Unpacking Kenya’s Finance Bill, 2025

Tax Alert

TAX ALERT ON FINANCE BILL, 2025

The Finance Bill, 2025 (The Bill) was presented by the Cabinet Secretary for National Treasury and Economic Planning to the National Assembly after being ratified by the Cabinet on 29 April 2025. The Bill will be debated in the National Assembly, subjected to public participation and the parliamentary procedure before eventually being passed into law.

The Bill proposes to amend the Income Tax Act (Cap. 470), the Value Added Tax Act, 2013, Excise Duty Act, 2015, Tax Procedures Act, 2015 and the Miscellaneous Fees and Levies Act (Cap. 469C).

The only proposals contained in the Bill that have an effective date of 1 January 2026 are the proposals to introduce Advance Pricing Agreements for Transfer Pricing purpose and possibility of waivers for penalties and interest if they arise due to errors generated by an electronic tax system. The rest of the proposals in the Bill have an effective date of 01 July 2025. We will have to wait and see if these proposals are enacted into law upon assent of the Finance Bill, 2025 by the President by latest 30 June 2025.

The Bill comes on the backdrop of events that surrounded the withdrawal of the Finance Bill, 2024. Towards the end of 2024, we saw amendments effective 27 December 2024 that were introduced through the Tax Laws (Amendment) Act, 2024, the Tax Procedures (Amendment) Act, 2024 and the Business Laws (Amendment) Act, 2024.

Notable proposals in the Bill is clarification on the due date for Minimum Top-up Tax that will be applicable to Multinational Enterprises with a certain threshold of Combined Effective Rate of Tax, introduction of five year period within which tax losses can be carried forward and enhancements to taxation of the digital economy from Income Tax, Value Added Tax (VAT) and Excise Duty perspectives.

More details on amendments to the various tax statutes are contained in this tax alert.

INCOME TAX ACT

1. Expanded definition of royalty

The Bill proposes to expand the definition of royalty to include transactions relating to distribution of software where regular payments are made for the use of the software through the distributor.

The proposed change will widen the scope of transactions that give rise to a royalty to include transactions relating to distribution of software. Royalty payments are subject to Withholding Tax (WHT) at the respective resident and non-resident rates and therefore, the above proposal will subject transactions related to software distribution to WHT.

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 also pegged on international best practice by applying the Organization for Economic Cooperation and Development Model Tax Convention on Income and Capital which also provides 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.

Proposed Effective Date: 01 July 2025

2. Harmonized definition of related persons

The Bill proposes to harmonize definition of "related person" to a single definition that includes all instances of relationship arising from participation either directly or indirectly in the management, control or capital of the business of the other person. The definition also covers instances of relationship that is derived from association through marriage, consanguinity or affinity.

The above proposal provides clarity on what leads to relationship for Transfer Pricing (TP) and Capital Gains Tax (CGT) purposes and will clear any ambiguity from multiple definitions in the Income Tax Act (ITA).

Proposed Effective Date: 01 July 2025

3. Increased threshold of tax free per diem

The Bill proposes to increase the tax free per diem limit from KShs 2,000 to KShs 10,000 per day. This proposal seeks to increase the limit for amounts received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside their usual place of work while on official duties and cushion against the increased cost of living.

Proposed Effective Date: 01 July 2025

4. Proposed changes to tax relief on pension income

The ITA, as amended by the Tax Laws (Amendment) Act, 2024 provides for tax exemption on payment of pension benefits from registered pension and individual retirement funds, public pension scheme or National Social Security Fund upon attainment of the retirement age or early withdrawals due to ill health or withdrawals after 20 years from the date of registration. The exemption is also applicable on payment of gratuity or other allowances paid under a public pension scheme.

The Bill proposes to split the tax exemption on gratuity and the tax exemption on other allowances paid under a public pension scheme. This is to cushion against an interpretation dispute that would arise resulting in granting tax exemption to only one of the items as currently worded in the ITA.

Further, in line with the tax exemptions on pension withdrawals introduced by the Tax Laws (Amendment) Act, 2024, the Bill also proposes to clean up the provisions that provided for taxation of payments on withdrawals from pension schemes upon retirement as they were rendered invalid.

Proposed Effective Date: 01 July 2025

5. Clean-up on WHT on certain payments

The Bill proposes to introduce under Section 10 of the ITA payments accrued in or derived from Kenya and paid by a resident person or a person with a permanent establishment in Kenya in respect of:

(i) The supply of goods to a public entity; and

(ii) The sale of scrap materials.

The above proposal is a clean-up exercise to ensure that the above payments which were subjected to WHT on both resident and non-resident persons by the Tax Laws (Amendment) Act, 2024 are included under Section 10 of the ITA similar to other payments that are subject to WHT.

Proposed Effective Date: 01 July 2025

6. Increased scope for Significant Economic Presence Tax

The Bill seeks to expand the scope of Significant Economic Presence Tax (SEPT) to cover the income of a non-resident person accrued in or derived from Kenya through a business carried out over the internet or an electronic network, including through a digital marketplace.

SEPT was introduced through the Tax Laws (Amendment) Act, 2024 to replace Digital Service Tax that only covered income of a non-resident person from a business carried out over a digital market place. The proposed amendment seeks to widen this scope to also include income of a non-resident person generated in Kenya through a business carried out over the internet or an electronic network as a means of expanding the tax base.

