomes of the research for policy dialogue and to influence policy making.

**Comments on the Finance Bill, 2025**

The Cabinet Secretary for the National Treasury and Economic Planning in compliance with the Public Finance Management Act, published the Finance Bill, 2025 on the 6th May 2025 and tabled it for consideration to the National Assembly. The Finance Bill, 2025 proposes amendments to the various tax laws including the Income Tax Act (CAP 470)), Excise Duty Act, 2015, Value Added Tax Act, 2013, Tax Procedures Act, 2015, and the Miscellaneous Fees and Levies Act, 2016.

The IEA-Kenya has reviewed the Finance Bill, 2025, prepared some comments summarizing the proposed amendments and provided a section on comment and a justification of each of the Tax Law;

| **Section of the Bill** | **Amendment** | **IEA’s Comments/Proposed Amendment** | **Justification** |
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| **Income Tax Act** | | | |
| 2 (Definition of Royalty, distribution of Software) | 2(a)(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"; | Delete the Proposal. Legal precedent, such as the 2021 High Court case Seven Seas Technologies Limited v Commissioner of Domestic Taxes[[1]](#footnote-1)[[2]](#footnote-2), establishes that software license payments are not royalties unless they involve copyright transfer. The current definition adequately covers these payments, making amendments unnecessary. Specific clauses on distribution could introduce legal ambiguity, leading to more uncertainty and raising litigation costs. An increased tax burden on software distribution may deter investment, stifle innovation, and disrupt business models while risking inconsistencies with DTAs and potential double taxation, undermining Kenya’s tax reliability in cross-border transactions. | The proposed amendment is unnecessary since the definition of "royalty" already covers software-related payments like licensing and support fees. Adding specific language to distribution arrangements could create ambiguity and increase litigation and compliance costs, especially for SMEs. It may lead to tax planning loopholes, deter investment in Kenya's tech sector, and conflict with double taxation agreements, like the Kenya-India DTA. The Kenya-India Double Taxation Agreement (effective January 1, 2018) defines royalties as payments for intellectual property like software. However, the Indian Supreme Court's 2021 ruling in Engineering Analysis Centre of Excellence v. Commissioner of Income Tax and Another (LL 2021 SC 124) stated that payments for standard software do not count as royalties under DTAs, as they only involve limited usage rights. This could create a conflict: while Kenya's domestic law treats software payments as royalties subject to withholding tax, India's DTA interpretation excludes them, exempting such payments from tax. Consequently, under treaty law, the DTA prevails, preventing Kenya from imposing withholding tax on software payments from India, which may lead to disputes in cross-border transactions. Given the adequacy of current legal frameworks and the lack of evidence for tax avoidance, the amendment seems redundant and potentially harmful. |
| 6(b), Removal of the Ksh 5 million limit on SEPT | (b) in subsection (3), by deleting paragraph (d). | Consider the efficiency of this tax measure. The amendment to Section 12E of the Income Tax Act removes paragraph (d) of subsection (3), eliminating the exemption for non-resident digital service providers with an annual turnover below five million shillings. | The Significant Economic Presence Tax targets specific individuals with economic power. Reducing the threshold makes SEPT an alternative tax under Income Tax, which is illogical for individuals with minimal economic power. The amendment raises administrative feasibility, market competitiveness, and vertical equity concerns. It negatively affects vertical equity because it imposes the same tax obligation (SEPT) on all non-resident digital service providers, regardless of their ability to pay. Subjecting small non-resident digital service providers to SEPT may impose excessive compliance costs relative to their income, deterring their entry or continued participation in the Kenyan market. This could stifle competition and limit innovation as smaller, more agile players exit or avoid the market. |
| 8(c) (Loss Carrying Provision) | (c) in subsection (4), by inserting the word "five"  immediately after the word "succeeding"; | Delete the Proposal | The Finance Bill 2025’s proposal to limit tax loss carryforwards to five years and remove the Cabinet Secretary's discretion threatens Kenya’s tax policy, investment, and economic resilience. This rigid loss relief penalizes pharmaceuticals and renewable energy industries, where profitability often exceeds five years. These firms face sudden tax burdens as projects yield returns, reducing net profits and deterring future investments. Startups and small businesses, vital for job creation, risk losing financial cushions from loss carryforwards since many don’t achieve sustainable earnings within five years. Indefinite loss carryforwards have helped manage tax liabilities during economic downturns. A