



AMCHAM
KENYA

THE FINANCE BILL, 2025 SUBMISSION

#	ISSUE OF CONCERN	CONCERN/IMPACT	RECOMMENDATION
1.	The Income Tax Act		
	<p>The Finance Bill, 2025 (“the Bill”), under Clause 2(a)(iii) proposes to amend the definition of term “royalty” under the Income Tax Act (ITA) to include “<i>the distribution of software where regular payments are made for the use of software through the distributor</i>”.</p>	<p>The Bill proposes to widen the scope of what constitutes royalty to include regular payments made by Kenyan persons to local distributors for the use of software. This proposal is likely to have several adverse consequences, as outlined below:</p> <p>1. Significant cash flow challenges for local distributors</p> <p>This proposed change would classify as a royalty (and therefore subject to withholding tax) any regular payments made by Kenyan resident persons or Kenyan permanent establishments of non-resident persons to local software distributors, where such payments are made for the use of software. The phrase “use of software” could be interpreted broadly, and the result is that virtually all payments made to the local distributors could be deemed to be made for the use of software and would be subject to the withholding tax rate of 5% that is applicable on royalty payments.</p> <p>In practice, the profit margin earned by local software distributors typically ranges between 3% and 10%. Consequently, the withholding tax deducted and remitted to the KRA could absorb the entire revenue earned by these distributors. This</p>	<p>Given the potential for significant cash flow difficulties for local distributors and the departure from internationally accepted definition of royalty, it is recommended that this proposal be deleted.</p> <p>Retaining the proposal would not only hinder the ability of local distributors to operate effectively but would also place Kenya at odds with established international tax principles.</p>

		<p>would place local distributors in a position where they face significant cash flow constraints, making it difficult for them to continue distributing software in the local market. Furthermore, these distributors would consistently find themselves in a tax refund position, as the withholding tax paid would regularly exceed their actual income tax liability.</p> <p>2. Contradiction with international best practice</p> <p>Pursuant to the Organization for Economic Co-operation and Development (OECD) Model Tax Convention, a payment constitutes a royalty only if it is made for the <u>right to use the copyright</u> in the program. Examples of right to use the software in the program include the right to modify the software, reproduce the software or publicly display the program.</p> <p>Despite this guidance, the Bill proposes to deem as royalty any payments made for the “use” of software to a local distributor.</p> <p>The implication of this proposal is that payments for the ordinary use of software, which do not constitute royalty payments in other leading jurisdictions, would comprise royalty payments in Kenya and subject to withholding tax. This approach is inconsistent with international best practice and would misalign Kenya’s tax regime with those of other leading jurisdictions.</p>	
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	<p>Clause 6 (b) – deletion of the threshold for the applicability of significant economic presence tax (SEPT)</p> <p>The Bill seeks to adjust the scope of SEPT by deleting the provision that exempts from SEPT the income earned by non-resident persons with an annual turnover of less than KES 5,000,000 (approx. USD 38,684.72).</p>	<p>The impact of the proposal is that all non-resident digital service providers earning income from the provision of digital services in Kenya would be required to account for SEPT on their income. This is <u>not a welcome</u> proposal for the following reasons:</p> <p>1. Negative impact on the rights of consumers</p> <p>The minimum threshold of KES 5,000,000 was introduced following concerns that small scale non-resident entities that provide digital services in Kenya would cease operating in Kenya if they were compelled to register and account for SEPT. This was based on the fact such entities would view the compliance requirements as being onerous when compared to the revenue earned from the Kenyan market. The impact of the withdrawal of such small-scale entities from the Kenyan market is that the rights of Kenyan consumers would be negatively impacted as Kenyan consumers would have fewer digital service providers to choose from.</p> <p>2. The proposal contradicts practices in other jurisdictions</p> <p>Furthermore, the introduction of the minimum threshold followed the practice in other jurisdictions that had introduced SEPT, such as Nigeria.</p> <p>In Nigeria, the minimum threshold for the applicability of SEPT is NGN 25,000,000 (approx. USD 15,782). Nigeria’s threshold recognises that some entities earn minimal revenue from their Nigerian operations and would make a commercial</p>	<p>This proposal should be deleted in its entirety and the threshold of KES 5,000,000 retained.</p>
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		decision to withdraw operations as the cost of compliance would not make economic sense.	
	<p>Clause 7 - Payment of minimum top up tax</p> <p>The Bill proposes to amend Section 12G of the ITA to provide that minimum top-up tax shall be payable by the end of the fourth month following the close of the relevant year of income.</p>	<p>Minimum top-up tax applies to covered persons, being resident entities or permanent establishments in Kenya that form part of a multinational group with a consolidated annual turnover of at least EUR 750,000,000 in at least two (2) of the four (4) financial years immediately preceding the tested year (that is, the year under consideration). The tax is triggered when the combined effective tax rate falls below fifteen percent (15%).</p> <p>Some of the questions that have arisen since the introduction of minimum tax are:</p> <ul style="list-style-type: none"> (a) the manner in which a multinational group would compute its tax liability in Kenya; and (b) the due date for payment of such minimum top up tax. <p>The Bill proposes to address one of these concerns by providing that the due date for the payment of the minimum top up tax shall be at the end of the fourth month after the end of the year of income. Accordingly, this is a welcome proposal.</p> <p>However, to ensure that there is clarity on the manner of payment of minimum top up tax, the provision needs to be amended to allow the Cabinet Secretary responsible for matters relating to Finance to make regulations for the implementation of minimum top up tax.</p>	<p>Recommendation</p> <p>The Bill amends section 12G to introduce a subsection (6) providing as follows:</p> <p><i>“The Cabinet Secretary shall issue Regulations for the better implementation of this section.”</i></p>