The Bill also proposes to repeal the exemption from SEPT on non-residents with annual income derived from Kenya that is below KShs 5 million. Resultantly, if assented into law, non-resident persons who accrue or derive income from Kenya through a business carried out over the internet or an electronic network, including through a digital marketplace will be subject to SEPT, irrespective of their turnover.

Proposed Effective Date: 01 July 2025

7. Clarity on the due date for Minimum Top-Up Tax

The Bill proposes to clarify that Minimum Top-up Tax shall be due and payable by the end of the fourth month following the close of a person's financial year.

Minimum Top-up Tax was introduced via the Tax Laws (Amendment) Act, 2024 to align with global minimum tax principles and is applicable to Multinational Enterprises operating in Kenya, that are part of a group whose consolidated annual turnover is Euro 750 million or more and have a combined effective tax rate of less than fifteen percent in a year of income.

Proposed Effective Date: 01 July 2025

8. Certainty on diminution allowance for loose tools

The Bill proposes to amend the ITA to provide for diminution allowance at the rate of 100% costs incurred on any implement, utensil or similar articles excluding machinery or plant employed in the production of gains or profits. Currently, the deduction for diminution is based on an amount deemed "just and reasonable" by the Commissioner. The proposed amendment will provide much needed clarity and certainty.

Proposed Effective Date: 01 July 2025

9. Repeal of provisions on taxation of non-citizens' employment income

The ITA currently provides for exemption from tax of one third of the total gains and profits from employment income of an individual who is not a citizen of Kenya where:

(i) The employer is a non-resident company or a partnership;

(ii) The individual is in Kenya solely for the performance of their duties in relation to their employer's regional office approved by the Commissioner;

(iii) The individual is absent from Kenya for an aggregate of 120 days; and

(iv) The gains are not deductible for the employer's taxable income.

The Bill proposes to repeal this provision and consequently, all gains and profits from employment income of non-citizens operating in Kenya will be fully taxable irrespective of the number of days the individual was present in Kenya.

Proposed Effective Date: 01 July 2025

10. Tax deductibility of expenditure incurred on timber production

The Bill proposes to repeal the provisions that empower the Commissioner to determine the just and reasonable cost attributable to the cost of timber sold during a year of income.

Therefore, if assented into law, taxpayers will determine and expense the cost related to standing timber on a self-assessment basis.

Proposed Effective Date: 01 July 2025

11. Taxation of expenditure incurred towards sports initiatives

The Bill proposes to include any donations made towards expenditure incurred in the construction of public sports facilities as an allowable deduction. This change aims to incentivize private sector involvement in developing sports infrastructure by offering tax relief, potentially leading to increased investment in public sports amenities and promoting community development and youth engagement.

The Bill further proposes to repeal the provision allowing for expenditure incurred on sports sponsorship, subject to the Cabinet Secretary responsible for sports approval, from being an allowable deduction. The proposed amendment has the potential of limiting sponsorships in the sports sector by the private sector if assented into law as it will limit the tax deductibility of such expenditure. This may lead to a decline in funding for sports development, and community-level initiatives that heavily rely on corporate sponsors and therefore negatively impact the growth of the sports sector and reduce opportunities for youth development and public engagement through sports.

Proposed Effective Date: 01 July 2025

12. Mortgage interest deduction

The ITA provides for tax deductibility of interest on mortgage of up to KShs 360,000 per annum by an individual on amounts borrowed for the purchase or improvement of an owner occupied residential premise.

The Bill proposes to expand the tax deductibility of the interest to include interest on amounts borrowed and utilized for construction of owner-occupied residential premises.

Under the proposed amendment, the interest deduction will now apply not only for the purchase or improvement of residential premises occupied by an individual during the year of income, but also used for the construction of such premises and therefore incentivize individuals who borrow to construct owner-occupied premises.

Proposed Effective Date: 01 July 2025

13. Capital loss on disposal of property

The ITA provides for a taxpayer who incurs a capital loss on disposal of property to offset the loss against capital gains from disposal of another property in the same year of income or to carry forward the loss to subsequent years of income.
The Bill proposes to repeal this provision and therefore, taxpayers will not be able to offset capital losses from disposal of property against any capital gains or carry forward the capital losses to subsequent periods.

Proposed Effective Date: 01 July 2025

14. Carry forward of tax losses to be capped to five years

The ITA provides for the indefinite carry forward of tax losses, meaning that any loss incurred in a given year can be deducted when computing taxable income for that year and subsequent years of income until it is fully utilized.

The Bill proposes an amendment to limit the number of years the tax losses can be carried forward to five years from the time the losses were incurred. The Bill also proposes to repeal the provisions that grant the Cabinet Secretary authority to extend the period for carrying forward of tax losses beyond the stipulated period.

The proposed change would significantly affect businesses with long investment cycles or those experiencing extended periods of losses, such as start-ups or capital-intensive businesses. By capping the carry-forward period to five years, taxpayers will forfeit unutilized losses beyond the five-year period, potentially increasing their tax liability and reducing overall post-tax profitability. This change has the potential of discouraging long-term investment and affect cash flow planning for affected entities.

