

The Clerk of the National Assembly
Departmental Committee on Finance and National Planning
Parliament
Parliament Road
P.O BOX 41842-00100 Nairobi
Nairobi, Kenya

Sent via email to cna@parliament.go.ke

27 May 2025

Dear Sirs,

**Subject: The Finance Bill 2025
Submission of Tax Proposals on behalf of Keega & Company Advocates LLP**

Pursuant to the Public Notice released by the National Assembly Committee on Finance and National Planning ("Committee") on 13 May 2025 and Article 201 of the Constitution of Kenya, 2010, we, Keega & Company Advocates LLP ("Keega"), are glad to submit tax proposals on the Finance Bill, 2025.

We have provided an executive summary of the legislative proposals in the attached document which also provides detailed analyses of the issues, impact, and recommendations. We are happy to provide any additional information on the proposals should you require us to.

We would be grateful for an opportunity to engage the National Assembly Committee on Finance and National Planning ("Committee") to further deliberate on Keega's proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact the undersigned on keega@keegalegal.com or our tax consultants on edna.gitachu@pwc.com or brian.kanyi@pwc.com at your convenience.

Yours faithfully

For: Keega & Company Advocates LLP



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1. Executive Summary

Table 1: Executive summary

No	Issue	Provision proposed to be amended	Proposed amendment	Justification for proposed amendment
1	The tax base applicable to digital asset tax and the persons upon whom the obligation to remit tax is imposed.	<p>Section 12F of the Income Tax Act CAP 470 ("ITA") currently provides as follows:</p> <p>(1) <i>Notwithstanding any other provision of this Act, a tax to be known as digital asset tax shall be payable by a person on income derived from the transfer or exchange of digital assets.</i></p> <p>(2) <i>The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax and remit it to the Commissioner.</i></p> <p>(3) <i>A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.</i></p> <p>(4) <i>A person who is required to deduct the digital asset tax</i></p>	<p>We recommend the deletion of Section 12F of the ITA to repeal the digital asset tax. We further recommend inclusion of the word 'digital asset' under the definition of property in the Eight Schedule to the ITA as follows:</p> <p>"property"–</p> <p>(a) <i>in the case of a company has the meaning assigned thereto in the Interpretation and General Provisions Act (Cap. 2), and includes property acquired or held for investment purposes but does not include a road vehicle;</i></p> <p>(b) <i>in the case of an individual means–</i></p> <p>(i) <i>land situated in Kenya and any right or interest in or over that land; and</i></p> <p>(ii) <i>a marketable security situated in Kenya, other than an</i></p>	<p>We recommend deleting Section 12F and to establish digital assets as a form of property for taxation purposes. This change is necessary to address several critical shortcomings in the current formulation of Section 12F</p> <p>(a) Recognising Losses and Volatility: Digital assets are highly volatile. Section 12F taxes the full value of a transfer even when a loss is made. A fair system should tax only real profits, not gross amounts.</p> <p>(b) Recognising digital assets as Payment Instruments: Section 12F treats all transfers of digital asset transfers as taxable events, including payments made using stablecoins. This ignores their role as a medium of exchange.</p> <p>(c) Ensuring Equal Tax Treatment: Unlike shares or property, digital assets are taxed on gross value, not net gains. This unfairly targets digital asset users and distorts investment</p>

		<p>shall, within five working days after making the deduction, remit the amount so deducted to the Commissioner together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.</p> <p>(5) For the purposes of this section – “income derived from transfer or exchange of a digital asset” means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.</p>	<p>investment share as defined in Part II of this Schedule;</p> <p>(iii) a digital asset</p>	<p>decisions.</p> <p>(d) Avoiding Double Taxation in Swaps: In a crypto-to-crypto exchange, both parties can be taxed on the full amount received—even if no profit is made. Tax should apply only to actual gains.</p> <p>(e) Supporting Innovation and Compliance: The current approach pushes activity offshore and into informal channels. A fairer system will promote innovation, transparency, and voluntary compliance.</p> <p>(f) Using Existing Tax Rules: Kenya’s current laws already cover income from digital assets through capital gains, business income, and Significant Economic Presence rules. There’s no need for a separate tax.</p> <p>(g) Reflecting the Diversity of Digital Assets: Digital assets vary widely from tokens and NFTs to platform fees and rewards. A single flat tax cannot fairly cover all these use cases.</p>
2	Inclusion of Virtual Asset Service Providers (“VASP”) under the definition of financial institution	<p>Part III of the first schedule to the Excise Duty Act defines a “financial institution” to mean -</p> <p>(a) <i>a person licensed under -</i></p> <p>(i) <i>the Banking Act;</i></p> <p>(ii) <i>the Insurance Act;</i></p>	<p>Specifically, we propose Part III of the first schedule to the Excise Duty Act to be amended to include a new subparagraph (d) as follows</p> <p>(a) <i>a person licensed under -</i></p> <p>(i) <i>the Banking Act;</i></p>	<p>Inclusion of VASPs under the definition of financial institutions will:</p> <ul style="list-style-type: none"> • Ensure fair tax treatment, promote equity between providers of similar services and eliminate regulatory arbitrage.

		<p>(iii) the Central Bank of Kenya Act; or</p> <p>(iv) the Micro Finance Act, 2006;</p> <p>(b) a Sacco society registered under the Sacco Societies Act, 2008; or</p> <p>(c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;</p>	<p>(ii) the Insurance Act;</p> <p>(iii) the Central Bank of Kenya Act; or</p> <p>(iv) the Micro Finance Act, 2006;</p> <p>(b) a Sacco society registered under the Sacco Societies Act, 2008; or</p> <p>(c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;</p> <p>(d) Virtual Asset Service Providers</p>	<ul style="list-style-type: none"> • Lead to avoiding double taxation through preventing cascading VAT charges on VASP transactions, aligning with global VAT norms. • Support legal and policy alignment through harmonizing tax law with the VASP Bill 2025, hence strengthening regulatory coherence. • Future-proof the tax system by establishing a scalable, innovation-friendly tax model for the digital economy. • Boost sector growth and compliance by encouraging formalization, investment, and support of Kenya's digital economy agenda.
		N/A	<p>Amendment of Part II of the First Schedule to the VAT Act to include the following new Paragraph immediately after Paragraph 2 of the first schedule to the VAT Act</p> <p>(3) "The Supply of services provided by Virtual Asset Service Providers in relation to dealings with Virtual Assets"</p>	

2. Background

2.1. About Digital Assets

2.1.1. Definition and Terminology

A digital asset is a form of value or ownership that exists in digital form and is recorded on electronic ledgers maintained across decentralized computer networks. These systems use cryptography, a method of securing information through complex codes, to protect transactions and verify ownership. Commonly referred to as crypto assets, virtual assets, or digital tokens, these assets are not typically issued or backed by a central authority, though exceptions exist, such as Central Bank Digital Currencies (CBDCs), which are government-backed.

