

ALPHA TAX AND BUSINESS ADVISORY SERVICES
FINANCE BILL SUBMISSION 2025
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No.	Clause	Description of the Clause	Proposal	Justification
1	Income Tax Act Clause 2(iii)	Expansion of the definition of ‘royalty’ Section 2 of the Income Tax Act is amended— in paragraph (b) of the definition of “royalty”, by inserting the words “and includes the distribution of software where	Removal of Clause 2(iii)	Subsection (iii) contradicts international best practice on the tax treatment of software payments. • This was illustrated in the <i>Seven Seas Technologies Limited v Commissioner for Domestic Taxes (Income Tax Appeal 8 of 2017) [2021] KEHC 358 KLR</i> where the court



		regular payments are made for the use of the software through the distributor” immediately after the words “support fees”;		<p>held that there is a distinction between payments made to acquire partial rights in the copyright which qualify as royalties, and payments made to acquire and distribute software copies (without the right to reproduce the software) which in the courts view was not subject to withholding tax under the Income Tax Act.</p> <ul style="list-style-type: none">• This proposal would discourage digital innovation and Imposing royalty fees on software distribution increases costs for local distributors and end-users, limiting access to essential digital tools. This dampens digital transformation, particularly for small and medium enterprises that rely on affordable software to compete and innovate.• If Kenya persistently treats software distribution payments as royalties, foreign software providers may avoid entering or expanding in the market due to the administrative burden and tax uncertainty. This reduces the availability of global software solutions in Kenya and undermines its attractiveness as a tech hub.
2	Income Tax Act Clause 6	Expanded scope for Significant Economic Presence Tax . Section 12E of the Income Tax Act is amended—	Removal of Clause 6	<ul style="list-style-type: none">• The removal of the Kshs. 5 million exemption threshold imposes an increased compliance burden and cost on small non-resident digital service providers, who may elect to set up in other jurisdictions.





		(a)in subsection (1), by inserting the words “the internet or an electronic network including through” immediately after the words “carried out over”; (b)in subsection (3), by deleting paragraph (d).		<ul style="list-style-type: none"> There is a risk of double-taxation for non-residents, as many countries do not recognize significant economic presence as a valid nexus for taxation under their domestic laws or treaties. Without bilateral tax treaty updates, this measure may expose non-residents to double taxation were their home tax regimes do not allow a tax credit in Kenya.
3	Income Tax Act Clause 8 (a)(vi)	<p>Repeal of provision on Allowability of expenditure on a public sports facility</p> <p>8. Section 15 of the Income Tax Act is amended— (a)in subsection (2)—</p> <p>(vi) by deleting paragraph (z);</p> <p>(z)expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports;</p>	Removal of Clause 8(a)(vi)	<ul style="list-style-type: none"> The provision allowing for the deduction of expenditure on public sports facilities serves a vital social and economic function by incentivizing private sector contributions to support government’s CBC goals of building capacity in sports and arts. The deductibility of expenditure on public sports facilities provides a strategic incentive for businesses to invest in the sports sector, often through sponsorships, branding, and infrastructure development. This not only enhances corporate visibility and brand association with positive community impact but also channels private capital into the sports sector.
3	Income Tax Act Clause 8(b)(ii) and (c)	<p>Restriction of carry forward of losses</p> <p>8. Section 15 of the Income Tax Act is amended—</p> <p>(b)in subsection (3)—</p> <p>(i) in paragraph (b), by inserting the words “construction of” immediately after the words “applied to the”;</p> <p>(ii) by deleting paragraph (f);</p>	Removal of Clause 8(b)(ii) and 8(c)	<ul style="list-style-type: none"> Limiting carry-forward of losses disrupts long-term financial planning, particularly for capital-intensive sectors like infrastructure, energy, and manufacturing. These sectors often have extended gestation periods before becoming profitable, and a five-year cap on loss utilization may deter projects with long-term return profiles.





