***Your Ref:NA/DDC/F&NP/2025/030***

27th May 2025

Clerk of the National Assembly

P. O. Box 41842 – 00100

NAIROBI.

Dear Sir,

**RE: SUBMISSION OF MEMORANDA ON THE FINANCE BILL, 2025**

The Kenya Property Developers Association (“KPDA”) was established in Nairobi in 2006 as the representative body of the residential, commercial, and industrial property development sector in Kenya. A Business Member Organization that works in proactive partnership with policy-makers, financiers, and citizens to ensure that the property development industry grows rapidly but in an organized, efficient, economical, and ethical manner.

One of our key mandates as an Association is advocacy, where we engage government and other stakeholders in policy dialogue to stimulate the property sector.

Below are our comments on the Finance Bill, 2025, for your consideration.

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| **S/No** | **Clause in the Bill.** | **Description of Finance Bill Clause** | **Proposal by KPDA** | **Justification** |
|  | **Clause 28 (b) (ii)** | Amending the Third Schedule to Income Tax Act (Cap 470) in Head B, paragraph 2, by deleting subparagraph (i). This proposal seeks to remove the 15% Tax Rebate available to a company that has constructed at least one hundred residential units annually, subject to approval by the Cabinet Secretary responsible for housing. | We recommend that this proposal is dropped and that the current provision of the Income Tax Act (Cap 470) is retained.  We opine that the solution is not to repeal the tax incentive, but to streamline its administration by increasing access to the tax incentive, by considering the following:   1. **Make it accessible to Limited Liability Partnerships (LLPs)**. In some instances, developments are undertaken under LLPs as the legal vehicle. The qualifying legal entity now is only a company; and   **Reduce the threshold from at least 100 units to at least 50 units**. | Firstly, Kenya being an emerging market, the housing sector is a critical development agenda for the Government due to the following reasons:   1. The housing deficit stands at over 2 million units, with **an annual shortfall of nearly 200,000 units**. Meanwhile, **over 60% of Nairobi residents live in informal settlements**, where access to clean water, sanitation, and decent shelter is limited. 2. The multiple value chain **potential for mass job creation, urban planning and infrastructure development and enhancement of social welfare (access to housing, education, and healthcare)**.   Over the years the Kenyan Government has provided tax incentives and exemptions to support government programs and projects.  The 15% corporate income tax rebate introduced under the Finance Act, 2016, was specifically targeted at companies constructing at least 400 residential units annually which was later amended to 100 residential units annually in Finance Act, 2023.  The history behind this tax rebate is that it was introduced to address the huge housing deficit in Kenya and support the Government’s constitutional mandate to realize the right to housing under Article 43(1)(b).  The tax rebate's purpose is to make large-scale, residential housing financially viable to attract both local and foreign investment (private sector) due to the Government’s budget deficit in its developmental budget.  The Government, through its BETA. aims to increase the supply of new housing to 250,000 units annually and raise the percentage of affordable housing from 2% to 50%.  Repealing the tax rebate now would be pre-mature as it is yet to materialize its purpose as a fiscal policy tax incentive.  **Arguments to retain the 15% Corporate tax rebate:**  **1.Alignment with International Best Practices**  Globally, tax incentives for housing rest on the principle that the state must create an enabling environment for private developers to deliver affordable housing. Governments often cannot meet housing needs alone, so tax rebates reduce the cost of production for developers and make housing more accessible to citizens.  In many countries, housing-related tax incentives are used to address affordability, urbanization, and housing deficits. For instance: -   1. India – Provides interest deductions on housing loans and tax holidays for affordable housing projects under the Pradhan Mantri Awas Yojana. 2. South Africa – Implements tax allowances for inner-city redevelopment and Social Housing Regulatory Authority incentives.   **2. Economic contribution by the real estate industry**  The real estate and construction industry is among the largest contributors to Kenya’s GDP, contributing over 7% as of the most recent economic survey. The sector supports a vast value chain including:   * Steel, cement, timber, and hardware manufacturing * Transport and logistics * Skilled and unskilled employment (from masons to engineers) * Professional services (surveyors, architects, quantity surveyors, engineers, lawyers, Environmentconsultants, valuers, and financiers)   Tax incentives like the 15% corporate tax rebate stimulate demand across this value chain. Removing the tax rebate could discourage investment, increase property prices, and slow down housing development. The government should retain the incentive or introduce a scaled tax relief based on project sizes to be able to accommodate all levels of developers.  