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S. Njoroge, CBS
Clerk of the National Assembly
Main Parliament Buildings
Nairobi

Our Reference
Account Number
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23 May 2025

Attention: S. Njoroge, CBS
By Email: cna@parliament.go.ke

Dear Sir

SUBMISSION OF CLIFFE DEKKER HOFMEYR'S (CDH'S) MEMORANDUM ON THE FINANCE BILL, 2025

We write to submit the memorandum of our law firm (Cliffe Dekker Hofmeyr) on the Finance Bill, 2025 (the "**Bill**"), for consideration by the National Assembly. Our firm has extensively reviewed the Bill and prepared a memorandum with a comprehensive set of comments. We have attached it for your reference.

The submission is in line with the principle of public participation in fulfilment of Article 118 of the Constitution of Kenya, 2010 and Standing Order 127(3) the National Assembly, which encourage stakeholders to provide their representations on Bills under consideration.

We are available to provide clarification during the Committee's hearings and remain committed to supporting the legislative process. The undersigned may be reached on the email address; Alex.Kanyi@cdhlegal.com or on the following number; **+ 254 724 498 999**

Kind regards

Alex Kanyi
Partner

Nairobi | Cape Town | Johannesburg | Stellenbosch | Windhoek

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From vision to fruition

For a full list of Directors, visit
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We commend the Government's continued efforts to enhance tax policy certainty, improve compliance, and align Kenya's tax system with global standards. We outline below the provisions which we support in the current Bill:

1. Advance Pricing Agreements (APAs) – Section 18G of the Income Tax Act

We support the introduction of APAs, which will enhance certainty and reduce litigation in transfer pricing matters for both resident and non-resident entities. This is a long-overdue reform that aligns with international best practice and provides a proactive approach to addressing transfer pricing risks.

2. Final Withholding Tax on Qualifying Dividends – Third Schedule of the ITA

We support the proposal to classify the 5% withholding tax on qualifying dividends as a final tax. This will simplify tax compliance and prevent the double taxation of dividend income, thereby enhancing investor confidence and tax transparency.

3. Digital Asset Tax Rate Reduction – Section 12G of the ITA

The reduction of the digital asset tax rate from 3% to 1.5% is a welcome adjustment. It aligns the tax with the realities of the digital economy and promotes fairer treatment of taxpayers engaged in emerging digital asset transactions.

4. Relief for NIFC-Certified Startups and Investors- Third Schedule of ITA

We support the preferential tax rates for NIFC-certified entities, including:

- 15% CIT for start-ups for three (3) years, then 20% for four (4) years.
- 15% CIT for large investments of more than three billion (KES 3B) for 10 years, then 20% for ten (10) years.

These measures are timely and consistent with the objective of positioning Nairobi as a regional financial and innovation hub. These incentives enhance Kenya's competitiveness as a financial hub and are consistent with the strategic goals of the Nairobi International Financial Centre.

5. Increase in Tax-Free Per Diem Limit – Section 5 of the ITA

We support the proposal to increase the tax-free daily per diem allowance from two thousand shillings (KES 2,000) to ten thousand shillings (KES 10,000). The existing threshold has not been updated for years and does not reflect the reality of travel and accommodation costs. The proposed increase is more aligned with current economic conditions and promotes fairness for employees who travel for work.

6. Refund Reforms and Withholding Tax Relief – Sections 39A of the TPA

We support the clarification that a withholding agent is not liable for principal tax if the recipient has already paid 100% principal tax on the income/payment subject to withholding tax.

7. Stamp Duty Exemption for Internal Restructurings

We support the introduction of stamp duty exemptions for transfers of property from a company to its shareholders during internal restructurings, proportionate to the shareholding. This will facilitate spin-offs without the rigid 90% ownership condition.

We have proposals that we would like changed or considered afresh. The details are in the sections below.

THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO.19 OF 2025)

INCOME TAX					
Item	Tax Head	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification of the proposed amendment
1.	Income Tax	New definition of "royalty" to include payments received as consideration for the distribution of software where regular payments are made for the use of the software through the distributor.	<p>Clause 2(a) (iii) of the Bill proposes to introduce an expanded definition to the term "royalty". The Bill defines it to now include payments as consideration of distribution of software where regular payments are made for the use of the software through the distributor.</p> <p>These payments have previously not been subject to withholding tax (WHT) in Kenya on the principle that they do not confer any intellectual property (IP) rights in the software to the payers.</p>	We recommend the deletion of this proposal in its entirety.	<p>If adopted in its current form, the proposal would classify all software-related payments as "royalties" and subject them to WHT. In our view, this would be contrary to the best international practices in the characterisation and taxation of royalties. Specifically, certain software-related payments, such as license payments made to software providers through distribution and end-user licence agreements, are not subject to WHT as royalties, on the principle that they do not confer any intellectual property ("IP") rights.</p> <p>This practice is captured under Article 12 of the OECD Model Tax Convention and has been reiterated by judicial decisions in Kenya in and other Commonwealth jurisdictions. Our regional neighbors in Uganda and Tanzania are also in conformity with these conventional principles.</p> <p>Accordingly, in the interest of maintaining the country's competitiveness from a tax perspective, we recommend that this proposal be dropped from the Bill.</p>