		(c)in subsection (4), by inserting the word “five” immediately after the word “succeeding”;		<ul style="list-style-type: none">• Many jurisdictions, including Kenya’s peers and competitors, offer indefinite or longer-term loss carry-forward provisions. A more restrictive regime could make Kenya a less tax-efficient jurisdiction, discouraging multinationals and regional investors from establishing or expanding operations locally.• The restriction disincentivizes innovation and R&D Activities for start-ups and companies investing in innovation, which often take longer to reach profitability due to upfront R&D costs and product development cycles. Restricting the carry-forward period undermines these efforts and may lead such firms to relocate to jurisdictions with more supportive tax regimes for innovation-driven enterprises.
4	Income Tax Act Clause 27	Investment Deduction/Capital Allowances The Second Schedule to the Income Tax Act is amended in paragraph 1— (a) by deleting subparagraph (1A); (b) (b)by deleting subparagraph (1B).	Removal of Clause 27	<ul style="list-style-type: none">• The investment allowance has been instrumental in driving capital investment into historically underserved regions. Its repeal could undermine this progress by deterring future investment and slowing the economic growth of emerging urban centres.• The investment allowance has been a mainstay in Kenyan tax policy for years, and long-term investors have relied on this predictable framework to plan and deploy resources outside major cities. Repealing this provision would weaken investor confidence, as it signals inconsistency in policy direction yet equitable development remains top of agenda for Kenya.





				<ul style="list-style-type: none">The investment allowance served to decrease urban overconcentration and strain on city resources, by incentivizing investment outside Nairobi and Mombasa which are already facing overcrowding constraints and infrastructure deficiencies. This overconcentration can hinder overall productivity and quality of life, while rural and secondary towns remain underutilized.
5	Value Added Tax Act Clause 32	Withholding VAT Offset 32. Section 17 of the Value Added Tax Act is amended in subsection (5)— (a) by deleting paragraph (c); (b) by deleting paragraph (d) and substituting therefor with the following new paragraph— (d) the registered person lodges the claim for refund of the excess tax within twelve months from the date the tax becomes due and payable; (c) by deleting paragraph (e).	Consider a revision of Clause 32	<ul style="list-style-type: none">Requiring the taxpayer to apply for a WHVAT refund imposes an undue administrative and compliance burden which would be an additional cost for taxpayers.Requiring the taxpayer to apply for a WHVAT refund will negatively impact taxpayers' cash flows, considering that the VAT withheld is 2% in addition to output VAT of 16% being paid. Over time this negatively affects taxpayers' cash flows as prior to processing of refund applications the taxpayer will have incurred a cost of 18% (2% withheld + 16% output VAT)
6	Excise Duty Act Clause 38	Expansion of definition of digital lenders 38. Section 2 of the Excise Duty Act is amended— (a) in subsection (1)— (i) by deleting the definition of “digital lender” and substituting therefor the following new definition—	Removal of Clause 38	<ul style="list-style-type: none">The expanded scope could lead to higher excise tax liabilities, which digital lenders may pass on to consumers. Given that digital lenders often serve underbanked or financially excluded populations, this could increase the cost of credit for low-income





		<p>“digital lender” means a person extending credit through an electronic medium but does not include a bank licensed 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>borrowers, undermining efforts to promote financial inclusion.</p> <ul style="list-style-type: none">• The broad and potentially ambiguous definition of a "digital lender" may create uncertainty about who qualifies and what obligations apply. This could lead to increased compliance burdens, legal disputes, or the unintended inclusion of platforms that facilitate but do not extend credit directly (e.g., marketplaces or e-wallet services with embedded credit features).
7	Tax Procedures Act Clause 47	<p>Agency Notices Section 42 of the Tax Procedures Act is amended— (a)in subsection (1), by inserting the words “or a non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”; (b)in subsection (2)—</p> <ul style="list-style-type: none">(i) in the opening statement, by inserting the words “or the non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”;(ii) (ii) in paragraph (a), by inserting the words “or the non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”;(iii) in paragraph (b), by inserting the words “or the non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”;	Removal of Clause 47	<ul style="list-style-type: none">• If enacted, this provision would infringe on the taxpayer’s right to fair administrative action under Article 47 of the Constitution, by allowing the Commissioner to enforce tax assessments before the taxpayer has had an adequate opportunity to challenge or appeal the decision.• The proposed amendment, if passed, would erode the taxpayer’s right to appeal and the right to a fair hearing under Article 50 of the Constitution. It would significantly weaken the effectiveness of the appeals process, as taxpayers may face considerable obstacles in recovering funds seized from third parties.