With approximately 60% of project costs spent locally, each project can inject over KES 180 million directly into the economy, with multiplier effects pushing total GDP contribution even higher, making the incentive a powerful tool for both affordable housing and economic growth.  **3. Government Policy and Real Estate Developers working as strategic partners**  Under the BETA housing is one of the five (5) key priorities for the Government. The government has acknowledged that delivering 250,000 units annually cannot be achieved without robust private sector involvement. The tax rebate recognizes real estate developers as strategic partners in national development.  By removing this tax incentive, the Government undermines its own policy goal. Developers will have less capital to scale up housing production, while new entrants will be discouraged by reduced returns on investment. Retaining the tax rebate ensures this balance is preserved.  **4.Promotes socio - economic goals**  Kenya’s housing deficit stands at over 2 million units, with an annual shortfall of nearly 200,000 units. Meanwhile, over 60% of Nairobi residents live in informal settlements, where access to clean water, sanitation, and decent shelter is limited.  As of 2020, about 51% of Kenya’s urban residents lived in slums. In Nairobi alone, approximately 2 million people inhabit informal settlements, highlighting the urgent need for increased affordable housing development to address urban housing deficits and improve living conditions.  The tax rebate is not merely a fiscal matter; it is a constitutional tool to operationalize the right to adequate housing under Article 43. Its removal disproportionately affects the low- and middle-income segments of the population. Scaling down affordable housing development due to higher taxes would exacerbate urban poverty, deepen inequality, and derail efforts to formalize the housing market.  **5. Lack of actualisation of Tax Incentive Benefit**  Repealing the tax rebate now would be pre-mature as it is yet to materialize its purpose as a fiscal policy tax incentive.  Notably, the reduced corporate income tax from 30% to 15% has led to increased participation by qualifying local and international developers in the housing sector.  By improving return on investment (ROI), the incentive made residential housing projects more financially viable, increasing the number of units built however the private sector is still far from assisting the Government to bridge the housing gap of 250,000 units annually. In summary, there are significant advantages for having the current law in place as highlighted below:   1. The housing shortfall in the country is still high and supply is needed to fill this gap. Large scale residential development is the best way to achieve this. 2. Developers are incentivized by this tax rebate as it boosts the post-tax performance and improves the attractiveness of the industry when analysed on a post-tax basis as compared with other industries or markets. 3. Incentivizes developers to remain in the industry and to expand into much larger projects, as the current tax regime does the following: 4. Cushions against rising global construction costs 5. Cushions against currency fluctuation 6. Allows for higher expenditure within the project on infrastructure that benefits the wider community 7. Real estate is one of the largest contributors to GDP, and incentives for players in the industry will ensure it remains robust as a GDP contributor 8. The current tax regime improves the attractiveness of Kenya as an investment market for foreign investors.   We are aware that only a handful of the real estate developers have received the 15% Corporate Tax Rebate. Developers made investment decisions based on the existence of this tax relief; to withdraw it now injects avoidable uncertainty into an already capital-intensive sector.  We believe that the tax rebate is critical in enhancing public - private partnerships necessary to deliver large scale housing and the proposal to remove the tax rebate will adversely affect the potential investment by both local and international players in the market.  Real Estate developments are capital intensive, and developers plan projects over 5–7-year horizons. **Repealing the tax incentive now, just two years after the operational threshold was clarified, creates an unpredictable tax environment.** This violates investment expectations and risks capital flight, especially from foreign developers and housing financiers. |
