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26 May 2025

The Chairman
The Departmental Committee on Finance and National Planning
Main Parliament Building - Parliament Road
P.O. Box 41842-00100
Nairobi

ATTENTION:

Clerk to the National Assembly

Dear Sir/Madam,

**SUBMISSION OF MEMORANDUM ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY
BILLS NO. 19 OF 2025)**

We refer to the above subject matter and thank the Committee for inviting us to make our submissions. Pursuant to article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Departmental Committee on Finance and Planning is considering the Finance Bill, 2025, and we once again request you to take into consideration our proposals contained in the attached memorandum.

We thank you most sincerely for the opportunity to engage with the Committee on this matter and we are happy to appear before the Committee to explain our proposals.

Yours faithfully,

For and on behalf of: PKF Taxation Services Limited

A handwritten signature in blue ink, appearing to read 'Michael Mburugu', with a large, stylized loop above the name.

Michael Mburugu
Regional Tax Partner

Directors: Michael Mburugu, Ritesh Mirchandani, Piyush Shah, Darshan Shah, Charles Mukunu, James Mulili, Benard Ngunya

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A. Income Tax Submissions

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
1	<u>Section 2 of the Finance Bill, 2025</u>	The Bill proposes to amend Section 2 of the Income Tax Act (ITA) by expanding the definition of royalties to include transactions relating to distribution of software where regular payments are made for the use of the software through the distributor.	Delete the clause	<p>The proposed amendment will bring into the ambit of the definition of royalty any payment for purchase/sale of software even where the distributor transfers the software without exploiting the intellectual property rights in the software. Consequently, the purchaser will have to withhold tax on payments relating to software purchase even where the purchaser is only distributing the software.</p> <p>This proposal is contrary to international best practice and previous judicial determinations by the High Court of Kenya, which applied the Organization for Economic Co-operation and Development Model (OECD) Tax Convention on Income and Capital. The previous determinations by the High Court provided that software distributors only make payment to acquire copies of the copyrighted software and do not exploit the copyright embedded in the software to give rise to a royalty payment for the purpose of Withholding Tax (WHT).</p>

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
				<p>If adopted into law, this proposal will signal a shift from international best practice in the taxation of software payments, as captured under Article 12 of the OECD Model Tax Convention, which generally requires that such payments should only be subject to WHT if they are made as consideration for rights to the software's underlying Intellectual Property (IP) rights.</p>
2	<u>Section 8 (c) of the Finance Bill 2025</u>	The Bill proposes to amend Section 15(4) of the ITA by limiting the number of years tax losses will be carried forward to five years from the time the losses were incurred.	To delete the clause	<p>Limiting the carry-forward of tax losses to five years will negatively impact capital intensive businesses especially those with huge investment allowances as they will forfeit any unutilized tax losses beyond the five-year period.</p> <p>This proposed amendment will potentially force investors to relocate to other jurisdictions where losses are carried forward infinitely.</p> <p>Further, the proposal to cap the carry-forward of tax losses to five years will deprive investors</p>

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
				<p>of the opportunity to recoup capital investments incurred within reasonable timelines by increasing their income tax liability.</p> <p>The above notwithstanding, if the proposal is maintained, it does not provide clarity on when the five-year period will commence and how the prior years' tax losses should be treated.</p> <p>We further recommend for powers to be vested to the Commissioner to allow taxpayers to carry forward tax losses beyond the five-year period in exceptional cases where the tax losses arise due to investments allowances e.g. the manufacturing sector and businesses in capital intensive sectors and those that have to invest for long periods before attaining commercialization e.g. the extractive sector covered under the Ninth Schedule to the ITA.</p> <p>If these powers are vested on the Commissioner, it will ensure that tax incentives extended to taxpayers who have made capital</p>

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
				intensive investments are not eventually reversed through unutilized tax losses.
3	<u>Section 8(a)(vi) of the Finance Bill 2025</u>	The Bill proposes to amend Section 15 of the ITA by repealing the provision allowing for expenditure incurred on sports sponsorship, subject to the Cabinet Secretary responsible for sports approval, being an allowable deduction.	To delete the clause	<p>Enacting this proposal will reduce the financial attractiveness of supporting sports programs thereby discouraging the private sector involvement in sports development. The consequence of the above is that Youth sports programs may struggle to offer regular training, access to equipment, or even maintain basic operations.</p> <p>Further, enacting the proposal may negatively impact youth engagement and national sports initiatives, areas often supported through private sector funding. Companies will no longer be able to claim tax deductions on expenses incurred to sponsor sports activities.</p>
4	<u>Section 27 (a) of the Finance Bill 2025</u>	The Bill proposes to amend the Second Schedule to the ITA by repealing the 100% investment allowance on	To delete the clause	This proposal has the potential of discourage investors from investing in areas outside Nairobi and Mombasa as well as in SEZs.

