REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:
THE CONSIDERATION OF
THE TAX PROCEDURES (AMENDMENT) (NO.2) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 46 OF 2024)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PPARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2024

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LIST OF ABBREVIATION

ADR	-	Alternative Dispute Resolution
APTAK	-	Administrators and Pension Trustees Association of Kenya
B2B	-	Business to Business
B2C	-	Business to Customer
BEPS	-	Base Erosion and Profit Sharing
CapEx	-	Capital Expenditure
CBK	-	Central Bank of Kenya
CDSC	-	Central Depository and Settlement Corporation of Kenya
CGT	-	Capital Gains Tax
CMA	-	Capital Markets Authority
COMESA	-	Common Market for Eastern and Southern Africa
CS	-	Cabinet Secretary
DST	-	Digital Service Tax
EAC	-	East African Community
EACCMA	-	East African Community Customs Management Act
EDA	-	Excise Duty Act
EPZ	-	Export Processing Zone
e-TIMS	-	electronic Tax Invoice Management Systems
FDI	-	Foreign Direct Investment
FPTS	-	Federation of Public Transport Sector
HS Code	-	Harmonized System Code
IATA	-	International Air Transport Association
ICPAK	-	Institute of Certified Public Accountants of Kenya
IDF	-	Import Declaration Fee
ITA	-	Income Tax Act
KAAO	-	Kenya Association of Air Operators
KAM	-	Kenya Association of Manufacturers
KASIB	-	Kenya Association of Stockbrokers and Investment Banks
KNCCI	-	Kenya National Chamber of Commerce and Industry

KRA	-	Kenya Revenue Authority
LLP	-	Limited Liability Partnership
MFIs	-	Microfinance Institutions
NSE	-	Nairobi Securities Exchange
OECD	-	Organization for Economic Co-operation and Development
OEM	-	Original Equipment Manufacturer
PAYE	-	Pay As You Earn
PFM	-	Public Finance Management
PIN	-	Personal Identification Number
RAK	-	REITs Association of Kenya
RDL	-	Railway Development Levy
REIT	-	Real Estate Investment Trust
SEPT	-	Significant Economic Presence Tax
TAT	-	Tax Appeals Tribunal
TPA	-	Tax Procedures Act
UN	-	United Nations
VAT	-	Value Added Tax
WHT	-	Withholding Tax

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Tax Procedures (Amendment) (No. 2) Bill, 2024 (National Assembly Bills No. 46 of 2024), sponsored by the Leader of the Majority party, Hon. Kimani Ichung'wah, EGH, MP Leader of the Majority Party. The Bill was published on 1st November, 2024. It was read a First Time on 13th November, 2024 and was then committed to the Committee for consideration and tabling of report to the House pursuant to Standing Order 127.The Bill has ten (10) clauses and seeks to amend the Tax Procedures Act.

In compliance with Article 118 (1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 14th November, 2024 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024/126 and Ref: NA/DDC/ F&NP/2024/127 dated 18th November 2024 and 19th November respectively invited key stakeholders to submit views on the Bill and attend a public participation forum from 25th to 28th November 2024 at KICC.The memoranda were to be received on or before Thursday, 28th November, 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received four memoranda.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honor to present to this House the Report of the Committee on its consideration of the Tax Procedures (Amendment) (No. 2) Bill, 2024 (National Assembly Bills No. 46 of 2024). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Tax Procedures (Amendment) (No. 2) Bill, 2024 (National Assembly Bills No. 46 of 2024) and wish to report to this August House with the recommendation that the House approves the Bill with amendments.

HON. CPA KURIA KIMANI, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216 (5)** whose mandate is as follows:
    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    ii. *To study the program and policy objectives of Ministries and departments and the effectiveness of their implementation;*
    iii. ***To study and review all the legislation referred to it;***
    iv. *To study, access, and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
    v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);*
    vii. *To examine treaties, agreements and conventions;*
    viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
    ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following government Ministries and Departments:
    i. The National Treasury;
    ii. State Department of Economic Planning;
    iii. Commission on Revenue Allocation; and
    iv. Office of the Controller of Budget.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson
Hon. CPA Kuria Kimani, MP
Molo Constituency
UDA Party

Vice-Chairperson
Hon. (Amb). Benjamin Langat, CBS, MP
Ainamoi Constituency
UDA Party

Hon. (Dr). Adan Keynan, CBS, MP
Eldas Constituency
Jubilee Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency
UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency
UDA Party

Hon. Paul K. Biego, MP
Chesumei Constituency
UDA Party

Hon. Dr. John Ariko Namoit, MP
Turkana South Constituency
ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency
UDA Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. CPA.Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Umul Ker Kassim, MP
Mandera County
UDA Party

Hon.(Dr.) Shadrack Ithinji, MP
South Imenti Constituency
Jubilee Party

Hon. Joseph Munyoro, MP
Kigumo Constituency
UDA Party

Hon. Mohamed S. Machele, MP
Mvita Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitate the Committee:

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto **D/Director, Legal Service**	Mr. Salem Lorot **Legal Counsel I**
Mr. James M. Macharia **Media Relations Officer I**	Ms. Peninnah Simiren **Legal Counsel II**
Ms. Winfred Kambua **Clerk Assistant III**	Mr. George Ndenjeshe **Fiscal Analyst III**
Mr. Benson Kamande **Clerk Assistant III**	Ms. Nelly W.N Ondieki **Research Officer III**
Mr. Benson Muthuri **Serjeant-At-Arms**	Ms. Joyce Wachera **Hansard Officer III**
Mr. Mwangi Muchiri **Audio Officer III**	Mr. Allan Ngugi **Intern**

CHAPTER TWO

2.0 OVERVIEW OF THE TAX PROCEDURES (AMENDMENT) (NO. 2) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 46 OF 2024).

2.1 BACKGROUND

6. The Tax Procedures (Amendment) Bill, 2024 (National Assembly Bills No. 46 of 2024) simplifies and clarifies several tax processes. It outlines the required details for electronic tax invoices to avoid confusion. The Bill extends the tax amnesty until June 2025, giving taxpayers more time to settle taxes without penalties. It also restores a provision for tax relief in challenging recovery cases, helping those in tough compliance situations. Lastly, it sets a 10% penalty for VAT withholding agents who fail to withhold or remit taxes as required.

2.2 SUMMARY OF LEGAL PROVISIONS

7. The Bill has the following proposal

i. Clause 2 Bill seeks to amend section 23A of the TPA to prescribe information that must be contained in an electronic tax invoice. This clarity will guide taxpayers in the contents of a valid electronic tax invoice.

ii. Clause 3 seeks to amend section 37E of the TPA to extend the tax amnesty period from 30th June 2024 to 30th June 2025.

iii. Clause 4 proposes inserting a new section 37F to provide relief because of doubt or difficulty in tax recovery (tax abandonment).

iv. Clause 5 of the Bill proposes to amend section 42A of the principal Act by deleting the proviso to subsection (1) and inserting a new subsection (4C) to prescribe a penalty of 10% for persons who fail to withhold and remit tax.

v. Clause 6 proposes amending section 47 to provide timelines for the application of offset of overpaid tax. For income tax, within five years and for any other tax, within six months.

vi. Clause 7 seeks to amend section 59A to provide for the integration of an electronic tax system with iTax to submit electronic documents and facilitate uptake and deployment of technology to facilitate cost-effective revenue collection.

vii. Clause 8 proposes to amend section 77 to provide that in the computation of the period for lodgement of objections to the Commissioner under section 51, appeals to Tax Appeals Tribunal under section 52, appeals to the High Court under section 53 and appeals to the Court of Appeal under section 54, computation of time shall not include Saturday, Sunday or a public Holiday.

viii. Clause 9 proposes to amend section 83 to provide for a penalty of twenty thousand shillings per month for an export processing zone enterprise that fails to submit required returns.

ix. Clause 10 proposes to amend the First Schedule to require for registration of an employee working remotely outside Kenya for an employer in Kenya. Excluding an employee outside Kenya working for the national carrier.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

8. Article 118 (1)(b) of the Constitution provides that:

   "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

9. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

   *"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

   (a) inviting submission of memoranda;

   (b) holding public hearings;

   (c) consulting relevant stakeholders in a sector; and

   (d) consulting experts on technical subjects.

   (3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

10. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024/126 and NA/DDC/F&NP/2024/127 dated 18th November, 2024 and 19th November, 2024 respectively invited key stakeholders to submit views on the Bill and attend a public participation forum from 25th November, 2024 to 28th November 2024.

11. During the stakeholder engagement process, the public and various stakeholders actively participated by presenting memoranda and making submissions on different clauses of the Bill. These engagements took place at the county level and KICC, where stakeholders had the opportunity to discuss and present their views. The feedback received from these interactions provided valuable input, highlighting specific concerns and suggestions for amendments. The submissions on various clauses of the Bill were as follows: -

3.2.1 TAITA TAVETA COUNTY

Clause 3

12. The members supported the proposal on the extension of the tax amnesty program till 3oth June, 2025. The relief from penalties is a relieve for Kenyans because the rate at which penalties are claimed by KRA disadvantages taxpayers compared to the rate at which taxpayers request for refunds on overpayment of taxes.

Clause 6

13. The Members of Taita Taveta County supported the proposal to have a simplified treatment of overpaid taxes noting that it will help in offsetting other taxes instead of going through the process s of claiming for a refund. They also proposed measures to have overpaid taxes refunded with an interest charge.

3.2.2 ISIOLO COUNTY

Clause 3

14. Members of the public expressed strong support for the tax amnesty extended up to 30th June 2025, viewing it as a positive step for both individuals and businesses struggling with tax arrears. Supporters argued that the amnesty would provide a much-needed opportunity for taxpayers to clear their debts without facing severe penalties or legal repercussions. They believed it could encourage voluntary compliance, increase tax revenue, and reduce the burden on the tax administration system. Many also felt that the extended deadline would give businesses, especially small and medium-sized enterprises, enough time to recover from the economic challenges caused by factors such as the pandemic and inflation.

3.2.3 KERICHO COUNTY

15. The Kericho County residents supported the bill. They noted the extension of the tax amnesty program until 2025 will provide taxpayers with an opportunity to settle outstanding tax obligations without facing heavy penalties or interest.

3.2.4 GRANT THORTON

Clause 4

16. Amend the proposal that requires the Commissioner to seek the approval of the Cabinet Secretary to assess or recover an unpaid tax by giving discretion to the Commissioner to write off taxes whose value does not exceed 1.5 million without consulting the Cabinet Secretary.

