

26 May 2025

The Clerk of the National Assembly  
Main Parliament Buildings, First Floor  
Parliament Road  
P.O. Box 41842 – 00100  
Nairobi

By email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

Dear Sir,

Memorandum: Legislative proposals for consideration by the National Assembly in the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025)

We, Shell and Vivo Lubricants Kenya Ltd collectively “SVL Kenya” or “the Company”), refer to the above subject matter where interested members of the public and organizations were invited to submit representations on the Finance Bill, 2025 (“the Bill”). SVL Kenya hereby makes these representations pursuant to Article 118(1)(b) of the Constitution and the National Assembly Standing Order 127(3).

## 1 Introduction

### 1.1 Company Background

SVL Kenya is a subsidiary of Shell & Vivo Lubricants Group, a lubricant joint venture owned by Shell and Vivo Energy, currently operating 6 lubricant plants in Africa (previously Shell Lubricants Plants). SVL Kenya is incorporated in Kenya under the Companies Act, Chapter 486 of the Laws of Kenya. The Company is the hub for the supply of Shell branded lubricants in East, Central and Southern Africa markets.

Since its incorporation, the Company has remained a reliable economic operator and a tax compliant taxpayer in Kenya. The Company's commitment to the country has been clear and consistent directly contributing to the GDP and employment.

Over the past five years, SVL Kenya has successfully supplied 175 million litres of high-quality lubricants to Kenya and the COMESA region, generating KES 19.7 billion in export sales revenue, KES 7.6 billion to the GDP, KES 3.0 billion in taxes, and KES 1.2 billion in capital expenditure at the Mombasa Plant. The company has created 153 direct jobs and supported thousands of indirect jobs through over 75 local suppliers.

From 2021, the Company has encountered difficulties in obtaining timely VAT refunds occasioned primarily by excess input tax that is attributed to export sales (zero-rated supplies). By 2024, the Company had accumulated unpaid VAT refund claims amounting to KES 870 million with only KES 380 million out of this amount settled vide the refund or offset mechanisms.

The delay in releasing approved refunds imposes significant financial strain, jeopardizing the sustainability of the business, increasing capital costs, and threatening ongoing operations. In effect, the financial impact of the delay is an additional annual cost of KES 260 million.

In consideration of the foregoing, the Company hereby submits this memorandum outlining proposals for consideration by the National Assembly, with a view to their inclusion in the Bill prior to assent, in order to facilitate the expedited recovery of VAT refund claims.

## 1.2 Current relevant legal provisions

Section 47 of the Tax Procedures Act, 2015 Cap 469B (“TPA”) was amended vide the Finance Act 2022 to allow taxpayers who have overpaid tax to apply to the Commissioner for either offset of the overpaid tax against other taxes payable, future tax liabilities, or for refund. The Section was further amended through the Tax Procedures (Amendment) Act, 2024 (“TPAA”) by deleting subsection (1) and substituting it with a new subsection that now reads as below:

*“1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form—*

*(a) to offset the overpaid tax against the taxpayer’s outstanding tax debts and future tax liabilities including instalment taxes and input value added tax”*

The import of this recent change was that the Legislature wished to clarify that among other taxes, instalment taxes and input value added tax qualified for offset against overpaid tax.

We note that the definition of tax as provided in the TPA includes the various taxes charged under the different domestic tax legislations. In our considered view, a strict and literal interpretation of the TPA suggests that taxes imposed under the different domestic tax laws qualify for offset against approved refunds.

The table below presents a non-exhaustive list of taxes imposed under the various tax statutes that the TPA creates a procedural and administrative framework for:

Tax Law	Taxes Imposed
Valued Added Tax Act	<ul style="list-style-type: none"><li>• Local VAT,</li><li>• VAT on imported goods and services.</li></ul>
Excise Duty Act	<ul style="list-style-type: none"><li>• Local Excise on goods and services,</li><li>• Excise on imported goods.</li></ul>
Miscellaneous Fees and Levies Act	<ul style="list-style-type: none"><li>• Railway Development Levy</li><li>• Import Declaration Fee</li></ul>

Income Tax Act	<ul style="list-style-type: none"> <li>• Corporate income tax,</li> <li>• PAYE,</li> <li>• Withholding Tax,</li> <li>• Turnover Tax,</li> <li>• Minimum Tax,</li> <li>• Advance Tax,</li> <li>• Monthly Rental Income Tax</li> <li>• Digital Asset Tax.</li> </ul>
Tax Procedures Act	<ul style="list-style-type: none"> <li>• Withholding VAT.</li> </ul>

Our reading of the provisions of Section 47(1)(a) together with other relevant provisions of the TPA is that the offset of overpaid taxes may be applied against any of the taxes listed above.