Proposed Effective Date: 01 July 2025

15. Changes to Country-by-Country reporting requirements

The ITA provides that an Ultimate Parent Entity (UPE) or a constituent entity of a Multinational Enterprise (MNE) Group with a consolidated turnover of more than KShs 95 Billion in the preceding year of income should submit a Country-by-Country (CbC) report to the Commissioner by the end of the twelfth month after the year end of the MNE Group. Where there are more than one constituent entities of the MNE Group that are tax resident in Kenya, the MNE Group may designate one of them as a Surrogate Parent Entity for purposes of filing the CbC report.

The Bill proposes to repeal the above provision that provides for appointment of a Surrogate Parent Entity and therefore, each constituent entity will be required to file a CbC report with the Commissioner.

A constituent entity is however exempted to file a CbC report if:

(i) The non-resident surrogate parent entity is required to file or files a CbC report in its jurisdiction which has a competent authority agreement with Kenya;

(ii) The competent authority of the jurisdiction of the non-resident surrogate parent entity has not notified Kenya of a systemic failure; and

(iii) The non-resident parent entity has notified the competent authority in the jurisdiction of its tax residence that the entity is the designated surrogate parent entity of the MNE Group.

Proposed Effective Date: 01 July 2025

16. Introduction of Advance Pricing Agreement provisions

The Bill proposes to introduce Advanced Pricing Agreement (APA) provisions between the Commissioner and persons involved with related party transactions with non-residents for the determination of an arm's length price. The APAs will be valid for a period of five years.

The Bill proposes to empower the Commissioner to declare the APA null and void in the event the Commissioner establishes misrepresentation of facts in the APA by the taxpayer.

The introduction of APAs is a welcome move, as they will help resolve Transfer Pricing (TP) disputes by providing certainty on taxpayers with related party transactions. APAs will allow taxpayers to agree with Commissioner on the TP methodology to be applied in advance and therefore avoid future disputes. APAs are also integral for taxpayers with complex inter-company transactions that may often be subject to interpretation disputes or where the non-resident related party has already signed an APA in their country of incorporation.

However, there is need for more regulations to provide for the legal framework on how the APA discussions will be undertaken as well provide clarity on the powers of the Commissioner has to declare an APA null to ensure the Commissioner's powers are not used arbitrarily.

Proposed Effective Date: 01 January 2026

17. Clean-up on taxation of membership clubs and trade associations

The ITA as was amended by Finance Act, 2023 provides for taxation of membership clubs and trade associations on the gross receipts on any other source of revenue other than joining fees, welfare contributions and subscriptions.

The Bill proposes to repeal the definition of gross investment receipts which includes various types of income such as dividends, interest, royalties, rent and gains granted for use or occupation of property. This is a clean-up provision since these types of income are chargeable to tax as per the changes introduced by Finance Act, 2023.

Proposed Effective Date: 01 July 2025

18. Amendments relating to change of accounting year end

The ITA currently provides that where a person intends to change their accounting year end date, they may apply to the Commissioner for approval at least six months before the year end. The Commissioner is mandated to communicate the decision in writing to the applicant within six months of the application.

The Bill proposes for there to be automatic approval of such applications if the Commissioner fails to respond within six months from the date of the application.

The above proposal seeks to provide certainty to taxpayers and protect them from delays by the Commissioner in making a determination.

Proposed Effective Date: 01 July 2025

19. Taxation of a non-resident ship owner

The ITA provides that a non-resident ship owner accounts for and pays tax in Kenya at the rate of 2.5% of the gross amounts received from the embarkment of cargo in Kenya. The ship owner is therefore obligated to account for and remit the tax themselves or through an appointed tax representative.

The Bill proposes to shift the burden of deducting the tax to the resident person that engages the non-resident ship owner as a withholding tax at the rate of 2.5% of the gross amount payable.

Proposed Effective Date: 01 July 2025

20. Extension of time for issuance of Income Tax exemption certificates

The income of a charitable organization established solely for the relief of poverty or distress among the public, or for the advancement of religion or education, is exempt from Income Tax. Currently, the Commissioner is required to issue an income tax exemption certificate within sixty days of the application being lodged, provided all requirements are met.

The Bill proposes to extend this time limit to ninety days from the date of receipt of the application.

Proposed Effective Date: 01 July 2025

21. Clarification on tax exemption on transfer of property in a Special Economic Zone

Currently, the ITA provides that gains on transfer of property in a special Economic Zone (SEZ) by a SEZ enterprise, an operator or a developer are exempt from tax.

The Bill proposes to clarify that the tax exemption shall only be applicable to a licensed SEZ developer, enterprise or operator.

Proposed Effective Date: 01 July 2025

22. Tax incentives for companies certified By Nairobi International Financial Centre Authority

The Bill proposes to introduce an exemption from tax on dividends paid by companies certified by the Nairobi International Financial Centre Authority (NIFCA) where that the company reinvests at least KShs 250 million of the profits after tax in Kenya in that year of income.

The Bill further proposes to introduce a preferential Corporate Income Tax (CIT) rate for companies certified by NIFCA. The preferential tax rate shall be 15% for the first 10 years of commencement and 20% for the subsequent 10 years provided they meet the following conditions:

(i) The company invests at least KShs 3 billion in Kenya in the first 3 years of operations;

(ii) The company is a holding company with at least 70% of its senior management being Kenyan citizens; and

(iii) The company establishes its regional headquarters in Kenya with at least 60% of its senior management being Kenyan citizens.