Committee observation

The Committee noted the noble proposal by the Stakeholder. However, the situation that gives rise to the need for the abandonment of taxes will differ across taxpayers. Notably, there could be cases whereby the cost of collection would exceed the value of the taxes and in other cases, the tax due may have been overtaken by events. Hence, there is no need to set a threshold since the provision in the Bill provides checks and balances, which the Committee finds adequate.

3.2.5 LEXLINK CONSULTING

Clause 6

17. Amend Clause 6 that deals with tax overpayments to read that the overpayment can be offset against VAT due for clarity purposes.

Committee Observation

The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder. Additionally, the Committee amended the refund for overpaid tax period to be within twelve (12) months.

3.2.6 RYAN MUREITHI

Clause 5 (b)

18. The stakeholder highlighted that Section 42A of the Tax Procedures Act aims to increase penalties for late withholding tax remittance to over 10%, putting small businesses at risk. He noted that the narrow timelines and steep penalties show a lack of consideration for the economic struggles of local businesses.

Committee Observations

The Committee observed the proposal. However, the Committee holds that the penalties are necessary to ensure compliance with this provision since the withheld amounts belong to the Government and in cases where concerns have been raised about the timelines and whether the amount due should be paid on accrual or on a cash basis which the Committee has dealt with.

3.2.7 STRATHMORE TAX RESEARCH CENTRE

Clause 2

19. The stakeholder supported the requirements of an e-tax invoice. They noted that this will enhance the uniformity of tax invoices and remove ambiguities in the existing act. However, KRA has to ensure that there is a clearly outlined procedure for filing electronic tax invoices in both an educational and technological manner.

Clause 3

20. The stakeholder supported the proposal noting that the extension provides an opportunity for taxpayers who missed the deadline for the previous amnesty program to regularize their books with KRA, without paying for the fines, interests, and penalties for their failure to pay the principal taxes, by 30th June 2025.

Clause 4

21. The stakeholder supported the proposal stating that increases transparency in granting tax abandonment by publicizing the reasons wherefore to the public, thus ensuring that there is an element of public accountability.

Clause 5

22. The stakeholder supported the proposal highlighting that the inclusion of the words "reasonable cause" by the amended section 4C is a great change as previously the section did not cater to any intricate differences that may have arisen in VAT compliance. The penalty was mandatory and circumstances may have differed. They emphasized that this change is moving towards a more equitable tax treatment. However, they proposed that there should be an expression as to what

the words 'reasonable cause' means to ensure that there is a transparent and equitable manner in which to implement the penalties and the manner in which agents should handle unreasonable cases should also be brought forward.

Committee Observation

The Committee noted that the word "reasonable cause" is a common legal term, and it seeks to provide the case-by-case application of the provision, which is important in enforcement.

Clause 6

23. The stakeholder noted that this provision expands the scope for refunds or offset of overpaid tax to include the taxpayer's outstanding tax debts and future tax liabilities, which include installment taxes and input VAT. However, the provision seems to contradict Section 29 of the Excise Duty Act which requires one to claim a refund of excise duty within 12 months from when the duty was paid. Thus, the provision should either be more specific or exclude excise duty from all other taxes, or Section 29 of the Excise Duty Act has to be amended to align the Tax Procedures (Amendment) (No. 2) 2024.

Committee Observations

The Committee noted that the Excise Duty Act Section 29(5) subjects it to the Tax Procedures; therefore, there is no contradiction. Additionally, the Committee amended the refund for the overpaid tax period to be within twelve (12) months.

Clause 7(b)

24. The stakeholders supported the proposal, noting that this would close loopholes in revenue collection. However, they noted that the Kshs.500,000 penalty for non-compliance might be a heavy burden on taxpayers who fail to comply with this. They proposed a penalty that does deter people from non-compliance but won't be a very heavy burden on taxpayers in the event of non-compliance.

Committee Observation

The Committee agreed with the stakeholders and amended the penalty for non-compliance to KSh. 100,000. Further, the Committee also amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

Clause 8

25. The stakeholder supported the proposal. They noted that the proposal is silent on whether adjustment on the computation of time extends to the Commissioner when filing appeals or giving objections. Thus, it is unclear whether weekends and public holidays will be factored in or left out when computing time for appeals or objections by the Commissioner. Additionally, they highlighted that this brings uncertainty and might leave the computation of time to the arbitrary choice of the Commissioner which may be detrimental to taxpayers waiting on his objections or appeals.

Committee Observation

The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

Clause 10

26. The stakeholder supported the move however, they noted that it is not clear whether foreigners are exempt from registering a PIN. The ambiguity in this clause can create a challenge for non-Kenyan employees deterring them from working in Kenyan businesses due to the complexities in the application of PIN. KRA will also have to clearly outline procedures that will enable the process of such to ensure smooth access.

Committee Observations

The Committee noted that the provision in the Bill is quite clear and specific on who should get a PIN and only requires and employee working remotely outside Kenya for an employer in Kenya, excluding an employee outside Kenya working for the national carrier.

3.2.8 ALCOHOL BEVERAGES ASSOCIATION OF KENYA INDUSTRY

Clause 7

27. The stakeholders proposed the deletion of the clause. They noted that the Excisable Goods Management System (EGMS) is already in place, providing a reliable and practical framework for monitoring excisable goods. Introducing an additional data management and reporting system would create redundancy, leading to overlapping functions without tangible benefits. They highlighted that manufacturers have legitimate concerns about data privacy and protecting sensitive business information. Mandating a direct connection to a government system introduces an intrusive layer of oversight that may disrupt internal business operations and administrative processes. They emphasized that manufacturers are open to providing data and reports when needed but prefer that these data requests be specific, timely, and limited to targeted information rather than imposing ongoing integration and monitoring.

Committee Observations

The Committee agreed with the stakeholder and amended that the data to be provided relate to their financials, such as sales, and exclude data relating to trade secrets, private information, and, in the case of a subsidiary, information relating to the parent companies.

3.2.9 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

Clause 2

28. Clause 2 of the Bill should be amended to clarify the definition of a small business as it differs from the Value Added Tax Act 2015 and the Companies Act definition. It is important to align the definition to avoid any confusion.

Committee Observation

The Committee noted the stakeholders' concerns and further amended the clause to include small businesses or small-scale farmers whose annual turnover does not exceed KES five (5) million.

Clause 3

29. ICPAK proposes that Clause 3 (1) and (2) be amended to extend the amnesty period. This is aimed at increasing the period under which the proposed amnesty covers to ensure more taxpayers take advantage of the provision and earn the government more revenue in taxes.

Committee Observation
The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 5

30. Amend Clause 5 to clearly define what 'reasonable cause' means in the proposed amendment to Section 42A of the Tax Procedures Act. This will eliminate any ambiguity and ensure strict compliance with tax withholding. It should provide clear guidelines for taxpayers on what constitutes an acceptable reason for failing to withhold or remit tax.

Committee Observation
The Committee noted that the word "reasonable cause" is a common legal term and it seeks to provide case by case application of the provision which is important in enforcement.

3.2.10 KENYA ASSOCIATION OF MANUFACTURERS

New Proposal on VAT Tax Refund Fund

31. Introduce new provisions for the establishment of a fund to cater for all refunds as follows:

Introduce a new Section 24 A to the Public Finance Management Act to read as follows:

Establishment of a Tax Refund Fund

i. There is established a fund to be known as the Tax Refund Fund which shall be administered by the Cabinet Secretary of matters relating to Finance.

ii. There shall be paid into the Fund 1% of the monthly tax-

   a. *Collected from any tax law including, the Tax Procedures Act, Income Tax Act, Excise Duty Act, Value Added Tax, and Miscellaneous Fees and Levies Act; and*

   b. *for the purpose of payment of refunds arising from excess and/or erroneous payment of tax under any tax law including, the Tax Procedures Act, Income Tax Act, Excise Duty Act, Value Added Tax, and Miscellaneous Fees and Levies Act.*

iii. Payment from the Fund shall be made without undue delay to cover all amounts owed by the Government payable as refunds.

iv. Not later than three months after the end of each financial year, the National Treasury shall prepare and submit to the Auditor-General financial statements for that year in respect of the Tax Refund Fund.

v. The Cabinet Secretary may by notice in the Gazette provide for the mode of administration of the Fund established under sub-section (1).

Or

32. Enact a dedicated Tax Refund Bill 2019 to provide for refunds of Tax under powers given to the Cabinet Secretary of the National Treasury under Section 24 (3) of The Public Finance Management.

33. The above proposal is premised on the fact that the Government has acknowledged the challenges of refunds and has, over the years, addressed backlogs of refunds owed to manufacturers. However, the issue continues to recur and there is a need for a sustainable solution. Thus this proposal seeks to address this issue sustainably by having the amounts of refund paid promptly by the Kenya Revenue Authority.

Committee Observation

The Committee noted the proposal from the stakeholders and recommended this matter in future legislation.

Clause 7

34. Delete clause 7 because existing data and information-sharing models with KRA adequately support revenue collection and administration. Additional measures should be subjected to a regulatory impact assessment before implementation. Further, KRA will have excessive power to access data outside companies of interest in Kenya. This is illegal and against local and international laws.

Committee Observation

The Committee agreed with the stakeholder and amended that the data to be provided relate to their financials, such as sales, and exclude data relating to trade secrets, private information, and, in the case of a subsidiary, information relating to the parent companies.

New Proposal

35. **Amend Section 23A (4) of the Tax Procedures Act to add businesses with an annual turnover of less than Kshs. 5 million or transactions below Kshs. 20,000 as part of the exclusions from the eTIMS requirement.** This is because The eTIMS requirement is proving to be very difficult to implement, especially for farmers, many of whom do not maintain any records for their supplies and do not even have PIN numbers or bank accounts since their payments are generally made through MPESA if not in cash. Additionally, it is not practicable to require businesses to obtain ETIMS for certain transactions, e.g., Matatu and Boda-Boda expenses. These expenses would generally be of a lower value and should therefore also be exempted from the ETIMS requirement has affected transactions between manufacturers and farmers thus resulting in reducing linkages between the two sectors. While they commended efforts by the Government to develop solutions around this requirement such as reverse invoicing, the adoption of the same has proven to be challenging due to apathy among farmers and system disruptions.

Committee Observation
The Committee noted the stakeholder's concern and further amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed KES five (5) million.