2.1.2. How Digital Assets Work

Most digital assets rely on a technology called blockchain, which is essentially a type of digital ledger, a record-keeping system. Unlike traditional systems managed by a single institution, blockchain is maintained by a network of computers that work together to verify and store data. Transactions are grouped into blocks, and each block is linked to the one before it, forming a continuous chain that is very difficult to alter.

To add a new transaction, the network must first agree that it is valid, a process called consensus. This is done either by solving complex problems (proof of work) or by pledging digital assets as a guarantee (proof of stake). Each user has a digital wallet with a public key, like an account number, and a private key, like a password, which are used to manage their digital assets securely.

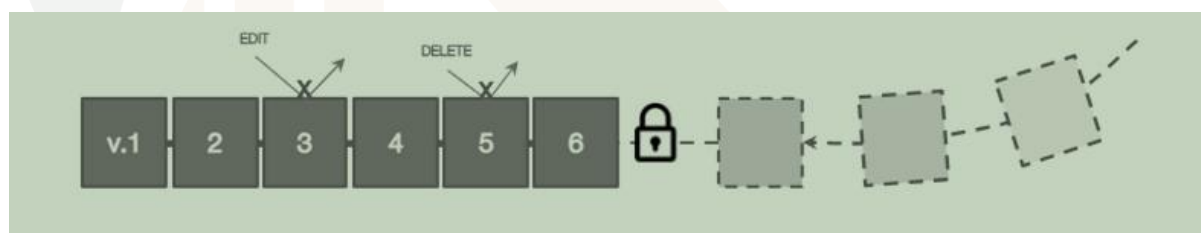







Figure 1: Visual Representation of Blockchain Technology

2.1.3. Types of Digital Assets and Their Uses

Digital assets can be grouped into several categories based on their design and intended use:

Table 2: Types of Digital Assets

Asset Type	Description	Primary Use	Common Examples
Unbacked Cryptocurrencies	Digital currencies not backed by any physical or financial asset. Value is driven by market demand and supply.	Medium of exchange, investment, smart contract execution	Bitcoin (BTC) Ethereum (ETH) 
Stablecoins	Digital currencies pegged to stable assets like fiat currencies (e.g., USD). Designed to reduce price volatility.	Payments, remittances, trading within crypto markets	USDC (USD Coin) USDT (USD Tether) 
Utility Tokens	Tokens used to access specific features or services within a blockchain platform. Not primarily intended for investments.	Access to services, governance, transaction fees	BNB (Binance Coin) INK (Chainlink) 
Real-World Asset Tokens	Digital representations of ownership in physical assets like real estate, commodities, or securities.	Fractional ownership, investment, automated asset management	Tokenized Real Estate Security Tokens 
Non-Fungible Tokens (NFTs)	Unique digital tokens representing ownership of a specific item or asset. Each token is distinct and not interchangeable.	Digital art, collectibles, intellectual property rights	NFTs on Ethereum 

2.1.4. Importance of digital assets

Driving Financial Innovation: Digital assets are reshaping how value is created, stored, and transferred. They enable faster, cheaper, and more efficient financial transactions, reducing reliance on traditional intermediaries like banks and payment processors.

Expanding Economic Participation: By lowering entry barriers, digital assets allow individuals and small businesses—especially in underserved regions—to access financial tools, raise capital, and participate in global markets. This promotes inclusion and economic empowerment.

Supporting Transparent and Accountable Systems: Transactions involving digital assets are recorded on secure, tamper-proof ledgers. This transparency helps reduce fraud, improve auditability, and build trust in both public and private sector operations.

Enabling New Forms of Ownership and Investment: Digital assets make it possible to tokenize real-world assets like property, commodities, or art. This allows for fractional ownership, making investment more accessible and unlocking new forms of wealth creation.

Creating Jobs and Building Digital Skills: The digital asset ecosystem is generating demand for new skills in technology, finance, law, and cybersecurity. This opens employment and entrepreneurship opportunities, particularly for youth and tech-savvy populations.

2.1.5. Transaction of digital assets

(a) Outside Exchanges (On-Chain)

Traders can send or receive digital assets by interacting directly with the blockchain. These are on-chain transactions, and they are fully recorded and verified by the decentralized network.