## 2 Clause 50(a) of the Finance Bill (National Assembly Bill No. 19 of 2025) – (Finance Bill, 2025)

Clause 50(a) of the Finance Bill, 2025 seeks to delete the words “*input value added tax*” from the provisions of Section 47(1) of the TPA. The proposed amendment reads as follows:

*50. Section 47 of the Tax Procedures Act is amended-  
(a) in subsection 1(a) by deleting the words “and input valued added tax”*

Through this memorandum, SVL Kenya proposes as below in respect of this amendment. We have also enclosed as **Appendix 1** to this letter our detailed proposals.

## 3 Proposals for consideration by the National Assembly for inclusion in The Finance Bill, 2025

### 3.1 Deletion of Clause 50 (a) of the Finance Bill, 2025 in its entirety

The Finance Bill, 2025 seeks to delete the wording “*input value added tax*” from the provisions of Section 47(1)(a) of the TPA. SVL Kenya, on the other hand, propose the deletion of this clause and the retention of the current provisions of 47(1)(a) of the TPA that reads as below:

*“1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form—*

*(a) to offset the overpaid tax against the taxpayer’s outstanding tax debts and future tax liabilities including instalment taxes and input value added tax”*

#### 3.1.1 Rationale for the deletion of Clause 50 (a) of the Finance Bill, 2025

Our proposal to delete Clause 50(a) of the Finance Bill 2025 aims at maintaining the current legal provision as is. Currently Section 47(1)(a) of the TPA expressly allows taxpayers to offset approved tax refunds against future and existing tax liabilities including instalment taxes and input value added tax.

In our view, the existing provisions of the law sufficiently cover taxpayers who may wish to offset approved VAT refunds against outstanding and future tax liabilities including withholding taxes,

corporate income tax, value added tax, pay as you earn (PAYE). Furthermore, this provision further averts any potential ambiguity by expressly stating that it includes instalment taxes, and input value added tax.

A plain reading of the proposal contained in Clause 50(a) that seeks to delete the wording “*input value added tax*” from Section 47(1)(a) of the TPA may be construed to mean an exclusion of input VAT from the offset mechanism. This proposed change could lead to undesired implications for the following reasons:

#### 3.1.1.1 The spirit of the offset mechanism

The introduction of an offset mechanism through the Finance Act, 2022 aimed to incentivise taxpayers to consider the recovery of overpaid tax through an alternative channel to the normal refund process that at the time only entitled taxpayers to actual repayment from the Kenya Revenue Authority. This aimed to not only cure the significant delays experienced by taxpayers in payment of the approved refunds but also eases the immediate tax expenditure and fiscal pressure occasioned by the numerous outstanding tax refunds. This is the spirit of Section 47(1)(a) of the TPA and hence it uses wording that allows offset against any historical outstanding tax debts or future tax liabilities covering all taxes imposed under the domestic tax laws.

Therefore, deletion of the wording “*input value added tax*” from Section 47(1)(a) of the TPA not only negates the spirit of the law but may potentially be considered as discriminatory. For instance, the proposed change could be construed to disentitle a taxpayer who primarily incurs VAT on the purchase of taxable supplies from offset while, on the other hand, bestowing an advantage to a taxpayer who pays more instalment taxes or other qualifying taxes. Such is the case for SVL Kenya.

By dint of its operations, the Company imports significant raw materials that suffer VAT at importation. These raw materials form the biggest portion of the Company’s costs. VAT on these materials is accordingly also significantly high. Compare SVL Kenya with a Company whose primary cost is employee costs, such as a services or consultancy Company. Should the proposed amendment pass into law, the services Company would be entitled to an offset against PAYE while, arguably, chances of SVL Kenya recovering VAT by way of offset will be impaired. Without an equitable offset system, the export driven sectors will continue to carry forward significant amounts of unpaid refunds reducing cash outflows and impacting operational liquidity critical for the business.

A retention of the current provision, therefore, allows a level playing field from a tax administration perspective.

#### 3.1.1.2 Interpretation of Section 47(1)(a) of the TPA

It is trite law that provisions of tax law must be interpreted in a strict manner, one that leaves no room for intendment, and at the same time a reading that looks at what is clearly said. In this regard, Kenyan Courts of Law have heavily relied on the oft cited decision in **Cape Brandy Syndicate v Inland Revenue Commissioners [1920] 1 KB 64** wherein Roland J. stated as below:

*“...in a taxing Act, one has to look at what is clearly said. There is no room for intendment as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used... If a person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover*

*the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.”*

Our construction of Section 47(1)(a) of the TPA based on the letter of the law, in line with the above decision, is that input value added tax is a tax covered by offset under Section 47(1)(a) of the TPA with or without the wording *“including instalment taxes and input value added tax”* and that such wording was only introduced to avoid any doubt or divergence in interpretation as to the applicability of offsets against instalment taxes and input VAT. This wording therefore remains fundamental in maintaining clarity in construction of the law.