Additionally, the Bill proposes to provide for a preferential tax rates for start-ups certified by NIFCA as follows:

(i) 15% for the first 3 years; and

(ii) 20% for the succeeding 4 years.

The above incentives aim to incentivize start-ups and multinational companies to set up their operations under NIFCA positioning Nairobi as a hub for start-ups, multinational companies and financial enterprises.

Proposed Effective Date: 01 July 2025

23. Repeal of preferential Income Tax rates for certain sectors

The ITA provides for a preferential Corporate Income Tax (CIT) rate of 15% for the first five years from the year of commencement for companies engaged in the local assembling of motor vehicles. The preferential rate can be extended for a further period of five years if the company achieves a local content equivalent to 50% of the ex-factory value of the motor vehicles.

The ITA also provides for a preferential CIT rate of 15% to real estate companies where a company constructs at least one hundred residential units annually subject to approval by the Cabinet Secretary responsible for housing.

The Bill proposes to revoke the above preferential tax rates. This means that the above entities will be subject to the CIT rate of 30% from the date of inception.

Proposed Effective Date: 01 July 2025

24. Clarification on WHT as final tax on qualifying dividends and interest

The ITA provides that qualifying interest and qualifying dividends are subject to WHT. The Bill proposes to clarify that WHT will be considered a final tax. This clarification addresses the uncertainty over whether qualifying dividends and qualifying interest should subjected to additional taxation after WHT has been applied following the amendments that were made through the Tax Laws (Amendment) Act, 2024.

Proposed Effective Date: 01 July 2025

25. Reduction in Digital Asset Tax rate

The Finance Act, 2023 introduced Digital Asset Tax (DAT), which is payable by a person on the income derived from the transfer or exchange of digital assets. The tax is at the rate of 3% of the transfer or exchange value of the digital asset.

The Bill proposes to reduce the DAT rate from 3% to 1.5%. This proposal is aimed at encouraging compliance on digital asset transactions as well as incentivize investments in the digital and financial technology sectors.

Proposed Effective Date: 01 July 2025

26. Clarification on the definition of a company for CGT

The Bill proposes to amend the definition of a company for purposes of CGT to include a body of persons, which carries on activities of a members' club or trade association that is carrying on a business.

Resultantly, members' clubs and trade associations will have to account for CGT on gains from qualifying transactions.

Proposed Effective Date: 01 July 2025

27. CGT exemption on transfer of assets by companies owned by family members

Currently, the ITA provides for CGT exemption on the transfer of assets to a company where spouses or a spouse and immediate family hold 100% shareholding.

The Bill proposes to introduce CGT exemption on the transfer of assets to a company where an individual spouse owns 100% of the shareholding. This will expand the current scope of exemption and greatly aid in succession planning. 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. In the same breath, it would also be prudent to expand the CGT exemption to a company owned 100% by immediate family members (children) since the current exemption is only applicable to a company owned by both a spouse and immediate family members (children).

Proposed Effective Date: 01 July 2025

28. Repeal of 100% and 150% investment allowances on capital expenditure

The Second Schedule to the ITA provides for an Investment Deduction at 100% where:

(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings: Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020;

(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or

(c) the person has incurred investment in a special economic zone

The Bill proposes to repeal the above 100% and 150% investment allowances and therefore harmonize investment allowance rates across industries. Whilst this proposal has the potential of discourage investors from investing in areas outside Nairobi and Mombasa as well as SEZs, the proposal demonstrates the Government's continued efforts to reduce tax incentives in an effort to scale up tax revenues.

Proposed Effective Date: 01 July 2025

29. Changes to other definitions in the ITA

The Bill proposes to amend the definition of "debenture" by deleting the expression 'that makes reference to paragraphs (d) and (e) of Section 7(1) of the ITA, which includes any loan or loan stock, whether secured or unsecured. This proposed change in definition of debenture is a clean-up in the existing legislation as paragraphs (d) and (e) of Section 7(1) were already repealed.

The Bill also proposes to amend the definition of an "individual retirement fund" to delete the condition "subject to Income Tax (Retirement Benefit) Rules." This is a clean-up provision in lieu of the changes through the Tax Laws (Amendment) Act, 2024, which harmonized the registration of retirement funds with the Retirements Benefits Authority.

VALUE ADDED TAX

1. Definition of tax Invoice

The Bill seeks to clarify the tax invoice by defining a tax invoice to include an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act, 2015 (TPA). This is an alignment to the TPA which stipulates that a person carrying out a business is required to issue an electronic tax invoice whose features include the following:

a) the words "TAX INVOICE";

b) name, address and PIN of both the supplier and purchaser;

c) serial number of the tax invoice;

d) date and time of the tax invoice issued

e) date and time the supply was made if different from the date the tax invoice was issued;

f) description of the supply in terms of quantity of goods or type of services;

g) details of any discount allowed at the time of supply;

h) consideration of the supply;

i) tax rate charged and the total amount of tax charged; and

j) any other prescribed information.

The proposal is meant to ensure that all tax invoices are e-TIMS compliant, especially for a VAT registered persons entitled to claim input VAT where applicable.