	<p>Clause 8 (c) & (d) – Limitation of period to carry forward tax losses</p> <p>The Bill proposes the amendment of Section 15(4) and repeal Section 15(5) of the ITA which currently provides for the indefinite carry forward of tax losses.</p> <p>The Bill also proposes to delete the provision allowing the Cabinet Secretary for Treasury on the recommendation of the KRA to extend the period of deduction beyond ten (10) years where a person gives evidence of inability to extinguish the deficit within the specified period.</p> <p>The Bill also proposes to repeal the provision allowing a taxpayer to deduct any capital loss realized against any capital gains.</p>	<p>The proposed amendment of Section 15 (4) and repeal of Section 15 (5) has the impact of limiting the period within which tax losses may be utilised to five years. The proposal does not include an option to apply to the Commissioner for an extension of this period. In addition, this proposal will repeal the provision that allows businesses to fully claim their allowable expenses (including from prior years where the expenses exceeded the income) and only pay tax when they begin to generate income.</p> <p>This change proposal poses a significant risk to business, particularly those in capital intensive sectors. In particular, crucial sectors such as the telecommunications, infrastructure and other sectors typically require significant capital investments which in turn leads to tax losses arising from the capital allowances granted under the current provision as per the ITA.</p> <p>Where passed into law, this would remove business flexibility to manage tax losses, particularly those with long gestation periods or fluctuating profitability, without a transitional provision for losses incurred in prior years. This could unfairly impact taxpayers with accumulated losses, as the effective period for their utilization would be abruptly shortened.</p> <p>We detail the potential adverse implications of this provision below:</p>	<p>Amend Section 15(4) to read as follows:</p> <p>“Where in any year of income the ascertainment of total income of a person results in a deficit, the amount of that deficit shall be an allowable deduction in ascertaining the total income of that person for that year and the subsequent seven years of income, or such longer period as the Commissioner may allow upon application and provision of sufficient evidence.</p> <p>Provided that, tax losses incurred prior to the enactment of this provision shall be deemed to arise in the year of income preceding the enactment.”</p> <p>Reinstate Section 15(5) with modification:</p> <p>“The Commissioner may, upon application by a person and submission of evidence of inability to extinguish the deficit within the specified period, extend the deduction period for a further three years.”</p>
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		<p>1. Unfair tax burden on loss-making taxpayers</p> <p>If the provision is enacted as is, loss-making taxpayers would have a timeline of five (5) years to deduct their losses. The provision does not have a grandfathering provision allowing for tax losses incurred before the provision entered into force being carried forward until exhausted. Accordingly, taxpayers with significant tax losses could end up forfeiting such tax losses if they are not fully claimed within five (5) years from the coming into effect of the provision.</p> <p>As a result of the proposal, taxpayers that had incurred significant losses in prior years (for instance as a result of claim of investment deductions from capital investment) would face a situation where the law which had informed their investment has changed before they have the opportunity to fully claim their losses.</p> <p>Profitable businesses would be paying the same amount of tax as loss-making taxpayers due to the disallowing of prior year losses (after the lapse of five (5) years). This would impose an unfair tax burden due to the heavier burden on the loss-making taxpayer as was held by the Court of Appeal in the Minimum Tax Judgment (<i>Kenya Revenue Authority v Waweru & 3 others; Institute of Certified Public Accountants & 2 others (Interested Parties) (Civil Appeal E591 of 2021) [2022] KECA 1306 (KLR) (2 December 2022) (Judgment)</i>).</p>	
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		<p>incentivized to incur capital costs since they would not be able to exhaust the losses within five (5) years.</p> <p>It would be a significant barrier to entry into the capital-intensive sectors because new businesses would not enjoy the benefit of fully exhausting tax losses that existing industry players had enjoyed at the time of setting up.</p> <p>Conclusion and proposal</p> <p>Given the above, we propose that the limitation is expanded to seven years with an option to extend by a further three years. We further propose the introduction of a proviso ensuring that tax losses generated prior to this provision remain intact.</p>	
	<p>Clause 11 – due date for the filing of country-by-country report</p> <p>The Bill proposes to amend Section 18D of the ITA to provide that <i>“where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities to file a country-by-country report and notify the Commissioner by the</i></p>	<p>Per our understanding, the Bill proposes that where a multinational enterprise has more than one constituent entity that is resident in Kenya, it may designate such a constituent entity to file a country-by-country report and communicate such designation to the Commissioner by the <u>last day of the reporting financial year of the group</u>.</p> <p>The above notwithstanding, the wording of the proposal appears to indicate that such notification is tied to the group’s country-by-country filing obligations, in effect requiring that a country-by-country report be filed by the last day of the reporting financial year of the group, an impractical scenario as the audit processes would not be complete at that point in time.</p>	<p>The Bill should be amended to provide as follows:</p> <p><i>“where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities to file a country-by-country report notification with the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify”.</i></p>

	<i>last day of the reporting financial year of that group in such form as the Commissioner may specify”.</i>		
	<p>Clause 12 - Introduction of advance pricing agreements</p> <p>The Bill proposes to provide for advance transfer pricing agreements to enable taxpayers to agree with the KRA, in advance, the tax treatment of related party transactions.</p>	<p>This proposal is welcome since an advance pricing agreement would enable taxpayers to agree with the KRA in advance the transfer pricing methodology and arm’s length price to be applied in related party transactions that are subject to transfer pricing rules.</p> <p>Despite the proposal, the following issues arise:</p> <ol style="list-style-type: none"> 1. the procedures to be followed by a taxpayer seeking to enter into an advance pricing agreement; 2. whether an advance pricing agreement can be amended in the event of a significant change in the assumptions made at the time of entering into the agreement; <ul style="list-style-type: none"> ● the process of amendment of an advance pricing agreement; ● the process to be followed by a taxpayer in withdrawing an advance pricing agreement; and ● the timelines within which the parties must conclude an advance pricing agreement. 	<p>Clause 12 already empowers the Cabinet Secretary responsible for matters relating to Finance to make regulations.</p> <p>The regulations should expressly provide for:</p> <ul style="list-style-type: none"> ● the procedures to be followed by a taxpayer seeking to enter into an advance pricing agreement, that is, the form of the application to be made and the documents to be adduced; ● the timelines within which the KRA would be required to respond to an application by a taxpayer to enter into an advance pricing agreement; ● the process of amendment of an advance pricing agreement and the timelines within which the amendment would have to be undertaken; and ● the process to be followed by a taxpayer in withdrawing an advance pricing agreement.
	Clause 27 proposes to repeal of accelerated allowances of 100% and 150% as provided for under Paragraph 1A and 1B	<p>The Bill proposes to repeal Paragraphs 1A and 1B of the Second Schedule to the ITA that provides for accelerated investment allowances of 100% and 150%.</p>	<p>We propose retaining Paragraph 1A and 1B of the Second Schedule to the ITA as highlighted below:</p> <p><i>“(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred percent where -</i></p>

