

Date: 22 May 2025

The Clerk of the National Assembly,
Office of the Clerk
Main Parliament Buildings
Nairobi, Kenya

Attention: S. Njoroge

Re: Submissions on the Finance Bill, 2025

We refer to the above subject matter and your public notice dated 13 May 2025 inviting the public to submit their comments on the Finance Bill, 2025 (**the Bill**).

Please see annexed to this Letter a Schedule, setting out our comments and proposals relating to the Bill. Should you require any clarifications, please do not hesitate to contact Kenneth Njuguna Kenneth.njuguna@aln.africa or myself daniel.ngumy@aln.africa.

Yours faithfully,



Daniel Ngumy

For and on behalf of Anjarwalla and Khanna LLP

SCHEDULE
SUBMISSIONS TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
ON THE FINANCE BILL, 2025

| NO. | SECTION (as it is in the Bill) | PROPOSED AMENDMENT | RECOMMENDATION AND JUSTIFICATION |
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| AMENDMENTS TO THE INCOME TAX ACT | | | |
| 1. | <p>Section 8 (c)</p> <p>Restriction on carry-forward of tax losses</p> | <p>The Bill proposes to restrict the carry-forward period for tax losses to the succeeding five (5) years.</p> | <p>If enacted as proposed, taxpayers with tax losses older than five years from the effective date may lose the ability to utilise those losses against future taxable income. Businesses, particularly those in industries with long recovery periods (e.g. startups, manufacturing or capital-intensive sectors such as power producers), may face increased financial strain due to the inability to carry forward tax losses as has been the case and therefore, having to start paying taxes sooner as a result of expiry of tax losses.</p> <p>Recommendation:</p> <p>We recommend that the proposed amendment includes a grandfathering provision for existing tax losses as taxpayers with losses accumulated over many years could face an immediate write-off of those losses, effectively reducing their tax shields and increasing their tax liability.</p> <p>We note that this provision has undergone several changes in the recent past with the time limit for claiming tax losses changing from 5 years to 10 years to the current indefinite period. This constant change only adds to the difficult of doing business in Kenya due to the uncertainty that it creates.</p> |

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| 2. | <p>Section 27</p> <p>Withdrawal of enhanced investment deductions</p> | <p>The Bill proposes to delete the higher investment deductions allowance of 150% for investments outside Nairobi City County and Mombasa County.</p> <p>This provision has been key to attracting significant investment in various underdeveloped sectors such as the power production sector, and its deletion is likely to have a significant impact on projects which are under construction as well as future planned projects.</p> <p>We foresee the impact of this deletion as resulting in higher project costs which would be passed onto consumers and for sectors such as power production, would result in higher electricity costs for most Kenyan consumers.</p> <p>Additionally, the deletion is also likely to trigger change in tax provisions under the various contracts between the Government and the respective investors, which would require the government to compensate the parties.</p> <p>Recommendation:</p> <p>We recommend that this proposal be deleted in order to avoid any adverse financial implications both on the Government as well as the Kenyan public. To provide certainty to investors in these capital intensive sectors, adequate advance notice (e.g., 3 – 5 years) should be given on any planned changes to the tax incentive regime.</p> |
| 3. | <p>Section 28 (b)(ii) and (iii)</p> <p>Scrapping of Rebates Granted to Housing Developers and Local Motor Vehicle Assemblers</p> | <p>The Bill has proposed to delete the 15% income tax rebate available to companies who construct at least one hundred residential units annually.</p> <p>The Bill has further proposed to delete the preferential corporate tax rate of 15% available to local assemblers of motor vehicles in their first 5 years of operations, which can be extended for a further 5 years if the assemblers achieve a local content equivalent to 50% of the ex-factory value of</p> <p>We note that the 15% income tax rate available to construction companies had been introduced on 1 January 2017, with the intention to encourage developers to construct affordable housing under the previous government's Big Four Agenda.</p> <p>As regards motor vehicle assemblers, the proposed change in law means that local motor vehicle assemblers will be subjected to standard rates of corporate tax if the proposal in the Bill is passed into law.</p> |