3.2.11 PKF KENYA

Clause 3

36. PKF Kenya supported the proposal. However, they proposed the period covered under the amnesty should be extended to 31st December 2023 or, better still, up to 31st December 2024. This will allow taxpayers to catch up and fulfil their tax obligations for the years before 31 December 2022 without incurring interest and penalties by motivating them to settle the principal tax.

Committee Observation
The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December 2023 to 30th June 2025.

Clause 5

37. Delete the proposal to repeal the VAT Withholding exemption on the value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from 01 July 2022 is at least three billion. This may lead to perpetual VAT Withholding credits for these suppliers and manufacturers and

exacerbate the VAT refund backlog faced by the Government. Although the Bill proposes to allow for excess input VAT credits to be directly offset against any tax liability, it creates an additional administrative burden for taxpayers who may not be interested in the lengthy tax refund process and procedures in seeking approvals from KRA to offset against other tax obligations.

Committee Observations

The Committee agreed with the stakeholder that the proposal be dropped as the exemption in the Clause has been in place since 2022 and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions.

3.2.12 MACADAMIA NUTS ASSOCIATION

Clause 2

38. Delete the Clause that provides the details of an electronic invoice to be generated by a person as required under section 23A (1) of the Tax Procedures Act. The ongoing pilot of reverse invoicing faces challenges, particularly with unapproved farmer invoices, as buyers must account for VAT on behalf of suppliers, increasing administrative burdens for the Association. Without a centralized sourcing system, buyers struggle to determine when reverse invoicing applies. To address this, formalizing farmers into cooperatives is recommended, ensuring transparency, aligning with KRA's tax visibility goals, and supporting government revenue efforts. Meanwhile, the suspension of the ban on Nut-in-Shell exports has significantly impacted Kenya's macadamia nut processing industry, threatening its global standing as the fourth-largest producer, with 13% of the market share.

Committee Observations

The Committee noted the stakeholder's concern and further amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed KES five (5) million.

3.2.13 ANJARWALLA & KHANNA LLP

Clause 3

39. Amend the base period for the tax amnesty extended from 31st December 2022 to 31st December 2023. This will allow more taxpayers to benefit from the tax amnesty in light of financial and economic challenges being experienced by several businesses. Additionally, this has the potential impact of taxpayers repaying outstanding principal taxes and voluntarily disclosing tax liabilities, which could unlock additional revenue for the Government.

Committee Observation

The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December 2023 to 30th June 2025.

Clause 5 (a)

40. Retain the proviso with an option of only deleting the words '*and registered manufacturers whose value of an investment in the preceding three years from the 1st July 2022 is at least three billion*.' This is because the proposed amendment extending withholding VAT to zero-rated supplies means these businesses will consequently be in perpetual tax credit positions, thus creating cash flow problems. The proposal would also inflate the number of taxpayer VAT refund applications, creating an additional administrative burden to the KRA.

Committee Observation

The Committee noted that the exemption in the Clause has been in place since 2022, and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions.

Clause 5 (b)

41. ALN recommended that if enacted, the usual provisions relating to the collection and recovery of penalties under the TPA should be applied for equality and consistency.

Committee Observation

The Committee observed the proposal. However, the Committee holds that the penalties are necessary to ensure compliance on this provision since the withheld amounts belong to the Government and in cases whereby concerns have been raised about the timelines and whether the amount due should be paid on accrual or on cash basis which the Committee has dealt with.

3.2.14 CLIFF DEKKER HOFMEYR LLP

Clause 2

42. Clause 2 (b) proposes that where a supply is received from a small business or a small-scale farmer, whose turnover does not exceed Kenya Shillings One Million (KES 1,000,000), then the purchaser must issue a tax invoice to ascertain tax liability. They recommended that the proposal be amended to specify the kind of purchasers who have the mandatory duty to issue tax invoices while purchasing from such small businesses or small-scale traders. It would be inordinate to expect individuals or other small-scale businesses to issue such invoices. Additionally, they recommended that the document be changed from a tax invoice to a delivery note or an acknowledgment of supply with details of the suppliers with an appropriate field being incorporated on e-Tims to capture the transactions.

Committee Observation

The Committee noted the stakeholder's concern and further amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed KES five (5) million.

Clause 3

43. Amend Clauses 3 (3)(a) and 3 (3)(b)(i) and (4) to ensure amnesty applies to fines, interests, and penalties accrued before 31st December 2023 and not 31st December 2022 and to extend the amnesty period to 31st December 2025 and not 30th June 2025 respectively.
44. They noted that taxpayers will have a limited period of 6 months to take advantage of the amnesty extension if left as June 2025. Additionally, previous Bills provided at least one year. The extension of the amnesty to 2025 will allow the government to collect more taxes and carry on with the success of the amnesty program which netted billions for the tax collector.

Committee Observation

The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 5

45. Delete Clause 5 (b) that seeks to introduce a 10% penalty for taxpayers who fail to withhold and remit withholding Value Added Tax. Section 83A of the Tax Procedures Act currently provides for a late payment penalty of 5% of the tax due, applicable where a taxpayer does not pay tax on its due date. Accordingly, having a different penalty for withholding VAT is unnecessary.

Committee Observation

The Committee observed that there is a clear distinction between late payment penalty provided for in Section 83A of the TPA and the proposed penalty for failure to withhold or remit withheld tax in this Clause.

Clause 6

46. Amend Clause 6 (1)(b)(ii) to increase the period given for applying for a refund to the Commissioner for other taxes apart from income tax to 3 years instead of the 6 months as outlined in the Bill. If enacted, the proposal will effectively limit the timelines for refunds or offset applications in relation to other taxes such as excise duty to 6 months. In our view, this will adversely affect taxpayers such as manufacturers of alcoholic beverages, whose excise duty rebates run into the hundreds of millions. The proposed 6-month limitation would not only result in the unjustified loss of these overpaid taxes but also lead to cash flow constraints and the loss of money that could otherwise be deployed to income-generating uses.

Committee Observation

The Committee noted the stakeholder's comments. However, the Committee recommended extending the period from six months to one year.

Clause 7

47. CDH proposed deletion of the clause in its entirety. They proposed that the penalty be capped at a maximum of KES 100,000. This proposal would continue a worrisome trend of the KRA's continued invasion of the affairs of enterprises and thus interfere with their privacy. It is the view of CDH that the objectives of this proposed amendment as drafted are not clear since it seems to require taxpayers to integrate electronic tax systems (such as iTax and eTIMS) with the Data Management and Reporting System (DMRS) for purposes of submitting electronic documents and transactional data to the KRA which is already done on a real-time basis.

Committee Observation

The Committee agreed with the stakeholders and amended the penalty for non-compliance to KSh. 100,000. Further, the Committee also amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies

Clause 8

48. Amend Clause 8(b) to ensure the period for lodging an objection and appeal be extended by a specific number of days. Amending the clause to remove weekends and holidays, imposes a huge task on the taxpayer, the tax collector and courts to count the days and consider holidays which is more onerous than just counting days from the date an action is required to the statutory timeline.

Committee Observation

The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

3.2.15 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

Clause 7

49. Delete clause 7 since it seeks to integrate iTax to core business systems. This poses regulatory overreach and data security risks for the business entities involved.

Committee Observation

The Committee agreed with the stakeholder and amended that the data to be provided relate to their financials, such as sales, and exclude data relating to trade secrets, private information, and, in the case of a subsidiary, information relating to the parent companies.

New Proposals

i. **Credit adjustment vouchers (CAVs)-Credit for input tax against output tax**

50. Introduce provisions to allow for refund of excess tax arising from zero-rated supplies adjusted/ assessed using the formula before 17th June 2019 under Legal Notice No. 86 published in the Kenya Gazette Supplement No. 84 dated 17th June 2019.

Committee Observation

The Committee noted the stakeholder's views and recommended that KRA and the National Treasury finds a way to resolve the matter.

ii. **Address refund for excess input credit after VAT refunds are paid under the VAT Formula**

51. Introduce legal amendments with provisions recognizing refunds arising after the VAT Formula is applied; or
52. Separate the capital expenditure items captured on the KRA itax system which causes an increase in credit refunds; or
53. Exemption of VAT on Machinery to ensure it is not captured under the ITax system as capital expenditure input items.
54. They proposed amending Part 1, Section A to the First Schedule of the VAT Act 2013 by inserting: **"The supply of denatured ethanol of tariff number 2207.20.00."**

Justification

55. Amendments to the VAT Act 2013 through the Statute Law (Miscellaneous Amendments) Act, 2024 subjected the supply of denatured ethanol of tariff number 2207.20.00 to 16% VAT effective 25th April 2024. This has been very detrimental to the growth of the Ethanol Cooking Fuel industry by rendering it unaffordable to households. This in turn makes the Government's objective of achieving universal access to clean cooking by 2028 unachievable.

Committee Observation

The Committee noted the proposal and recommended that the National Treasury to fast-track the development of a fund as guided by the National Tax Policy.

3.2.16 ALPHA TAX AND BUSINESS ADVISORY SERVICES

Clause 3

56. Amend Clause 3 to read as follows:

(4) ' Despite subsection (2), where a person has paid part of the principal tax due as on the 31st December 2023, and has been granted amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June, 2025, shall attract interest and penalties for which no amnesty shall be granted.'

Justification

Expanding the amnesty period to include 2023 encourages more taxpayers to regularize their status, thereby broadening the tax base and increasing government revenue. Including 2023 fosters trust in the tax system by incentivizing taxpayers to settle their liabilities, which helps reduce future non-compliance. Additionally, waivers for 2023 liabilities ease financial burdens on businesses, promoting investment and growth during a time of ongoing economic challenges.

Committee Observation
The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 7

57. Delete the proposal on integration of the electronic tax system to a data management and reporting system. Integrating iTax with private sector core business systems, such as SAP, significantly increases the risk of data breaches, leaving sensitive financial and personal information vulnerable to cyber-attacks. If core systems are hosted outside Kenya and contain centralized data from multinational branches, the Kenya Revenue Authority (KRA) could inadvertently gain unauthorized access to extraneous data, violating both local and international laws. Furthermore, there has been no regulatory impact assessment to justify such integration. Current data-sharing models between businesses and the KRA are sufficient for supporting revenue collection and administration, and any additional measures should undergo thorough regulatory impact assessments before being implemented.

Committee Observation
The Committee agreed with the stakeholder and amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

3.2.17 KELVIN SAITOTI NAIKUNI (INDIVIDUALS)

Clause 5

58. Delete Clause 5 (b) that seeks to increase the penalty for taxpayers who fail to withhold and/or remit withholding Value Added Tax to 10%

Committee Observation
The Committee observed the proposal. However, the Committee holds that the penalties are necessary to ensure compliance on this provision since the withheld amounts belong to the Government and in cases whereby concerns have been raised about the timelines and whether the amount due should be paid on accrual or on cash basis which the Committee has delt with.