	<p>of the Second Schedule to the ITA</p> <p>Paragraphs 1A and 1B of the Second Schedule to the ITA provide:</p> <p><i>“(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred percent where –</i></p> <p><i>(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least one billion shillings:</i></p> <p><i>Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty percent, that rate shall continue to apply for the investment made</i></p>	<p>This will negatively impact all capital-intensive sectors as it will not be possible to recoup investment in the initial years. Thus, businesses will not benefit from improved cashflow allowing them to reinvest money back into the business.</p> <p>We therefore propose that the accelerated allowances be retained. We are of the view that retaining accelerated allowances will have a positive impact of investment inflows.</p> <p>With a specific focus on the telecommunications sector, retaining accelerated allowances will lower the cost of telecommunication towers, boosting investment and network coverage in rural and marginalized counties in the country. This supports Kenya's digital superhighway and creative economy goals under the Bottom Up Economic Transformation Agenda (BETA), aiming to enhance ICT penetration and position Kenya as a regional leader in internet connectivity and mobile phone usage.</p>	<p><i>(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least one billion shillings:</i></p> <p><i>Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty percent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings;</i></p> <p><i>(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or</i></p> <p><i>(c) the person has incurred investment in a special economic zone</i></p> <p><i>(1B) Paragraph (1A) shall apply to items listed under paragraphs 1(1)(a)(i) and (ii), and (1)(b)(i)”</i></p>
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	<p>on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings;</p> <p>(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or</p> <p>(c) the person has incurred investment in a special economic zone</p> <p>(1B) Paragraph (1A) shall apply to items listed under paragraphs 1(1)(a)(i) and (ii),</p>	
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	<i>and (1)(b)(i)”</i>		
	Income Tax Proposals Not in the Bill		
	Significant Economic Presence Tax regime	<p>The Bill seeks to further amend Section 12E of the ITA, yet no regulations have been issued to guide the governance and implementation of the SEPT regime.</p> <p>Section 12E (6) of the ITA mandates the Cabinet Secretary for the National Treasury to issue regulations for the effective implementation of the SEPT regime.</p> <p>Although the SEPT regime has been operational for approximately five months, the absence of implementing regulations has created compliance gaps. As such, non resident persons who are subject to the SEPT regime are currently operating in a legal vacuum, making it difficult for them to fully comply with the regime.</p> <p>In contrast, countries such as Nigeria that have implemented a SEPT regime have detailed provisions clarifying the nature of services that give rise to a significant economic presence and the mechanisms through which such presence is established.</p>	<p>We therefore recommend that the Cabinet Secretary issues SEPT regulations to govern the implementation of the SEPT regime. The regulations should clarify key issues including the following:</p> <ol style="list-style-type: none"> 1. The scope of services that when performed by a non-resident person, constitute services capable of creating a significant economic presence for purposes of SEPT; 2. The mechanisms and thresholds for establishing a significant economic presence in Kenya; 3. How the income which is subject to SEPT will be determined; and 4. If paragraph 12E(3)(d) of the ITA is retained, a clear definition of the term “turnover” should be provided, including the methodology for its calculation.
	Amendment to provide clarity on the revenue base against which withholding tax is applied in accordance with Section 10 (4) of the ITA	<p>Section 10 (4) of the ITA imposes WHT obligations on an owner or operator of a digital marketplace or platform, whether resident or non-resident, who either makes or facilitates payment in respect of services or property offered over the digital</p>	<p>We propose that an amendment is included in section 35 of the ITA clarifying that the WHT imposed is in respect of net payments from the payer to the payee.</p> <p>To achieve this, a proviso can be added immediately after</p>

		<p>marketplace or platform.</p> <p>However, the provision is silent on the revenue base against which WHT is imposed and in particular whether the WHT under this section 10(4) is applied on the net payment or gross payment from the non-resident or resident person to the payee resident in Kenya.</p> <p>Currently, withholding tax (WHT) is applied on the gross amounts collected from customers, which includes fees ultimately remitted to the platform provider. In the case of players in the ride hailing sector, this approach does not reflect the actual income earned by the driver-partners, as a significant portion is retained by the platform as service fees.</p> <p>We propose that WHT on payments made to driver-partners be levied on the net amount—that is, after deducting the platform’s commission and other service fees. This would align the WHT mechanism with the principle under Section 15 of the ITA and improve the working capital and cash flow position of individual service providers. Notably, this change would not result in a revenue loss to the government, as the total income (inclusive of the platform’s commissions) remains within the tax net.</p>	<p>section 35(3) and before section 35(3A) of the ITA with the following wording:</p> <p><i>“Provided that, in the case of tax withheld pursuant to section 10(4) of this Act, the withholding tax shall be applied on the net amount payable, after deduction of platform service fees and other such other fees and commissions.”</i></p>
	<p>Proposed amendment to Section 10 (4) of the ITA to limit the application of WHT to non-resident owners or operator of a digital</p>	<p>Section 10(4) of the ITA imposes a WHT obligation on an owner or operator of a digital marketplace or platform, whether resident or non-resident, who either makes or facilitates payment in respect of services or property offered over the digital</p>	<p>In this regard, we recommend that the WHT obligation under Section 10(4) be limited to non-resident platform owners. This would help reduce the compliance burden on resident platform owners who are already within the Kenyan tax net.</p>

	<p>marketplace or platform.</p>	<p>marketplace or platform.</p> <p>The imposition of this WHT on resident platform operators and owners imposes a high administrative burden on resident platform owners and operators.</p> <p>The withholding tax regime imposed under Section 10(4) of the ITA was intended to ensure that the KRA has visibility over payments made to resident persons by non residents, as such payments would ordinarily not be within the KRA's purview. However, Section 10(4) was drafted as a catch-all provision, which inadvertently captures both resident and non-resident platform owners and operators.</p> <p>Given that the KRA already has visibility over payments made by resident persons to other resident persons, since such payments are made against eTIMS-compliant invoices and the recipients are already subject to tax obligations in Kenya, there is no need to impose a WHT obligation on resident platform owners.</p> <p>Furthermore, it should be noted that the WHT obligation under Section 10(4) imposes an undue administrative burden on platform owners who are already remitting other taxes in Kenya.</p>	
	<p>Proposed amendment to Section 10(4) to exclude goods and moveable property</p>	<p>Contradiction to Parliament's Intentions: The National Assembly Departmental Committee on Finance and National Planning in December 2024</p>	<p>Amending Section 10(4) of the ITA to exclude goods and movable property under the definition of the word property through a proviso providing that “property</p>