		<p>(iv) (iv) in paragraph (c), by inserting the words “or the non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer”;</p> <p>(v) (v) in paragraph (d), by inserting the words “or the non-resident person who is subject to tax in Kenya” immediately after the word “taxpayer” wherever it occurs;</p>		
8	Tax Procedures Act Clause 52	Data Management System 52. Section 59A of the Tax Procedures Act is amended by deleting subsection (1B).	Removal of Clause 52	<ul style="list-style-type: none">• Granting the revenue commissioner broad access to personal data—such as financial records, location information, or biometric identifiers—without clear safeguards exposes individuals to the risk of surveillance, data leaks, and identity theft. Without stringent oversight, this kind of access could expose sensitive taxpayer information to misuse.• Requiring businesses to disclose trade secrets, and other proprietary information to the revenue authority without strong legal and operational firewalls poses a severe risk of leakage or misuse. Even the perception of weak safeguards could deter foreign direct investment, push companies to relocate operations, or stifle innovation, as businesses would fear losing control over their most valuable intellectual assets.
9	Tax Procedures Act Clause 54	Objection Timelines	Removal of Clause 54	<ul style="list-style-type: none">• Removing the exclusion of weekends and public holidays would effectively shorten the period available to taxpayers to file objections and





		54. Section 77 of the Tax Procedures Act is amended by deleting subsection (2).		<p>appeals. This compressed timeline may unduly pressure taxpayers, especially smaller businesses or individuals with limited resources, to respond hastily—potentially compromising the quality or completeness of their submissions.</p> <ul style="list-style-type: none">• In the alternative, we propose that the exemption of Saturdays, Sundays and public holidays from the computation of time be extended to the Commissioner as well to avail them enough time to render fair, complete and accurate tax decisions.
10	Tax Procedures Act Clause 54	<p>Waiver of Penalties and Interest</p> <p>56. Section 89 of the Tax Procedures Act is amended by inserting the following new subsection immediately after subsection (5)—</p> <p>(5A) The Cabinet Secretary may, on the recommendation of the Commissioner, 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— (a)an error generated by an electronic tax system; (b)a delay in the updating of an electronic tax system; (c)a duplication of a penalty or interest due to a malfunction of an electronic tax system; or (d)the incorrect registration of the tax obligations of a taxpayer.</p>	Amendment of Clause 54	<ul style="list-style-type: none">• We respectfully propose that this clause be amended to provide for the automatic waiver of penalties and interest in the listed circumstances, rather than leaving such waiver to the discretion of the Cabinet Secretary upon recommendation by the Commissioner. This would ensure certainty, fairness, and administrative efficiency in cases where the taxpayer is not at fault, such as errors or delays arising from the electronic tax system or incorrect registration of tax obligations.• In addition, we propose an effective date of 1st July 2025 taking into account challenges tax payers are encountering resulting from the implementation of e-tims.
11	Excise Duty Act	Section 14(1) Relief for raw materials	Inclusion of a clause to include relief for packaging	<ul style="list-style-type: none">• Packaging materials are essential components in preserving product quality, ensuring safety, and meeting regulatory standards—particularly for





		Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.	materials as well as raw materials used in the manufacture of excisable goods	excisable goods like beverages, cosmetics, and pharmaceuticals. Excluding them from relief undermines the full production value chain. <ul style="list-style-type: none">• It is international best practice to recognize packaging materials as legitimate inputs in the production of excisable goods for purposes of tax relief or duty suspension. Including packaging within the relief framework keeps Kenya's excise regime competitive and aligned with global trade and manufacturing norms.
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For any questions, clarifications, or requests, please feel free to contact us using the details provided below.

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