3.2.18 WECARE YOUTH ORGANIZATION

Clause 3(b)

59. They supported the proposal and recommended for further augmentation to include a window for abandonment because of the ongoing migration of ledger balances from tax legacy to iTax.

Committee Observation
The Committee noted the concern by the stakeholder and proposed that the augmentation be done administratively.

3.2.19 WESTMINSTER CONSULTING

Clause 3

60. The stakeholders supported the extension of the tax amnesty as it will encourage taxpayers to complain and honor their tax obligations and, at the same time, significantly fund the Exchequer. They recognized the positive impact that the expired amnesty had on both the taxpayers and the Government. The taxman saw a significant number of voluntary declarations made as taxpayers were eager to clean up their tax ledgers. Westminister Consulting further recommend for a consideration for the tax period to be extended from 31st December 2022 to 31st December 2023 considering the turmoil and chaos experienced in the country in the recent past that had a negative impact on the country and a move such as this will be highly encouraging for taxpayers to align their tax affairs.

Clause 4

61. The stakeholder supported the provision of the Commissioner to allow for tax relief because of doubt or recovery of tax as it provides for situations where it is impossible to recover an unpaid tax because of undue difficulty or expense in the recovery of unpaid tax.

Clause 5

62. Amend Clause 5 by clarifying the intention of the legal draftsman in respect of the zero-rated supplies since deleting the proviso would imply that withholding VAT agents will be required by law to withhold VAT at 2% on a zero-rate invoice which is technically not possible.

Committee Observation
The Committee noted that the exemption in the Clause has been in place since 2022, and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions.

Clause 7

63. The stakeholders supported the introduction of a Data Management and Reporting System as it would broaden the tax base through access to enhanced information. However, the stakeholder proposed maintaining strict adherence to all data protection requirements.

Clause 10

64. The stakeholder supported the introduction of the requirement for registration for a PIN for an employee working remotely outside Kenya for an employer in Kenya, excluding an employee outside Kenya working for the national carrier since such employees are primarily stationed outside the country due to the nature of their industry and not necessarily for additional gains that are not being subjected to tax already in Kenya.

New Proposed Amendments

Taxation of Digital Assets

65. Introduce a provision granting the Cabinet Secretary for the National Treasury and Economic Planning the authority to:

Develop and implement incentives for taxpayers and other stakeholders operating in emerging sectors such as digital assets, to encourage voluntary disclosure and compliance with tax obligations.

Promote collaboration with stakeholders by establishing mechanisms to gather information on taxable activities within the digital asset space (such as; cryptocurrency transactions) and reward informants or contributors with a commission capped at 2% of the additional revenue collected as a result of their input.

66. This would enhance revenue collection from emerging sectors, particularly digital assets, while incentivizing compliance and fostering innovation.

Committee Observation

The Committee lauds the idea. However, there are existing provisions in the various tax legislations.

Income Tax

67. The Income Tax Act is amended in section 133(6), by deleting the expression 31st December, 2023" and substituting therefor the expression "31st December, 2024."

Committee observation

The proposal was accepted by the Committee.

3.2.20 DELOITTE & TOUCHE LLP

Clause 2 (b)

68. Amend Clause 2 (b) by inserting the word "annual" in Section 3A to clarify the time since the proposal does not indicate whether the turnover is annual, monthly or based on any other criterion.

Committee Observation

The Committee agreed with the stakeholders that inserting the word "annual" would provide more clarity.

Clause 3

69. The stakeholder supported the extension of the tax amnesty as it will grant taxpayers additional time to re-evaluate their tax compliance status for periods up to 31st December 2022 to clear any outstanding principal taxes and to enjoy the complete waiver of the attendant penalties and interests.

Clause 5

70. Delete Clause 5 as well as Section 42A (4C). Section 83A provides for a late payment penalty of 5% of the tax due and payable, and having a different penalty for withholding VAT is superfluous. It creates an unnecessary dichotomy in the imposition of late payment penalties.

Committee Observation

The Committee noted the concerns of the stakeholders. However, the Committee said that imposing a 10% penalty of the amount in dispute will enable compliance with filing to be on the 5th day of the following month.

Clause 6

71. Amend Clause 6 by modifying the proposal to include the timelines for refund applications to be retained as they currently are, being 6 months for VAT and five years for other taxes.

Committee Observation

The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder. Additionally, the Committee amended the refund for overpaid tax period to be within twelve (12) months.

Clause 8

72. Amend Clause 8 by excluding Saturdays, Sundays and Public Holidays in the computation of the period for taxpayers to lodge objections and appeals as this will grant taxpayers additional time within which they can contest unfavorable decisions.

Committee Observation

The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

New Proposed Amendments

Section 47(13)

73. Amend Section 47 (13) to treat refund decisions as tax decisions rather than appealable ones. This would clear the ambiguity in the law introduced by Section 47 of the TPA and empower taxpayers to challenge refund decisions before the Tax Appeals Tribunals.

Committee Observation

The Committee noted that the current procedures for a refund, including the proposal for offsetting future liabilities, are sufficient and address the issues raised by the stakeholders.

Section 51 (11)

74. Amend Section 51 (11) to increase the timelines within which the Commissioner should respond to an objection to ninety days from the current sixty days to afford both the taxpayers and the Independent Review of Objections (IRO) sufficient opportunity to close out tax disputes at the objection level without the need for recourse to the judicial system.

Committee Observation

The Committee agreed with the stakeholders' concerns and amended the timelines within which the Commissioner should respond to an objection to ninety days from the current sixty days.

Section 89 (6) to (8)

75. Reinstate the provisions of Sections 89 (6) to 89 (8) to ensure that taxpayers deserving of waiver of penalties and interest, taking particular note of genuine cases, have legislative access to reprieve before the Commissioner and, ultimately, the Tax Appeal Tribunal or Courts. Additionally, it will help avert tax disputes for both taxpayers and the KRA.

Committee Observation

The Committee noted that there was the need to remove the discretion consideration for abandonment or remission of tax, waivers or penalties to provide equity and fairness in the treatment of taxpayers.

3.2.21 HHK CONSULTING

Clause 2 (b)

76. They proposed exemption for parties in the informal sectors where payment of withholding tax is final. This is because the measure will ease the administrative burden and is more likely to yield more positive results for compliance where the focus on eTIMS is only for critical taxpayers as opposed to numerous taxpayers with minimal contribution to the tax kitty.

Committee Observations

The Committee noted that the proposal is targeted at small-scale farmers to enable them sell their produce and therefore, the policy of having reverse invoice enhances the database of the KRA thereby enhancing compliance. In the event of complexities, the Commissioner can invoke Section 23(A) (5) of the TPA to exempt a person from the requirement of this clause.

Clause 5

77. Amend the proposal to read as follows:

"in the proviso to subsection (1) by deleting the words "in the preceding three years from the commencement of this Act is at least three billion" and substituting therefor the words "is at least two billion shillings on the 31st December, 2024."

Justification

This is premised on the fact that, deletion will be detrimental for manufacturers as it will restrict their cashflow in credits which they could otherwise invest further in the country contributing to the economy.

Committee Observation

The Committee noted that the exemption in the Clause has been in place since 2022 and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions

3.2.22 HAMUD ALWI (INDIVIDUAL)

Clause 3 (3 b) (4)

78. Amend to read as follows:

3 (a): the amnesty shall be on interest or penalties on the unpaid tax that have accrued up to the 31st of December 2023; (b) the amnesty shall only be granted once if the person —

(i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th of June 2025.

(ii) does not incur a further tax debt; and

(iii) signs a commitment letter for the settlement of all outstanding taxes that the person may owe.

(4):Despite subsection (2), any amount of principal tax as at 31st December, 2023 that remains unpaid on the 30th June, 2025, shall attract interest and penalties for which no amnesty shall be granted under this section.

79. This proposal seeks to widen the scope till 31st December 2023 to give taxpayers a relief based on the tough economic conditions experienced in the nation so they can revamp their business engagements and remain compliant with existing tax laws.

Committee Observations

The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

3.2.23 SKM AFRICA LLP

Clause 3

80. The stakeholder supported the clause stating that the proposal is a positive amendment since it extends more time for taxpayers to clear outstanding principal taxes to enjoy full waiver of penalties and interest. However, the extension of tax amnesty only relates to principal taxes due but not been paid before 31st December 2022.They proposed extending the period covered under the programme to be on unpaid principal taxes before 31 December 2023 which will encourage taxpayers to take advantage of the extension to resolve outstanding tax balances and disputes as well as the government to collect more tax revenue. This will unlock more revenue for government within the financial year ending 30 June 2025.

Committee Observation
The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 5 (a)

81. Delete the proposed amendment because it will affect businesses that supply zero rated supplies to suffer WHVAT of 2% on their invoices resulting to perpetual tax credits and cash flow problems. The proposal will subsequently increase the applications for VAT refund creating an additional administrative burden to the government.

Committee Observation
The Committee noted that the exemption in the Clause has been in place since 2022 and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions.

3.2.24 ANDERSEN

Clause 3

82. Amend the Clause to have the amnesty period extended to paid principal tax due before the 31st December 2023. This will increase overall tax compliance, as it offers relief from financial penalties, which can be a significant deterrent for taxpayers who might otherwise delay payment.

Committee Observation
The Committee agreed with the stakeholder and noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 5

83. Amend the Clause to substitute 'by the fifth working day' with ' by the twentieth day of the next month. This allows businesses more flexibility in aligning their tax filings with their cash flow cycles.

Committee Observation

The Committee noted the concern of the stakeholder. However, the Committee noted that imposing a 10% penalty of the amount in dispute will enable compliance with filing to be the 5th day of the following month.

3.2.25 KBL & UDV KENYA

Clause 7

84. Delete the proposal under data management and reporting system since the proposal is a regulatory overreach, poses data security risks and might result in incompatibility issues.

Committee observation

The Committee agreed with the stakeholder and amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

3.2.26 AMERICAN CHAMBER OF COMMERCE (AMCHAM)

Clause 2

85. Amend Clause 2 of the Bill to provide for the following provisions:
    i) This subsection shall come into force on 1 January 2026
    ii) The Cabinet Secretary shall, by notice in the Gazette, make regulations for better carrying out of the provisions of this subsection

86. According to AMCHAM, the proposed amendment does not clarify whether the proposed turnover threshold of Kshs 1million monthly, annual or based on the metrics. Further, it does not also clarify how purchasers supposed to identify suppliers whose annual turnover is below prescribed threshold. It is their opinion that given the less-than-ideal uptake of eTIMS since its rollout, introduction of reverse invoicing at this point would be premature.

