29 May 2025

Departmental Committee on Finance and National Planning,

1st Floor, Main Parliament Buildings,

P. O. Box 41842-00200

# Nairobi, Kenya

Attn: Hon. Kuria Kimani, CBS, MP

Dear Sirs,

**PROPOSALS TO THE FINANCE BILL 2025**

We refer to the above subject.

We are pleased to submit our Memorandum highlighting our various proposals to the Finance Bill, 2025 (the **Bill**).

We make these submissions to propose measures which in our view will result in a more sustainable tax regime for the sector in Kenya.

Our proposals entail the following:

1. Replacing the Income Tax Act provision on the 20% WHT on winnings with a 5% WHT on withdrawals (i.e., the gross payout made which is the stake plus the winnings) remitted to punters / players on a daily basis; and
2. Replacing the Excise Duty Act provision on the 15% Excise Duty on stakes with 5% Excise Duty on deposits (all sums deposited by a customer in their online wallet inclusive of the stake) made by punters / players on a daily basis.

Our proposal will lead to a predictable and sustainable tax regime which will create certainty for investors to plan accordingly in investing in the sector leading to increased revenue collection in the long run. It is a fact that investors have held back from making significant capital investment as a result of the constantly changing tax regime.

Further, not only does the betting and gaming sector experience the most dynamic tax environment, but it also is the most taxed sector in Kenya. Currently, the taxes applicable in the sector include:

1. Betting / gaming tax which is applicable at 15% on the Gross Gaming Revenue (**GGR**) pursuant to the Betting, Lotteries and Gaming Act, Chapter 131, Laws of Kenya (the **BLGA**).
2. Corporation income tax which is applicable at 30% on the business income of the betting and gaming operators.
3. Withholding Tax (**WHT**) which is applicable at 20% on the winnings which is withheld from customers and remitted to the KRA.
4. Excise Duty which is applicable at 15% on the stakes placed by customers (therefore reducing the value of the stake in a betting and gaming transaction).
5. Excise Duty which is applicable at 15% on the fees charged on advertisement of betting and gaming services.

In the region, Kenya is the only country that charges multiple taxes in the sector. Uganda, Tanzania and Rwanda only impose tax on the GGR and therefore operators in Kenya carry a heavy tax burden.

In view of the foregoing, we have set out our legislative proposals below and should be grateful for the Committee to consider them for inclusion in the resulting Act.

Yours sincerely,

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**FINANCE BILL, 2025 – PROPOSALS RELATED TO THE BETTING AND GAMING SECTOR**