|  | Clause 36 (h) | This proposal seeks to remove tax incentive for goods imported or purchased locally for 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; | We recommend that this proposal is struck out and that the current provision of the Value Added Tax Act (Cap 476) is retained.  We propose that the VAT exemption framework be aligned with the corporate tax incentive model. Specifically, we recommend that:   * The VAT exemption on housing inputs be retained; * The approval process be decentralized by removing the National Treasury as the approving authority;   The Kenya Revenue Authority (KRA) or the State Department for Housing be designated to administer and verify exemption claims based on clearly defined eligibility criteria. | Affordable housing has been one of the key arms of not just the current government’s BETA but also its predecessors and the UNs SDG 11 on making cities and human settlement s inclusive, safe, resilient and sustainable by eliminating slums.  Specifically in Kenya, the goal of creating affordable housing was to address the significant housing deficit especially in urban areas where the demand outweighs the supply of housing units.  To attract private sector participation and reduce the cost of construction in order to realize one of its agenda, the government introduced incentives in this sector and specifically the exemption from VAT vide the Section 21 of the Finance Act, 2019.  The VAT provision lowers the cost of inputs such as steel and cement for developers who participate in the construction of government approved affordable housing units.  Pursuant to **Article 43(1)(b)** of the Constitution, every Kenyan has the right to accessible and adequate housing. **Article 21(2)** further mandates the State to take legislative and policy measures to progressively realize this right. Parliament, as the chief legislative organ, has a pivotal role in ensuring that fiscal policy reflects and supports these constitutional imperatives.  Retaining the VAT exemption on affordable housing inputs is a concrete, non-cash contribution by the State towards realizing this right and addressing Kenya’s housing deficit.  According to the *2023/24* *Kenya Housing Survey Basic report* by the Kenya National Bureau of Statistics, Kenya faces an acute housing shortage. The annual demand stands at over **250,000 housing units**, yet only about **50,000 units are delivered**, leaving a persistent shortfall of over **200,000 units**. Additionally, over **60% of Nairobi residents** live in slums and informal settlements, reflecting the urgency of increasing affordable housing supply (*UN-Habitat, Kenya Urban Housing Sector Profile, 2022*).  Subjecting housing inputs to VAT would raise construction costs, making homes less affordable and thereby further widening the housing gap.  Beyond the constitutional and humanitarian concerns, the housing sector is a key economic driver. According to the *Kenya National Bureau of Statistics, Economic Survey 2023,* it contributes **more than 7% to Kenya’s GDP** and supports a wide array of industries in the value chain—such as **steel and cement manufacturing**, **transport and logistics**, and **professional services** including architecture, engineering, quantity surveying, and legal services.  The sector also generates **thousands of jobs**, both skilled and unskilled. Maintaining VAT exemptions for housing inputs therefore serves not just a social good but also an economic imperative.  However, despite the VAT exemption’s importance, its effectiveness has been significantly undermined by a complex multifaceted approval process. Currently, developers must seek approval from the **National Treasury**, a process that is widely reported as **bureaucratic, slow, and opaque**. Consequently, according to the *Kenya Property Developers Association, Policy Brief 2024* very few developers—estimated at **less than 5% of those eligible**—have successfully accessed the benefit. This undermines the incentive and creates uncertainty in the market.  In contrast, the **15% corporate tax incentive** for affordable housing—administered under the Income Tax Act—has proven more accessible, with clearer eligibility criteria and a more streamlined implementation.  This change will ensure that tax incentives are **predictable, accessible, and effective**—thereby increasing uptake, reducing housing production costs, and encouraging more private sector participation. Moreover, this will foster investor confidence and facilitate long-term planning in the capital-intensive housing sector.  **Impact**  **Support for Affordable Housing**: Retaining the VAT exemption is crucial for reducing construction costs, thereby making housing more affordable for low- and middle-income earners.  **Alignment with Government Initiatives**: The Affordable Housing Act, 2024, which introduces a 1.5% levy on gross income to fund affordable housing, complements the VAT exemption. Removing the exemption could undermine these efforts,  **Encouragement for Private Sector Participation**: The VAT exemption incentivizes private developers to invest in affordable housing projects, increasing the supply of such units.  Economic and Social Impact: Affordable housing projects contribute to job creation and economic growth. Removing the VAT exemption could slow down these developments, negatively impacting the broader economy. |