Committee Observation

The Committee noted the stakeholder's concern. However, the Committee amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed five million.

Clause 3

87. Amend Clause 3(2) to extend the amnesty to cover the period ending 31st December 2023. AMCHAM is of the opinion that the extension will be a show of

goodwill from the government and will encourage taxpayers to settle their taxes owed.

Committee Observation
The Committee agreed with the stakeholder to extend the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 6

88. Amend Clause 6 (1) of the Bill to read as follows:

1(b) for a refund of the overpaid tax under any law within five years from the date on which the tax was overpaid.

89. This is to ensure fairness and avoid undue hardship on taxpayers, consider retaining the five-year timeframe for claiming refunds for all taxes. Provide taxpayers with sufficient time to identify and recover overpayments.

Committee Observation
The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder. Additionally, the Committee amended the refund for the overpaid tax period to be within twelve months.

Clause 7

90. Amend clause 7 of the bill, which seeks to empower the Commissioner to require taxpayers to integrate their electronic tax system with KRA's iTax. AMCHAM believes the notice period should exceed one year, given the unique specific and technical capabilities of each taxpayer approved by the Commissioner. Further, their proposal recommends that the failure to comply with the provisions under the clause should be proportionate to the severity and frequency of the violations and the Commissioner shall provide adequate support and guidance to affected taxpayers during the integration process.

Committee Observation
The Committee noted the stakeholders' proposals. However, the timelines in place are necessary to ensure the compliance of all taxpayers.

New Proposal

91. AMCHAM proposes that Section 35 (5) of the Income Tax Act and Section 42A (4B) of the Tax Procedures Act be amended to allow for withholding tax to be remitted on or before the 20th day of the following month in which the deduction was made. This will ensure taxpayers are not subjected to onerous compliance burden and that Kenya aligns with the region's best practice where other jurisdictions submit withholding tax once a month.

Committee Observation
The Committee agreed with the stakeholder because remittance of the tax within five days places a strenuous compliance burden on the taxpayer and risks eroding the government's efforts to collect additional revenue and adversely affect the efficiency, productivity and ease of doing business.

3.2.27 EAST AFRICA VENTURE CAPITAL ASSOCIATION (EAVCA)

Clause 2 (b)

92. Delete the proposal that seeks a small business or a small-scale farmer whose turnover does not exceed 1KES 1 million for the purchaser to issue a tax invoice to ascertain tax liability. It is the opinion of EAVCA that KRA is already implementing eTIMs and small-scale traders can issue invoices either on web-based platforms or by dialing *222# on their mobile phones.

    Committee Observation
    The Committee noted that the proposal. However, the Committee amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed five million.

Clause 3

93. Amend clause 3 to extend the tax amnesty to June 2025 but still retain the period covered to be up to 31 December 2022. It is the opinion of EAVCA that taxpayers will have a limited period of 6 months to take advantage of the amnesty extension.

    Committee Observation
    The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 7

94. Delete clause 7 which proposes to empower the Commissioner to issue written notices to taxpayers requiring them to integrate electronic tax systems with the DMRS for purposes of submitting electronic documents and transactional data to KRA to businesses whose turnover exceeds KES 5 million. The clause further proposes a penalty not exceeding of KES 500,000 for every month. It is their opinion that government is already implementing eTIMs and which party will bear the cost of integrating with KRAs systems.

    Committee Observation
    The Committee noted the stakeholder's proposal. However, the Committee amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

3.2.28 MARTIN NJUGUNA MUGO

Clause 2 (a) - 2A

95. Mr. Mugo proposed deletion of the clause in its entirety stating that if this happens, big businesses may be discouraged from dealing with small businesses because of

the additional compliance requirement when they buy goods and services from small businesses.

Committee observations

The Committee noted the proposal. However, the Committee amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed KES five (5) million.

Clause 7

96. Mr. Mugo proposed deletion of the clause in its entirety stating that the proposal appears to run contrary to constitutional protections of taxpayers and international norms on data privacy.

Committee observations

The Committee noted the proposal. However, the Committee amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

3.2.29 BRITISH CHAMBER OF COMMERCE KENYA

Clause 7

97. **Delete clause in its entirety** since there is no justification, through a regulatory impact assessment, why iTax should be integrated with core business systems such as SAP. Existing models of sharing data and information with KRA adequately support revenue collection and administration. Additional measures should be subjected to a regulatory impact assessment before implementation. Moreover, some challenges associated with this proposal includes but not limited to; Data security risks, Implementation cost, and operational disruptions among others.

Committee Observation

The Committee noted the proposal. However, the Committee amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

3.2.30 PRICEWATERHOUSECOOPERS LIMITED (PWC)

Clause 2 (b)

98. Amend the proposal for further clarity on the frequency of threshold imposed and for clarification on the turnover frequency because the clause is unclear whether the turnover thresholds are monthly or are on an annual basis. Further, they expressed the need to align the eTIMS threshold to the VAT registration threshold because the

proposal may also inadvertently discourage some businesses that may not want additional compliance requirements to work with small businesses.

Committee Observation
The Committee noted the proposal. However, the Committee amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed KES five (5) million.

Clause 3

99. PWC proposed an amendment to extend the amnesty period to taxes due and not paid beyond December 2022 to December 2023 because the proposed extension of the amnesty only relates to principal taxes due but not paid before 31st December 2022. It is highly likely that a further extension of amnesty of taxes due and not paid beyond December 2022 will lead to additional taxpayers taking advantage of the extension to resolve outstanding tax balances and disputes, including through Alternative Dispute Resolution mechanism.

Committee Observation
The Committee agreed with the stakeholder and amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 7

100. PWC proposed an amendment of this proposal to align with constitutional provisions and data privacy laws. Further clarity is also needed to aid implementation, such as a definition of 'transactional data', compliance timelines, and reasonable penalties. The proposed clause appears to run contrary to constitutional protections of taxpayers and international norms on data privacy. This will lead legal and reconciliation disputes and offshore options. Additionally, the proposal will increase compliance requirements for businesses with a turnover exceeding five million shillings, as they will need to integrate their electronic tax systems to submit detailed transactional data. This will necessitate investment in technology and potentially new processes to ensure compliance. This requires time, and the proposed penalties are punitive as well.

Committee Observation
The Committee observed the proposal. However, the Committee amended that the data to be provided relate to their financials such as sales and exclude data relating to trade secrets, private information and in the case of a subsidiary, information relating to the parent companies.

Clause 8

101. PCW proposed that this amendment of the due dates for submission and any payments to KRA to exclude weekends and public holidays in the computation of

time be introduced to the Tax Appeals Tribunal Act. This will ensure the Tax Appeals Tribunals timelines are harmonized in all the tax statutes, as well as with other court filing rules and The Interpretation and General Provisions Act Cap 2 of the laws of Kenya.

Committee Observation
The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

New Proposals on the TPA

Section 35(5)

102. Amend the section to reintroduce a previous provision where taxpayers were granted one month to make WHT payments. They also recommend having one single day in the month for all the tax payments. Remitting WHT within five days of payments places a strenuous compliance burden on the taxpayer and risks eroding the government's efforts to collect additional revenue. This is in comparison with regional practices.

Committee Observation
The Committee agreed with the stakeholders because remittance of the tax within five days places a strenuous compliance burden on the taxpayer and risks eroding the government's efforts to collect additional revenue and adversely affecting the efficiency, productivity, and ease of doing business.

Section 31(8)

103. The section provides the requirements for an amended assessment. The Stakeholder recommended addition of a subsection that expressly requires the Commissioner to provide a statement of reasons for the additional tax in an amended assessment. This will ensure taxpayers understand the basis for changes to their tax assessments, which enables them to respond effectively to the changes made. Clear explanations could lead to fewer disputes, as taxpayers are more likely to accept well-justified assessments. Helps in resolving tax issues promptly, reducing the administrative burden on both taxpayers and the KRA. Ensures compliance with Article 47 of the Constitution of Kenya which requires administrative decisions to contain written reasons.

Committee Observation
The Committee agreed with the stakeholder for the Commissioner to provide a statement of reasons for additional tax in an amended assessment.

New Section

104. PWC made proposals relating to the adducing of additional documentation at the Tax Appeals Tribunal. They recommended the adding a section in the TPA that expressly allows the taxpayer to add additional documentation at the Tax Appeals

Tribunal and obligates the Tribunal to allow its introduction and consider it at the first instance. They stated that the Tribunal is a court of first instance, and it is the first opportunity for the taxpayer's case to be heard by a neutral party. This will ensure that justice is served to the taxpayer. Additionally, the taxpayer may not have been informed by the commissioner of what is the 'relevant information' by the time the Appeal is lodged. The taxpayer, having received clarity on what the relevant information is, must be allowed to produce it either because they now have access to the information or it was requested during the review of the notice of objection by the Independent Review of Objections team.

Committee Observation
The Committee noted with the stakeholder...

Section 84(6)

105. PWC recommended the deletion of this section, which attaches tax shortfall penalties on private rulings. The removal will provide consistency with Section 63 of the TPA. Removing penalties associated with private rulings may encourage taxpayers to seek private rulings without fear of penalties, promoting voluntary compliance and transparency in tax matters. In addition, taxpayers should have clear and predictable tax obligations. Penalizing taxpayers for positions that contradict private rulings, which are not binding on them, undermines legal certainty and fairness.

Committee Observation
The Committee noted there was no specific proposal by the stakeholder.

3.2.31 LAW SOCIETY OF KENYA (LSK)

Clause 3

106. LSK welcomes this proposal. However, recommends that the period for which the tax amnesty applies be extended from 31st December 2022 to 31st December 2023.

Committee Observation
The Committee agreed with the stakeholder and amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 4

107. LSK welcomes this proposal, noting that the introduction of tax abandonment provisions is a welcome move for struggling taxpayers, as the provisions provide a mechanism for taxpayers who are genuinely unable to pay their taxes to be relieved of the tax burden.