| **Clause of the Bill** | **Issue** | **Recommendations** | **Justification** |
| --- | --- | --- | --- |
| 2. Section 2 of the Income Tax Act is amended –  a) In subsection (1)  5. Section 10 of the Income Tax Act is amended in subsection (1) (g),  16. By inserting Section 34 (1) (m) and 34 (2) (i) before Section 35.  17. Section 35 of the Income Tax Act is amended in sub section (1) (i) , (3) (h) and 5A  28.The Third Schedule to the Income Tax Act is amended in Head B by inserting – Paragraph 3(i) under (c)  by inserting – Paragraph 5(i) under (c) | **Applicability of WHT on Winnings**  Currently, WHT in the sector applies at the rate of 20% on winnings which has been defined and interpreted by the courts as the difference between the amount staked or waged by a customer, and the gross payout made by a betting or gaming operator. | We propose to replace the 20% WHT on winnings with a 5% WHT **on withdrawals** (i.e., the gross payout made which is the stake plus the winnings) remitted to punters / players on a daily basis. In our view, this will allow a transparent and fair compliance mechanism for the industry. Transparency means that the tax revenues are easy to verify and audit.  In this regard, we propose that the Income Tax Act, Chapter 470, Laws of Kenya is amended –  **In Part I – PRELIMINARY**  I. At Section 2 (1) by deleting the definition of  “winnings” and substituting therefor –  *“withdrawals” means the amount of money withdrawn by a customer from their betting or gaming wallet maintained by a person licensed under the Betting, Lotteries and Gaming Act”.*  **In Part II – IMPOSITION OF INCOME TAX**  At Section 10 (1) (g) by deleting the word “winnings”  and substituting therefor – “*withdrawals*”.  **In Part VI – RATES, DEDUCTIONS AND SET- OFF OF TAX AND DOUBLE TAXATION RELIEF** | Most withdrawals by customers are made through mobile money, which data is easily verifiable. Withdrawals through Mobile Network Operators (**MNOs**) is therefore an assured method of tax collection and provides much- needed visibility on the transactions.  Similar to the proposal to apply excise duty on deposits, the recommendation to apply WHT on withdrawals will streamline the taxation of the sector and result in the following:  **Growth in Tax Collections:** The focus on taxation on withdrawals as opposed to winnings will lead to a 50% growth in revenue collections, translating to **KES 6.5 billion** in additional revenue annually.  **Guaranteed Tax Collections:** The collection of tax revenue where the WHT is collected at source when the betting / gaming customer withdraws from their betting / gaming wallet to their MNO wallet is guaranteed as opposed to the current scenario where a tax event arises only upon the chance if they win.  **Tax Base Expansion:** will remove the porous need for self- reporting and assessment and broaden the tax base by bringing more operators into the tax net. This tax regime makes sure that there is no manipulation of the reported numbers. |
|  |  | **A - Rates of Tax**   1. At Section 34 (1) (m) by deleting the word “winnings” and substituting therefor – *“withdrawals”*. 2. At Section 34 (2) (i) by deleting the word “winnings” and substituting therefor – *“withdrawals”*.   **B – Deduction of Tax**   1. At Section 35 (1) (i) by deleting the word “winnings” and substituting therefor – *“withdrawals”.* 2. At Section 35 (3) (h) by deleting the word “winnings” and substituting therefor – *“withdrawals”*. 3. At Section 5A by deleting the word “winnings” and   substituting therefore – *“withdrawals”*.  **In the Third Schedule – RATES OF PERSONAL RELIEF AND TAX**  **Head B – Rates of Tax**   1. At paragraph 3 (i), by deleting the words “in respect of winnings, twenty percent” and substituting therefor the words “*in respect of withdrawals, five percent*”.   At paragraph 5 (i), by deleting the words “in respect of winnings, twenty percent” and substituting therefor the words “*in respect of withdrawals, five percent”*. | There will be **no need for external integrations** that are cumbersome and often not working properly including downtime.  **Daily collection of tax (that is easy):** encourages legal domestic economic activity by ensuring no delays in revenue collection.  **Anti-Money Laundering and Terrorism Financing:** Taxing betting and gaming transactions withdrawals guarantees transparency and allows for reporting of suspicious and unusual transactions that are the basis of illicit financial flows. This is particularly relevant for Kenya now that it has been grey listed by the FATF. |
| 42. By inserting Part II of the First Schedule to the Excise Duty Act | The rate of Excise Duty has consistently been on the increase since its introduction in the sector which is **not sustainable**.  Consistent increase of excise duty, which is borne by the customers, is likely to **dampen the demand** for betting and gaming on eligible persons and **deepen offshore and illegal gambling** that will generate no revenue for the Government since customers will be drawn to “black market” companies that are unregulated by the Betting Control and Licensing Board. | We propose that the current 15% Excise Duty on stakes is replaced with 5% Excise Duty **on deposits** (i.e., all sums deposited by a customer in their online wallet inclusive of the stake) made by punters / players on a daily basis.  In this regard, we recommend that the First Schedule to the Excise Duty Act, 2015 is amended –  **In Part II – EXCISABLE SERVICES**   1. At **paragraph 4A**, by deleting the words “fifteen percent” and substituting therefor the words “*five percent*” and by deleting the words “wagered or staked” and substituting therefor the words “*deposited into the customers betting wallet*”; 2. At **paragraph 4B**, by deleting the words “fifteen percent” and substituting therefor the words “*five percent*” and by deleting the words “wagered or staked” and substituting therefor the words “*deposited into the customers gaming wallet*”; 3. At **paragraph 4C**, by deleting the words “fifteen percent” and substituting therefor the words “*five percent*”;   At **paragraph 4D**, by deleting the words “fifteen percent” and substituting therefor words “*five percent*”. | In the last four (4) years, the excise duty regime in the betting and gaming sector has consistently been amended. From no excise duty to introduction of excise duty at 7.5% by the Finance Act, 2021, which was subsequently increased to 12.5% through the Finance Act, 2023 (against a proposal to increase the rate to 20%), and the Tax Laws Amendment Act, 2024, which increased the rate to 15%.  The effect of sudden and frequent increases in taxes will create an incentive for unscrupulous operators to game the system in an effort to **evade tax** and **illegal gambling** which will result in **unregulated activities** where minors cannot be protected. A move to the “black market” also means that customers cannot be protected against gambling addiction and fraudulent schemes. For this reason, we propose a different application of excise duty on the deposits as opposed to the wagers or stakes which is guaranteed to result in the following:  **Growth in Tax Collections:** The focus on taxation on withdrawals and deposits as opposed to winnings and stakes is likely to lead to a 50% growth in revenue collections, translating to **KES 6.5 billion** in additional revenue annually.  **Guaranteed Tax Collections:** The collection of tax revenue where the excise duty is collected at source when the customer deposits their funds to their betting or gaming wallet is guaranteed as opposed to the current scenario where a tax event arises only upon action by a customer in placing a stake. |
| 42. By inserting Part III of the First Schedule to the Excise Duty Act |  | **In Part III – INTERPRETATION OF SCHEDULE**   1. Deleting the definition “amount wagered or staked”. 2. Inserting the following new definition in proper alphabetical sequence:   *“amount deposited into the customers betting wallet” means the amount of money transferred by a customer into the customer wallet maintained by a licensed betting and gaming operator for betting and gaming purposes*. | **Tax Base Expansion:** Excise duty on deposits will remove the porous need for self-reporting and assessment and broaden the tax base by bringing more operators into the tax net. This tax regime makes sure that there is no manipulation of the reported numbers.  There will be **no need for external integrations** that are cumbersome and often not working properly including downtime.  **Daily collection of tax (that is easy):** This encourages legal domestic economic activity by ensuring no delays in revenue collection.  **Anti-Money Laundering and Terrorism Financing:** Taxing betting and gaming transactions on deposits guarantees transparency and allows for reporting of suspicious and unusual transactions that are the basis of illicit financial flows. This is particularly relevant for Kenya now that it has been grey listed by the Financial Action Task Force (**FATF**). |