|  | **Clause 36(d)** | This clause proposes the deletion of paragraph 1A and 1B of the ITA which incentivize investments made outside Nairobi City County and Mombasa County as well investments made in a Special Economic Zone (SEZ) | We propose that this deletion be removed from the Bill. Paragraph 62 should be retained in the First Schedule of the VAT Act that provides for VAT exemption. | These spatially focused incentives are designed to foster regional development, alleviate urban congestion, and foster more equitable economic distribution.  In the Kenyan context, such measures are aligned with the strategic objectives of Vision 2030 and the Bottom-up Economic Transformation Agenda (“BETA”), both of which emphasize inclusive growth and regional equity.  According to *the Kenya National Bureau of Statistics, Gross County Product Report 2022*, Kiambu County demonstrates the efficacy of regional tax incentives, having attracted substantial private-sector investment that boosted its GDP to over KES 550 billion, second only to Nairobi County. These investments have driven urbanization, employment, and infrastructure development. Repealing the incentive risks reversing this growth and redirecting investment to already congested urban centres.  **International Practices in Regional Investment Incentives**   * Within the East African Community, member countries including Uganda, Tanzania, and Rwanda have instituted targeted regional incentives aimed at promoting geographically balanced economic development.   **Alignment with Global Best Practices**   * International institutions—including the World Bank, the United Nations Conference on Trade and Development (“UNCTAD”), and the OECD—advocate for spatially targeted fiscal incentives as a means of achieving inclusive and sustainable development. * These practices are widely recognized for their role in addressing regional disparities and enhancing national economic cohesion.   **Impact**   * Removing this incentive undermines regional equity and contradicts Kenya’s own development agenda under Vision 2030 and the BETA   Additionally, removal of the provision will greatly impact companies’ willingness to invest in areas outside the Nairobi and Special Economic Zones (“SEZ”), thus stagnating development as companies will be less willing invest outside the traditional City Centres. |
|  | Clause 36(e) | Deletion of paragraph 63 of the First Schedule which provides for exemption of 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 | We recommend the removal of this deletion from the Bill. Paragraph 63 should be retained in the First Schedule of the VAT Act that provides for VAT exemption. | Access to quality healthcare remains a national priority as outlined in Kenya’s BETA and Vision 2030 through the Universal Health Coverage (“UHC”) whose goal is ensuring that all individuals and communities have access to essential health services without financial hardship  Specialized hospitals serve as referral centres and are often the only providers of critical care for serious conditions. Such hospitals include the Spinal Injury hospital and Mathari National Teaching and referral hospitals.  A joint report on the state of Kenya’s health market published in 2024 by Kenya’s Ministry of Health and the USAID’s public sector engagement program highlights the need for more specialized hospitals and care centres such as oncology centres for cancer patients.  VAT exemption on construction and medical equipment for these facilities directly reduces capital costs, enabling more institutions to scale and improve the quality of healthcare offered.  Additionally, removal of this exemption in Kenya would increase the cost of building specialized hospitals, undermining UHC goals which forms part of the government’s BETA.  Internationally, VAT exemptions for healthcare align with WHO recommendations and the UN’s SDG 3. Further IAS 20 supports government assistance for public health infrastructure.  **Impact**   * Medical services are currently exempt from VAT which makes them accessible and affordable to the citizens. Charging VAT at the standard rate of 16% on the input used in construction of specialised hospitals will increase the cost of construction of the hospitals. Since the provision of medical services is exempt from VAT, the cost of construction would indirectly be passed on to the consumers, increasing the cost of access to medical services. * Given the significant disease burden in Kenya and the growing demand for specialized care (e.g. oncology, cardiology), removing the VAT exemption would increase the cost of care, limit investment in underserved regions, and contradict the nation’s UHC goals. * Further, Article 43(1)(a) of the Constitution of Kenya, 2010 provides that it is the right of every person to access healthcare services. Also, and as part of aligning with the United Nations SDG 3.   Deletion of the VAT exemption to standard rate the input used in construction of specialised hospitals will ultimately increase cost of construction of these facilities which will be passed onto the consumer. |