five-year cap increases taxes for companies needing cash flow for reinvestment and hiring, potentially prolonging recessions. This proposed restriction creates uncertainty for financial planning; sectors like agriculture face unrealistic profitability timelines, stifling innovation. Rather than simplifying administration, the cap compounds compliance burdens, complicating tax planning for smaller enterprises. By weakening incentives in green technology, this measure risks diminishing Kenya’s attractiveness as an investment hub compared to countries with flexible loss-carryforward policies. Short-term government revenue gains may incur long-term growth costs; balanced alternatives, like sector-specific extensions, could protect fiscal goals without penalizing ventures supporting sustainable progress. |
| 12 (Advance Pricing Agreements) | 12. The Income Tax Act is amended by inserting the following new section immediately after section 18F—  Insertion of a new section 18G to Cap. 470.  Advance pricing agreement.  18G. (1) The Commissioner may enter into an advance pricing agreement with a person who undertakes a transaction contemplated under section 18(3) or section 18A.  (2) The amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length contemplated under section 18(3) or section 18A, shall be determined in accordance with the advance pricing agreement entered into under subsection (1).  (3) The advance pricing agreement entered into under subsection (1) shall be valid for a period not exceeding five consecutive years.  (4) Where the Commissioner determines that the person referred to in subsection (1) entered into the advance pricing agreement through misrepresentation of facts, the Commissioner shall declare the agreement void and issue a notice of the declaration in writing, to the person.  (5) The Cabinet Secretary may make regulations for the better implementation of this section. | APAS tend to be costly and time-consuming to negotiate. Most Kenyan businesses that interface with other countries and could require APAS could be classified as SME, with few being MNES. | The amendment introducing Advance Pricing Agreements (APAS) under section 18G of Kenya’s Income Tax Act favors larger firms, creating an uneven economic playing field for small and medium-sized enterprises (SMES). Multinational enterprises (MNEs) manage the high costs of APAs, securing tax certainty and reduced compliance burdens. In contrast, SMES, with limited budgets, find this process prohibitively expensive and time-consuming, relying on traditional transfer pricing documentation. This disparity increases SMEs’ exposure to tax disputes while larger firms gain a competitive edge, worsening economic inequities and undermining the growth potential of smaller businesses in Kenya. The amendment risks prioritizing larger firms by fostering administrative bias and reducing competition. The Kenya Revenue Authority (KRA) may focus on APA applications from MNEs due to their higher tax revenue potential, sidelining SMEs and reinforcing a system that favors the economically powerful. This favoritism could stifle competition, as SMEs struggle to match the advantages, such as lower compliance costs, afforded to larger firms through APAs. Policymakers should consider simplified APAs to ensure equitable access to tax benefits and foster a more inclusive economic environment. |
| 24 (Offenses) | 24. Section 109 of the Income Tax Act is amended in subsection (1)—  (a) in paragraph (b), by deleting the words "fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or";  (b) by deleting paragraph (c);(c) by deleting paragraph (f);  (d) by deleting paragraph (h);  (e) by deleting paragraph (j) and substituting therefor the following new paragraph —  (j) fails to supply prescribed certificates as is required by section 37. | Delete the provision | The deletion of the phrase “fails to furnish a full and true return by the requirements of any notice served on him under this Act” from Section 109(1)(b) of the Income Tax Act raises significant concerns regarding compliance clarity, administrative discretion, and taxpayer protection. Its removal dilutes a clear statutory obligation that allowed taxpayers to understand their duties. This change introduces ambiguity around non-compliance, broadening interpretation by the tax authority, and expands the Commissioner’s discretionary power, potentially leading to arbitrary enforcement. The amendment seems regressive regarding transparency and fairness, as the “full and true return” requirement imposes a meaningful obligation and safeguards against aggressive enforcement for minor errors. Without this clause, taxpayers face higher compliance risks without adequate legal clarity or fairness. |
