

**RESPONSE TO THE CALL FOR PUBLIC CONSULTATION  
FINANCE BILL 2025 MEMORANDUM**

No	Clause	Description of the Clause	PROPOSED CHANGE	JUSTIFICATION FOR CHANGES
1.	Section 42 a(vi)	Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages	Change the rate from KES sh. 500 per litre to KES 250 per litre	<div><div><div><div><div>Current Kenya ENA excise rate per liter</div><div>Proposed Finance Bill 2025 for ENA</div><div>Tanzania ENA excise rate per liter</div><div>Uganda ENA excise rate per liter</div></div><div><div>Kes 964</div><div>KES 500</div><div>Tzs 5000/litre (KES 239.29)</div><div>Ush 2,500 (Kes. 88.64) or 80% of value</div></div></div></div></div> <div><p>1. We appreciate the govt's effort to change excise regime on undenatured extra neutral alcohol from ABV-based to volume-based and reducing the tax rate from KES 964/litre to KES 500/litre</p><p>2. However, the taxes charged on Ethanol by both Tanzania and Uganda is very low, which will still encourage smuggling into Kenya. Please see the table below, where Kenya is at KES 500/litre while Tanzania and Uganda is at KES 239.29 (Tsh5000) and KES 88.64 (Ush 2,500) per litre respectively</p><p>3. Proposed excise rate for ENA is 5.6 times the Uganda rate thus reducing cash flow and making local manufacturing in Kenya uncompetitive.</p><p>4. Further excise rate reduction will reduce the incentive for unscrupulous individuals from smuggling Ethanol into Kenya, which has exacerbated the problem of illicit alcohol trade.</p></div>

No	Clause	Description of the Clause	PROPOSED CHANGE	JUSTIFICATION FOR CHANGES
				<p>5. Alcohol Beverage Association of Kenya (ABAK) commissioned Euromonitor to publish a 2025 illicit alcohol report which estimates Ethanol smuggling volume at 81,455 hectolitres of pure alcohol (7% of illicit alcohol volume in Kenya) with a value of KES 23billion, with a fiscal loss of KES 9 billion for govt. The study was done with the support from government ministries, departments and agencies concerned with escalating problem of illicit alcohol in Kenya.</p> <p><b>Expected Outcomes</b></p> <ol style="list-style-type: none"> <li>1. Increased govt. revenue collection from reduction in illicit ethanol which is used by counterfeiters</li> <li>2. Reduced public health impact from manufacturer of sub-standards spirits</li> <li>3. Increased competitiveness</li> </ol>
2.	<p>Section 8 (a)(vi)</p> <p>Proposes to delete section 15 subsection 2(Z) of the Income Tax Act (ITA)</p>	<p>Sec. 15 (2)Z – Provision enabling tax deduction of expenditure incurred in that year of income by a person sponsoring sports</p>	<p>Delete the clause in the Finance Bill 2025.</p>	<ol style="list-style-type: none"> <li>1. Deletion of the clause goes against UDA BETA commitments on youth and sports development i.e. investment in sports infrastructure, including stadiums and training facilities, promotion of sports as a career path, with structured talent identification and development programs and support for creative and performing arts as part of the creative economy pillar</li> <li>2. The proposal will lead to decline in sports sponsorships especially those undertaken by corporates owing to withdrawal of the tax incentive</li> <li>3. Sports are critical in society since they not only generate income for the youth but also prevent them from engaging vices like drug abuse.</li> <li>4. Deletion of section 15(2) Z will be counter-productive and have an adverse impact to sports funding from the private sector in light of the constrained Government resources.</li> </ol>

No	Clause	Description of the Clause	PROPOSED CHANGE	JUSTIFICATION FOR CHANGES
3.	Section 8 (C)  Inserting a capping of 5 years on carry over of deficits/tax losses under Section 15 (4)	Sec. 15 (4) – allows taxpayers to carry over income tax deficits/losses indefinitely in succeeding years of income.	<ol style="list-style-type: none"> <li>1. Rescind the clause in entirety in the Finance Bill 2025.</li> <li>2. Alternatively, the clause should be limited to 10 years and reworded to read that it will only impact losses arising from the date of enactment into law/current period and go-forward.</li> </ol>	<ol style="list-style-type: none"> <li>1. The proposal will impact companies with heavy capital expenditures that result to income tax deficits owing to significant capital allowances that could extend to beyond 5 years.</li> <li>2. Further, it will impact companies that had significant historical losses owing to past inefficiencies that have since been restructured and now in a profit streak. For such companies the historical losses should be allowed indefinitely provided that no new losses are being accrued.</li> <li>3. The clause will impact current and future start-ups given that most businesses in Kenya break-even way beyond 5 years. This may discourage opening/running of new business.</li> <li>4. Further market distortion is brought about by the fact that in Tanzania, carry forward of losses is indefinite, while in Uganda, its 7 years with the subsequent 50% of the deficit being allowed indefinitely in succeeding years.</li> </ol>
4.	Clause 52 of the Finance Bill 2025	<p>Proposal to delete Section 59A (1B) of Tax Procedures Act Cap.469B which states: -</p> <p>(1B) The Commissioner shall not require a person to integrate or share data relating to—</p>	Delete the clause from the Finance Bill 2025	<ol style="list-style-type: none"> <li>1. The clause in the Bill conflicts with existing legal frameworks, both local and international.</li> <li>2. The clause goes against Article 31 – Right to Privacy of The Constitution of Kenya (2010). KRA would have the right to demand access to personal and private data, which could infringe on the Constitutional right to privacy.</li> <li>3. Deletion of the clause violates several sections of the Data Protection Act, 2019 including but not limited to Section 25,26, 29, and 31<sup>1</sup></li> </ol>