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| | the motor vehicles. | <p>There are many investors who have made long term investment plans based on the above incentives, and in particular, large real estate developments which are under construction where the investments were undertaken in reliance on the incentives.</p> <p>Recommendations:</p> <p>We recommend that this proposal be rejected. The government should consider retaining the preferential 15% income tax rebate to incentivise real estate developers to continue investing in this sector to meet the housing deficit and deliver affordable housing to Kenyans. Additionally, should this proposal be accepted, it would be a set-back for the local motor vehicle assembly industry that is still in its early stages of development. Going forward, withdrawal of tax incentives should be planned with adequate notice to investors (e.g., 5 year cycles) to enable proper planning.</p> |
| 4. | <p>Section 28 (iv)</p> <p>Preferential Tax Regime for Investors in the Nairobi International Financial Centre</p> | <p>The Bill further proposes to introduce a preferential corporate tax rate of 15% for the first ten years from the year of commencement of its operations and 20% for the subsequent ten years of its operation provided the following conditions are met:</p> <ul style="list-style-type: none"> a) the company invests at least KES 3 billion in Kenya in the first three years of operation; b) where the company is a holding company, at least 70% of its employees in senior management are citizens of Kenya; and c) where the regional headquarters of the company is in Kenya, at least 60% of its employees in senior management are citizens of Kenya; and <p>Recommendation:</p> <p>We recommend that further alignment of the NIFCA regime with other regimes like the SEZs is done. Particularly, concerning financial investment thresholds, to enhance its attractiveness to</p> |

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| | | <p>d) In the case of a start-up certified by NIFCA, the Bill has proposed a corporate tax rate of 15% for the first three years and 20% for the succeeding four years.</p> <p>Additionally, the Bill proposes to grant a withholding tax exemption on dividends paid by a company certified by NIFCA where the company reinvests at least KES 250 million in Kenya in that year of income.</p> | foreign investors. |
| 5. | Section 29 CGT Exemption on Transfer of Property to a Company Held by an Individual | <p>The Bill proposes to amend the Eighth Schedule to the ITA to introduce a CGT exemption on transfer of assets to a company where an individual holds 100% shareholding in the company.</p> | <p>The proposed amendment is a welcome move as it will enable individuals who wish to hold their assets through a company, for personal or estate planning purposes, to do so without triggering CGT.</p> <p>Recommendation:</p> <p>We recommend that the proposed amendment be modified to include a corresponding stamp duty exemption to align with the proposed CGT exemption and avoid triggering stamp duty upon transfer of property to a wholly owned company.</p> |
| 6. | Section 60 New Stamp Duty Exemption | <p>The Bill has proposed the introduction of a new stamp duty exemption relating to transfer of property by a company to its shareholders as part of an internal reorganisation.</p> | <p>This new proposal is welcome since it would allow companies to undertake internal restructurings which involve transfer of property to shareholders, without incurring stamp duty.</p> <p>Recommendation:</p> <p>We recommend that a similar exemption be introduced from an income tax perspective under the Income Tax Act to ensure that transfers of property to shareholders is tax efficient from all tax heads.</p> |

AMENDMENTS TO THE VALUE ADDED TAX ACT, 2013

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| 7. | <p>Section 17(5)(d) Reduction of Timelines for Lodging a Tax Refund Claim</p> | <p>The Bill proposes to reduce the statutory period for lodging a claim for refund of excess tax from the current 24 months to 12 months from the date the tax becomes due and payable.</p> <p>The proposed amendment may place taxpayers at a procedural disadvantage by requiring them to submit refund claims within significantly shorter timeframes.</p> <p>A reduction in this period could lead to many taxpayers being excluded from claiming legitimate input VAT or missing out on refunds for various inputs. Moreover, the compressed timelines are likely to result in a surge of last-minute claims, creating administrative pressure for both taxpayers and the Commissioner, and potentially increasing the risk of errors and disputes.</p> <p>Recommendation:</p> <p>We propose that the proposed amendment be shelved and the current position in the VAT Act be retained as is.</p> |
| 8. | <p>Section 66A Liability to pay tax for exempt and zero rated supplies</p> | <p>The Bill proposes to introduce a new provision (66 A) requiring taxpayers to account for VAT where goods or services acquired under exempt or zero-rated status are subsequently used in a manner inconsistent with the purpose for which that VAT treatment was granted. In such cases, the person must pay VAT at the applicable rate at the time of disposal or alternative use.</p> <p>While the proposed amendment seeks to address tax loopholes and prevent the misuse of VAT exemptions and zero-rating provisions, its effectiveness is likely to be undermined in the absence of clear regulations or guidelines on the criteria for determining what constitutes 'inconsistent use' of goods or services.</p> <p>In the absence of such guidelines, the provision is likely to give rise to significant interpretational challenges and an increase in disputes between taxpayers and the tax authority, potentially hindering compliance and efficient tax administration.</p> <p>Recommendation:</p> |