	<p>from the ambit of Section 10 (4).</p> <p>Taken together, the amendments above require digital marketplaces/ platform owners or operators to withhold tax at a rate of 5% and 20% on payments to residents and non-residents respectively when the digital marketplace makes or facilitates payment in respect of digital content monetization, property, or services.</p>	<p>made an amendment to exclude goods under Section 10(4) to promote the e – commerce industry which is at its nascent stage. The intention of the National assembly was that withholding tax should not be applicable to goods. The provision as is therefore with the word ‘property’ has the potential to cause uncertainties in the interpretation given the broad definition of "property"</p> <p>Negative Impact on Digital Economy: Most MSME’s use e-commerce platforms as an additional distribution channel market which means they already have other offline channels i.e physical stores. WHT on goods will push vendors to physical shops/social media where their sales won't be subject to WHT.</p> <p>Reversal of MSME Digitization: WHT on goods sold on digital marketplaces could lead to mass exits from e-commerce platforms, reducing digital economic activity while hindering the tax base expansion strategy and BETA objectives.</p> <p>Unequal Competition: WHT applies only to digital marketplaces, creating unfair competition with physical retailers.</p> <p>Tax Rate Inconsistency: The 5% WHT is much higher than the current 1.5% Turnover Tax, straining MSMEs’ cash flows and increasing tax administration costs.</p>	<p>excludes goods and moveable property.</p> <p>Specifically, we propose that the section 10(4) of the ITA should read as follows;</p> <p><i>(4) Where a resident or a non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetisation, or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya.</i></p> <p><i>Provided that "property" shall not include goods and movable property.</i></p>
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	<p>Section 12G (4) (d) of the ITA</p> <p>Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen per cent.</p> <p>(4) This section shall not apply—</p> <p>.....</p> <p>(d) to a real estate investment vehicle that is an ultimate parent entity;</p>	<p>Whereas Section 12G of the Income Tax Act contains provisions on the Minimum Top-up Tax, the Section as currently worded does not clarify that the Ultimate Parent Entity's jurisdiction should be used to determine whether the subsidiary is owned by a real estate investment vehicle (REIV).</p> <p>In addition, to mitigate ambiguity in respect of application of minimum top up tax, consideration should be given to exempt a subsidiary of a REIV in line with the GloBE model rules.</p>	<p>Under Section 12G of the ITA in respect of the term Real Estate Investment Vehicle "REIV", consideration should be given to the meaning assigned in the country of residence of the Ultimate Parent Entity ("UPE") by amending Section 12G (4) (d) of the Income Tax Act as follows:</p> <p><i>"(d) to a real estate investment vehicle that is an ultimate parent company as per the meaning assigned in the ultimate parent company jurisdiction and the subsidiary of the real estate investment vehicle"</i></p>
	<p>Repeal of the five-day period for payment of withholding income tax</p> <p>Section 35 (5) of the ITA provides that for the remission of withholding tax to the Commissioner within five days of deduction. It stipulates:</p>	<p>Under Section 35 (5) of the ITA, withholding tax (WHT) deducted is required to be remitted to the KRA within five working days from the date the deduction is made.</p> <p>Due to the large volume of transactions and the global nature of ride hailing business operations, this requirement to remit WHT to the KRA within 5 business days imposes an undue compliance burden which is costly for ride hailing businesses and others with similar business models, particularly keeping in mind that per the prevailing</p>	<p>We propose that the WHT obligations timelines under section 10(4) of the ITA be harmonised with compliance timelines relating to the VAT and SEPT obligations, such that WHT is remitted to the KRA on the same due date as SEPT and VAT.</p> <p>In this regard, we recommend that the below proviso be added immediately after section 35 (5) of the ITA but before section 35(5A) of the ITA with the following wording:</p> <p><i>"Provided that, in the case of tax withheld pursuant to section 10(4) of this Act, the tax withheld shall be remitted</i></p>

	<p>“35. Deduction of tax from certain income</p> <p><i>Where a person deducts tax under this section he shall, within five working days after the deduction was made–</i></p> <p><i>(a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment the amount of tax deducted, and such other information as the Commissioner may specify; and</i></p> <p><i>(b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.”</i></p>	<p>jurisprudence in Kenya, the tax point for deduction of WHT is upon accrual into a company’s books of account.</p> <p>We note that non-resident companies in the mobility operations sector have to comply with the following tax obligations- SEPT, WHT and value added tax (VAT) are currently facing compliance challenges given that the tax point for WHT falls on different dates as compared to the tax point for SEPT and VAT obligations. Alignment of the various tax points would buttress this challenge.</p>	<p><i>to the Commissioner no later than the 20th day of the month following the month in which the tax is deducted.”</i></p>
2.	The Value Added Tax Act, Cap. 476 (“VAT Act”)		
	<p>VAT exemption on inputs for local manufacturing of denatured bioethanol for cooking</p> <p>The VAT Act provides for VAT exemption for “the supply of</p>	<p>In Kenya, the sugar and sugar by-products industries stand as fundamental pillars of the economy, contributing significantly to employment, rural development, and food security.</p> <p>With a rich history dating back to the early 20th century, this sector plays a pivotal role by offering</p>	<p>We propose to amend Part 1, Section A to the First Schedule of the VAT Act 2013 by inserting:</p> <p>“Inputs and raw materials locally purchased or imported for the manufacture of denatured bioethanol for cooking”</p>