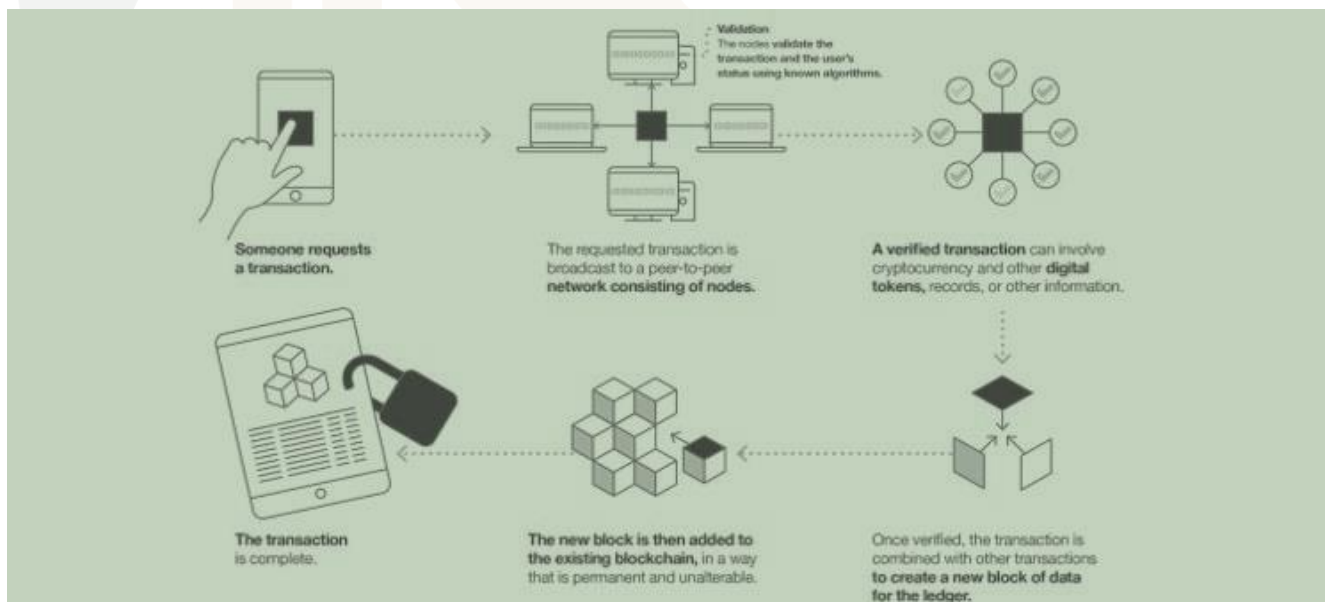


Figure 2: Process of on-chain transactions

(b) Within Centralized Exchanges (off-chain)

Digital assets are often traded on centralized cryptocurrency exchanges like Binance and Coinbase. These platforms let users buy, sell, and manage assets easily, similar to regular financial apps. Most trades happen off the blockchain, using the exchange's internal system.

2.1.6. Generation of income through the transfer or exchange of digital assets

Table 2: Means of Income Generation

Type of Transaction	Description	Example
Trading (Capital Appreciation)	Buying and selling digital assets to profit from market price fluctuations. Income is generated when assets are sold at a higher price than they were bought.	A user buys 1 ETH at KES 250,000 and later sells it at KES 300,000 , earning a KES 50,000 profit.
Selling Digital Assets for Fiat or Stablecoins	Converting digital assets into local currency (e.g., KES) or stablecoins (e.g., USDT). Income arises from the difference between the selling price and the original cost.	A digital artist sells an NFT for USDT 1,000 (\approx KES 150,000) after buying it for KES 100,000 , generating KES 50,000 in income.
Exchanging One Digital Asset for Another	Swapping one crypto asset for another (e.g., BTC to ETH). Income is realized if the value of the received asset is higher than the value of the asset given up.	A user trades 1 BTC (worth KES 9 million) for 40 ETH (worth KES 10 million), resulting in KES 1 million in income.
Holding Digital Assets as a Store of Value	Acquiring and holding digital assets long-term for investment. Income is only realized when the asset is eventually sold or exchanged.	An investor holds an NFT bought at KES 100,000 . It appreciates to KES 500,000 , but no income is realized until it is sold.
Using Digital Assets as Payment	Accepting or spending digital assets for goods or services. The value of the asset at the time of the transaction represents earned income.	A freelancer is paid 0.5 ETH for a project. At KES 300,000/ETH , the income is KES 150,000 .
Staking and Yield Farming	Earning rewards by locking crypto in Proof-of-Stake networks or DeFi protocols. These rewards represent passive income.	A user stakes 20 ETH and earns 1.5 ETH. At KES 300,000/ETH , the reward is worth KES 450,000 .

Mining Rewards	Income earned by validating transactions on Proof-of-Work blockchains like Bitcoin. Typically involves hardware and energy costs.	A miner earns 0.25 BTC/month . At KES 4 million/BTC , this equals KES 1 million/month in income.
NFT Royalties and Smart Contract Income	Creators earn royalties from secondary sales of NFTs through smart contracts. This provides recurring income.	An artist earns a 10% royalty on a KES 1 million NFT resale, receiving KES 100,000 .
Fees and Commissions by VASPs	Virtual Asset Service Providers (e.g., exchanges, wallets) earn income from user fees for services like trading, withdrawals, or custody.	A local exchange charges 1% per transaction . On KES 1 billion in volume, it earns KES 10 million in fees.

2.1.7. Players in the Virtual Assets Ecosystem

(a) Virtual Asset Service Providers (“VASPs”)

VASPs are businesses or individuals that help people buy, sell, store, or transfer digital assets. They include exchanges, wallet providers, and custodians who manage digital assets or the keys that control them.

(b) Miners and Validators

These are the actors who confirm and record transactions on blockchain networks.

(c) Token Issuers

Token issuers create and distribute digital tokens, which can be used for access to services or as investment tools. They often distribute these through sales or free giveaways.

2.2. Digital Asset Landscape in Kenya

In September 2023, the Financial Reporting Centre published its inaugural National Risk Assessment Report on Money Laundering and Terrorism Financing risks associated with Virtual Assets and Virtual Asset Service Providers (“NRA”).¹ This assessment was driven by the growing uptake of digital assets in Kenya and the global push for jurisdictions to identify and mitigate risks associated with these emerging technologies. The report identified the following:

¹ Financial Reporting Centre, National Risk Assessment Report on Money Laundering and Terrorism Financing risks associated with Virtual Assets and Virtual Asset Service Providers, September 2023 < https://www.frc.go.ke/wp-content/uploads/2024/02/VAs-and-VASPs-ML_TF-Risk-Assessment-Report-1.pdf > accessed on 24 May 2025.

2.2.1. The Rise of Blockchain Use and VA Adoption

Blockchain technology in Kenya has rapidly permeated financial and non-financial sectors. Its decentralized, transparent, and relatively low-cost nature has attracted a broad demographic, particularly the youth. According to survey data collected during the assessment, 75% of virtual asset users in Kenya are aged between 18 and 40, with students being among the most active participants.

People in Kenya are using blockchain-based virtual assets primarily for investment and speculation, but also for remittances, online transactions, and as a hedge against currency depreciation. These transactions often occur via peer-to-peer platforms due to restrictions on financial institutions engaging with virtual asset platforms. Respondents indicated strong usage of online wallets and centralized exchanges to store their digital assets, although some also used physical wallets (e.g. in the form of hard drives) and non-custodial services.