Proposed effective date: 01 July 2025

2. Place of supply of services in Kenya to include internet services

Electronic services provided by a non-resident person to a person in Kenya are deemed to be supplied in Kenya.

The Bill proposes to include internet service under the definition of electronic services, which include the following:

a) Websites, webhosting or remote maintenance of programs and equipment

b) Software and the updating of software

c) Images, text and information

d) Access databases

e) Self-education packages

f) Music, films, and games, including games of chance; or

g) Political, cultural, artistic, sporting, scientific, and other broadcast and events including internet, radio or television broadcasting services.

This proposed amendment provides clarity on the requirement for non-resident persons providing electronic services to users in Kenya to register and account for VAT accordingly.

Proposed effective date: 01 July 2025

3. Changes to utilization of VAT withholding credits

Currently, Section 17(5)(c) of the VAT Act, 2013 provides that a VAT registered person with excess input tax arising from withheld VAT may apply for a refund from the Commissioner or utilize the credits to offset against any tax payable.

The Bill proposes to clean up VAT refund provisions under Section 17(5), by repealing the aforementioned Section 17(5)(c) and retaining Section 17(5)(b) the VAT Act, 2013, which provides for claiming VAT refunds arising out of excess input tax relating to withheld VAT.

This also aligns to the provisions of Section 47(1) of the TPA that provides for either offset of overpaid tax against outstanding tax debts and future tax liabilities or refund of overpaid tax.

Proposed effective date: 01 July 2025

4. Minimum time for VAT refund applications on bad debts reduced

The Bill proposes to reduce the minimum time within which a VAT registered person may apply for a VAT refund on bad debts from three years to two years from the date of supply. This is a welcome move because it will allow taxpayers to recover VAT amounts on bad debts within a reasonable timeline and improve cash inflows. It is important to note that taxpayers have up to ten years from the date of supply to make VAT refund applications arising from bad debts.

The Bill also introduces a new provision that allows the refunded VAT amount from bad debts to be utilized to offset against other VAT liabilities, subject to the Commissioner's approval. This proposal seeks to align with TPA, which allows for offset of VAT refunds against any future tax liabilities.

However, the Bill proposes to repeal the provisions that require taxpayers to refund VAT amounts paid from bad debts by the Commissioner where taxpayers recover the unpaid amounts from recipients of the supplies. There is also a proposal to repeal interest charged on failure by taxpayers to refund the amounts to the Commissioner. This is quite an interesting proposal but welcome to taxpayers.

Proposed effective date: 01 July 2025

5. Clarity on the timeline for making VAT refund applications

The Bill proposes to reduce the timeline for application for refund of excess input tax resulting from zero rated supplies and VAT withheld by appointed VAT withholding agents from 24 months to 12 months.

The proposal intends to align with Section 47 of the TPA, which provides that an application for refund of overpaid VAT should be made to the Commissioner within 12 months after the date on which the tax was overpaid.

Proposed effective date: 01 July 2025

6. Mandatory requirement for issuance of a tax invoice

The Bill proposes to have a VAT registered person making any supply, whether taxable or exempt to issue a proper tax invoice.

Currently, a VAT registered person is only required to issue a tax invoice for a taxable supply. This proposal emphasizes the need for all supplies to be supported by Electronic Tax Invoice Management System (e-TIMS) invoices so that they can be transmitted to the auto populated VAT return. This will enhance transparency, avoid revenue leakage and automatically restrict input VAT deductibility to the extent of the taxable value.

Proposed effective date: 01 July 2025

7. Combating tax avoidance schemes by imposing VAT on the misuse of exempt or zero-rated supplies

The Bill proposes to impose VAT on a person who purchases or imports goods or services that are VAT exempt or zero rated and subsequently uses them for a different purpose other than the intended purposes. This is a welcome move as this will encourage and enhance VAT compliance but begs the question of the criteria the Commissioner will use to determine if the goods or services have been inconsistently used.

Proposed effective date: 01 July 2025

8. Applicability of VAT to official aid funded projects on certain supplies

The Bill proposes to impose VAT at a rate of 16% on fuels, lubricants and tyres supplied to official aided funded projects. Currently, these products are VAT exempt if supplied to official aid funded projects. This proposal will create intricacies of funding by the donors who have restricted measures relating to financing of taxes in the projects and this would resultantly increase project costs.

Proposed effective date: 01 July 2025

9. VAT relief on tea and coffee packaging materials

The Bill proposes to exempt from VAT packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture. This will reduce incidental costs in the form of VAT on purchases of these packaging materials.