	<p>denatured ethanol of tariff number 2207.20.00.”</p> <p>This exemption has resulted in significant benefits to Kenyan households, sugarcane farmers, and the nation as a whole.</p> <p>However, a significant portion of the cost of ethanol cooking fuel also stems from the VAT applied to essential inputs used in its production such as molasses, transportation, and electricity.</p> <p>Since denatured ethanol is VAT-exempt while its production inputs such as molasses, transport, and electricity are not, local ethanol manufacturers are unable to recover the VAT paid on these inputs. The additional cost in relation to unclaimable input VAT is ultimately pushed down to consumers increasing the retail price of ethanol cooking fuel for Kenyan households. This puts local manufacturers at a competitive disadvantage compared to imported ethanol</p>	<p>livelihoods to thousands of Kenyan families and addressing the nation's economic needs. Specifically focusing on deriving ethanol from sugarcane propels the growth of the agro-processing sector, aligning with the East African Community's vision for value-addition within the community.</p> <p>This approach ensures a stable market for our sugar producers, contributing to the sustainability of the sugar industry and improving farmers' livelihoods.</p> <p>The extension of VAT exemption on inputs used in the production of denatured ethanol will support the growth of the local agro-processing industry since local producers will not have to cover the cost for VAT charged on the inputs. This will result in a reduction of the manufacturing costs improving the competitiveness of local ethanol cooking fuel and reduce the costs of ethanol cooking to Kenyan households, driving higher demand and achieving targets for the green energy transition set out in the Kenya National Cooking Transition Strategy.</p>	
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	<p>The Second Schedule to the Value Added Tax Act is amended in Part A where the supply of locally assembled and manufactured mobile phones have been moved from zero rated category to the tax-exempt status</p>	<p>We propose that for Locally assembled devices, we either retain the current zero-rate VAT status or also exempt from VAT all inputs or raw materials supplied to approved mobile phone assemblers/manufacturers in Kenya for local assembly and manufacture of mobile phones, also be exempted from VAT. from VAT.</p> <p>This proposal could potentially deal with the significant VAT refund issue which is currently experienced by local assemblers. The proposed amendment is also likely to result in a 16% increase in locally assembled devices as the inputs used to assemble these devices are currently subject to VAT at the standard rate and consequently impacting affordability and accessibility of locally assembled mobile devices.</p> <p>Mobile devices are enablers in accessing digital services, hence an affordable device ensures Kenyans can readily access digital services. To enable assemblers' avail affordable mobile devices locally, inputs used in the assembly process should be equally exempted from VAT. In this way, the VAT currently paid on the inputs (which currently triggers the VAT refunds) will not form part of the cost component of the assembled device due to the assemblers' inability to claim or recover the input VAT thereon.</p>	<p>Either retain the current zero-rate VAT status or exempt the inputs from VAT.</p>
	<p>Section 31 of the Value Added Tax Act is amended in subsection (1)- (a) in</p>	<p>A commendable good start proposed in the Bill is the proposal to reduce the period within which a taxpayer can submit a VAT refund claim on bad debts</p>	<p>Further reduce the period within which a taxpayer can lodge a refund from the proposed 24 months to 12 months.</p>

	<p>paragraph (a), by deleting the words "three years" and substituting therefor the words "two years";</p> <p>This is on VAT refunds on Bad Debts.</p>	<p>by 12 months. However, the Bill equally proposes to increase the VAT refund audit validation period by 90 days, resulting in a net reduction period by 9 months.</p> <p>To further support businesses in reducing finance costs to ensure that they have sufficient working capital during these tough economic times, we propose to have this period reduced by a further 12 months, i.e., from the current legislated 36 months to 12 months. This proposal will revamp businesses currently struggling with insufficient working capital and significant finance costs.</p> <p>We also propose to amend the VAT Act to allow a taxpayer to directly set-off the bad debt VAT refund against current and future VAT liabilities. We also propose an additional amendment to allow the Commissioner to undertake an audit at a future date to validate the refund.</p>	
	<p>Clause 37(c) & 36 (o) – the proposal to change from zero-rated to VAT exempt, the supply of locally assembled and manufactured mobile phones.</p>	<p>Clause 37(c) and 36 (o) of the Bill propose to exempt from VAT the supply of locally assembled and manufactured mobile phones. This is not a welcome proposal as elaborated below.</p> <p>Currently, the supply of locally assembled and manufactured mobile phones is zero-rated meaning that VAT is charged at the rate of 0%. The proposal to exempt from VAT the supply of locally assembled and manufactured mobile phones would mean that local assemblers and manufacturers would not be entitled to recover the input VAT incurred in the production process through the input output VAT credit mechanism.</p>	<p>We propose that: clause 37(c) be deleted in its entirety to ensure that the supply of locally assembled and manufactured mobile phones remains zero-rated.</p>