Clause 7

108. The LSK proposed that the clause be deleted, noting that the KRA already has the authority to audit taxpayers and greater visibility of transactional data through eTIMS; further integration would be an additional compliance burden. Importantly, it is unclear why the KRA would want to integrate, and there is no requirement for the KRA to explain its reasons to the taxpayer for seeking such integration

Committee Observation

The Committee agreed with the stakeholder and amended that the data to be provided relate to their financials, such as sales, and exclude data relating to trade secrets, private information, and, in the case of a subsidiary, information relating to the parent companies.

Clause 8

109. The LSK recommended that the number of days be increased instead of exclusion of days to ensure consistency and avoid potential disputes.

Committee Observation

The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

3.2.32 TAXWISE

Clause 2(b)

110. Delete clause since the responsibility to issue a tax invoice should be placed on the supplier, not the purchaser. Placing the mandate on the purchaser imposes additional administrative burdens on the Purchaser who has to confirm that the small business or farmer falls within the One million threshold.

Committee Observation

The Committee noted the stakeholder's concern. However, the Committee amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed KES five (5) million.

Clause 3

111. Amend the clause to extend the duration allowable for penalty waiver from 'before 31st December 2022 to before 31st December 2024'. This will offer the taxpayers with a more realistic timeframe to manage their financial obligations.

Committee Observation

The Committee noted that extending the amnesty period is likely to result in potential revenue losses and thus amended the amnesty period to cover from 31st December, 2023 to 30th June, 2025.

Clause 5(a)

112. Delete clause since this proposal will expose the businesses that supply zero rated supplies to 2% Withholding VAT as such will place such businesses in a perpetual tax refund position which will in turn inflate the number of VAT refund applications that will create administrative burdens on KRA and taxpayers. No party stands to benefit from this proposal.

Committee Observation
The Committee noted that the exemption in the Clause has been in place since 2022 and it was not intended to be perpetual. Further, there is the current Government policy on reducing exemptions.

Clause 6

113. Amend the clause to expressly define the term 'other tax' or explicitly stating the specific taxes. This is because this proposal as is currently conflicts with provisions of the Excise Duty Act which requires claims for refund of excise duty to be made within 12 months from the date of payment of the duty.

Committee Observation
The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder. Additionally, the Committee amended the refund for overpaid tax period to be within twelve (12) months.

Clause 8(b)

114. Amend the clause to include application for all tax-related actions such as return filing and tax payment instead of narrowing its scope to time computation for objections and appeals only. This proposal will benefit from a broader application allowing for its application for all tax- related actions such as return filing and tax payment instead of narrowing its scope to time computation for objections and appeals only.

Committee Observation

The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

3.2.33 RSM (EASTERN AFRICA) CONSULTING LTD

Clause 2(b)

115. Reject the proposal because the criteria of determining a small-scale supplier would be difficult for the customers to ascertain, in order to reverse invoice these suppliers. There is also a risk that fraudulent reverse invoices may be raised by certain people, in order to inflate their expenses, and reduce tax liabilities if this provision is passed,

thereby opening the doors to the missing trader problem that the eTIMS provision sought to cure.

Committee Observation

The Committee noted the stakeholder's concern. However, the Committee amended the clause to include small business or a small-scale farmer whose annual turnover does not exceed five million.

New Proposal

116. The Tax Procedures Act, 2015 to be amended by inserting the following section immediately after Section 47B:

47C. Refund of excess value added tax credits

(1) The Commissioner shall determine an application under Section 17(5)(f) of the Value Added Tax Act within ninety days from the date the application is lodged.

(2) Where the Commissioner fails to determine an application under subsection (1) within ninety days, the same shall be deemed approved in its entirety.

(3) Where the Commissioner ascertains that excess value added tax is refundable under subsection (1), the Commissioner shall apply the overpayment in the following order-

(a) in payment of any other tax owing by the taxpayer under the specific tax law;

(b) in payment of a future tax or tax owing by the taxpayer under any other tax law;

(c) in payment of a future tax or any tax due under Section 22 of the Value Added Tax Act;

(d) in payment of any tax due under Section 5(1)(c) and/or Section 36(3) of the Excise Duty Act;

(e) any remainder shall be refunded to the taxpayer.

Committee Observation

The Committee noted the proposal from the stakeholder and recommended this matter in future legislation.

3.2.34 KELDINE

New Proposal

117. They include:

i. Amend by introduction of a de minimis rule be applied that businesses with a turnover of less than KES 1 million per annum be exempted from the requirement to onboard on eTIMS

ii. Amend by harmonization of the due dates of statutory deductions that is NSSF, SHIF, PAYE, NITA, VAT and WHT to be on or before the 20th of the following month.

Committee Observation

The Committee noted the proposal of the stakeholder. However, it is key that the timelines in regards to the statutory deductions remain within the jurisdiction of their respective legislations.

3.2.35 HON. GATHONI WAMUCHOMBA

118. Hon. Wamuchomba through a written submission noted that the tax amendments proposed will create severe consequences. They include;
119. Increasing KRA's powers under TPA to intrude on taxpayer's privacy and the constrain taxpayer's right to privacy through integrating taxpayer's systems and Mobile Phones/IMEI into KRA systems. She emphasized that this would convert KRA into a defacto domestic spy agency making the Authority lose sight of its primary mission as a Revenue agency.

Clause 2

120. She noted that the proposal to introduce reverse invoicing under Section 23 A will inadvertently discourage some businesses that may not want additional compliance requirements to work with small businesses.

Committee Observation
The Committee noted that the proposal is targeted at small-scale farmers to enable them sell their produce and therefore, the policy of having reverse invoice enhances the database of the KRA thereby enhancing compliance. In the event of complexities, the Commissioner can invoke Section 23(A) (5) of the TPA to exempt a person from the requirement of this clause.

Section 59A

Clause 7

121. She noted that allowing the Commissioner to require businesses with turnover exceeding KShs. 5 million to integrate electronic tax systems will necessitate investment in technology and potentially new processes to ensure compliance, an investment most Kenyans don't have. She highlighted that the amendments run contrary to constitutional protections of taxpayers and international norms on data privacy.

Committee Observation
The Committee noted the proposal and amended that the data to be provided relate to their financials, such as sales, and exclude data relating to trade secrets, private information, and, in the case of a subsidiary, information relating to the parent companies.

3.2.36 ERNEST & ASSOCIATES LLP

Clause 2

122. Amend clause 2 of this by inserting the words 'act' with the words 'or a tax law' and further replace subsection (2) with:

Without prejudice to subsection 3, at the time of contracting, or when making a supply, or when a supply is received from a person who is a small business or trader or a small-scale farmer, and whose annual turnover does not exceed Kshs 1 million,

(a) the person making the supplies shall sign a declaration that their annual turnover does not exceed Kshs 1 million

(b) the person making the supplies shall authorize their customer, in the declaration form, to issue an electronic tax invoice on their behalf, through the system established under subsection (1);

(c) the person making the supplies shall provide their customer with a copy of their PIN or national identity card

(c) A customer of such person making the supplies, shall issue invoice on behalf of the person making the supplies, through the system established under subsection (1);

(d) the commissioner shall prescribe the declaration form for purposes of this subsection

Provided, a person required to account for tax under section 12C and 6A of the income tax act shall not be required to issue invoice on behalf of the person making the supplies, through the system.

Committee Observation
The Committee noted the stakeholder's views and recommended consideration of this matter in future legislation.

Clause 3

123. Delete 2022 and replace with 2023 in the Bill.

Committee Observation

The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder.

Clause 4

124. Amend subsection 2 and add proviso to read:

Provided that

(i) "the cabinet secretary's approval shall only be required where the total accumulated unpaid taxes, for the taxpayer, in that year, under all tax laws, considered under subsection (1) exceeds Kshs five million"

(ii) the commissioner shall report to the cabinet secretary, all amounts he has refrained from assessing or recovering tax under this subsection.

(6) as required under article 210, the commissioner shall maintain a public record of each waiver together with the reason for the waiver; and each waiver, and the reason for it, shall be reported to the Auditor-General.

Committee Observation

The Committee noted the stakeholders view and recommended consideration of this matter in future legislations.

Clause 5

125. Amend the clause under paragraph (a) through deletion and replace it as follows:

(a) in the proviso in subsection (1) by deleting the words "and registered manufacturers whose value of investment in the preceding three years from 1 July 2022 is at least three billion"

Committee observation

The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder.

Clause 6

126. Amend and replace this clause with the following:

In subsection 47(1) insert the words "in return required under a tax law or" after the words "the Commissioner"

In 47(1)(a) delete the words "input"

Committee observation

The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder. Additionally, the Committee amended the refund for overpaid tax period to be within twelve (12) months.

Clause 7

127. Amend and replace this clause with the following:

In paragraph (a) in the proposed section 1C delete the word "million" and replace it with "billion"

In paragraph (b) in the proposed section 5 after the words "under subsection 1A" insert the words "within the timeframe provided in subsection 1B or any during any further time extensions provided"

Committee observation
The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder.

Clause 8

128. Amend this clause with the following:

(1) Delete "excluding Saturdays, Sundays and public holidays" "Saturdays, Sundays and public holidays shall not count in the counting of time"

Add new subsection (3) to read:

(3) Notwithstanding the requirements under any tax law, if there has been a failure or disruption any of the systems established by the Commissioner under sections 23A. (1) or 59A. (1), or 75. (1), where the duration of the failure or disruption of any of the system subsisted for a period exceeding 12 hours:

(a) the commissioner shall cause a notice to be published notifying the public of the failure or disruption any of the system and a further notice of restoration of the system

(b) despite the provision of a tax law, in computing the period for the lodgment of a return or other document under a tax law, or an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54, or the payment or repayment of a tax under a tax law the computation shall not include period between the notices of the failure or disruption any of the system and the further notice of restoration of the system.

Committee observation
The Committee noted that the matter of how to calculate time is provided for in Section 77 and therefore, there is no risk of the Commissioner making arbitrary decisions on time.

Clause 9

129. Amend section 83(1) to include the words "or fails to submit a return" after the words "submits a tax return after the due date.

Committee observation
The Committee observed that the proposal in the Bill is sufficient and caters for the concerns by the Stakeholder.

New Proposal

Section 42 (14)

130. Amend by deletion subsection 14 and insert a new section 42D which shall read:

The Commissioner shall not issue a notice under sections 39, 40, 41 or 42, unless—

(a) the taxpayer has defaulted in paying an instalment under section 33(2).

(b) the Commissioner has raised an assessment, and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;

(c) the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;

(d) the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or

(e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

Committee observation
The Committee noted the stakeholders view and recommended consideration of this matter in future legislations.