Proposed effective date: 01 July 2025

10. Reclassification of VAT status on certain goods and services from VAT exempt to general rated supplies

Item	Tariff classification	Current VAT status	Proposed changes
Food supplements	2106.90.91 2106.90.30	Exempt N/A	Vatable at 16% Exempt
Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in form of packaging for retail sale	3003.41.00 3003.42.00 3003.43.00 3003.49.00	Exempt	Vatable at 16%
All goods and parts thereof of chapter 88 i.e. aircraft, spacecraft and parts thereof However, the Bill proposes to exempt any aircraft parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation	88	Exempt	Vatable at 16%
Direction-finding compasses, instruments and appliances for aircraft	N/A	Exempt	Vatable at 16%
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. "Recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills For any approvals authorised by the Cabinet secretary responsible for matters relating to recreational parks, the exemption will apply until 30 June 2026	N/A	Exempt	Vatable at 16%

Item	Tariff classification	Current VAT status	Proposed changes
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption For any approvals authorised by the Cabinet secretary responsible for health, the exemption will apply until 30 June 2026	N/A	Exempt	Vatable at 16%
Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions: (i) the vehicles shall at all times be registered and operated by a company that is licensed under the Tourism Vehicle Regime; (ii) the vehicles shall be used exclusively for the transportation of tourists; (iii) The vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and (iv) Any other condition the Commissioner may impose; Provided that tax shall become payable upon change of use or disposal of the vehicle for other use	N/A	Exempt	Vatable at 16%
Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing For any approvals authorised by the Cabinet secretary responsible for matters relating to housing, the exemption will apply until 30 June 2026	N/A	Exempt	Vatable at 16%

Item	Tariff classification	Current VAT status	Proposed changes
Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration licence in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Petroleum Act,2019, or a mining license in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to energy, Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be For any approvals authorised by the Cabinet secretary Energy, Petroleum and Mining, the exemption will apply until 30 June 2026	N/A	Exempt	Vatable at 16%
Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy For any approvals authorised by the Cabinet secretary responsible for matters relating to energy, the exemption will apply until 30 June 2026	N/A	Exempt	Vatable at 16%
Discs, tapes, solid-state non-volatile storage devices, “smartcards” and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health For any approvals authorised by the Cabinet secretary responsible for matters relating health, the exemption will apply until 30 June 2026	85.23	Exempt	Vatable at 16%
Weighing machinery (excluding balances of a sensitivity of 5 cg or better) of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health For any approvals authorised by the Cabinet secretary responsible for matters relating to health, the exemption will apply until 30 June 2026	8423.10.00	Exempt	Vatable at 16%

Item	Tariff classification	Current VAT status	Proposed changes
Inputs and raw materials used in the manufacture of passenger motor vehicles	N/A	Exempt	Vatable at 16%
Locally manufactured passenger motor vehicles: Provided that in this paragraph - locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya	N/A	Exempt	Vatable at 16%

Proposed Effective Date: 01 July 2025

11. Reclassification of VAT status on certain goods and services from zero rated to VAT exempt supplies

Item	Tariff classification	Current VAT status	Proposed changes
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary for the time being responsible for matters relating to health	N/A	Zero Rated	Exempt
Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for time being responsible for Agriculture	N/A	Zero Rated	Exempt
Transportation of sugarcane from farms to milling factories	N/A	Zero Rated	Exempt
The supply of locally assembled and manufactured mobile phones	N/A	Zero Rated	Exempt
The supply of motorcycles	8711.60.00	Zero Rated	Exempt
The supply of electric bicycles	N/A	Zero Rated	Exempt
The supply of solar and lithium on batteries	N/A	Zero Rated	Exempt
The supply of electric buses	8702	Zero Rated	Exempt
Bioethanol vapour (BEV) Stoves (cooking appliances and plate warmers for liquid fuel)	7321.12.00	Zero Rated	Exempt

Proposed Effective Date: 01 July 2025

EXCISE DUTY

1. Digital Lender definition amended

The Bill proposes to amend the definition of a digital lender to exclude a Bank licensed under the Banking Act, Savings and Credit Cooperative Organization (Sacco) registered under the Co-operative Societies Act or a Microfinance Institution (MFI) licensed under the Microfinance Act.

It is worth noting that excise duty is applicable on other fees charged by the financial institutions above and also on fees charged by digital lenders who are licensed under the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022. The excise duty applicable to both financial institutions and digital lenders is only on the fees charged, excluding interest on loan or return on loan.

This provision aims to separate the provisions on applicability of excise duty on the above listed licensed financial institutions vis-à-vis digital lenders.

Proposed Effective Date: 01 July 2025

2. Definition of Digital Marketplace

The Tax Laws (Amendment) Act, 2024 introduced excise duty on excisable services offered by a non-resident in Kenya through a digital platform. The Bill proposes to expand this definition and as such, excise duty would apply to excisable services offered in Kenya by a non-resident over the internet, an electronic network or through a digital marketplace if passed into law.

The Bill provides the definition of Digital Marketplace to mean an online platform which enables users to sell goods or provide services to other users. This amendment provides clarity on the applicability of excise duty on excisable services offered through a digital marketplace.

Proposed Effective Date: 01 July 2025

3. Enhancement of applicability of excise duty on excisable services provided by non-residents

Currently, supply of excisable services is deemed to be made in Kenya if the services are provided by a supplier whose place of business is in Kenya.

The Bill proposes to expand the applicability of excise duty to include non-residents where such services are consumed in Kenya. The Bill proposes that if the place of the business of the supplier is outside Kenya, the supply of services shall be deemed to be made in Kenya if the services are consumed by a person in Kenya through the internet, electronic network or digital marketplace.

Proposed Effective Date: 01 July 2025

4. Timelines for issuance of licence

The Bill proposes to introduce a timeline for issuance or rejection of excise licence. The Commissioner would be required within fourteen days of receipt of the required documents to grant or refuse to issue the applicant with an excise licence.