| 28 (Nairobi International financial centre) | 24. Section 109 of the Income Tax Act is amended in subsection (1)—  (a) in paragraph (b), by deleting the words "fails to furnish a full and true return in accordance with the requirements of any notice served on him under this Act or"; | Discourage dual systems. Review the tax system to have a flat tax that discourages artificial restructuring or tax planning. This provision privileges a specific industry. Privileging NIFC is equivalent to Redistributing income from other taxpayers to big players. The NIFC license takes Article 210's discretion of Parliament to impose taxes. | The preferential tax regime granted to entities licensed under the Nairobi International Financial Centre (NIFC) is economically inefficient, regressive, and constitutionally questionable. By creating a dual tax system, it distorts market competition and encourages artificial restructuring purely for tax avoidance purposes, rather than for productive economic activity. This undermines allocative efficiency by diverting resources to tax planning instead of innovation or investment. From a public finance perspective, such preferential treatment narrows the tax base and shifts the tax burden to less mobile and often smaller firms and individuals, violating the principle of horizontal equity. It effectively redistributes income from ordinary taxpayers to large multinational financial entities, which would the primary beneficiaries of the regime. Furthermore, it undermines the goal of a broad-based, neutral tax system that minimizes distortions and maximizes revenue at the lowest economic cost. The NIFC’s tax privileges also bypass Article 210 of the Constitution, which vests the power to impose or vary taxes in Parliament, thus weakening fiscal accountability. Rather than fostering inclusive growth, the regime entrenches elite capture of public policy and risks Kenya’s reputation in international tax cooperation by fostering harmful tax competition. Therefore, abolishing such preferential tax treatment in favor of a simplified, flat, and broad-based tax system would enhance fairness, improve compliance, and support sustainable economic development. |
| **Value Added Tax** | | | |
| The finance bill proposes various changes to the Value-Added Act,2013 with the aim of mobilising more revenue to finance the government spending in the financial years 2025/2026 | | | |
| 32. | The bill proposes deleting paragraph (c) of Section 17 (5)  Section 17 Credit for input tax against output tax  5. Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period: Provided that any such excess shall be paid to the registered person by the Commissioner where—   1. 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 | Retain the proposal. We recommend retaining paragraph (c) since it allows for excess input tax resulting from VAT withheld by agents to be specifically eligible for a direct refund or application against other tax liabilities and therefore reduces liquidity challenges emanating from the withheld excess tax on inputs. | * Removing this provision would mean that excess input tax which arises from withholding VAT would be carried forward to future tax periods. This could potentially reduce businesses’ liquidity especially in an industry where withholding VAT is prevalent. * This could discourage investments in such industry and potentially reduce inflow of FDI due to the increased cost of doing business especially when firms are forced to borrow to bridge the increased cash requirement resulting from the tied-up refund |
| 36. | (e) by deleting paragraph 63: Provided that an exemption that had been approved pursuant to paragraph 63 before the deletion of paragraph 63 came into effect shall continue to apply until the 30th June, 2026;  63.Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption. | Expunge the proposal. To avoid discouraging the construction and equipping of specialized hospitals (minimum fifty beds), the proposed 16% tax on related materials and equipment should be removed and the provision expanded to all hospitals registered in Kenya to prevent discrimination against smaller hospitals. | The government aim of Universal Health Coverage is to ensure access to essential health care services without anyone suffering any financial hardship. This is achievable when proper policies are in place and there is adequacy of financial resources.  Therefore, imposition of taxes in the construction and equipping of hospitals will increase the cost of their establishment which might be passed on to patients, leading to higher cost of accessing medical services by lower income households    In addition, the clause should be deleted to ensure that the Cabinet Secretary does not retain powers that violate the constitution by making decisions on determining eligibility of exemption for taxation. This proposal was introduced last year with exemption status. Introduction of standard rate this year reflect the unpredictability of taxation in Kenya Which may pause a challenge for long term investment planning and compliance certainty by investors. |