Clause 47B

131. Amend by introducing mechanisms where the Commissioner shall transfer verified tax refunds from a taxpayer to another tax payer.

Committee Observation
The Committee noted the stakeholders view and recommended consideration of this matter in future legislations.

3.2.37 ERNST AND YOUNG

Clause 3

132. EY proposes extending the period to 31st December 2023 as the window period and the application and Settlement deadline to 31st December 2025. They noted that

the extension would benefit both the taxpayers in providing ample time to comply and the KRA in terms of collection targets.

Committee Observations

The Committee agreed with the stakeholders and thus amended the amnesty period to cover from 31st December 2023 to 30th June 2025.

New Proposal

Section 42A of the Tax Procedure Act

133. Amend the due date for the remittance of withholding tax and withholding VAT to the 20th day of the following month since the current provision of 5 day is very cumbersome and increases the compliance cost to consumers.

Committee Observations

The Committee agreed with the stakeholders because remittance of the tax within five days places a strenuous compliance burden on the taxpayer and risks eroding the government's efforts to collect additional revenue and adversely affecting the efficiency, productivity, and ease of doing business.

Section 89(6)(7) of the Tax Procedure Act

134. Amend by introducing the power of the commissioner under this section to waive erroneous penalties and interest. This in the sense that non-compliance with tax obligations arises due to a myriad of reasons beyond both the taxpayer and KRA control of iTax system error.

Committee Observations

The Committee noted that there was the need to remove the discretion in consideration for abandonment or remission of tax, waivers or penalties to provide equity and fairness in the treatment of taxpayers.

CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATION

135. The Committee having considered the Tax Procedures (Amendment) Bill, 2024 (National Assembly Bills No. 46 of 2024) recommends that the House approves the Bill with amendments as proposed in the schedule.

SIGNED..DATE 2/12/2024

HON. CPA KURIA KIMANI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 02 DEC 2024
DAY. MONDAY
TABLED BY: HON. (CPA) FRANCIS KURIA, MP (CHAIRPERSON)
CLERK-AT THE-TABLE: MERCY GITUMO

CHAPTER FIVE

5.0 SCHEDULE OF PROPOSED AMENDMENTS

136. The Committee proposed the following amendments to be considered by the House in the Committee stage:

REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118 (1)(B) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—

(1) THE TAX PROCEDURES (AMENDMENT) (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2024); AND

(2) THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024)

INVITATION TO SUBMIT MEMORANDA AND NOTIFICATION OF PUBLIC HEARINGS

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Tax Procedures (Amendment) (No. 2) Bill (National Assembly Bill No. 46 of 2024)** and the **Tax Laws (Amendment) Bill, 2024 (National Assembly Bill No. 47 of 2024)** were Read a First Time on Wednesday, 13th November, 2024, and thereafter committed to the **Departmental Committee on Finance and National Planning** for consideration and reporting to the House.

IT IS NOTIFIED that—

(1) The **Tax Procedures (Amendment) (No. 2) Bill (National Assembly Bill No. 46 of 2024)** is a Bill sponsored by the Leader of the Majority Party which seeks to amend the provisions of the Tax Procedures Act (Cap. 469B)—
- (a) to provide for the information to be contained in an electronic tax invoice;
- (b) to extend the tax amnesty programme from 30th June 2024 to 30th June 2025;
- (c) to introduce a new relief that accounts for doubt or difficulty in recovery of tax (tax abandonment);
- (d) to prescribe a 10% penalty for persons who fail to withhold and remit tax;
- (e) to require a taxpayer to apply for an offset or refund of overpaid tax within a prescribed period;
- (f) to integrate the electronic tax system into the data management and reporting system for the purposes of submission of electronic documents;
- (g) to exclude Saturdays, Sundays, and public holidays from the computation of the period for lodgement of objections and appeals in tax disputes;
- (h) to prescribe a penalty of twenty thousand shillings per month for an Export Processing Zone enterprise that fails to submit required returns; and
- (i) to require for registration of an employee working remotely outside Kenya for an employer in Kenya, excluding an employee outside Kenya working for the national carrier;

(2) The **Tax Laws (Amendment) Bill, 2024 (National Assembly Bill No. 47 of 2024)** is a Bill sponsored by the Leader of the Majority Party which seeks to amend the provisions of four (4) Acts of Parliament as follows—

(a) The Bill seeks to amend the **Income Tax Act (Cap. 470)** to—
- (i) review the definitions of the terms "royalty", "donation", "public entity", "registered individual retirement fund", "registered pension fund", and "registered provident fund";
- (ii) enhance the limit of the amount of benefits given by an employer to employees not subject to tax. This proposal is intended to enhance the benefits of meals, non-cash and gratuity and similar payments that are exempt from tax;
- (iii) in section 10 on taxation of income derived from services offered by the owner or operator of a digital marketplace or platform who makes or facilitates payment in respect of digital content monetisation, goods, property or services shall be deemed to be income derived or accrued in Kenya;
- (iv) replace the Digital Service Tax with a Significant Economic Presence at an effective rate of 6%. This will align the taxation of digital services with international best practice;
- (v) provide for the Minimum Top-Up Tax to align the taxation of multinationals with the global practice that prevents tax base erosion. Under the provision, a multinational company with a consolidated annual turnover of 100 billion shillings shall pay a minimum effective tax of 15%;
- (vi) provide for the deduction of the Affordable Housing Levy; Contributions to post-retirement medical funds, registered pension or provident funds, registered individual retirement funds or public pension schemes from taxable income. This will address the issue of double taxation;
- (vii) exempt from income tax pension payments including gratuity and other payments from a registered pension fund, registered provident fund, public pension scheme or National Social Security Fund;
- (viii) delete the exemption from income tax of the income or principal sum of a registered family trust;
- (ix) delete the exemption from income tax for capital gains relating to the transfer of title of immovable property to a family trust;
- (x) introduce taxation of interest income from infrastructure bonds at the rate of 5%;
- (xi) exempt non-resident contractors, sub-contractors, consultants or employees involved in the implementation of a project financed through a full grant from income tax;
- (xii) propose new rates for withholding tax for payments for the supply of goods to a public entity at 0.5% for a resident and 5% for a non-resident;
- (xiii) propose new rates for withholding tax for payments in the digital marketplace at 5% for a resident and 20% for a non-resident;
- (xiv) propose new rates for withholding tax for infrastructure bonds at 5% for both residents and non-residents; and
- (xv) propose new rates for withholding tax for significant economic presence tax at 30% of the deemed taxable profit of a non-resident
- (xvi) reduce the rate on withholding tax on supplies to public entities by residents to zero-point five percent;
- (xvii) enhance investment incentives by setting the Capital Gains Tax (CGT) rate at fifteen percent (15%), which would be a final tax; and
- (xviii) reduce the CGT rate from 15% to 5% for the transfer of an investment of at least three billion shillings; and
- (xix) delete the penalty for failure by an EPZ enterprise to submit a return;

(b) The Bill seeks to amend the **Value Added Tax Act (Cap. 476)** to—
- (i) clarify that the time of supply of exported goods is the time when the certificate of export and such other equivalent export documents have been issued by Customs. This is to ensure that only valid exports benefit from VAT refunds;
- (ii) delete the threshold for applying VAT apportionment formula which allows tax payers who make 90% of a zero-rated supply to claim 100% input VAT. This seeks to reduce revenue leakage;
- (iii) expand the application of the East African Community Customs Management Act to exported goods for VAT purposes;
- (iv) to change the supply or importation of various goods from exempt supplies to 16% standard rate VAT: Aeroplanes and other Aircrafts; spacecraft and suborbital and spacecraft launch vehicles; helicopters; IP super soft fluff pulp; imported aircraft spare parts; specially designed locally assembled motor vehicles for transportation of tourists; taxable goods supplied to persons contracted by the Government and exempted from value added tax; and capital goods for the promotion of investment in the manufacturing sector exceeding two billion shillings;
- (v) to exempt various goods from VAT, including goods for use in the manufacture of baby diapers, sanitary towels and tampons; imported inputs and raw materials supplied to manufacturers of agricultural pest control products; agricultural pest control products; certain fertilizers; and inputs or raw materials for manufacturing fertilizer;
- (vi) to change the supply or importation of various services from exempt supplies to 16% standard rate VAT, including betting, gaming and lotteries services; hiring, leasing and chartering of aircrafts (apart from helicopters); air ticketing services by travel agents; entry fees into national parks and national reserves; and services of tour operators;
- (vii) to include the transfer of a business as a going concern as an exempt supply; and
- (viii) to remove various items from zero rated supply, including all inputs and raw materials supplied to manufacturers of agricultural pest control products; agricultural pest control products; certain fertilizers; and inputs or raw materials for manufacturing fertilizer;

(c) The Bill seeks to amend the **Excise Duty Act (Cap. 472)** to—
- (i) grant remission of excise duty for spirits made from sorghum, millet or cassava or any other agricultural products (excluding barley), grown in Kenya to support local farmers;
- (ii) enlarge the due date for payment of excise duty on alcoholic beverages from 24 hours to the 5th day of the following month;
- (iii) to exclude locally assembled electric vehicles from excise duty to support local assembling therefore creating jobs;
- (iv) decrease the rate of excise duty for Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% from Shs. 142.44 per litre to shs. 22.50 per centilitre of pure alcohol;
- (v) reduce the rate of excise duty for telephone and internet data services from 15% to 12%;
- (vi) impose excise duty on excisable services offered in Kenya by a non-resident through a digital platform. The duty is payable by the non-resident person offering the service;
- (vii) increase the rate of excise duty for imported sugar (apart sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery) from Shs. 5 per kg to Shs. 7.50 per kg;
- (viii) increase the rate of excise duty for cigarettes with filters from Shs. 4,067.03 per mille to Shs. 4,100 per mille;
- (ix) increase the rate of excise duty for cigarettes without filters from Shs. 2,926.41 per mille to Shs. 4,100 per mille;
- (x) increase the rate of excise duty for products containing nicotine or nicotine substitutes from Shs. 1,594.50 per kg to 2,000 per kg;
- (xi) increase the rate of excise duty for liquid nicotine for electronic cigarettes from Shs. 70 per millilitre to Shs. 100 per millilitre;
- (xii) to impose excise duty on imported electric transformers and certain parts at 25%, imported printing ink (excluding ink originating from East African Community Partner States that meet the East African Community Rules of Origin) at 15%, and coal at 5% of its value or shs. 27,000 per metric tone;
- (xiii) decrease the rate of excise duty for wines and other alcoholic beverages obtained by fermentation of fruits from Shs. 243.43 per litre to Shs. 22.50 per centiliter of pure alcohol;
- (xiv) increase the rate of excise duty on betting, gaming, prize competitions and lotteries (except charitable lotteries) from 12.5% to 15%; and
- (xv) impose a 15% excise duty on fees charged on the Internet and social media;

(d) The Bill seeks to amend the **Miscellaneous Fees and Levies Act (Cap. 469C)** to increase the rate of the Railway Development Levy from 1.5% to 2.5%.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the **Departmental Committee on Finance and National Planning**.