Proposed Effective Date: 01 July 2025

5. Classification of goods

The Bill aims to provide clarification on the basis for classification of goods by proposing that goods shall be classified by reference to the tariff codes set out in Annex 1 to the protocol on the Establishment of the East African Community (EAC) Customs Union and in interpreting that Annex, the general rules of interpretation set out in the Annex to apply.

Proposed Effective Date: 01 July 2025

6. Removal of Excise Duty on specific goods

The Bill proposes to scrap the following items from the list of goods subject to excise duty. As such, excise duty would no longer be applicable on the following goods:

- Imported eggs of tariff heading 04.07
- Imported onions of tariff heading 07.03; and
- Imported potatoes, potato crisps and potato chips of tariff heading 07.01.

Proposed Effective Date: 01 July 2025

7. Changes in Excise Duty Rates

The Bill has proposed the following changes to excise duty rates and description:

Item	Previous rates	New rates
Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7005 but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	35% of custom value or KShs 200 per kg	35% of excisable value or KShs 200 per Kg, whichever is higher
Coal	2.5% of the custom value	2.5% of the excisable value
Printed self-adhesive paper, gummed paper or paper board of tariff 4811.41.90 and 4811.49.00 but excluding those originating from EAC Partners States that meet the EAC rules of origin	25% or KShs 150 per Kg, whichever is higher	25% of excisable value or KShs 200 per Kg , whichever is higher
Imported other self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff 3919.90.90, but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	25% or KShs 75 per Kg, whichever is higher.	25% of excisable value or KShs 200 per Kg , whichever is higher
Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	No provision	25% of excisable value or KShs 200 per Kg , whichever is higher
Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	No provision	25% of excisable value or KShs 200 per Kg , whichever is higher
Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	No provision	25% of excisable value or KShs 200 per Kg , whichever is higher
Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19 .90, but excluding those originating from EAC Partner States that meet the EAC Rules of Origin	No provision	25% of excisable value or KShs 200 per Kg , whichever is higher
Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages	No provision	KShs 500 per litre

Proposed Effective Date: 01 July 2025

TAX PROCEDURES ACT

1. Electronic Tax Invoice Exemptions

The Bill proposes to provide a clearer definition of transactions excluded from electronic tax invoice requirements. The exclusions include emoluments, payments for imports, payments of interest, transactions for accounting for investment allowances, airline passenger ticketing and payments subject to WHT that is a final tax.

The main change proposed is the exclusion of payments subject to WHT, where such is a final tax. The Bill seeks to provide clarity and enhance the transacions exempt from electronic tax invoice requirements. However, there are limited types of payments that are subject to WHT as final tax, which raises the question of the relevance of this exemption.

Proposed Effective Date: 01 July 2025

2. Commissioner's Amended Assessments

The TPA requires the Commissioner to notify the taxpayer in writing where an amended assessment has been issued. The notification should include details of the amount assessed, penalties applicable, late payment interest payable, period to which the assessment relates, due date for payment and manner of objecting to the assessment.

The Bill proposes to mandate the Commissioner to also provide a reason for the amended assessment. This is a welcome move that will enhance transparency and accountability in the tax assessment as taxpayers will now have clearer insight into the reasons behind any amendments to their assessments, promoting fairness.

Proposed Effective Date: 01 July 2025

3. Penalty for failure to deduct WHT

The Bill proposes to provide a relief from penalties for failure to deduct WHT, where the recipient of the payment has already paid and accounted for the full principal tax. In such a case, the person who failed to account for WHT will not be required to pay WHT again.

This proposal is welcome as it prevents double taxation and shifts the focus from penalizing the WHT agent, where such tax has already been accounted for and paid by the principal.

Proposed Effective Date: 01 July 2025

4. Security on property for unpaid tax

The Commissioner is empowered to attach a taxpayer's property as security where such a taxpayer fails to pay taxes by the due date. The Bill proposes to exempt the Commissioner from payment of stamp duty in such transactions.

This proposal is aimed at easing the administrative burden for the Commissioner in transactions or transfers, where stamp duty is applicable e.g. land and shares transactions.

Proposed Effective Date: 01 July 2025

5. Power to collect tax from non-residents through agency

Where the Commissioner has reasonable grounds to believe that a taxpayer will not pay a tax by the due date, the Commissioner may require a person who (or may subsequently) owes, holds money or has authority to pay money to the taxpayer, to pay the amount of the unpaid tax to the Commissioner.

The Bill proposes to expand the powers to include non-resident persons who are subject to tax in Kenya. This is a necessary move as it ensures that the Commissioner has powers to collect taxes due from non-residents.

Proposed Effective Date: 01 July 2025

6. Withholding VAT penalties

The Bill proposes to delete the specific Withholding VAT (WHVAT) penalty of 10% provided under Section 42A of the TPA. Consequently, the late payment penalty of 5% under Section 83A will now apply for failure to deduct WHVAT on time.

This is a positive aimed towards legislative alignment and clarity, eliminating potential confusion on the penalty applicable under the TPA.

Proposed Effective Date: 01 July 2025

7. Timelines for offset or refund of overpaid tax

Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner to offset against outstanding/future tax liabilities or may apply for a refund. For offset against future liabilities, the overpaid tax could be used for future tax liabilities, including instalment taxes and input VAT.