2.2.2. Usage Patterns and Popular Platforms

Bitcoin (BTC) and Ethereum (ETH) emerged as the most commonly used virtual assets. Binance, Coinbase, Paxful, Luno, Crypto.com, KuCoin, and BitPesa (now operating as Aza Finance, and the only Kenyan platform) are among the most frequently used VASPs in the Kenyan market. These platforms enable users to trade, hold, or convert digital currencies into fiat currency. A significant portion of users, over 53%, invested less than **KES 100,000**, indicating cautious but growing interest.

Stablecoins like USDT and USDC are also widely used, particularly for their relative price stability. Some users are also engaged with NFTs, where they participate in real estate and fund investments.

2.2.3. The Key Players

Kenya's virtual assets/VASP ecosystem comprises wallet providers, exchanges, brokers/payment processors, and investment platforms. Many of the service providers operate across jurisdictions without a physical presence in Kenya, taking advantage of the internet's borderless nature. About 80% of surveyed VASPs confirmed operating across multiple African countries and internationally, including in the UK, EU, and Asia.

2.3. Kenya's Policy Position on Virtual Assets and VASPs

2.3.1. Draft Policy on Virtual Assets and Virtual Asset Service Providers

The Draft National Policy on Virtual Assets and Virtual Asset Service Providers of December 2024² affirms Kenya's intention to support the regulated adoption of virtual assets. Rather than banning or discouraging their use, the policy proposes a comprehensive, risk-based regulatory

² National Treasury, Draft National Policy on Virtual Assets and Virtual Asset Service Providers, December 2024 < <https://www.treasury.go.ke/wp-content/uploads/2025/01/DRAFT-NATIONAL-POLICY-ON-VAS-AND-VASPs.pdf> > accessed on 24 May 2025.

framework to govern virtual assets and VASPs in line with international best practices, particularly those set by the Financial Action Task Force.

In the draft policy, the Government of Kenya has made a clear policy decision to allow virtual asset-related activities in the country. This follows the findings of the 2023 NRA, which recommended regulatory action rather than prohibition, citing widespread adoption. Accordingly, the policy positions Kenya to leverage the benefits of digital assets, such as efficiency in cross-border transactions, alternative investment channels, financial innovation, and job creation, while managing risks through regulatory oversight. The policy promotes a “regulate-and-enable” rather than a “ban-and-restrict” approach.

2.3.2. Tax Policies in Kenya

The Government of Kenya’s tax policy direction on digital assets reflects a clear intention to tax the digital economy. As outlined in the National Tax Policy (2023),³ the government aims to enhance tax compliance and revenue collection from digital platforms by leveraging technology, regularly reviewing tax laws, training tax administrators, and collaborating with stakeholders. Classifying the digital sector as hard to tax, this approach is rooted in a risk-based framework that seeks to detect tax avoidance and ensure the tax system keeps pace with emerging technologies.

The Medium-Term Revenue Strategy (2023) (“MTRS”)⁴ operationalizes the National Tax Policy by outlining specific tax reforms and measures to enhance revenue collection. The MTRS similarly recognizes the digital sector as a hard to tax sector due to the mobile, intangible, and often opaque nature of digital transactions. In response, the government aims to bring digital assets into the tax net through targeted policy and administrative measures, ensuring that this growing part of the economy contributes fairly to national revenue.

It is essential that tax policy remains aligned with broader government priorities, particularly in supporting innovation and fostering long-term, sustainable growth in the digital economy, including the responsible integration of virtual assets.

³ National Treasury, National Tax Policy, Sessional Paper No. 02 of 2023, 2023 < <https://www.treasury.go.ke/wp-content/uploads/2024/05/7.05.-2024-National-Tax-Policy.pdf> > accessed on 24 May 2025.

⁴ National Treasury, Medium Term Revenue Strategy, September 23 < <https://www.treasury.go.ke/wp-content/uploads/2023/12/Medium-Term-Revenue-Strategy-2023.pdf> > accessed on 24 May 2025.

3. Detailed Submissions on Tax Proposals

3.1. Proposal to reduce the rate of Digital Asset Tax from 3% to 1.5% of the value of the transfer or exchange value of the digital asset.

3.1.1. Background

In July 2023, the Finance Act, 2023 introduced Section 12F into the Income Tax Act, CAP. 470 (ITA), establishing a framework for taxing digital asset transactions. Under this provision, the tax base is defined as the gross fair market value of income earned from the transfer or exchange of digital assets. The responsibility to deduct and remit the tax is placed on the platform owner or the person facilitating the transaction.

To operationalize this framework, the Finance Act also amended the Third Schedule of the ITA by inserting Paragraph 13, which sets the digital asset tax rate at 3 percent of the income derived from such transfers or exchanges. This tax applies uniformly to all digital asset transactions, regardless of whether the transaction results in a gain or a loss.

The Finance Bill, 2025 proposes to amend Paragraph 13 by reducing the tax rate to 1.5 percent of the transaction value. While this reduction may appear to ease the burden on taxpayers, it does not address the core concerns raised by industry stakeholders regarding the structure and fairness of the current regime.

3.1.2. Issues

While we welcome the decision to lower the tax rate, the following issues are yet to be addressed:

(i) Violation of the principle of neutrality

Section 12F taxes digital asset transactions on gross proceeds, unlike other assets such as equities or real estate, which are taxed on net gains. This unequal treatment distorts investment decisions, discourages innovation, and may push activity outside formal systems, reducing transparency and compliance.

(ii) Potential for double taxation in exchange-based transactions

By taxing the full value received in exchanges, Section 12F risks taxing both parties in a single transaction, even when no net wealth is created. This leads to double taxation, which is economically unjustified and increases the compliance burden.

(iii) Uncertainty in the phrase “person who facilitates the exchange or transfer”

The law requires the person who facilitates the exchange or transfer to remit tax but does not define who this is. In centralized system transactions, it is unclear whether this refers to the platform, wallet provider, or custodian. In addition, in the instances of decentralized or peer-to-peer system transactions, there may be no identifiable party, making enforcement unworkable.

(iv) Excessive Compliance Burden on Non-Resident Platforms

Most digital asset platforms serving Kenya are based abroad. These platforms often lack local infrastructure or access to user data, making it difficult to identify Kenyan users or apply tax rules in real time. The requirement to remit tax within five days and submit returns is especially demanding for platforms handling large volumes. Many do not control the information needed for compliance but may still be held liable, which may deter them from operating in Kenya and limit user access to global services.