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| | | | <p>We propose the inclusion of a clause requiring the Commissioner to issue regulations to operationalise proposed amendment.</p> |
| 9. | Section 36 (j) & (k) | <p>The Bill has proposed the deletion of various VAT exemptions including exemptions relating to goods used in geothermal, oil or mining prospecting or exploration (Paragraph 112 of the First Schedule), as well as deletion of the exemption for specialised equipment for the development and generation of solar and wind energy (Paragraph 113 of the First Schedule).</p> | <p>We note that the Bill proposes a grandfathering provision which would allow for any exemption already approved to continue applying until 30 June 2026.</p> <p>This proposal, if passed into law, would result in increased costs for developers of power projects, particularly new power projects set to commence after 1 July 2025, which would not have any VAT exemption.</p> <p>The increased costs are likely to be passed on by the developers of such projects onto the consumers, which in this case would be the Government of Kenya as well as the Kenyan citizens.</p> <p>Recommendation:</p> <p>We would recommend that this proposal be deleted and the current provisions be retained, in order avoid an increase in costs in the power sector.</p> |
| 10. | Second Schedule zero-rated supplies | <p>The Bill proposes to change the VAT status of the supply of electric motorcycles (tariff heading 8711.60.00), electric bicycles, electric buses (tariff heading 87.02), and the supply of solar and lithium-ion batteries from zero-rated to exempt.</p> | <p>The proposed amendment may significantly dampen investment in Kenya's nascent electric mobility sector and lead to an increase in the cost of Electric Vehicles (EVs) owing to the inability of importers and manufacturers to recover input VAT.</p> <p>This change appears to contradict Kenya's commitments under the Paris Agreement to reduce emissions by 32% by 2030, policy</p> |

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| | | <p>objectives under the National Climate Change Action Plan and the 2024 Draft National e-Mobility Policy which prioritize EV adoption as a key strategy in reducing the transport sector's carbon footprint.</p> <p>Recommendation</p> <p>We propose that the current zero-rating be retained to accelerate EV adoption, attract investment in local assembly, and align with Kenya's climate and energy transition goals.</p> |
| AMENDMENTS TO THE EXCISE DUTY ACT, 2015 | | |
| 11. | <p>Clause 38 (a)</p> <p>Expansion of the definition of 'Digital lenders'</p> | <p>The Bill proposes to amend the definition of the term 'Digital Lenders' to mean a person extending credit through an electronic medium but does not include a bank licensed under the Banking Act, a Sacco Society registered under the Co-operative Societies Act or a microfinance institution licensed under the Microfinance Act.</p> <p>This amendment further amends the definition that was introduced in the EDA by the Tax Laws (Amendment Act), 2024, which took effect on 27 December 2024 which defined "digital lender" as <i>"a person holding a valid digital credit provider's license issued by the Central Bank of Kenya."</i></p> <p>The proposed amendment broadens the scope of persons considered to be "digital lenders" for excise duty purposes by shifting from a regulatory-based definition to a functional</p> |
| | | <p>We note that there is an error in the amendment by referencing that Saccos are registered under the Cooperative Societies Act as opposed to the Sacco's Societies Act, 2008 (CAP. 490B) and therefore a clean-up is required. Further, it is not clear from the current drafting of the Bill, whether Co-operative Societies registered under the Co-operative Societies Act (CAP 490) are to be excluded from this definition and this issue therefore needs to be clarified before the Bill is passed into law.</p> <p>Recommendation.</p> <p>We propose that the requisite clean-up is done so that there is clarity that Saccos Registered under the Sacco's Societies Act, 2008 and Co-operative Societies registered under the Co-operative Societies Act (CAP 490) are to be excluded from this definition and effectively not excisable.</p> |