The Bill proposes to repeal input VAT from the list of future tax liabilities against which overpaid tax can be applied. In addition, the Bill proposes to increase the timelines for the Commissioner to ascertain and determine the offset/refund application from ninety days to one hundred and twenty days. In addition, where the Commissioner subjects the taxpayer to an audit to verify the offset/refund, the Bill proposes to extend the timelines from one hundred and twenty days to one hundred and eighty days.

We note that although the Bill has proposed to increase the timelines for the Commissioner to determine offset/refund applications, the TPA provides under Section 47(3) that where the Commissioner fails to ascertain and determine an offset/refund application within 90 days, the same shall be deemed ascertained and approved.

These proposed changes give the Commissioner more time to handle offset/refund applications and as a consequence, would further delay the resolution of taxpayer offset/refund claims.

Proposed Effective Date: 01 July 2025

8. Sharing of trade secrets and customer data

The Commissioner is empowered to establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents. Currently, the TPA restricts the Commissioner from requesting for integration or sharing of data on trade secrets and private or personal data held on behalf of customers or collected in the course of business.

The Bill proposes to remove this restriction, thus empowering the Commissioner to access trade secrets and customer data. 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.

Proposed Effective Date: 01 July 2025

9. Late objection to tax decisions

The Bill proposes to amend the TPA such that when the Commissioner allows a late objection and the objection is validly lodged, the period within which the Commissioner may make a decision on the objection shall start from the date the late objection is lodged.

This amendment provides clarity on the timeline for objection decisions in cases where late objections are allowed.

Proposed Effective Date: 01 July 2025

10. Timelines on objections and appeals

In computing the period for the lodgement of an objection to the Commissioner's decision, appeal to Tax Appeals Tribunal (TAT), appeal to the High Court or appeal to the Court of Appeal, the computation does not include Saturdays, Sundays or public holidays.

The Bill seeks to delete the provision that excludes Saturdays, Sundays and public holidays when computing the timeframes for lodging a tax objection or appeals to the TAT, High Court, or the Court of Appeal.

The proposed change will effectively reduce the time available to taxpayers to prepare and submit objections or appeals.

Proposed Effective Date: 01 July 2025

11. Waiver of penalties on errors generated by electronic tax system

The Bill proposes to empower the Cabinet Secretary, on the recommendation of the Commissioner, to waive penalties or interest on errors generated by an electronic tax system, delays in updating an electronic tax system, duplication of penalty or interest due to a system malfunction or incorrect registration of tax obligations.

This amendment is welcome and provides a mechanism for waiving penalties and interest when the fault lies with the electronic tax system or administrative errors, rather than with the taxpayer.

Proposed Effective Date: 01 January 2026

MISCELLANEOUS FEES AND LEVIES

1. Clean-up of Provisions on Excess Tax Refunds

The Bill proposes to clean up the provisions under Section 9B of the Miscellaneous Fees and Levies Act (the Act), which deals with refunds of excess tax, ascertainment and repayment of fees and levies overpaid or paid in error and the determination by the Commissioner on penalties and interest on fees that remain unpaid.

Currently, Section 9B of the Act makes reference to Section 47 of the Tax Procedures Act (TPA), which relates to offset or refund of overpaid tax. Therefore, the proposal seeks to delete reference to Section 47 of the TPA and consequently, all the relevant Sections of the TPA will apply to Section 9B of the Act.

The proposed change is a clean-up of the Act to widen the applicability of the TPA to refunds of excess tax, ascertainment and repayment of fees and levies overpaid or paid in error and the determination by the Commissioner on penalties and interest on fees that remain unpaid under the Act.

Proposed Effective Date: 01 July 2025

2. Changes in Goods Exempt from Import Declaration Fee and Railway Development Levy

The Bill proposes to amend the Second Schedule of the Miscellaneous Fees and Levies Act that deals with goods exempt from Import Declaration Fee (IDF) and Railway Development Levy (RDL). The Bill proposes to delete the IDF and RDL exemptions on the following:

- All goods and parts thereof of Chapter 88; and
- Any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance, upon recommendation by the competent authority responsible for civil aviation.

However, the Bill proposes to introduce the following IDF and RDL exemptions on the following:

- All parts of chapter 88 and goods of tariff heading 8802.30.00 and 8802.40.00.

This proposal narrows the IDF and RDL exemptions for aircraft-related imports, potentially impacting the cost of importing certain aircraft and parts while maintaining some exemptions related to aircraft of an unladen weight exceeding 2,000 kg. This will negatively impact the aviation industry in Kenya as aircraft operators will have to incur additional costs to pay for IDF and RDL on goods and parts that do not fall under the specific exemptions above.

Proposed Effective Date: 01 July 2025

3. Reclassification of Export and Investment Promotion Levy (EIPL) rate on certain tariff description

No:	Tariff No.	Tariff Description	Current EPIL rate	Proposed change in EPIL rate
a.	7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	17.5 % of the customs value	5 % of the customs value
b.	7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	17.5 % of the customs value	5 % of the customs value
c.	7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter or others	17.5 % of the customs value	5 % of the customs value

Proposed Effective Date: 01 July 2025

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