3.1.3. Regional best practices

We have considered some of the regional practices in connection with this subject. The findings are summarized in the table below:

Table 3: Regional practices in connection with this subject

No	Country	Legislative Provision/Authority/Practice	Tax Treatment
1	Tanzania	Section 83C and Paragraph 4(c)(ix) of the First Schedule to the Income Tax Act, 2004 ("Tanzania ITA")	<ul style="list-style-type: none">• Specialised tax regime similar to Kenya• Digital asset tax is levied on the value of the gross fair market value of the transfer, with no consideration for whether the trade results in a profit or loss.⁵• The Act places the obligation on the digital exchange platform or facilitator of the transfer/exchange to deduct and remit the digital asset tax.⁶
2	South Africa	Income Tax Act, 1962	<ul style="list-style-type: none">• Normal tax rules on disposal of property assets apply. (Capital Gains Tax Rules and Business Income Rules).• Taxpayers conduct a self-assessment.• Acquisition costs and losses are allowable deductions.⁷• In determining whether to subject the transfer of the digital asset to CGT or to gross income, the factors SARS will consider include the intention with which

⁵ Paragraph 83C, Tanzania Income Tax Act, 2004.

⁶ Section 83C (1), Tanzania Income Tax Act, 2004

⁷ South African Revenue Service, 'Crypto Assets & Tax' < <https://www.sars.gov.za/individuals/crypto-assets-tax/> > accessed on 24 May 2025.

			the taxpayer acquired the property, the actual activities of the taxpayer in relation to the asset in question, the manner of its realisation, the taxpayer's business operations (if any) and, in the case of a company, its objects as laid down in its memorandum of association. ⁸
3	Nigeria	Section 2 and 5, Capital Gains Act, 1967	<ul style="list-style-type: none"> • Specialised tax regime in the form of a CGT model. • Tax is levied on the gains from the disposal and losses are considered allowable deductions.⁹

3.1.4. International best practices

We have considered some of the international practices in connection with this subject. The findings are summarized in the table below:

Table 4: International practices in connection with this subject

No	Country	Legislative Provision/Authority/Practice	Tax Treatment
1.	United Kingdom	His Majesty's Revenue and Customs ('HMRC') Cryptocurrency Manual 2021	<ul style="list-style-type: none"> • Normal tax rules on disposal of property assets apply. (Capital Gains Tax (CGT) rules and Business Income Rules).¹⁰ • Companies are not liable for CGT; they pay corporation tax on profits from selling their digital assets. • In order to determine whether the exchange would have taken place as a personal investment or a business, HMRC considers the frequency of the exchange of the tokens and the level of organisation and sophistication of the nature of the

⁸ Supreme Court of Appeal of South Africa, *Commissioner for the SA Revenue Service v Catherine Wyner*, 25 November 2003, 6 < <https://www.supremecourtofappeal.org.za/index.php/component/downloads/summary/31-judgments-2003/2024-commissioner-sa-revenue-service-v-wyner-581-02> >accessed on 26 May 2025.

⁹ Section 3, Nigeria Finance Act, 2023.

¹⁰ Crypto20050, Cryptoassets for individuals: which taxes apply, HMRC Cryptoassets Manual, 2021.

			<p>individual's dealings.¹¹</p> <ul style="list-style-type: none"> • Taxpayers conduct a self-assessment • Acquisition costs and losses are allowable deductions.
2.	India	Section 115BBH and 194S, Income Tax Act, 1961	<ul style="list-style-type: none"> • Specialised tax regime including a flat rate tax and a withholding tax. • Digital assets are taxed on the profits from the transfer of such digital asset.¹² • Only the acquisition cost of the digital asset is an allowable cost in determining the profit.¹³ • The Act also imposes a withholding tax obligation on the buyer in transactions exceeding a particular value.¹⁴
3.	Australia	Income Tax Assessment Act, 1997	<ul style="list-style-type: none"> • Normal tax rules on disposal of property assets apply. (CGTax rules and Business Income Rules).¹⁵ • In order to determine whether the exchange would have taken place as a personal investment or a business, the Australian Taxation Office considers the frequency of the exchange of the tokens and the level of organisation and sophistication of the nature of the individual's dealings.¹⁶ • Taxpayers conduct a self-assessment. • Acquisition costs and losses are allowable deductions. • Individuals, trusts and

¹¹ Crypto20250, Cryptoassets for individuals: what is trading, HMRC Cryptoassets Manual, 2021.

¹² Section 115BBH (1) (a), India Income Tax Act, 1961 as read with section 2 (24)(i) of the Income Tax Act, 1961.

¹³ Section 115BBH (2) (a), India Income Tax Act, 1961.

¹⁴ Section 194S (3), India Income Tax Act, 1961.

¹⁵ Australian Taxation Office, 'What are crypto assets?' 16 June 2024 < <https://www.ato.gov.au/individuals-and-families/investments-and-assets/crypto-asset-investments/what-are-crypto-assets>> accessed on 24 May 2025.

¹⁶ Paragraph 13-25, Taxation Determination 2014/27, 17 December 2014 < <https://www.ato.gov.au/law/view/document?docid=TXD/TD201427/NAT/ATO/00001>> accessed on 24 May 2025.

			superannuation funds are allowed discounts on CGT where they hold the digital asset for more than 12 months. Companies are not eligible for a discount. ¹⁷
4.	OECD	The OECD released in October 2020, a report titled, 'Taxing Virtual Currencies- An Overview of Tax Treatments and Emerging Tax Policy Issues'. The report was prepared after undertaking a study on over 50 jurisdictions.	<ul style="list-style-type: none"> • In most countries including Argentina, Australia, Belgium, Canada, Estonia, Finland, France, Greece, Ireland, Israel, Japan, Luxembourg, Netherlands, Slovak Republic, Slovenia, South Africa, Spain, Sweden and the United Kingdom normal tax rules on disposal of property apply (CGT rules and Business Income Rules).¹⁸ • Occasional trades, or transactions made in a personal investment capacity, often give rise to CGT liabilities. • Trading in a business capacity, or by businesses, gives rise to business or capital income, meaning that normal business tax rates apply.¹⁹

3.1.5. General Observations from International Best Practice

A review of regional and global frameworks reveals key trends in digital asset taxation:

- (a) **Net Gain Taxation:** Most countries, including South Africa, Nigeria, the UK, and Australia, tax digital assets based on net gains, allowing deduction of acquisition costs and other costs that may be incidental to the generation of the income.
- (b) **Volatility and Loss Recognition:** Most jurisdictions acknowledge the volatility of digital assets by permitting loss offsets, ensuring fairer tax outcomes.
- (c) **Rejection of Gross-Based Taxation:** Gross taxation, as seen in Kenya and Tanzania, is rare. Most systems focus on taxing actual gains.
- (d) **Property Classification:** Digital assets are widely treated as property, enabling the use of existing CGT or income tax rules and promoting consistency and legal clarity.