Therefore, the Company notes that the deletion of the wording *“input value added tax”* will lead to undesired confusion and ambiguity and it is in the Legislature’s best interest to maintain the wording for purposes of clarity.

Based on the above, the Company submits that deleting Clause 50(a) from the Bill will maintain the clarity in the law as appertains the application of offsets against input value added tax.

### **3.2 Proposal to define “future tax liabilities” for purposes of offset**

#### **3.2.1 Amendment of Section 47(1) of the TPA**

The Company further proposes an amendment of Section 47 of the TPA to define the term “future tax liabilities” for purposes of the Section. The proposed change would be as below:

*Section 47 of the Tax Procedures Act be amended by inserting the following new subsection immediately after subsection 47(13) -*

*47(14) For the purpose of this section, “future tax liabilities” means all taxes imposed and payable under a tax law including value added tax payable on importation of taxable goods.*

#### **3.2.2 Rationale for the proposed amendment**

##### **3.2.2.1 Clarity on interpretation of future tax liabilities**

The insertion of the proposed subsection to Section 47 of the TPA will provide clarity on the taxes that fall within the ambit of “future tax liabilities”, wording that has been used several times under Section 47 of the TPA. Specifically, the Company prevails upon the Legislature to cover VAT on importation of taxable goods under the definition to address existing and potential future differences in interpretation and implementation of Section 47(1)(a) of the TPA.

Importantly, the Company notes that VAT to be suffered on importation of taxable goods qualifies as a “future tax liability” under Section 47(1)(a) in line with the below construction:

- a) The definition of the term “tax” under Section 3 of the TPA covers tax imposed or charged under various tax laws;
- b) One of the laws within scope for the imposition of tax under the TPA is the Value Added Tax Act, CAP 476 (“VAT Act”);
- c) The VAT Act, under Section 5(1)(b) brings to charge VAT on importation of taxable goods;
- d) Importers can ascertain the import VAT payable prior to importation of taxable goods and Customs declaration procedure requires prior declaration for ease of administration; and

- e) To the extent that VAT payable on the importation of taxable goods is ascertainable in advance, the same qualifies as a future tax liability within the purview of the TPA;
- f) VAT payable on the importation of taxable goods therefore qualifies as a future tax liability for purposes of offset of overpaid tax under Section 47(1)(a) of the TPA.

The proposal to introduce an express inclusion of VAT payable at importation of taxable goods within the definition of “future tax liabilities” is therefore aimed at providing clarity and averting differences in interpretation which hamper the implementation of offsets. For instance, in the period following the changes introduced through the Tax Procedures (Amendment) Act, 2024 - i.e. from 27 December 2024 to date, the Kenya Revenue Authority (“KRA”) is yet to implement Section 47(1)(a) of the TPA in respect of import VAT due to divergencies in interpretation as to whether import VAT should be within scope.

Further, the Company together with many other taxpayers in the manufacturing sector would seek the inclusion of this proposed amendment in the TPA for the following business reasons:

### **3.2.2.2 Unpaid VAT refunds have a negative impact on business sustainability**

Over the past five years the Company has made significant contributions to the economy as summarized below:

- a) Export sales revenue amounting to KES 19.7 billion have significantly contributed to foreign exchange earnings;
- b) The Company has contributed KES 7.6 billion to GDP;
- c) It has paid KES 3.0 billion in taxes paid (excluding refunds);
- d) It’s capital investment in the Mombasa plant stands at KES 1.2 billion;
- e) SVL Kenya has directly employed 153 staff and contractors; and
- f) By extension, the Company supports thousands of indirect jobs through over 75 local suppliers.

The Company’s contribution to the economy is enormous. Indeed, the Company intends to continue its business growth through the manufacture of lubricants not only for the local market but also for export.

SVL Kenya’s export business compared to local business has gradually grown from 38% in 2020 to 52% in 2025. The Company expects that its export business will grow to 58% compared to 42% local business by 2029. This evolution of its business presents a scenario where the Company’s VAT refund claims will continue to increase. Since 2021, SVL Kenya has accumulated VAT refunds amounting to KES 870 million out of which only KES 380 million has been recovered by way of refund or offset as of 2024. The Company presently has more than 560 million in unpaid refunds by the KRA.

Projections reveal that the delay in processing refund claims will negatively impact SVL Kenya’s cashflow position by KES 1.58 billion as at the end of 2025. Further, the delays occasion an average additional annual financial cost of KES 260 million.