|  | Clause 36(j) | Deletion of paragraph 113 of the First Schedule which provides for exemption of 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. | We recommend that this proposed deletion be struck out. Paragraph 113 should remain in the First Schedule of the VAT Act that provides for VAT exemption. | The renewable energy sector constitutes a cornerstone in the pursuit of national energy security and the mitigation of climate change impacts. According to the *Energy and Petroleum Statistics* for the fiscal year ending June 2024, published by the Energy and Petroleum Regulatory Authority (“EPRA”), Kenya has achieved an impressive renewable energy penetration rate of 79.89%.  In a communiqué by the Kenya Power and Lighting Company (“KPLC”) in February 2025, the Managing Director disclosed that the national electricity peak demand currently stands at 2,316 MW during peak consumption hours.  When juxtaposed with EPRA’s longitudinal data referenced to above, which indicates a progressive escalation in electricity demand from 2,000 MW in 2020 to present levels, the trend underscores a consistent upward trajectory in national energy consumption.  Notably, the KPLC’s February statement highlights an average monthly increment in electricity demand of approximately 14.5 MW for the 8 months preceding February 2025, reflecting sustained growth in demand for electricity.  Given the ongoing expansion of Kenya’s economy, it is anticipated that electricity demand will continue to rise. This trajectory necessitates the strategic incentivization of energy generation initiatives and the deployment of requisite infrastructure and technologies to support scalable, sustainable power production.  VAT exemptions on solar and wind equipment reduce the initial cost burden for both private and public sector projects, particularly in off-grid and marginalized areas where energy poverty is high.  This exemption was curated to bolster the uptake of renewable sources of energy and reduce reliance on fossil fuels, whose net impact is to reduce global warming. This is also in line with the united Nation’s SDG 7.  Further and in accordance with Article 5 of the Paris Agreement, Kenya agreed to incentivise the energy sector to encourage uptake and adoption of renewable sources of energy as a way of mitigating climate impact.  Additionally, Kenya's renewable energy sector, particularly solar and wind, is actively supported by Public-Private Partnerships (PPPs) to achieve a goal of 100% renewable electricity by 2030. The country boasts a robust portfolio of renewable resources including geothermal, wind, solar, and hydropower, with nearly 90% of its electricity already generated from these sources. The Public Private Partnerships Act of 2021 provides a framework for procuring public projects, including utility-scale power projects, further incentivizing investment in renewable energy.  VAT incentives in exempting from VAT of 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 is aimed at:   1. Increasing investments through PPP in the renewable energy sector with an effort to meet the increasing electricity demand in the country from renewable source; 2. Providing alternative sources of energy that are renewable and sustainable.   **Impact**   * Eliminating the exemption would significantly increase equipment costs (by 16% as a result of standard rating the inputs), discouraging investment, slowing down electrification targets, and negatively impacting Kenya’s commitment under the Paris Agreement.   The proposed change also contradicts the global shift towards green fiscal policy, where taxation is used to incentivize clean energy and discourage fossil fuels.  Data from developers on the reduced cost of electricity owing to use of alternative and renewable energy such as solar (Acorn Holdings Limited) |
|  | **Clause 36(d)** | Deletion of paragraph 62 of the First Schedule which provides for exemption of 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 | We propose that this deletion be removed from the Bill. Paragraph 62 should be retained in the First Schedule of the VAT Act that provides for VAT exemption. | The tourism sector is a cornerstone of Kenya’s economic strategy, contributing over 10% to GDP and employing over 1 million Kenyans directly and indirectly. The tourism sector remains to be one of Kenya’s top foreign exchange (forex) earner alongside diaspora remittances and agricultural exports.  Tax incentives in this sector play a catalytic role in attracting both local and foreign direct investment. The VAT exemption under Paragraph 62 has been instrumental in lowering entry barriers for developers of large-scale tourism and conference facilities, which also support ancillary sectors like transport, hospitality, and agriculture.  **Impact**   * Maintaining the exemption aligns Kenya with international development strategies and makes the country more competitive as a regional tourism and convention hub. Removing this exemption would likely slow down capital-intensive tourism projects that are vital to regional development, cultural promotion, and economic diversification. |