| 36 | Amendment of the first Schedule to Cap. 476.The bill proposes application exempt status as per the first schedule (s.2(1))   |  |  |  | | --- | --- | --- | | **Item** | **Current provision** | **Proposed amendment** | | The supply of motorcycles of tariff heading 8711.60.00. The supply of locally assembled and manufactured mobile phones,The supply of electric bicycles, The supply of electric buses of tariff heading 87.02. The supply of solar and lithium-ion batteries. | Zero | Exempt | | Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health. | Zero | Exempt | | Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for the time being responsible for Agriculture and Transportation of sugarcane from farms  to milling factories | Zero | Exempt | | Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, | Exempt | 16% | | Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing | Exempt | 16% | | Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act (Cap. 314), production sharing contracts in accordance with the Petroleum Act (Cap. 308) or a mining license in accordance with the Mining Act (Cap. 306) upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters  relating to mining, as the case may be | Exempt | 16% | | Locally Manufactured passenger motor vehicles:  “Locally manufactured passenger motor vehicle” means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and “local content” means parts designed and manufactured in Kenya by an original equipment manufacturer  operating in Kenya. | Exempt | 16% | | 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 | Exempt | 16% | | Discs, tapes, solid-state non-volatile storage devices, “smartcards” and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding pro | Exempt | 16% | | Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. For the purposes of this paragraph,” recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills. | Exempt | 16% | | Direction-finding compasses, instruments and appliances for aircraft. | Exempt | 16% | | |  | | --- | | Expunge this proposal | | Expunge this proposal | | Expunge this proposal | | Expunge this clause. | | Expunge this clause. | |  | | Expunge this clause. | | Expunge this clause. | | Expunge this clause. | | Expunge this clause. | | Expunge this clause. | | Expunge this clause. | | |  | | --- | | Suppliers will not be able to claim input VAT which will affect the cost of production. These costs may be shifted to consumer leading to high increase in the cost of motorcycles.  Abandon the proposal because it violates the government’s green agenda and may reduce growth within the e-mobility sector. | | Exemption of these products means taxpayers will no longer be eligible to claim refunds on input VAT incurred. Health of citizen’s is of essence as increase in the price of medical products may lead to substitution towards ineffective options.. The status quo should be maintained at the Zero rate | | Abolish reclassification from zero to exempt as this will lead to increase in the cost of production for the suppliers hence passing the cost to the farmers leading to increase in the cost of food.  Parliament Should not grant discretion to the Cabinet Secretary or any other office in the Executive arm to change, vary or determine any tax liability because this is an express violation of Article 210 of the Constitution. | | Amend the proposal to extend VAT exempt status to all vehicles in that category and withdraw the discretion of customs officers of any authority from determine eligibility for this waiver. Delete the proposal. Kenya will lose its competitive edge as an assembler of vehicles for transportation of tourism. | | Amend the proposal to exempt materials for construction of housing to create a level playing ground. It is essential for GOK to set policy to make house construction competitive a universal VAT exempt status is consistent with attainment of the goals of the Affordable Housing Policy. | | Expunge this tax hike. The imposition of VAT on such inputs will raise the cost of power production and this additional cost will likely be passed to consumers. This proposal is a counter measure on government agenda of affordable energy. | | Expunge this clause. The VAT exemption was introduced three years ago and the proposal is application of the standard rate. This will discourage more investment in the local manufacture of motor vehicle and increase in prices. | | Expunge this tax hike. The imposition of VAT on such inputs will raise the cost of power production and this additional cost will likely be passed to consumers. This proposal is a counter measure on government agenda of affordable energy. | | Expunge this clause.  The price of these product increase affecting the market share in the country. | | The VAT exemption status should be maintained and extended to all registered tourism facilities without limit on acreage. The Discretion given to the Cabinet Secretary be withdrawn.  Kenya might lose its competitive edge over its neighbors as tour operator may raise their cost to cater for the additional cost.  The approach should be such that the tax advantage is available to as many firms as can invest without imposing an arbitrary and discriminatory land standard of 50 acres. Apply clear and transparent rules that bare not dependent on the interpretation and judgement of the Cabinet Secretary. | | Application of Standard Rates will increase air ticket pricing and also hinder the country from positioning itself as a regional Hub. | |
| **Excise Duty Tax** | | | |
| Section 2 (Subsection 1 (i)) | Definition of the digital lender removes the licensing requirement under the Central Bank of Kenya | Expunge the tax proposal | While the redefinition aims to enhance tax compliance among digital lenders, it raises concerns about regulatory oversight and consumer protection. Balancing the need for increased tax revenue with the imperative of safeguarding consumers will be crucial. |