However, delayed processing of VAT refunds continues to negatively impact the Company’s cashflows and, as a result, threatens the sustainability of the business in future. The persistent delay has also increased pressure on working capital leading to an increased cost of capital for the Company.

Facilitating the Company and other similar businesses through the creation of an efficient and equitable offset mechanism will lead to business sustainability and growth thereby contributing to increased tax revenues and contribution to the government's bottom-up economic transformation agenda. The establishment of this efficient offset mechanism will firstly require clarity in the law, in line with the Company's submissions as above, that VAT payable suffered on the importation of taxable goods qualifies for offset under Section 47(1)(a) of the TPA.

#### **4 Our request**

In conclusion, we request your favourable consideration and support of our submissions to amend the relevant tax laws to facilitate immediate recovery of the excess taxes paid to the Government as set out above.

Please feel free to reach out to the undersigned or our tax agents, Deloitte & Touche LLP vide email [cmusyoka@deloitte.co.ke](mailto:cmusyoka@deloitte.co.ke) should you require additional information or clarification regarding our submissions.

Yours faithfully,

**For: SVL Kenya Limited**



Phelix Ogolla

**General Manager, Supply Chain**

Appendix 1: Proposals for consideration by the National Assembly on The Finance Bill (National Assembly Bill No. 19 of 2025)

No	Tax Head	Proposed Amendment	Recommended change	Justification
1	Tax Administration – Tax Procedures Act	<p>The Finance Bill, 2025 seeks to delete the words “<i>input value added tax</i>” from the provisions of Section 47(1) of the TPA. The proposed amendment reads as follows:</p> <p><i>50. Section 47 of the Tax Procedures Act is amended-</i></p> <p><i>(a) in subsection 1(a) by deleting the words “and input value added tax”</i></p>	Deletion of Clause 50(a) of the Finance Bill, 2025 in its entirety	<p>The Finance Act of 2022 introduced an offset mechanism designed to encourage taxpayers to reclaim overpaid taxes through alternative means, alleviating delays in refunds and reducing the fiscal pressure on unpaid VAT refunds.</p> <p>Section 47(1)(a) of the TPA facilitates offsets against historical or future tax liabilities across all domestic taxes. However, the removal of “input value added tax” from this section may create a discriminatory effect; for instance, it could disadvantage taxpayers who incur VAT on taxable supplies while favoring those with more considerable installment taxes.</p> <p>This is particularly relevant for companies like SVL Kenya, which incurs high VAT costs on imported raw materials, unlike service-focused businesses that might benefit from easier offsets against PAYE or instalment taxes. Maintaining the current provision</p>



Appendix 1: Proposals for consideration by the National Assembly on The Finance Bill (National Assembly Bill No. 19 of 2025)

				<p>is, therefore, essential for ensuring equitable tax administration.</p> <p>It is trite law that tax law provisions require strict interpretation, leaving no room for implied meanings, as emphasized in the case of <b>Cape Brandy Syndicate v Inland Revenue Commissioners</b>. Following this principle, the interpretation of Section 47(1)(a) of the TPA indicates that input value added tax is encompassed within the provision for offsets, regardless of the specific wording.</p> <p>The introduction of the phrase “including instalment taxes and input value added tax” serves to clarify applicability rather than alter the law’s intent. The Company argues that removing this wording could introduce ambiguity, and advocates for the deletion of Clause 50(a) in the Bill to preserve legal clarity regarding offsets against input VAT.</p>
2	Tax Administration -	The Company further proposes an amendment of Section 47 of the TPA to define	The proposed change would be as below:	The proposed amendment to Section 47 of the TPA aims to

Appendix 1: Proposals for consideration by the National Assembly on The Finance Bill (National Assembly Bill No. 19 of 2025)

	Tax Procedures Act	the term “future tax liabilities” for purposes of the Section.	<p><i>Section 47 of the Tax Procedures Act be amended by inserting the following new subsection immediately after subsection 47(13) -</i></p> <p><i>47(14) For the purpose of this section, “future tax liabilities” means all taxes imposed and payable under a tax law including value added tax payable on importation of taxable goods</i></p>	<p>clarify that VAT on the importation of taxable goods qualifies as a "future tax liability." This inclusion is intended to address existing ambiguities and prevent differing interpretations of the law.</p> <p>The Company emphasizes that since import VAT can be determined prior to importation, it fits within the definition of future tax liabilities in the TPA. The need for this clarification has become more pressing since changes made by the Tax Procedures (Amendment) Act, 2024, have led the Kenya Revenue Authority to pause the implementation of Section 47(1)(a) concerning import VAT due to interpretation issues.</p> <p>The Company, along with other manufacturers, is advocating for this amendment to facilitate better business practices</p>
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