		<p>Instead, all the input VAT incurred by such entities would constitute a cost of production which would have to be passed on to local consumers by way of an increase in prices. The immediate and direct impact of the proposal would be an increase in the retail price of locally produced mobile phones by at least 16%. The increase in cost would make such mobile phones less competitive pricewise when compared to imported alternatives.</p> <p>An alternative proposal to ensure that locally produced mobile phones continue to be competitive while balancing the government's concerns regarding tax expenditure would require that the Bill be amended to also exempt from VAT all imported inputs and raw materials used in the local production of mobile phones. This would ensure that the local entities undertaking the assembly do not incur VAT in the value chain and consequently do not pass down any VAT to the final consumer.</p> <p>We appreciate that the proposed amendment to exempt from VAT locally assembled or manufactured devices will mitigate the increased cost of financing borne by device manufacturers and assemblers due to the significant outstanding VAT refunds owed to them by the KRA. However, the current proposal to only exempt from VAT the supply of locally produced mobile phones is not feasible. This is further elaborated as follows:</p>	
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		<p>The proposal contradicts the government’s goal of digital inclusion</p> <p>On 30 October 2023, the President presided over the launch of a mobile assembly plant that aimed at producing locally assembled smartphones for sale in the local market at a price that was estimated as being thirty percent (30%) lower than the cost of similar imported smartphones.</p> <p>At the time of the launch, there were about 29.7 million active smartphone devices in the country per estimates by the Communications Authority of Kenya (CAK). On the other hand, there were approximately 33.7 million active feature phones (phones that lack the advanced functionality of smartphones).</p> <p>As at the end of January 2025, the CAK reported that there were approximately 37.4 million active smartphone devices in Kenya (approximately a 25.9% increase from the year 2023 numbers). However, the statistics still indicate that nearly a 1/3 of Kenyans (14.1 million persons) are still using feature phones (phones that lack the advanced functionality of a smartphone) as their primary mobile device.</p> <p>The significant cost of smartphones has been indicated as being a key hindrance to the transition to smartphones especially among Kenyans living in rural areas. cost of mobile phones a hindrance</p>	
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		<p>The zero-rating of the supply of locally assembled and manufactured mobile phones back in July 2023 was aimed at making locally produced mobile phones affordable to a majority of Kenyans. Accordingly, changing the VAT status from zero-rated to exempt from VAT will inevitably lead to an increase in cost of such locally assembled mobile phones and reverse the gains made in transitioning more Kenyans to smartphones.</p> <p>The proposal would have widespread negative consequences for the local economy</p> <p>The initial intent of zero-rating the locally assembled mobile phones was to ensure citizens could access services that the government had already digitized.</p> <p>In addition, mobile phones including smartphones play a crucial role in improving the social-economic livelihoods of Kenyans. To illustrate, Kenyans are able to run online businesses and transact digitally.</p> <p>By allowing manufacturers to deduct and make a claim for refund of input VAT, the policy lowered production costs and improved cashflow, making it more attractive to invest in local assembly plants.</p> <p>The benefits of widespread access to mobile phones has also been recognized in other countries. In the year 2021, Tanzania waived VAT on smartphones, tablets, and modems specifically “to make device prices affordable” and boost broadband penetration from 38% to 80% by 2025. Tanzanian authorities explicitly recognized that cheaper smartphones</p>	
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		<p>would “promote digital inclusion and boost the digital economy”. Smartphones exempted from VAT</p> <p>Accordingly, our position is that the proposal should be to determine how to further incentivize local assemblers and manufacturers of mobile phones to make mobile phones cheaper rather than making locally produced mobile phones more expensive.</p> <p>Inconsistency with the national tax policy</p> <p>The proposal comes barely two (2) years after the VAT Act was amended through the Finance Act 2023 to provide for the current treatment, being zero-rating of locally produced mobile phones. The National Tax Policy expressly provides that there is a need to move away from the practice of constantly amending tax laws that leads to unpredictability in the tax system and additional costs of compliance.</p> <p>The supply of locally assembled and manufactured mobile phones has been zero rated for less than two years. Accordingly, more time is needed for the full impact and goal of the zero-rating to be felt and therefore the proposal to exempt such a supply would unnecessarily distort the local assembly ecosystem and deny Kenyan consumers the benefit of affordable locally made mobile phones.</p> <p>In conclusion, the proposed VAT amendment is misaligned with Kenya’s economic policy trajectory. It undermines digital inclusion efforts, contradicts manufacturing promotion, and could slow progress toward the country’s development targets. Our</p>	
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		proposal is to maintain zero-rating in line with Kenya's long-term vision of a digitally connected, industrialized, and inclusive economy.	
3.	The Excise Duty Act		
	<p>(Not in the Bill)</p> <p>Clause 25 – Excise Duty on Imported Sugar Confectionery</p> <p>The Tax Laws Amendment Act, 2024 amended the First Schedule to the Excise Duty Act to increase the rate of excise duty on imported sugar confectionery of tariff heading 17.04', to 'Shs. 85.82 per kg'"</p>	<p>The Tax Laws Amendment Act, 2024 led to an increase to Ksh. 85.82 per kg represents a cumulative rise of over 100% since 2020:</p> <ul style="list-style-type: none"> - 2020: Ksh. 20/kg - 2021: Increased by 75% to Ksh. 35/kg - Nov 2021: 5% inflation adjustment to Ksh. 36.74/kg - 2022: Further increase of 9.8% to Ksh. 40.37/kg - Current (2024): Ksh. 85.82/kg <p>This sharp escalation in excise duty is raising serious concerns among stakeholders. Businesses are finding the tax burden increasingly unsustainable, which could lead to a significant decline in sales volumes.</p> <p>Since excise revenue is volume-based, a drop in sales could paradoxically result in lower overall tax collections. Moreover, the higher tax rate is likely to deter investment in the sector, potentially leading to job losses and reduced income, particularly within the retail and fast-moving consumer goods (FMCG) distribution chains.</p> <p>There is also a broader risk of market contraction, which would shrink the tax base and further undermine revenue generation.</p>	<p>To support the sustainability and growth of the sector, it is proposed that the current excise duty rate of Ksh. 85.82 per kilogram be reduced to Ksh. 42.91/kg, aligning with the 2022 rate, or by Ksh. 5 to Ksh. 37.91/kg.</p> <p>This adjustment would serve several critical objectives:</p> <ul style="list-style-type: none"> • Sustain and grow sales volumes by making products more affordable to consumers. • Safeguard government excise revenue by preventing volume declines that could reduce overall collections. • Encourage continued business investment by improving the operating environment and reducing cost pressures. • Preserve employment in the retail and distribution sectors, which are highly sensitive to price-driven demand shifts. • Avoid unintended market distortions and mitigate the risk of revenue losses due to reduced consumption or informal market activity.

	<p>Clause 38 (a) (i) – definition of the phrase “digital lender”</p> <p>The Bill proposes to amend the definition of the term “digital lender” to mean “a person extending credit through an electronic medium but does not include a bank licenced under the Banking Act, a Sacco society registered under the Co-operative Societies Act or a microfinance institution licensed under the Microfinance Act.”</p> <p>Currently, the phrase “digital lender” means a person holding a valid digital credit providers licence issued by the Central Bank of Kenya.</p>	<p>This proposal <u>is not welcome</u> as it will have a negative impact on other sectors such as the digital services sector that is reliant on Kenyan consumers having access to affordable devices such as smartphones.</p> <p>Kenya has witnessed a proliferation of an alternative form of financing whereby the entity providing goods and services also provides financing options to the consumer. This enables consumers to conveniently buy a wide variety of products ranging from mobile phones to household electronics and pay for such items later or on an instalment basis.</p> <p>This also alleviates the burden of a consumer having to borrow such funds from digital credit providers who often charge exorbitant interest or fees on provision of financing services.</p> <p>Currently, sellers providing such forms of alternative financing (financing that is incidental to their core business) are not required to charge excise duty on the fees charged for such financing. This is because the Central Bank of Kenya (Digital Credit Providers) Regulations 2022 expressly provide that the provision of credit by a person that is merely incidental to that person’s primary business of the provision of goods or services is outside the ambit of digital lending.</p> <p>The result of this express exemption has been that Kenyans now have access to a wide array of affordable financing options since the providers of</p>	<p>We propose that: the proposed clause be deleted in its entirety.</p>
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		<p>such alternative forms of financing are not required to charge excise duty on the fees charged to the borrowers.</p> <p>The proposed expansion of the definition of the term “digital lender” to refer to the extending of credit through an electronic medium will mean that any persons providing financing including persons whose core business is not lending will be required to charge excise duty at the rate of 20% on any fees that they charge to customers. In most instances, the cost of capital is normally inbuilt into the product price and therefore, there would not be a separate fee charged for the services. Unbundling the costs for purposes of excise duty would impact the product price. This fee would be passed on to the borrowers making borrowing unaffordable for such consumers who often do not have any other alternative means of accessing credit.</p>	
	<p>Clause 40 (b) – clarification of the provisions relating to the charging of excise duty on excisable services offered in Kenya by non-resident persons</p> <p>The Bill proposes to amend the Excise Duty Act to clarify that excisable services provided by persons operating from outside Kenya will be deemed to be supplied in Kenya if they are</p>	<p>This provision seeks to broaden the category of persons required to charge excise duty, extending the obligation to non-resident entities that provide excisable services in Kenya via the internet, electronic networks, or digital marketplaces.</p> <p>Although the Bill’s objective is to ensure that non-resident providers of excisable services in Kenya are required to charge and remit excise duty, further refinement is necessary.</p> <p>Notably, the Bill does not define the term “consumed”. As a result, for excisable services such</p>	<p>Section 45 of the Excise Duty Act already provides that the Cabinet Secretary responsible for Finance may make regulations for the implementation of the Excise Duty Act.</p> <p>In this regard, our proposal would be for the Cabinet Secretary to make regulations providing for:</p> <ol style="list-style-type: none"> simplified registration for purposes of charging excise duty; and the instances in which excisable services would be deemed to have been consumed in Kenya.