¹⁷ Australian Taxation Office, 'How to calculate your CGT' 8 April 2025 < <https://www.ato.gov.au/individuals-and-families/investments-and-assets/capital-gains-tax/calculating-your-cgt/how-to-calculate-your-cgt#ato-Whatyoupaytaxon>> accessed on 24 May 2025.

¹⁸ OECD, *Taxing Virtual Currencies: An overview of Tax Treatments and Emerging Tax Policy Issues*, 31.

¹⁹ OECD, *Taxing Virtual Currencies: An overview of Tax Treatments and Emerging Tax Policy Issues*, 31.

3.1.6. Proposed Amendments

While we appreciate and welcome the proposed amendment of the rate of tax subjected on the transfer value of digital assets transferred or exchanged, we wish to recommend the further amendment of section 12F of the ITA as follows:

(a) Deletion of Section 12F

We recommend that the deletion of Section 12F of the ITA to repeal the digital asset tax.

(b) Application of Normal Rules Applicable to Property Disposal to Digital Assets

We further recommend inclusion of the word 'digital asset' under the definition of property in the Eight Schedule to the ITA. This would allow for digital assets to be taxed under the normal rules applicable to property disposal.

3.1.7. Justification for the Proposed Amendments

(a) Deletion of Section 12F

The proposed amendment seeks to delete Section 12F and establish digital assets as a form of property for taxation purposes. This change is necessary to address several critical shortcomings in the current formulation of Section 12F:

(i) *Recognition of Losses and accounting for Volatility in Digital Asset Markets*

The current provision taxes digital asset transfers based on gross proceeds, without accounting for acquisition costs. This approach fails to recognize losses, which is a fundamental departure from standard income tax principles. The proposed amendment restores balance by ensuring that only actual economic gains are taxed, thereby aligning digital asset taxation with broader income tax norms.

Furthermore, Digital assets are highly volatile, with prices subject to rapid and unpredictable changes. Taxing gross proceeds without regard to acquisition cost ignores this volatility and imposes tax liabilities even in loss-making scenarios. By shifting to a net gain basis, the amendment acknowledges the inherent risks of digital asset markets and ensures that taxation reflects real economic outcomes.

For instance, an investor who bought 1 ETH at KES 580,000 during its 2021 peak and sold it for KES 110,000 in 2022 would incur a massive loss of KES 470,000. Yet, under a gross-based tax system, they would still be required to pay KES 1,650 (1.5% proposed) in tax on the transfer value, despite having made no profit. Continued taxation though the digital asset tax penalizes loss-making transactions and disregards the economic reality of the investor, making it both inequitable and economically distortive.

(ii) *Some Digital Assets are used as a Medium of Exchange*

Section 12F does not distinguish between digital assets held for investment and those used as a means of payment. This is especially problematic for stablecoins, which are linked to fiat currencies and often used to pay for goods and services. Taxing these transactions on a gross basis is both economically distortive and unfair.

For instance, if a Kenyan freelancer is paid 100 USDT (a stablecoin) for services, the platform must withhold 3 USDT as tax, even though the freelancer has simply received payment and not made any profit. This is comparable to taxing a mobile money transaction, or bank transfers and goes against the principle of tax neutrality. Repealing Section 12F would allow these transactions to be taxed more fairly under the existing income tax rules, promoting fairness and encouraging the use of digital assets in everyday commerce.

(iii) Upholding the Principle of Tax Neutrality

Tax neutrality requires that the tax system not favour or penalise specific types of economic activity. Currently, digital assets are taxed more harshly than other asset classes such as equities or real estate, which are taxed on net gains. This inconsistency distorts investment decisions and discourages participation in the digital economy. The proposed amendment promotes neutrality by aligning the treatment of digital assets with that of other capital assets.

(iv) Preventing Double Taxation in Exchange-Based Transactions

Under the current gross-based approach, both parties in a digital asset swap may be taxed on the full value of what they receive, even though no net wealth is created. This results in the potential double taxation of a single transaction. The proposed amendment mitigates this risk by taxing only the net gain realized by each party, thereby promoting fairness and reducing the compliance burden.

(v) Supporting Innovation and Compliance

The punitive nature of the current tax treatment may drive digital asset activity underground or offshore, undermining transparency and compliance. By adopting a more equitable and economically sound approach, the amendment supports the objectives of the Draft National Policy on Digital Assets, which seeks to foster innovation while ensuring effective regulation and taxation.

(vi) Existing tax framework is sufficient

Kenya's current income tax framework already provides sufficient legal and administrative mechanisms to tax income and gains arising from the digital asset ecosystem without the need for a separate digital asset tax regime. If Section 12F is repealed, digital assets can be effectively brought within the scope of existing provisions under the Income Tax Act (ITA), particularly:

- CGT under the Eighth Schedule for disposals of digital assets held as investment property;
- Business income rules or WHT where applicable for trading, service-related income arising from the use or facilitation of digital assets or royalties;

- Significant Economic Presence (SEP) provisions under Section 3(3)(c), applicable to non-resident platforms with a digital presence in Kenya.

Repealing Section 12F will not eliminate taxation of digital asset transactions. It will replace an inequitable and impractical regime with a fair, administrable, and future-proof framework, grounded in existing law and aligned with the realities of the digital economy.

(vii) Section 12F Overlooks the Complexity of Digital Asset Transactions

Digital assets are highly diverse in nature, function, and income types—ranging from capital gains and staking rewards to royalties and service fees. This reflects the complexity of blockchain systems and the varied roles of participants like investors, creators, and validators. Applying a uniform gross-based tax regime like Section 12F ignores these differences, resulting in economically flawed and impractical outcomes. For example, speculative gains differ fundamentally from service compensation, yet Section 12F treats them the same. A more effective approach is to tax digital assets under existing income and capital gains frameworks, which better reflect transaction substance. Repealing Section 12F is essential to ensure Kenya’s tax system remains fair, enforceable, and aligned with global standards.