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
		capital expenditure, especially for investments outside Nairobi and Mombasa and in Special Economic Zones (SEZs) and therefore harmonizing investment allowance rates across all sectors and in preferential tax regimes like SEZs.		<p>The shift in investment patterns may have a significant economic impact in areas outside Nairobi and Mombasa that are already lagging in development and are in need of private sector investment. If investors are discouraged from setting up businesses or projects in these areas, the result exacerbates regional economic disparities.</p> <p>Ultimately, the implementation of this proposal may result in a geographic imbalance in investment flows, concentrating economic activity in already developed urban areas while neglecting the non-urban areas and discourage foreign direct investments especially for preferential tax regimes like SEZs.</p>
5	<u>Section 28 (b) (ii) of the Finance Bill, 2025</u>	The Bill proposes to revoke the preferential corporation tax rate of 15% for companies that construct over one hundred residential units annually.	To delete this clause	Revoking the preferential corporation tax rate of 15% for companies that construct more than 100 residential units could discourage real estate investors from investing in residential houses.

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
				<p>The removal of the preferential tax rate of 15 % reduces the attractiveness of large-scale residential construction projects that depend on favourable tax policies.</p> <p>We recommend that the preferential rate of 15% is maintained to encourage the private sector's involvement in construction of affordable residential houses until the housing gap has been sufficiently closed in line with the affordable housing agenda.</p>
6	<u>Section 28 (b) (iii) of the Finance Bill, 2025</u>	The Bill proposes to revoke the preferential tax rate of 15% for the first five years of operations, provided to companies whose business is local assembling of motor vehicles.	To delete this clause	<p>If this proposal is enacted, it will discourage companies from assembling vehicles here in Kenya.</p> <p>We recommend the preferential rate of 15% to be maintained, to nurture a thriving local motor vehicle production sector and to create employment opportunities for Kenyans.</p>

No	Clause in the Finance Bill, 2025	Description of the clause	Proposal	Justification
7	<u>Section 29 (b) of the Finance Bill, 2025</u>	The Bill proposes to introduce CGT exemption on transfer of assets to a company where an individual spouse owns 100% of the shareholding.	To amend the clause and expand CGT exemption to a company owned 100% by immediate family members only.	<p>This proposal will expand the current scope of exemption and greatly aid in succession planning.</p> <p>As currently worded in the ITA, the transfer of assets to a company owned 100% by an individual spouse is not exempt from CGT since the CGT exemption is only applicable to a company owned 100% by spouses and immediate family.</p> <p>We recommend that the CGT exemption be expanded to a company owned 100% by immediate family members (children) since the current exemption is only applicable to a company owned by both spouse and immediate family members.</p>

B. VALUE ADDED TAX ACT

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
1	Section 36 (e) of the Finance Bill, 2025; and Section 36 (h) of the Finance Bill, 2025	<p>The Bill proposes to change the VAT status of taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities from VAT exempt to taxable at the standard rate of 16%; and</p> <p>The Bill also proposes to change the VAT status of specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators from VAT exempt to taxable at the standard rate of 16%</p>	Delete the clause	<p>This proposal is intended to increase tax revenue collection. However, reclassification of the VAT status of these goods from VAT exempt to taxable at the standard rate of 16% will increase the cost of construction of tourism facilities, convention and conference facilities and will negatively impact these sectors in terms of investments.</p> <p>The tourism and conferencing sectors are vital to the Kenyan economy because they contribute immensely to foreign exchange earnings.</p> <p>Primarily for the tourism sector, since tour operator services are VAT exempt, it is beneficial to exempt from VAT goods for direct and exclusive use in the construction of tourism facilities to manage the associated costs to make Kenya the preferred and cost-effective tourist destination. There will certainly be a ripple effect in realization of tax revenues since the tourists will have the capacity to spend on safari in Kenya.</p>