<sup>1</sup> Section 25: Personal data must be processed lawfully, fairly, and transparently.

Section 26: Data subjects have the right to be informed, access, object to processing, and request deletion.

No	Clause	Description of the Clause	PROPOSED CHANGE	JUSTIFICATION FOR CHANGES
		(a) trade secrets and (b) private or personal data held on behalf of customers or collected in the course of business		<ol style="list-style-type: none"> <li>Kenya, as a regional tech and financial hub, risks undermining investor confidence and international data transfer agreements if it weakens its data protection framework</li> <li>Forcing disclosure of proprietary business information could violate intellectual property rights and deter innovation and investment.</li> <li>Businesses may relocate data operations to jurisdictions with stronger protection. This will of course be preceded by retrenchment and increased unemployment; a problem that Kenya is severely grappling with.</li> <li>The deletion could lead to constitutional petitions and judicial reviews, potentially invalidating tax assessments based on unlawfully obtained data</li> </ol>
5.	New Clause	<p>Section 12 (1) of the Excise Duty Act provides as follows: This section shall apply where the First Schedule specifies a rate of excise duty payable by reference to a quantity measured by volume or weight.</p> <p>Under Regulation 36(1) "The volume of spirits contained in any container may be</p>	<p>Amend Excise Duty Act 2015 and Regulations 2020 to provide for an allowance for spirits processing and transit losses.</p> <p>Delete Section 36 (2) and replaces it with: -</p> <p>2) Where the Commissioner under paragraph (1) directs ascertainment by the</p>	<ol style="list-style-type: none"> <li>The process of measuring volume of Spirits sold by distillers or received by manufacturers of spirits has changed due to the introduction of mass flow meter which are approved by Weights and Measures for custody transfer application. Temperature influences ethanol volume readings. When the readings are taken at warmer temperatures, the ethanol quantity is usually higher as opposed to a colder temperature. This lack of standardisation normally results in significant losses.</li> <li>Prior to 2015, the Customs and Excise tax law in Kenya used to provide for a 1% spirits process and transit loss allowance on excisable raw materials.</li> </ol>

Section 29: Sensitive personal data (including financial and biometric data) requires higher protection.

Section 31: Data controllers must implement appropriate technical and organizational measures to safeguard data.

No	Clause	Description of the Clause	PROPOSED CHANGE	JUSTIFICATION FOR CHANGES
		<p>ascertained for any purpose by weight, measure or gauge as the Commissioner may direct.”</p> <p>Under Regulation 36(2)- “Where the commissioner under paragraph directs ascertainment by weighing, the volume shall be calculated : -</p>	<p>volume shall be calculated—</p> <p>a) by use of a mass flow meter at twenty degrees centigrade With an accuracy of +/-3% of the measured volume in litres</p>	<p>3. Regulations in other jurisdictions such as South Africa, Europe, US and UK provide for allowances for spirits processing losses<sup>2</sup>.</p> <p><b>Expected outcomes.</b> Manufacturers will be shielded from paying excess taxes due to variations in readings at ethanol source and destination and due to evaporation that happens in transit. Increase competitiveness of legally produced Spirits products which are under pressure from the threat of illicit products</p>

<sup>2</sup> South Africa- Excise duty on Spirits is assessed on the total litres of absolute alcohol less a fixed allowance for losses in the warehouse of 1.5%. United Kingdom – HMRC rules allow producers of spirits to claim a loss allowance called “reasonable evaporation and filtration allowance”. In the US, the Alcohol and Tobacco Tax and Trade Bureau regulations allows manufacturers to claim a processing loss allowance of 0.5% for distilled spirits produced and stored in bonded