|  | **Clause 8(c)** | by inserting the following new subsection immediately after subsection (4) – ‘(4A) A person shall be allowed to carry forward a loss under subsection (1) for a period not exceeding five years immediately succeeding the year in which the loss was first made.’ | We opine that this proposal should be deleted from the Bill to retain the indefinite carrying forward period for trading losses.  The government should consider drafting comprehensive provisions guiding on how the losses are carried forward and against what can the losses be utilized. This can be benchmarked from section 45-47 of the UK’s Corporation Tax Act, 2010 in order to curb entities in false perpetual loss-making positions from tax avoidance without negatively impacting those in genuine loss-making positions. | This approach serves to safeguard enterprises operating within long-term investment horizons, particularly those in capital-intensive industries.  By allowing the deferral of trading losses, tax systems avoid imposing undue burdens on businesses during periods of initial capital outlay or cyclical downturns, thereby promoting economic resilience and sustainable growth.  **International Practices in the Treatment of Trading Losses**   * In the United Kingdom, sections 45 through to 47 of the Corporation Tax Act, 2010 permit trading losses to be carried forward indefinitely, allowing businesses to offset these losses against future profits without temporal limitation. * Within the East African Community, both Uganda and Tanzania adopt a similar stance, permitting indefinite carrying forward of trading losses, contingent upon the continuity of the business entity.   **Alignment with Global Best Practices**   * The indefinite carrying forward of trading losses is endorsed by both the Organisation for Economic Co-operation and Development (“OECD”) and the International Financial Reporting Standards, specifically under IAS 12 This alignment ensures that tax policy reflects the economic realities of business cycles, fostering fairness and consistency in global tax administration.   **Impact:**   * This change would disproportionately affect capital-intensive and start-up businesses, which often take longer to become profitable going against Article 201(b)(i) of the Constitution Kenya, 2010 which provides that the tax burden be fairly shared among the citizenry. |
|  | **Clause 8(b)(ii)** | The bill proposes deletion of section 15(3)(f) of the Income Tax Act, CAP 470 which provides that losses from taxable gains under section 3(2)(f) can only offset similar gains in the same year, or future years if not fully used. | We propose that this proposal should be deleted from the Bill and Section 15(3)(f) be retained as is in the Income Tax Act. | The allowance for capital loss deductions serves a dual purpose. Firstly, it upholds the principle of equity in tax by ensuring that taxpayers are not disproportionately taxed on net gains without recognition of corresponding economic losses.  Secondly, it fosters a more conducive investment climate by acknowledging the inherent risks of capital ventures and providing a mechanism for mitigating financial setbacks through the tax system.  **International Practices in Capital Loss Treatment**   * In the United Kingdom, the taxation framework permits capital losses to be offset against capital gains, with any unutilized losses eligible for indefinite carry forward, as stipulated under Section 2A of the Taxation of Chargeable Gains Act 1992. * Similarly, jurisdictions such as Tanzania and Uganda adopt a comparable approach, allowing taxpayers to offset capital losses against gains and to carry forward these losses into future tax periods.   **Alignment with Global Best Practices**   * Internationally, the recognition of deferred tax assets arising from capital losses is supported under the International Financial Reporting Standards, specifically International Accounting Standards (“IAS”) 12. This standard underscores the importance of symmetrical tax treatment, which is widely regarded as both equitable and efficient. * Such alignment with global norms reinforces the integrity and competitiveness of national tax systems.   **Impact**  Stemming from the foregoing, deletion of this provision would greatly discourage investment in Kenya’s economy. The change increases tax liability seeing as companies reduce their taxable income by deducting the losses it incurs on disposal of property. Removal of this makes this an absolute expense to the company which is far from ideal for business. |

Thank you for giving us the opportunity to engage in this process.

In case of further comments or inquiries, please reach to the KPDA Interim Chief Executive Officer, **Rose Kamau**, by emailing: [ceo@kpda.or.ke](mailto:ceo@kpda.or.ke) or on telephone **0708323496.**

Yours faithfully,

For and On Behalf of **the Kenya Property Developers Association**





Kenneth Luusa

**KPDA CHAIRMAN**