	consumed by persons in Kenya through the internet, an electronic network or a digital marketplace.	<p>as online advertisements for alcoholic beverages and betting services, non-resident providers would be left to determine when such services are considered to be consumed in Kenya.</p> <p>It may be inferred that these services are consumed in Kenya when advertisements are viewed by individuals whose internet protocol (IP) addresses are located in Kenya. However, further amendments would be required to address potential disputes similar to those that have arisen in the context of value added tax (VAT), particularly regarding the place of consumption of services and the applicable VAT treatment (i.e., whether to apply VAT at the standard rate of 16% or at zero rate). Such clarification would help to avoid similar uncertainties in determining whether excise duty should be charged.</p>	
4.	The Tax Procedures Act, Cap. 469B		
	Amendment of Section 42 of the Tax Procedures Act	The proposed amendment to Section 42 of the Tax Procedures Act in the Finance Bill, 2025, would allow the Commissioner to issue an agency notice even when a taxpayer has appealed an assessment specified in a Tax Appeals Tribunal (TAT) or court decision. Currently, the Commissioner is prevented from issuing such a notice if the taxpayer has appealed within the statutory timelines. This change is concerning because it could allow for the enforcement of tax through agency notices while a matter is actively under appeal, potentially undermining taxpayers' constitutional right to due	We propose the deletion of this proposal and the retention of Section 42(14)(e) as presently drafted.

		process and fair resolution before enforcement action.	
	<p>Repeal of Section 59A (1B) of the Tax Procedures Act</p> <p><i>The Commissioner shall not require a person to integrate or share data relating to—</i></p> <p><i>(a) trade secrets; and</i></p> <p><i>private or personal data held on behalf of customers or collected in the course of business.</i></p>	<p>The Tax Procedures Act currently embodies the balance between the right to privacy and the power of the KRA to collect taxes. It prohibits the KRA from requiring any person to integrate or share data relating to (a) trade secrets and (b) private or personal data held on behalf of customers or collected in the course of business.</p> <p>Clause 52 of the Bill proposes to delete this crucial protection, which would result in a conflict between the provisions of the Tax Procedures Act and the Kenyan Data Protection Act, 2019 (DPA) which provides that any processing of personal data must be lawful, fair, limited to specified purposes, and subject to technical safeguards.</p> <p>The result of the proposal would be that proprietary business information and personal data would be accessible by the KRA without the clear, specific legal basis, proportionality, or oversight required by the DPA.</p> <p>The immediate risk arising is that critical and sensitive data such as pricing models, supplier lists, research and development etc. that would be accessible to the KRA could potentially be leaked to competitors. In such a scenario, very minimal remedies would be available to sufficiently compensate aggrieved taxpayers.</p>	<p>We propose retaining Section 59A (1B) and inserting the proviso captured below:</p> <p><i>“Provided that integration with KRA systems shall not compel a taxpayer to disclose confidential commercial information or personal data without appropriate safeguards and in compliance with the Data Protection Act, 2019.”</i></p>

		<p>Customer personal data – names, addresses, transaction histories, identifiers – would similarly be swept into KRA systems, multiplying the risk of data breaches or unauthorized disclosures.</p> <p>Due to these clear gaps, the immediate and direct impact of this proposal would be that there would be a decline in foreign direct investments since most investors would be wary of (a) their trade secrets being leaked or (b) lawsuits in relation to breach of data privacy. These concerns would particularly be significant for investors coming from jurisdictions where there are robust data privacy laws.</p> <p>International norms and comparative practice Globally, best practice accords great weight to informational privacy even in tax administration. The OECD Privacy Guidelines – the first internationally recognized and accepted data-protection principles – emphasize that privacy and data protection are “critical conditions for the free flow of personal data” and for public confidence in government use of information. European Union law requires that tax authorities may only request personal data when expressly authorized by law, with clear limits on scope and purpose. For instance, the Court of Justice of the European Union in case number 175/20 has held that a tax agency seeking customer data from a company must have a specific legal mandate, must specify a limited purpose for the request, and must respect the General Data Protection Regulation’s data minimization principle.</p>	
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		requiring businesses to hand over all customer or proprietary data. Any legitimate access to data should require, at minimum, a court order, reasonable suspicion of evasion, or specific legal provision – in keeping with Article 47’s requirement of lawful, reasonable action.	
	<p>Repeal of Section 77 (2) of the Tax Procedures Act</p> <p><i>In computing the time prescribed for making an appeal or objection under this Act, Saturdays, Sundays and public holidays shall not be reckoned.</i></p>	The inclusion of weekends and public holidays in appeal timelines, as proposed by the repeal of Section 77 (2) of the Tax Procedures Act, would unfairly disadvantage taxpayers by significantly reducing the effective time available to prepare and submit appeals, given that many offices and services are unavailable during these non-business days.	We propose the deletion of this proposal and the retention of Section 77(2) as presently drafted.
	<p>Clause 50 - Extension of Refund Timelines</p> <p>The Bill proposes the following changes to the regarding refund timelines:</p> <ol style="list-style-type: none"> 1. that the time limit for the KRA to ascertain and determine a refund or offset application is extended from ninety (90) days to one hundred and twenty (120) days; and 2. where the application for refund is subjected to an audit, the time 	<p>The proposed amendments are unwelcome as they undermine taxpayer’s rights to a fair and equitable tax system.</p> <p>Extending the period within which the KRA is permitted to make decisions on refund applications imposes an undue restriction on taxpayers’ rights to access and benefit from taxes already paid. Such a measure would not only delay the return of funds rightfully owed to taxpayers but would also place an unnecessary administrative and financial burden on them.</p> <p>The result of the delayed processing of tax refunds is that taxpayers would continue paying additional taxes and further worsening the problem as they await the processing of the refund applications. This</p>	Clause 50 should be deleted in its entirety .