| Section 2 (Subsection 1 (ii)) | Introduces the definition of a digital marketplace to include an online platform which enables users to sell goods or provide services to other users. | Retain the proposal | Taxing digital platforms ensures fair competition between online and offline sellers and also promotes tax equity. |
| Section 2 (subsection 3) | Goods to be classified by reference to Tariff (HS)Codes set out under Annex 1 to the Protocol Establishment of the EAC Customs Union | Retain the proposal | Alignment of product classification with EAC Customs Standards enhances consistency across taxes and simplifies compliance and enforcement |
| Section 13(subsection 2) | The Bill proposes to expand the scope of the services that are excisable to include services offered by non-residents over the internet, an electronic network or through a digital marketplace. | Expunge this Clause | There is no justification for the application of Excise Taxes to services provided over the internet. |
| Section 17 (subsection 1) | Establishes a clear timeline for the issuance (or refusal) of excise licenses, which previously had no specified timeframe. | Retain the proposal | Establishing a clear timeline will promote predictability, reduce discretion, avoid administrative delays and support ease of doing business for all eligible firms. |
| First Schedule of the Excise Duty Act. | **Changes in excise duty rates.**   |  |  |  | | --- | --- | --- | | Description | New excise duty | Old excise duty | | Imported other self-adhesive plates, sheets, film, foil, tape, strip, and other flat excisable shapes, of plastic, whether or not in rolls value or KES of tariff number 3919.90.90 but excluding those originating from E. Africa Community Partner States. | 25% of excisable value or KES 200 per kg whichever is higher. | 25% or KES 75 per kg | | Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of excisable plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from E. Africa Community Partner State. | 25% of excisable value of KES 200 per kg. | 25% or KES 75 per kg. | | Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil, and strip of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African Community Partners. | 25% of excisable value or KES 200 per kg whichever is higher. | 25% or KES 75 per kg | | Imported printed poly (ethylene terephthalate) of polycarbonates alkyd resins, polyallyl esters or other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.62.90, but excluding those originating from East African Community partner states. | 25% of excisable value or KES 200 per kg whichever is higher. | 25% or KES 75 per kg | | Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community partner states. | 25% of excisable value or KES 200 per kg whichever is higher. | 25% or KES 75 per kg | | Gummed paper and paperboard of tariff number 4811.49.00 but excluding those originating from East African Community partner states. | 25% of excisable value or KES 200 per kg whichever is higher. |  | | Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages. | KES 500 per litre. | 0 | | |  | | --- | | Expunge the Clause. | | Expunge the Clause | | Expunge the Clause | | Expunge the Clause | | Expunge the Clause | | Expunge the Clause | | Delete this provision, allow market forces guide alcohol pricing | | The exclusion of goods originating from E. Africa Community Partner States is a Protectionist measure. This move is unfair for trades outside t E. Africa Community and can lead to Market Distortions & Unfair Competition. It also seems to be designed to favour selected firm at the expense of Kenyan consumers.  The Ksh 125/kg increase in excise duty on imports will increase manufacturing costs through packaging materials. This cost can be borne by producers or transferred to consumer through higher prices.   |  | | --- | |  | |  | |  | |  | |  | |  | | New tax significantly raises production costs for local distillers and beverage manufacturers which could mean hiked consumer prices or reduced profitability if costs cannot be transferred to consumers. Price controls create black markets.  The previous taxation was informed by the fact that this is an intermediate good | |
| **Export, Investment Promotion and Eco Levy-International Trade and Development** | | | |
|  | 1. in tariff description "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’’, by deleting the expression ‘’17.5%’’ appearing in the corresponding export and investment promotion levy rate and substituting therefore the expression ‘’10%’’ | The third schedule to the miscellaneous fees and levies is amended  so that semi-finished products of iron or non-alloy steel containing <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness, lowers the levy rate from 17.5% to 10%. | Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  | b) In tariff description, ‘’Bars and rods of iron or non-alloy steel, | The third schedule to the miscellaneous fees and levies is amended so that  Bars and rods of iron or non-allow steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14 mm in diameter of cross section measuring less than 8mm’’ has its tariff lowered from 17.5% to 10% | Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  | **Section of the Bill** | **Amendment** | **IEA’s Comments**  **Proposed Amendment** |