Written Memoranda should indicate the name of the person or organization submitting it, their contact details and the Bill that the submission relates to and should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to financecommitteena@parliament.go.ke to be received **on or before Thursday, 28th November 2024** at **5.00 p.m.**

A Public Views Template providing guidance on the form of submission to be received is available on http://parliament.go.ke.

IT IS FURTHER NOTIFIED that the Departmental Committee on Finance and National Planning shall hold Public hearings on the Bills from **Monday 25th November, 2024** to **Thursday 28th November, 2024** at the **Kenyatta International Convention Centre (KICC)** from **10.00am to 5.00pm**.

The Committee shall discuss the contents of the Bills and their implications during the hearings. Members of the public are invited to attend and share their views on the Bills during the sessions.

Copies of the Bills are available at the National Assembly Table Office or http://www.parliament.go.ke/the-national-assembly/house-business/bills.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
14th November 2024

"For the Welfare of Society and the just Government of the People"

REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118 (1)(B) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—

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(2) THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024)

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- (c) to introduce a new relief that accounts for doubt or difficulty in recovery of tax (tax abandonment);
- (d) to prescribe a 10% penalty for persons who fail to withhold and remit tax;
- (e) to require a taxpayer to apply for an offset or refund of overpaid tax within a prescribed period;
- (f) to integrate the electronic tax system into the data management and reporting system for the purposes of submission of electronic documents;
- (g) to exclude Saturdays, Sundays, and public holidays from the computation of the period for lodgement of objections and appeals in tax disputes;
- (h) to prescribe a penalty of twenty thousand shillings per month for an Export Processing Zone enterprise that fails to submit required returns; and
- (i) to require for registration of an employee working remotely outside Kenya for an employer in Kenya, excluding an employee outside Kenya working for the national carrier;

(2) The **Tax Laws (Amendment) Bill, 2024 (National Assembly Bill No. 47 of 2024)** is a Bill sponsored by the Leader of the Majority Party which seeks to amend the provisions of four (4) Acts of Parliament as follows—

(a) The Bill seeks to amend the **Income Tax Act (Cap. 470)** to—

- (i) review the definitions of the terms "royalty", "donation", "public entity", "registered individual retirement fund", "registered pension fund", and "registered provident fund";
- (ii) enhance the limit of the amount of benefits given by an employer to employees not subject to tax. This proposal is intended to enhance the benefits of meals, non-cash and gratuity and similar payments that are exempt from tax;
- (iii) in section 10 on taxation of income derived from services offered by the owner or operator of a digital marketplace or platform who makes or facilitates payment in respect of digital content monetisation, goods, property or services shall be deemed to be income derived or accrued in Kenya;
- (iv) replace the Digital Service Tax with a Significant Economic Presence at an effective rate of 6%. This will align the taxation of digital services with international best practice;
- (v) provide for the Minimum Top-Up Tax to align the taxation of multinationals with the global practice that prevents tax base erosion. Under the provision, a multinational company with a consolidated annual turnover of 100 billion shillings shall pay a minimum effective tax of 15%;
- (vi) provide for the deduction of the Affordable Housing Levy; Contributions to post-retirement medical funds, registered pension or provident funds, registered individual retirement funds or public pension schemes from taxable income. This will address the issue of double taxation;
- (vii) exempt from income tax pension payments including gratuity and other payments from a registered pension fund, registered provident fund, public pension scheme or National Social Security Fund;
- (viii) delete the exemption from income tax of the income or principal sum of a registered family trust;
- (ix) delete the exemption from income tax for capital gains relating to the transfer of title of immovable property to a family trust;
- (x) introduce taxation of interest income from infrastructure bonds at the rate of 5%;
- (xi) exempt non-resident contractors, sub-contractors, consultants or employees involved in the implementation of a project financed through a full grant from income tax;
- (xii) propose new rates for withholding tax for payments for the supply of goods to a public entity at 0.5% for a resident and 5% for a non-resident;
- (xiii) propose new rates for withholding tax for payments in the digital marketplace at 5% for a resident and 20% for a non-resident;
- (xiv) propose new rates for withholding tax for infrastructure bonds at 5% for both residents and non-residents; and
- (xv) propose new rates for withholding tax for significant economic presence tax at 30% of the deemed taxable profit of a non-resident
- (xvi) reduce the rate on withholding tax on supplies to public entities by residents to zero-point five percent;
- (xvii) enhance investment incentives by setting the Capital Gains Tax (CGT) rate at fifteen percent (15%), which would be a final tax; and
- (xviii) reduce the CGT rate from 15% to 5% for the transfer of an investment of at least three billion shillings; and
- (xix) delete the penalty for failure by an EPZ enterprise to submit a return;

(b) The Bill seeks to amend the **Value Added Tax Act (Cap. 476)** to—

- (i) clarify that the time of supply of exported goods is the time when the certificate of export and such other equivalent export documents have been issued by Customs. This is to ensure that only valid exports benefit from VAT refunds;
- (ii) delete the threshold for applying VAT apportionment formula which allows tax payers who make 90% of a zero-rated supply to claim 100% input VAT. This seeks to reduce revenue leakage;
- (iii) expand the application of the East African Community Customs Management Act to exported goods for VAT purposes;
- (iv) to change the supply or importation of various goods from exempt supplies to 16% standard rate VAT: Aeroplanes and other Aircrafts; spacecraft and suborbital and spacecraft launch vehicles; helicopters; IP super soft fluff pulp; imported aircraft spare parts; specially designed locally assembled motor vehicles for transportation of tourists; taxable goods supplied to persons contracted by the Government and exempted from value added tax; and capital goods for the promotion of investment in the manufacturing sector exceeding two billion shillings;
- (v) to exempt various goods from VAT, including goods for use in the manufacture of baby diapers, sanitary towels and tampons; imported inputs and raw materials supplied to manufacturers of agricultural pest control products; agricultural pest control products; certain fertilizers; and inputs or raw materials for manufacturing fertilizer;
- (vi) to change the supply or importation of various services from exempt supplies to 16% standard rate VAT, including betting, gaming and lotteries services; hiring, leasing and chartering of aircrafts (apart from helicopters); air ticketing services by travel agents; entry fees into national parks and national reserves; and services of tour operators;
- (vii) to include the transfer of a business as a going concern as an exempt supply; and
- (viii) to remove various items from zero rated supply, including all inputs and raw materials supplied to manufacturers of agricultural pest control products; agricultural pest control products; certain fertilizers; and inputs or raw materials for manufacturing fertilizer;

(c) The Bill seeks to amend the **Excise Duty Act (Cap. 472)** to—

- (i) grant remission of excise duty for spirits made from sorghum, millet or cassava or any other agricultural products (excluding barley), grown in Kenya to support local farmers;
- (ii) enlarge the due date for payment of excise duty on alcoholic beverages from 24 hours to the 5th day of the following month;
- (iii) to exclude locally assembled electric vehicles from excise duty to support local assembling therefore creating jobs;
- (iv) decrease the rate of excise duty for Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% from Shs. 142.44 per litre to shs. 22.50 per centilitre of pure alcohol;
- (v) ..duce the rate of excise duty for telephone and internet data services from 15% to 12%;
- (vi) impose excise duty on excisable services offered in Kenya by a non-resident through a digital platform. The duty is payable by the non-resident person offering the service;
- (vii) increase the rate of excise duty for imported sugar (apart sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery) from Shs. 5 per kg to Shs. 7.50 per kg;
- (viii) increase the rate of excise duty for cigarettes with filters from Shs. 4,067.03 per mille to Shs. 4,100 per mille;
- (ix) increase the rate of excise duty for cigarettes without filters from Shs. 2,926.41 per mille to Shs. 4,100 per mille;
- (x) increase the rate of excise duty for products containing nicotine or nicotine substitutes from Shs. 1,594.50 per kg to 2,000 per kg;
- (xi) increase the rate of excise duty for liquid nicotine for electronic cigarettes from Shs. 70 per millilitre to Shs. 100 per millilitre;
- (xii) to impose excise duty on imported electric transformers and certain parts at 25%, imported printing ink (excluding ink originating from East African Community Partner States that meet the East African Community Rules of Origin) at 15%, and coal at 5% of its value or shs. 27,000 per metric tone;
- (xiii) decrease the rate of excise duty for wines and other alcoholic beverages obtained by fermentation of fruits from Shs. 243.43 per litre to Shs. 22.50 per centiliter of pure alcohol;
- (xiv) increase the rate of excise duty on betting, gaming, prize competitions and lotteries (except charitable lotteries) from 12.5% to 15%; and
- (xv) impose a 15% excise duty on fees charged on the Internet and social media;

(d) The Bill seeks to amend the **Miscellaneous Fees and Levies Act (Cap. 469C)** to increase the rate of the Railway Development Levy from 1.5% to 2.5%.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the **Departmental Committee on Finance and National Planning**.

Written Memoranda should indicate the name of the person or organization submitting it, their contact details and the Bill that the submission relates to and should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to **financecommitteena@parliament.go.ke** to be received **on or before Thursday, 28th November 2024** at **5.00 p.m.**

A Public Views Template providing guidance on the form of submission to be received is available on **http://parliament.go.ke**.

IT IS FURTHER NOTIFIED that the Departmental Committee on Finance and National Planning shall hold Public hearings on the Bills from **Monday 25th November, 2024** to **Thursday 28th November, 2024** at the **Kenyatta International Convention Centre (KICC)** from **10.00am to 5.00pm**.

The Committee shall discuss the contents of the Bills and their implications during the hearings. Members of the public are invited to attend and share their views on the Bills during the sessions.

Copies of the Bills are available at the National Assembly Table Office or **http://www.parliament.go.ke/the-national-assembly/house-business/bills.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
14th November 2024

"For the Welfare of Society and the just Government of the People"

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE TAX PROCEDURES (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2024).

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Monday, 2nd December 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - **CHAIRPERSON**	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP – **VICE CHAIRPERSON**	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETTING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	