

THE FINANCE BILL, 2025

INSTITUTION: CM ADVOCATES LLP DATE: 26TH MAY 2025

S/No	Clause in the Bill.	<i>Comments and/or Issue with the Clauses</i>	Recommendation
1.	Clause 28 – Proposes to amend Head B to the Third Schedule to the Income Tax Act by deleting subparagraph (i) which provides 15% Tax Rebate to real estate developers	<p>The government, through its manifesto, aims to increase the supply of new housing to 250,000 units annually and raise the percentage of affordable housing from 2% to 50%. To achieve this, the manifesto outlines that the government will provide incentives for developers to construct affordable housing.</p> <p>Removing these incentives would not only undermine this objective but also contradict the Affordable Housing Act, which seeks to</p>	We recommend that the clause is not adopted

		provide accessible housing in line with Article 43 of the Constitution	
2.	Clause 36(h)-Proposal to delete the tax incentive in relation to VAT on goods imported or purchased locally for the direct and exclusive use of the construction of houses under the Affordable Housing scheme.	<p>The government, through its manifesto, aims to increase the supply of new housing to 250,000 units annually and raise the percentage of affordable housing from 2% to 50%. To achieve this, the manifesto outlines that the government will provide incentives for developers to construct more affordable housing.</p> <p>Removing these incentives would not only undermine this objective but also contradict the Affordable Housing Act, which seeks to provide accessible housing in line with Article 43 of the Constitution.</p>	We recommend that the proposal is not adopted
3.	Clause 52 of the Bill seeks to delete Section 59A of the Tax	This proposal would pose a huge risk in privacy and data protection rights of Kenyans. The Constitution protects an	We recommend that the proposal is not adopted

	Procedures Act to allow for the commissioner to obtain trade secrets and customer data	individual's right to privacy and any exemptions from this would need to be reasonable and justifiable. Further, confidentiality is a key cornerstone of professional ethics and deviating from this could erode trust between professionals and clients while at the same time negatively impacting fundamental rights and freedoms.	
4.	Clause 2 (a) (iii) Expanded definition of Royalty	This proposal is in direct conflict with the ruling in the High Court decision in Income Tax Appeal no. 8 of 2017 Seven Seas Technologies Limited Vs the Commissioner of Domestic Taxes where the High Court ruled that the purchase of software for resale does not give rise to a royalty to the extent that the software reseller does not acquire the rights to enable them to commercially exploit the software. The High Court decision was	We recommend that the proposal is not adopted.

		also pegged on international best practice by applying	
5.	Limitation on tax-loss carryforwards	<p>The Bill seeks to introduce a five-year cap on deductibility of tax losses. Currently, the law permits taxpayers to carry forward tax losses indefinitely. The Bill has not provided a transition clause for existing tax losses, thereby leading to uncertainty on the utilization of historical tax losses. Businesses with substantial capital expenditure incur huge tax losses which can take longer to utilize, especially if the business does not generate profitability as quickly. Without room for applying for an extension of time to utilize the tax losses, businesses with significant tax losses may be negatively affected since they will lose tax losses that will not be utilized within the 5-year period.</p>	We recommend that the proposal is not adopted.

6.	<p>The Bill proposes to delete Section 42(14) (e) thus empowering KRA to issue notices in recovery to taxes from third parties owing a taxpayer despite a taxpayer appealing against an assessment specified in a decision of the Tribunal or Court.</p>	<p>The Bill proposes granting the Commissioner powers to issue agency notices even when the taxpayer has appealed against an assessment specified in a decision of the Tax Appeals Tribunal (TAT) or the higher courts.</p> <p>This removal effectively grants the Commissioner unrestricted discretion to enforce collection through agency notices at any stage, including when a taxpayer has lodged a valid appeal. The complete removal of the restriction exposes taxpayers to the risk of aggressive or premature enforcement actions even as the taxpayer proceeds to appeal an assessment and denies the taxpayer his constitutional rights of access to justice.</p>	<p>We recommend that the proposal is not adopted.</p>
7.	<p>Clause 54 of the Bill proposes to amend</p>	<p>The proposed amendment shall reduce the effective time for lodging objections and</p>	<p>We recommend that the proposal is not adopted.</p>

	<p>Section 77(2) of the Tax Procedures Act include Saturdays, Sundays and Public Holidays in computation of statutory time for lodging objections and appeals.</p>	<p>appeals. The amendment is likely to increase risks of missed filings due to shorter deadlines.</p>	
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**SUBMITTED FOR AND ON BEHALF OF
CM ADVOCATES LLP**