

**MEMORANDUM: THE FINANCE BILL 2024**  
**PROPOSED AMENDMENT, RATIONALE AND JUSTIFICATION**  
**23<sup>RD</sup> MAY 2025**

The Clause Number in the Finance Bill 2025	Current Clause	Proposed Amendment	Rationale and Justification
Sec 8.  Limitation of carry-over of tax losses to 5 succeeding years of income	Sec 15 subsection (4). No limitation on carry-over of tax losses	<ol style="list-style-type: none"> <li>1. Drop the amendment</li> <li>2. Alternatively, include a proposal granting the Commissioner power to extend the period of the deduction beyond 5 years, if the taxpayer demonstrates an inability to utilize the losses within that period.</li> <li>3. Additionally, the proposal need to be amended to include a transitional clause to cover tax losses existing prior to the implementation date.</li> </ol>	<ul style="list-style-type: none"> <li>• Capping the carry-over of tax losses to 5 succeeding years of income introduces a danger of a taxpayer losing their tax losses if not utilized within the proposed timeframe of 5 years. Some of our members have tax losses of up to Kshs. 1.5B which if this amendment is passed – will now require them to fully utilize these losses within 5 succeeding years of income, there's a possibility that they will not be able to fully exhaust the carried over losses against incomes within this time frame.</li> </ul>
Sec 12  Inserting section 18G which will allow the Commissioner to enter into advance pricing agreements with a person involved in cross-border transactions with related parties. The agreement shall be valid for a period not exceeding five (5) consecutive years.	No provision for advance pricing agreements	<ol style="list-style-type: none"> <li>1. The proposal should be passed and the Cabinet Secretary to issue the necessary Regulations for implementation of the provision.</li> </ol>	<ul style="list-style-type: none"> <li>• This is a welcome move as it will create certainty for businesses involved in cross-border transactions and minimize Taxpayer (TP) audits.</li> </ul>
Sec 47  To delete paragraph (e)	Sec 42 (14) (14) The Commissioner shall not issue a notice under this section unless - (e) the taxpayer has not appealed against an assessment  specified in a decision of the Tribunal or court.	Drop the amendment as it denies the taxpayer their right to justice - full hearing and determination of a tax dispute up to the highest court level. The proposal gives the Commissioner unfair advantage in collecting tax even before a dispute is fully determined.	<ul style="list-style-type: none"> <li>• The Commissioner will have powers to issue an agency notice after a tribunal or court decision, without granting taxpayer time to appeal. The law provides 30 days to appeal after the decision is issued. With the proposal taxpayers will be required to pay the tax in dispute and then appeal. This denies a taxpayer right to full determination of their case before paying and gives the Commissioner an unfair advantage to collect tax in dispute.</li> </ul>

<p>Sec 50</p> <p>Section 47 of the Tax Procedures Act is amended— (a) in subsection (1)(a) by deleting the words “and</p> <p>input value added tax</p>	<p>Sec 47 (1) (a) provides (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;</p>	<ol style="list-style-type: none"> <li>1. Drop amendment to delete seek amendment to delete input value added tax</li> <li>2. Amend the VAT act in the definition of Input VAT part (b) to read as follows: <b>(b) tax paid or payable by a registered person on the importation of goods or services to be used by him for the purposes of his business.</b> On this part b, we need “or payable” to add in the definition.</li> <li>3. Alternatively, explore the possibility of applying for offsets under the wording ‘<b>future tax liabilities</b>’ as per the existing law.</li> </ol>	<ul style="list-style-type: none"> <li>• Input Value added tax excluded among the taxes that can be offset using the overpaid taxes. This will impact on import input VAT for PIEA Members, which we have been advocating for the operationalization of the offsets.</li> <li>• Taxpayers are required to continue paying current tax even when huge amounts are owed to them by KRA. In addition, KRA does not pay interest income on overpaid taxes withheld by the authority.</li> <li>• The delay in tax refunds has put additional strain on taxpayers, hence increasing the cost of doing business.</li> </ul>
<p>Sec. 52</p> <p>Section 59A of the Tax Procedures Act is amended by deleting subsection (1B).</p>	<p>Section 59 A provides that (1B) The Commissioner shall not require a person to integrate or share data relating to—</p> <p>(a) trade secrets; and (b) private or personal data held on behalf of customers or collected in the course of business</p>	<ol style="list-style-type: none"> <li>1. Drop the amendment as it contravenes taxpayers’ rights to data privacy. Private/personal data should only be availed to the Commissioner upon request and with the consent of the data subject.</li> </ol>	<ul style="list-style-type: none"> <li>• The deletion of the subsection will grant the Commissioner powers to access data on trade secrets and private/personal data held by customers. The Commissioner may use the data and issue assessments to taxpayers which will result into a lot of tax disputes due to misconceptions about the data.</li> </ul>
<p>Sec. 56</p> <p>Section 89 of the Tax Procedures Act is amended by inserting the following new subsection (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—</p>	<p>No provision for waiver of penalty or interest due to KRA system challenges</p>	<p>Pass this amendment</p>	<ul style="list-style-type: none"> <li>• This is a welcome move since taxpayers will no longer be penalized as a result of KRA system challenges/malfunctions</li> </ul>

<p>(a) an error generated by an electronic tax system.</p> <p>(b) a delay in the updating of an electronic tax system.</p> <p>(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>			
<p>Clause 48</p> <p>Amend Section 42A of Tax procedures Act (TPA) to provide for exemption from withholding VAT where pricing is controlled by the Government.</p>		<p>Introduce Section 4D to allow for <b>exemption from withholding VAT</b> for customers where prices are controlled by the Government.</p>	<ul style="list-style-type: none"> <li>• OMC and the dealers/retailers have accumulated withholding VAT credits over the years. KRA is currently processing refunds to a maximum of Kes 30 million per taxpayer per month which makes it impossible to claim full refund of withheld tax.</li> <li>• Refunds accumulated over six months are converted to refund adjustment Voucher which has short comings as advised above.</li> <li>• Withholding VAT has impacted on OMC cashflows hence increasing cost of borrowing to remain afloat.</li> <li>• Dealers are always in perpetual credit position. Need to revert to previous position to cure this.</li> <li>• We have the eTIMs addressing this issue of compliance going forward.</li> </ul>
<p align="center"><b>ADDITIONAL AMENDMENTS FOR CONSIDERATION AND INCLUSION IN THE FINANCE BILL 2025</b></p>			
<ol style="list-style-type: none"> <li>1. Amendment to the VAT Act, 2013 in the definition of Input VAT part (b) to read as follows: (b) tax paid or payable by a registered person on the importation of goods or services to be used by him for the purposes of his business. On this part b, we need “or payable” to be added in the definition.</li> <li>2. Amend Petroleum regulations no47 to allow only “working days” to pay petroleum after outturn date.</li> <li>3. Amend the law to include definition of Future Taxes liabilities</li> </ol>			
<p align="center"><b>IMPACT OF MAKING PETROLEUM PRODUCTS VAT EXEMPT</b></p> <p>Exemption simply means the input VAT cannot be claimed and thus that becomes part of business expenses. Today, VAT is not a cost as it is fully claimed.</p>			