|  | d) In tariff description, ‘’Bars and rods of iron or non-alloy steel, | The third schedule to the miscellaneous fees and levies is amended so that..  Bars and rods of iron or non-alloy steel, hot rolled, in irregularly wound coils of circular cross-section measuring less than 14 mm in diameter of cross section measuring less than 8 mm’’, has its tariff lowered from 17.5% to 10%. | Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  | e) In tariff description, ‘’Bars and rods of iron or non-alloy steel, | The third schedule to the miscellaneous fees and levies is amended so that..  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 has its tariffs lowered from 17.5% to 10%. | Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  | f) In tariff description, ‘’Bars and rods of iron or non-alloy steel, | The third schedule to the miscellaneous fees and levies is amended so that..  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; other’ has its tariffs lowered from 17.5% to 10%. | Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  | THIRD SCHEDULE [s. 7A (1)] | **Export and Investment Promotion Levy** |  |
|  | 7207.11.00. | Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carob; of rectangular (including square) cross-section, the width measuring less than twice the thickness.  (17.5% of the customs value to 10%) | The amendment proposes that levies drop from 17.5% to 10%. This is a welcome change. Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  |  | 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  (17.5% of the customs value) | The amendment proposes that levies drop from 17.5% to 10%. This is a welcome change. Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
|  |  | Bars and rods of iron or non-allow steel, hot rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other  (17.5% of the customs value) | The amendment proposes that levies drop from 17.5% to 10%. This is a welcome change. Levies are like taxes; they reduce welfare of the consumer and the producer, induce income and substitution effects, and result in destruction of efficiencies. The reduction of levies in intermediate goods improves producer welfare and consumer welfare after the product has been produced and is sold on the market. |
| **Miscellaneous Fees & Levies** | | | |
| Section 59 which amends the Third Schedule of the Miscellaneous Fees and Levies Act | Reducing export and investment promotion levy from 17.5% to 10% for goods under tariff:  **7207.11.00**: 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  **7213.91.10**: 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  **7213.91.90**: 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; other | The IEA partly agrees with the proposal to lower the export and investment promotion levy rates for these goods from 17.5% to 10%. However, we strongly recommend that the levy be entirely scrapped. Lastly, parliament should move away from frequent changes in tax laws. | Lower tax rates are expected to make goods less costly consequently reducing input costs as well as construction costs while making our domestic exports competitive.  Evidence (2025 Economic Survey) shows that the levy is associated with a decline in domestic exports for the manufacturing sector leading to lost revenue and foreign exchange. Moreover, the resultant drop in inputs due to high costs partly contributed to the sluggish sector growth. Generally, this tax distorts international trade, without necessarily leading to more revenue as shown in the [Estimates Of Revenue Grants And Loans](http://www.parliament.go.ke/sites/default/files/2025-05/ESTIMATES%20OF%20REVENUE%20GRANTS%20AND%20LOANS_1.pdf)(other taxes on international trade) whereby they are on the decline.  It is worth noting that this Third Schedule was introduced through the Finance Act, 2023. It was then amended through the Tax Laws (Amendment) Act, 2024 – in December 2024. Therefore, this is the second round of amendments in just six months. These frequent amendments violate the principles of good taxation as this creates uncertainty.  We strongly recommend that the National Assembly applies that National Taxation Policy (Sessional Paper No. 02/2023 in the design and review of tax rates. |
| **Tax Procedures** | | | |
| Amendment of section 23A of CAP. 469B.  23A. Electronic tax invoices | (4) The electronic tax invoice referred to in subsection (3) may exclude payments of emoluments, payments of imports, payments of interest, transactions for accounting for investment allowances, airline passenger ticketing, and payments subject to withholding tax that is a final tax. | This adds specificity by adding the word ‘payments’ to the items excluded from tax.  Also, it specifies payments subject to withholding tax that is a final tax.  These are welcome proposals. | Taxation systems should be as simple as possible. This proposal removes ambiguity on what payments are excluded for electronic tax invoices.  Harmonization and removing redundancies e.g. seeing that emoluments are already captured under PAYE. Therefore, requiring an electronic tax invoice for the withholding tax is redundant because it is already paid by the withholding agent. |