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
				<p>The same negative impact to the tourism sector will be introduced by standard rating specially designed locally assembled motor vehicles for transportation of tourists from the current VAT exemption.</p> <p>We recommend that this clause is deleted.</p>
2	Section 36 (f) of the Finance Bill, 2025	The Bill proposes to change the VAT status of taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty from VAT exempt to taxable at the standard rate of 16%	Delete the clause	<p>While the proposal is intended to increase tax revenue collection, this reclassification ultimately increase the cost of medical care, which is against the Government's Universal Healthcare Pillar of improving healthcare access for all Kenyans. Currently, the country needs more specialized hospitals to take care of Kenyans who are suffering from various diseases and are forced to travel abroad at huge costs for specialized treatment.</p> <p>This clause should be deleted as it has a negative impact to both investors in the healthcare sector as well as increasing the cost of medical care to Kenyans.</p>

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
3	Section 36 (p) item 157 of the Finance Bill, 2025	The Bill proposes to reclassify transportation of sugarcane from farms to milling factories from zero rated to VAT exempt.	Delete clause	This is not a welcome move since the transportation of sugarcane from the farms to the milling factories will attract additional costs to the farmers. Currently, we have noted that the Government has initiated reforms in the sugar sector and therefore to exempt from VAT transportation services will have huge cost implications, which will result in cash flow constraints to farmers. Therefore, the zero rated status of the transport services in the sector is more beneficial and complements the ongoing reforms by the Government.
4	Sections 36 (p) item 158 of the Finance Bill, 2025	The Bill proposes to reclassify the supply of locally assembled and manufactured phones from zero rated to VAT exempt.	Delete the clause	By exempting from VAT, the supply of locally assembled and manufactured phones from VAT while retaining the standard rated status of inputs used for manufacture of the phones is detrimental to the sector. Whilst this proposal will deal with the huge VAT refund backlogs that suppliers of locally assembled and manufactured phones are faced with, it will directly lead to an increase in the price of the phones and would affect the sector.

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
				<p>The proposed options would be to either exempt from VAT the inputs used to manufacture the phones or to standard rate both the phones and inputs used to manufacture the phones. The impact of exempting the phones and retaining the inputs as standard rated is detrimental to the sector that provides employment to very many Kenyans and attracts a lot of investments in the sector contributing to Kenya's economic growth.</p>

C. TAX PROCEDURES ACT

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
1	Section 52 of the Finance Bill, 2025	The Bill proposes to empower the Commissioner to access trade secrets and customer data held on behalf of customers or collected in the course of business.	Delete the clause	<p>The Data Protection Act, 2019 aims to protect the privacy of individuals and regulate the processing of their personal data. The Act is a direct result of Article 31(c) and (d) of the Kenyan Constitution, which guarantees the right to privacy.</p> <p>Therefore, this proposal would pose a huge risk in privacy and data protection rights of Kenyans. The Constitution protects an 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.</p> <p>Additionally, there is no comprehensive framework that has been proposed in law to ensure data security and confidentiality, which without doubt will create loopholes for abuse and trust that taxpayers will have with the data that is accessible by the Commissioner.</p>

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
				The right to privacy under the Constitution of Kenya should be safeguarded to ensure there is protection of trade secrets and personal data, preservation of professional ethics and maintenance of the integrity of taxpayers' data that is provided to the Commissioner.
2	Section 50 of the Finance Bill, 2025	<p>The Bill proposes to increase the timelines for the Commissioner to ascertain and determine the offset/refund of overpaid tax from ninety to one hundred and twenty days from the date of application.</p> <p>Additionally, the Bill proposes that where the Commissioner subjects a taxpayer to an audit to verify the offset/refund of overpaid taxes, the timelines for determination of the offset/refund to be extended from one hundred</p>	Delete the clause	<p>The proposal to extend the timelines is viewed as a scheme by the Commissioner to delay the ascertainment and payment of tax refunds rightfully due to taxpayers for overpaid taxes.</p> <p>This is unfair and unjust to businesses that are rightfully entitled to tax refunds.</p> <p>Despite Section 47(2) of the Tax Procedures Act, 2015 (TPA) providing ninety-days within which the Commissioner is required to ascertain and determine refunds due to taxpayers, the reality is that the approvals take years and even after the expiry of the ninety days, the Commissioner is not held accountable. The provisions of Section 47(3) of the TPA provide that where the</p>

No.	Clause in the Finance Bill, 2025	Description of the Clause	Proposal	Justification
		and twenty to one hundred and eighty days.		<p>Commissioner fails to ascertain and determine aa refund within ninety days, the refund shall be deemed ascertained and approved but unfortunately there is no mechanism that allows the taxpayer to access their refunds rendering this provision superfluous.</p> <p>There is need for expeditious processing of tax refunds that has been an endless impediment to businesses' cash-flows.</p> <p>The intention and spirit of the law must be adhered to, and taxpayers must also be treated fairly on tax refunds.</p>