3.2. Proposal to include Virtual Assets Service Providers included under the definition of financial institutions

3.2.1. Background

According to the Virtual Assets Service Providers Bill 2025 (“the VASP Bill”), a virtual asset has been defined to mean “a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of fiat currencies, e-money, securities and other financial assets.

On the other hand, the Bill defines a VASP “as a local company incorporated under the Companies Act or a foreign company issued with a certificate of compliance under the Companies Act and conducts one or more of the activities listed under the schedule”. Some of the services rendered are as highlighted below:

- ✓ Providing storage of virtual assets on behalf of others;
- ✓ Providing a digital online platform facilitating virtual asset transfers and exchanges;
- ✓ Exchanges may occur between one or more forms of virtual assets, or between virtual assets and fiat currency.
- ✓ Issuing own virtual assets to facilitate virtual asset transfers and exchanges
- ✓ Arranging transactions involving virtual assets and fiat currency, or between virtual assets.
- ✓ Managing portfolios in accordance with mandates given by clients on a discretionary basis where such portfolios include one or more virtual assets;
- ✓ Issuing and selling virtual assets to the public
- ✓ Participating in and providing financial services relating to the initial virtual asset offering.

From the list provided above, you will note that the services offered by VASP's are more or less similar to what is offered by a financial institution. We have highlighted immediately below some of the main elements of VASPs that equate them to Financial Services:

- ✓ **Intermediate and Brokerage;** VASPs often act as intermediaries, facilitating the exchange, transfer, or custody of virtual assets between parties, similar to how banks and brokers operate in traditional financial markets.
- ✓ **Custody and Safekeeping;** Many VASPs provide custodial services, holding virtual assets on behalf of clients. This mirrors the role of banks and other financial institutions that safeguard clients' funds and securities.
- ✓ **Payment and Settlement Services;** VASPs may offer payment processing and settlement services using virtual assets, akin to payment service providers and clearinghouses in the traditional financial sector.
- ✓ **Exchange Services;** VASPs frequently operate exchanges where users can buy, sell, or swap virtual assets for other assets or fiat currency. This is analogous to stock exchanges or currency exchanges in the financial industry.
- ✓ **Compliance and Regulatory Functions;** VASPs are increasingly subject to anti-money laundering (AML) and know-your-customer (KYC) regulations, similar to traditional financial institutions, further aligning their operations with those of established financial service providers.

Being that the Virtual Assets sector is a new niche, and the intention of the government is to bring this niche to tax, it is important that this is done through consideration of the underlying nature of the services being offered.

3.2.2. The Issue

The Value Added Tax, 2013 ('the VAT Act') imposes VAT on a taxable supply made by a registered person in Kenya, the importation of taxable goods and the supply of imported taxable services unless the taxable supply is exempt from VAT under the first schedule to the VAT Act. Given that services provided by VASPs are not specifically listed in the exempt schedule, Virtual Assets Services may be subject to VAT at the standard rate of 16% in absence of specific exemptions provided to the industry.

Virtual assets, such as cryptocurrencies, often function similarly to traditional means of payment like fiat currency or financial instruments such as securities or derivatives. Many VAT systems exempt transactions involving money and certain financial instruments to avoid taxing the medium of exchange itself, which would otherwise create cascading tax effects and hinder economic activity. Therefore, the tax treatment of services rendered by a VASP should be consistent with that applied to financial institutions.

Kenya already has a successful module for taxing financial services without impeding industry growth for the sector. Financial services are exempt from VAT according to Paragraph 1 of part B of the first schedule to the VAT Act. On the other hand, financial institutions in Kenya pay Excise Duty on the fees charged for money transfer services at the rate of 15% and on other fees charged as defined under Part III of the First Schedule to the Excise Duty Act, 2015 at the rate of 20%.

Since there are no specific considerations on the applicability of VAT on services offered by VASPs, our proposal is that such services are accorded with similar treatment as that of other financial services.

3.2.3. International best practices

We have considered some of the international best practices in connection with this subject. The findings are summarized in the table below:

Table 5: International practices in connection with this subject

No	Country	Legislative Provision/Authority/Practice	Tax Treatment
	United Kingdom	His Majesty's Revenue and Customs("HMRC") Cryptocurrency Manual 2021 Value Added Tax Act 1994	<ul style="list-style-type: none"> In 2014, HMRC decided that under Item 1, Group 5, Schedule 9 of the Value Added Tax Act 1994, the financial services supplied by bitcoin exchanges - exchanging bitcoin for legal tender and vice versa - are exempt from VAT²⁰.
	United Arab Emirates	UAE Federal Tax Authority Guidance	<ul style="list-style-type: none"> The UAE has positioned itself as a crypto-friendly jurisdiction. It does not levy any transaction tax on crypto trades. In fact, cryptocurrency transactions are exempt from VAT (Value Added Tax), treating them akin to traditional financial services.
	Singapore	The Goods and Services Tax Act 1993	<ul style="list-style-type: none"> The Inland Revenue Authority of Singapore (IRAS) treats digital payment tokens (e.g., Bitcoin) as neither goods nor money for VAT (GST) purposes. Since January 1, 2020, the supply of digital payment tokens is exempt from GST. This means that buying, selling, or using digital payment tokens as payment is not subject to GST. However, the supply of goods or services paid for with digital tokens remains subject to GST. Utility tokens and security tokens are