| Amendment of section 31 of CAP. 469B. | (8A) Where the commissioner has made an assessment, the Commissioner shall include in the notification under subsection (8) the reasons for the amended assessment | This is a commendable insertion as it makes it mandatory (SHALL INCLUDE) for the commissioner to give reasons for the amendment unlike in the past where this was not the case. | This gives root for enhanced transparency in tax procedures and the right to reply for the aggrieved party.  This aligns with Article 47 (2) of the Constitution of Kenya and the Fair Administrative Action Act, 2015 under Section 4(2) and Section 6(2) in which every person ought to be given written reasons for any administrative action that negatively affects their rights.  It also allows a party to appeal knowing the basis behind the amendment |
| Amendment of section 39A of CAP. 469B. | (2) Despite subsection (1), a person who does not deduct, withhold or remit tax on a payment shall not be required to pay the principal tax not deducted, withheld or remitted where the recipient of the payment has paid and accounted for the full principal tax and the tax not deducted, withheld or remitted. | This new addition removes the liability to pay tax from the person based on proof of payment and accounts for the full principal tax. | This eliminates double taxation where the tax has already been paid by the recipient so that the withholding agent doesn’t pay it as well. This ensures equity in taxation. |
| Amendment of section 42 of CAP. 469B | 1. In subsection (1), by inserting the words “or a non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”; 2. In subsection (2), 3. In the opening statement by inserting the words “or the non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”; | This amendment enlarges the bracket for the collection of taxes to include non-residents who also earn incomes in Kenya.  KRA can now recover unpaid taxes through other financial channels. | A concern would be that there may be abuse of this especially where it is not so clear about the existence of a tax due.  Also, in the definition clauses in the interpretation section, the Act may just be edited to state that for purposes of Section 42(1) a ‘taxpayer’ also includes a non-resident person subject to tax in Kenya or have this at the beginning of the section, to avoid the repetition. |
| Repeal of section 42B of CAP. 469B  42B. Appointment of digital service tax agent | Repealing Section 42B | This is in line with the Digital Service Tax change to Significant Economic Presence Tax proposal that will be in charge of the collection of this tax. | This amendment effectively places tax on digital services under the Significant Economic Tax Act |
| Amendment of section 83 of CAP. 469B  83. Penalties for late submission and failure to submit returns  (1)A person who submits a tax return after the due date shall be liable to a penalty | Section 83 is amended in subsection (1), by inserting the words “fails to submit a tax return or” immediately after the words “person who”. | This is to clarify the need to submit returns on time  Ensures that total non-compliance (not just late filing) attracts penalties and penalizes both. | This amendment is a welcome addition as it gives clarity to the timelines within which a taxpayer is supposed to submit tax returns. |
| Amendment of section 89 of CAP. | Amend section 89 by inserting the following new subsection immediately after subsection 5-  (5A) The Cabinet Secretary may, on the recommendation of the Commissioner, waive whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest was due to-   1. an error generated by an electronic tax system; 2. a delay in the updating of an electronic tax system; 3. a duplication of a penalty or interest due to a malfunction of an electronic tax system; or 4. the incorrect registration of the tax obligations of a taxpayer. | This amendment identifies instances where the CS, upon recommendation by the commissioner can waive whole or part of penalty due.  This clause should be expunged. | The possibility of abusing this provision is real. There is nothing that stops the Commissioner, in agreement with the CS from imposing this retrogressive power to the benefit of a few. It is a loophole for corruption and cronyism and should therefore be expunged. |

1. Seven Seas Technologies Limited v Commissioner of Domestic Taxes (Income Tax Appeal 8 of 2017) [2021] KEHC 358 (KLR) (Commercial and Tax) (10 December 2021) (Judgment) [↑](#footnote-ref-1)
2. In the case of Tata Consultancy Services vs. State of Andhra Pradesh (277 ITR 401) from 2004, the Indian Supreme Court ruled that when software is stored on a medium, it is classified as goods intended for sale rather than being considered as a copyright-protected item. This decision highlights the legal distinction between physical products and intellectual property in the context of software distribution. [↑](#footnote-ref-2)