	<p>limit for determining the application is extended from one hundred and twenty (120) days to one hundred and eighty (180) days.</p>	<p>situation would have a detrimental effect on taxpayers' cash flows, potentially impacting their ability to operate efficiently and meet other financial obligations. It is therefore essential to stress that any changes to the refund process should be designed to protect, rather than erode, the rights and financial stability of taxpayers.</p>	
	<p>Clause 56 - Introduction of discretion to waive penalties and interest arising from electronic system errors</p> <p>The Bill proposes to empower the Cabinet Secretary, on the recommendation of the KRA, to waive penalties or interest where the liability arises from:</p> <ol style="list-style-type: none"> 1. an error generated by an electronic tax system; 2. a delay in the updating of an electronic tax system; 3. a duplication of a penalty or interest due to a malfunction of an electronic tax system; or 4. the incorrect registration of the tax obligations of a taxpayer. 	<p>This proposal is welcome as it recognizes that penalties and interest should not apply where non-compliance results from technical or administrative failures beyond the taxpayer's control.</p> <p>The introduction of a statutory waiver mechanism enhances fairness and aligns with the broader principle of proportionate enforcement.</p> <p>However, the requirement for Cabinet Secretary approval may prolong the waiver process. In this regard, our proposal would be for the iTax system to be configured to provide for an automatic waiver of the penalties and interest once the KRA ascertains that the penalties and interest arise from electronic system errors. This would be the same process that is currently being followed under the voluntary tax disclosure programme where the approval of the Cabinet Secretary is not required.</p>	<p>The provision should be amended to provide as follows:</p> <p><i>“The Commissioner may waive the whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest was due to -</i></p> <ol style="list-style-type: none"> <i>(a) an error generated by an electronic tax system;</i> <i>(b) a delay in the updating of an electronic tax system;</i> <i>(c) a duplication of a penalty or interest due to a malfunction of an electronic tax system; or</i> <p><i>the incorrect registration of the tax obligations of a taxpayer.”</i></p>

	<p>Not in the Bill:</p> <p>Amendment of Section 47 of the Tax Procedures Act</p> <p>Setoff of Overpayment/Setoff of Advance Payment</p>	<p>Section 47 of the Tax Procedures Act as presently drafted allows a taxpayer to elect to cash disbursement on approved refunds or to a set-off of the approved refunds against present and future tax obligations.</p> <p>The said provision states as follows:</p> <p><i>“Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form—</i></p> <p><i>(a) to offset the overpaid tax against the taxpayer’s outstanding tax debts and future tax liabilities including instalment taxes and input value added tax; ...”</i></p> <p>We must also add that upon review of the refund claim, and subsequent issuance of the RAVs, the taxpayer is allowed to utilize against <u>outstanding tax debts</u>.</p> <p>Some of our members have huge tax overpayments arising from excess input VAT incurred in the generation of export sales. They lodge normal VAT refund claims within the stipulated timelines provided for in law, and upon review of the refund claims and supporting documentation, KRA grants refund adjustment vouchers (RAVs) to set-off against their existing tax liabilities.</p> <p>In the course of business operations, these companies also settle payments to suppliers which</p>	<p>We recommend the amendment of Section 47(1)(a) of the TPA to include the words “withholding taxes” immediately after the word “instalment taxes”.</p> <p>In our view, this proposal will allow taxpayers to offset their present tax liabilities for WHVAT and WHT in the same way as with Income Tax, VAT, PAYE, and excise duty obligations; and will enable the seamless application of Section 47(1)(a) of the TPA and implementation of the i-Tax system in a way that is consistent with the law as was intended.</p> <p>Further, this will relieve taxpayers of the burden to directly remit tax when it has millions of approved RAVs which have not been exhausted.</p>
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		<p>creates a tax obligation for withholding tax (WHT) and withholding VAT (WHVAT) for settlement every 5 days after the supplier is paid. The duty to account for the aforementioned taxes rests on the companies and any non-compliance leads to outstanding debts on their i-tax accounts.</p> <p>Notably, our members also have other monthly tax obligations such Excise duty and PAYE.</p> <p>The issue is that i-Tax portal as presently configured only allows a taxpayer to utilize RAVs against PAYE, Income tax, Excise duty and Value Added Tax (VAT) thus locks out settlement of WHT and WHVAT obligations through RAVs against the provisions of section 47 of the TPA.</p> <p>The phrase “outstanding tax debts and future tax liabilities” is broad and covers all tax heads including WHT and WHVAT based on the definition of the term “tax” under section 3 of the TPA which defines the term as follows:</p> <p>“tax” means—</p> <ul style="list-style-type: none"> a) a tax or penalty imposed under a tax law; b) an instalment tax imposed under section 12 of the Income Tax Act; or c) withholding tax <p>WHT and WHVAT are imposed under the Income Tax Act and the TPA respectively. The ITA and TPA are tax laws based on the definition of the term tax law under the TPA. Further, section 32 of the TPA</p>	
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		<p>specifies that a tax debt is any tax payable by a person under a tax law.</p> <p>There is therefore no justification why the i-Tax portal is not configured to utilize RAVs against taxpayers' WHT and WHVAT obligations similar to the configuration on account of other taxes including PAYE, an agency tax.</p> <p>Impact:</p> <p>Some of our members are forced to settle WHT and WHVAT debts through direct remittance to KRA's bank account while offsetting other monthly tax liabilities vide RAVs.</p> <p>These companies would like to settle all its tax obligations through RAVs without any limitation on the basis that all tax obligations qualify to be outstanding debts as envisaged under Section 47 of the TPA.</p> <p>Some of these businesses require loan injection to support trade. Consequently, they have interest obligations as well as obligations to settle dues to their suppliers. They thus incur significant cash flow challenges to account for WHT on interest paid on loans and remittance of WHVAT to KRA on deductions applied to VAT registered suppliers.</p> <p>In addition, WHT and WHVAT obligations are not stand-alone taxes and are considered to be advance payments of income tax and VAT respectively.</p>	
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