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| | | one. By focusing on the function of the “digital lenders” i.e., provision of credit through an electronic medium, the proposed amendment would be interpreted to include unregulated lenders who were previously outside the scope of the definition due to the lack of licensing by the Central Bank of Kenya. | |
| 12. | Clause 38 (b) Alignment of Tariff classification under the EDA with the EACCET | The Bill proposes to introduce a new provision to section 2 of the EDA by requiring goods listed in the Act to be classified according to the tariff codes set out in Annex 1 to the Protocol on the Establishment of the East African Community Customs Union (the EACCET). It further proposes that the General Rules of Interpretation contained in the EACCET apply when interpreting classification of goods under the EDA. | This amendment is a welcome development as it provides clarity on how goods are to be classified under the EDA. Whilst this has been the practice, it was not explicitly provided for in the law. By expressly referencing the EAC Common External Tariff and its general rules of interpretation, the amendment codifies existing practice and enhances legal certainty for taxpayers and administrators alike. Recommendation. We propose that this amendment is retained as is. |
| 13. | Clause 39 Expansion of the scope of Excisable services offered through digital platforms by non-residents | The Bill proposes to replace the phrase ‘ <i>through a digital platform</i> ’ with ‘ <i>over the internet, an electronic network or through a digital marketplace</i> ’ | We understand that the import of this amendment is to capture a wide range of digital transactions into the taxing net. This is on the basis that the term “ <i>over the internet, an electronic network or through a digital marketplace</i> ” ensures that any digital service accessed or delivered online regardless of the infrastructure or medium used, falls within the scope. Recommendation. We propose that this amendment is retained as is. |

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| 14. | Clause 41 Timeline for issuance of Excise Duty Licences | The Bill proposes to introduce a 14-day timeline within which the Commissioner must issue a decision on applications for excise duty licences, from the date of receipt of the required documents. | This amendment is welcome and is aimed at enhancing administrative efficiency and providing certainty to businesses seeking to operate within the excise duty regime. Recommendation. We propose that this amendment is retained as is. |
| AMENDMENTS TO THE TAX PROCEDURES ACT, 2015 | | | |
| 15. | Clause 47 Agency Notices | The Bill has proposed to delete section 42 (14)(e) of the TPA that prevents the Commissioner from issuing agency notices where a taxpayer has appealed against an assessment specified in a decision of the Tribunal or Court. | The proposed amendment is bound to claw back on the expediency and efficiency in dispute resolution at the High Court that was achieved with the introduction of section 42 (14) (e) of the TPA in 2023. Since July of 2023, there has been a reduction in the amount of time taken to resolve disputes at the higher courts without undertaking the initial step of applying for stay of execution and issuing security for costs thus bolstering not only taxpayers' right of access to justice but also reducing back log in the judiciary. We note that while a litigant has the right to enjoy the fruits of a decision, this right must be balanced against the losing party's right to appeal and seek judicial remedy. Furthermore, although a taxpayer on succeeding the higher courts could apply for a refund of security for costs, it is worth noting that the process of seeking refunds is time consuming and ultimately triggers audits by the KRA before the refund application can be processed, is very stringent thus causing unnecessary cash flow and financial hardship on taxpayers. It is on this basis that we propose that the proposed amendment be rejected. Recommendation We propose that the proposal be reconsidered and rejected. |