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<https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto45000#:~:text=In%202014%2C%20HMRC%20decided%20that,versa%20%2D%20are%20exempt%20from%20VAT>

			treated based on their underlying function—utility tokens may be subject to GST, while security tokens are generally exempt ²¹
	Australia	Treasury Laws Amendment (2017 Measures No. 6) Act 2017	<ul style="list-style-type: none"> • From 1 July 2017, digital currencies (e.g., Bitcoin, Ethereum) are no longer subject to GST when used as payment for goods or services. • This means that using crypto to pay for goods/services is treated the same as using fiat currency—the underlying good/service is taxed, not the crypto itself. • This change ensures that digital currencies are treated like money, avoiding double taxation (previously, GST applied both when buying the crypto and when using it).
	European Union	Legal Precedence: <i>Skatteverket v. Hedqvist</i> (C-264/14), 2015	<p>The EU currently treats virtual currencies (like Bitcoin) as a means of payment, following the 2015 European Court of Justice (ECJ) ruling in the <i>Hedqvist</i> case. This means:</p> <ul style="list-style-type: none"> • Exchanges of virtual currencies for fiat money are exempt from VAT, similar to currency exchange services. • Goods and services purchased using virtual currencies are subject to VAT, just as if they were purchased with traditional currency. <p>By forgoing a transaction tax, the EU focuses on growth and transparency; governments still collect taxes on exchange profits and on gains when cashed out into fiat, but users are not taxed simply for transacting.</p>
	OECD²²	The OECD released in October 2020, a report titled, 'Taxing Virtual Currencies- An Overview of Tax Treatments and Emerging Tax Policy	For consumption taxes, there is more consistency in tax treatment, with countries treating almost all aspects of virtual currencies as exempt or out of scope. This is often for practical reasons, as they may wish to avoid

²¹ Australian Taxation Office, 'How to calculate your CGT' 8 April 2025 < <https://www.ato.gov.au/individuals-and-families/investments-and-assets/capital-gains-tax/calculating-your-cgt/how-to-calculate-your-cgt#ato-Whatyoupaytaxon>> accessed on 24 May 2025.

²² <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-policy/flyer-taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf>

	Issues'. The report was prepared after undertaking a study on over 50 jurisdictions.	<p>having to consider the implications of a barter scenario, whereby a single transaction creates two sets of VAT liabilities and input credits.</p> <p>Additionally, in EU countries, the VAT treatment was determined by the decision of the European Court of Justice in 2015 that exchanges of Bitcoin are exempt under the EU VAT Directive.</p> <p>Finally, virtual currencies form part of a taxpayer's assets and are taxable under wealth and inheritance taxes, where these exist. Inheritance taxes may pose logistical difficulties, as the asset may not be accessible to the inheritor, but tax is generally still payable.</p>
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3.2.4. Proposed Amendments

We propose that Virtual Asset Service Providers are accorded similar tax treatment with the financial institutions as far as VAT and Excise Duty is concerned. Specifically, we propose the following amendments:

a) The Excise Duty Act

Amendment under Part III of the first schedule to the Excise Duty Act to include sub paragraph (d) immediately after subparagraph (c) "*Virtual Asset Service Providers*" as part of the definition of a financial institution.

b) The Value Added Tax Act

Amendment of Part II of the First Schedule to the VAT Act to include Paragraph 3 immediately after Paragraph 2 as follows:

"The Supply of services provided by Virtual Asset Service Providers in relation to dealings with Virtual Assets"

3.2.5. Justification for the Proposed Amendments

a) Functional Parity and Equity in Taxation

VASPs perform core financial functions such as brokerage, custody, payment facilitation, settlement, and asset management which mirrors the services of traditional financial institutions. Despite these similarities, they are currently subjected to VAT on their services, unlike banks and other licensed financial institutions, which are exempt under the VAT Act and instead pay excise duty.

The proposal to classify VASPs as financial institutions ensures horizontal equity, where entities providing similar services are taxed in a consistent manner. This removes regulatory arbitrage and upholds the principle of tax neutrality, eliminating distortions in the financial sector and fostering fair competition.

b) Risk of double taxation

Imposing VAT on services offered by VASPs introduces a significant risk of double taxation, particularly in transactions involving virtual asset exchanges or custodial services. For example, if a person buys goods or services using cryptocurrency and VAT is charged both on the purchase of the cryptocurrency and on the goods/services, this will create an unfair tax burden. This not only inflates the cost of using VASP services but also violates international best practices, where financial intermediation is typically exempt from VAT to avoid cascading tax effects. The VAT Act exempts financial services from VAT for this very reason. By contrast, applying VAT to VASP transactions could lead to over-taxation and ultimately disincentivize the formalization of the sector.

Transitioning VASPs into the same tax treatment as financial institutions where only the fees and commissions are subject to excise duty protects government revenue while eliminating distortionary tax layering. This approach strikes a balance between effective taxation and fostering innovation and growth in the digital economy.

c) Policy Alignment and Future-Proofing the Tax Framework

This proposal harmonizes Kenya's tax laws with the Virtual Asset Service Providers Bill, 2025, which already recognizes and licenses VASPs similarly to financial institutions. Recognizing VASPs in the tax code closes a regulatory gap and strengthens legal coherence between tax and financial sector laws.

Additionally, as virtual assets grow in relevance for cross-border payments, remittances, investment, and digital commerce, this step future-proofs Kenya's tax system by creating a scalable model for taxing digital financial innovations, in line with global standards.

In addition, other East Africa countries are yet to issue specific VAT guidance on virtual assets. Therefore, including such guidance in the VAT Act will set Kenya apart in the digital financial sector which is a growing market.

d) Balancing growth and innovation in the digital financial sector

Imposing VAT on services offered by VASPs risks stifling innovation and driving businesses into informal channels or offshore jurisdictions, particularly given the price-sensitive and technology-driven nature of the digital finance space. By subjecting VASPs to excise duty on commissions and fees, rather than VAT on gross transaction values, Kenya would ensure steady revenue collection without compromising sector growth or investment.

This treatment is consistent with Kenya's existing tax model for financial services and aligns with global trends in fintech taxation, where many jurisdictions exempt digital asset transactions to avoid tax cascading effects but also protect the payment function of virtual assets.

e) Consistency with other local policies and International best practices

Bringing VASPs under the financial institution framework creates a clear and predictable tax regime, encouraging registration, licensing, and formal sector participation. This supports the Kenya Revenue Authority's (KRA) digital tax agenda, increases compliance, and widens the tax base. Moreover, it aligns with Kenya's broader development goals under Vision 2030 and the Digital Economy Blueprint, by supporting digital financial inclusion, lowering the cost of financial services, and boosting investor confidence in the Kenyan fintech ecosystem.

On the other hand, treating Virtual Assets akin to financial services aligns with many jurisdictions, including the European Union and OECD guidelines who have chosen to exempt virtual currencies from VAT to maintain consistency with international practices and to avoid creating barriers to cross-border transactions.