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| <p>16.</p> <p>Clause 50</p> <p>Refund Application timelines</p> | <p>The Bill proposes to revise Section 47 (2) of the Act the periods for the Commissioner to respond to offset or refund applications;</p> <p>a) The Bill proposes extending the period within which the Commissioner shall be required to ascertain an offset or refund application to one hundred and twenty (120) days from the current ninety (90) days; and</p> <p>In the event the Commissioner subjects the application to an audit, the Bill proposes to extend the period within which the Commissioner must ascertain an offset or refund application from one hundred and twenty (120) days to one hundred and eighty (180) days.</p> | <p>While the intention behind extending the prescribed timelines may be to accommodate the increasing volume of refund applications processed by the Commissioner, the proposed amendments are likely to have the unintended consequence of slowing down the refund and offset process. This may, in turn, adversely affect taxpayers' cash flow.</p> <p><u>Recommendation</u></p> <p>We propose that the proposed extensions be reconsidered to avoid undue delays in processing refunds and offsets.</p> |
| <p>17.</p> <p>Clause 52</p> <p>Data Protection</p> | <p>The Bill proposes to delete Section 59A (1B). The current provision that prohibits the Commissioner from requiring taxpayers to share or integrate data relating to trade secrets, or private or personal data held on behalf of customers or collected in the course of conducting business.</p> | <p>The Tax Laws (Amendment) Act, 2024 struck a careful and commendable balance between strengthening tax transparency and safeguarding constitutional rights, particularly the right to privacy under Article 31 of the Constitution of Kenya. By expressly prohibiting the Commissioner from accessing trade secrets and private or personal data held on behalf of clients, the law aligned Kenya's tax administration with constitutional, ethical, and international best practices. The proposed deletion of this safeguard threatens to upend that balance by granting the Commissioner unchecked access to highly sensitive business and personal information. This shift not only risks breaching constitutional protections but also disregards key principles under the Data Protection Act, including data minimization and purpose limitation, without providing a justification or demonstrating adequate safeguards such as risk impact assessments, data encryption protocols, or internal access controls. Moreover, the Commissioner has not demonstrated</p> |

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| | | | <p>why access to such data is necessary, nor whether the infrastructure to protect it is in place.</p> <p>Removing these privacy protections without first establishing a comprehensive framework for data security and confidentiality opens the door to potential abuse, undermines public trust in the Kenya Revenue Authority, and creates an environment of legal uncertainty. It could erode professional-client confidentiality, discourage innovation and the transfer of intellectual property into Kenya, and expose businesses and individuals to reputational and legal harm. Confidentiality is a core tenet of professional ethics and weakening it would significantly impair relationships between taxpayers and their advisors. We therefore strongly recommend that the current safeguards be retained to uphold constitutional values, protect trade secrets and personal data, preserve professional ethics, and maintain confidence in the integrity of Kenya's tax system.</p> <p><u>Recommendation</u></p> <p>We propose that the amendment be shelved and the current position in the Tax Procedures Act be retained.</p> |
| 18. | <p>Clause 54</p> <p>Computation of Time in Appeals</p> | <p>The Bill proposes to delete Section 77 (2), which excludes weekends and public holidays when computing timelines for filing appeals to the Tax Appeals Tribunal, High Court, and Court of Appeal.</p> | <p>This provision was introduced by the Tax Procedures (Amendment) Act, 2024, which excludes weekends and public holidays when computing timelines for filing appeals to the Tax Appeals Tribunal, High Court, and Court of Appeal. Deleting this provision means taxpayers will revert to the previous rule under Section 77(1)(c) of the TPA, requiring that if a statutory deadline falls on a weekend or public holiday, the filing or action must be taken on the preceding working day.</p> <p>Reverting to the earlier position shortens filing deadlines,</p> |

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| | | <p>potentially placing taxpayers at a procedural disadvantage. The recent introduction and quick reversal of this provision introduced only six months prior through the Tax Procedures (Amendment) Act, 2024, undermines tax certainty and stability, which are critical for taxpayer confidence and compliance. Retaining the exclusion aligns tax law with established principles under the Interpretation and General Provisions Act, ensuring fairness and predictability in tax administration.</p> <p><u>Recommendation</u></p> <p>We propose that the provision excluding weekends and public holidays in computing appeal timelines be retained to uphold procedural fairness.</p> |
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