2.	Income Tax Act	Taxation of pension funds and benefits	Clause 4 of the Bill proposes to delete provisions that provide tax relief and exemptions on certain income and withdrawals from pension funds. By deleting them, the Bill aims to remove or limit existing tax exemptions and reliefs related to pensions, retirement benefits and home ownership saving schemes. These subsections currently shield certain amounts and circumstances from being taxed, thereby reducing the tax burden on retirees, beneficiaries and savers.	We recommend the deletion of this proposal in its entirety.	<p>The proposed amendment should be dropped due to its disproportionate and far-reaching negative impacts on vulnerable segments of the population, particularly retirees, low- to middle-income earners, and families dealing with the loss of a loved one. The amendment undermines long-standing tax exemptions that have served as critical incentives for retirement planning, home ownership, and financial security in later life. By reversing these provisions, the amendment risks eroding public confidence in the tax system, discouraging long-term savings, and introducing unnecessary financial strain at key life stages—retirement, bereavement, and home acquisition—thereby contradicting the policy objectives previously promoted by the government itself in recent tax reforms. There could be valid reasons for early withdrawal e.g. upon termination of employment or death hence the proposed change will be counter-productive.</p> <p>The impact of the amendment includes:</p> <p>On early withdrawals except for ill-health</p> <p>.</p>

					<ul style="list-style-type: none"> • Loss of exemptions (e.g. KES 300,000 on pension income under subsection 4 and KES 600,000 on lump sum payments under subsection 5 would mean: <ul style="list-style-type: none"> i) higher tax liability for individuals, reducing their disposable retirement income). ii) Smaller retirement payouts, especially affecting low- to middle-income earners. <p>On beneficiaries after death</p> <ul style="list-style-type: none"> • Without subsections 6 and 7, beneficiaries (spouses, children) may face full taxation on lump sum payments or pension balances that were previously exempt where the death happens before the member attains 20 years as a member of the fund.
3.	Income Tax	Removal of the KES 5 million threshold for SEPT	<p>Clause 6 (b) of the Bill seeks to remove the exemption on nonresident entities with annual turnovers below KES 5 million from the obligation to pay significant economic presence ("SEP") tax.</p>	<p>We recommend the deletion of this proposal in its entirety</p> <p>Cognisant of the fact that this change is intended to boost tax revenue by widening the scope of foreign companies that will pay tax on their taxable profits linked to Kenya, we recommend its deletion.</p> <p>In the alternative, we recommend that should the SEP proposal be retained, there should be a provision mandating the Cabinet</p>	<p>Since the introduction of SEPT by the Tax Laws (Amendment) Act, there has been ambiguity regarding the threshold for determining a significant economic presence in Kenya. In the absence of a defined user threshold, it has generally been interpreted that the ITA sets the threshold based on turnover.</p> <p>Removing this provision would subject all non-resident companies that own digital marketplaces and now to also those providing services through the internet or an electronic network to SEPT regardless of number of users and annual turnover attributable to Kenya.</p>

				Secretary to publish the Regulations that state among other things, the threshold within the next six months from 1 July 2025.	<p>This may drive away such companies from serving customers who are resident in Kenya or discourage tax compliance as there will be no clear threshold.</p> <p>Nigeria, which implemented SEPT in 2019, established its threshold by mandating that all companies with annual earnings exceeding NGN 25 million (approximately KES 2 million) are subject to SEPT. Kenya should also established a well-defined threshold.</p>
4.	Income Tax	All employee reliefs and deductions to be applied prior to computing PAYE	Clause 17 (a) of the Bill proposes an amendment to the effect that an employer must grant an employee all applicable deductions, reliefs and exemptions provided under the ITA before computing the tax deductible.	<p>We have reviewed the potential implications of this change and make the following recommendations:</p> <ol style="list-style-type: none"> 1. We recommend the deletion of this proposal in its entirety. 2. In the alternative, we recommend including a proviso that "The provisions of subsection 1A shall not apply to personal relief." 3. In the alternative, the provision is provided for in the Employment Act as opposed to the Income Tax Act. 	<p>1 The proposed approach to PAYE computation will create unintended distortions in net pay outcomes.</p> <p>Whereas the Government's intention is to ease the tax burden by applying all eligible deductions, exemptions, and reliefs before computation of Pay-As-You-Earn (PAYE), our comparative analysis below on the impact of these changes on a payslip before and after the introduction of these changes raises questions about the real impact on take-home pay.</p> <p>We have prepared a simulation of PAYE computation at the end of this submission to demonstrate the effect.</p> <p>2. This would ensure that personal relief remains to be credited against tax payable rather than a deduction from income as per the proposed amendment.</p>

4.	Income Tax	Clarification on exemption of Special Economic Zone entities from capital gains tax	Clause 26 (e) of the Bill proposes to clarify that only gains on transfer of property within a Special Economic Zone (SEZ) by a licensed SEZ developer, operator or enterprise qualify for exemption from capital gains tax.	We recommend the deletion of this proposal in its entirety.	<p>The current law does not restrict the CGT exemption solely to licensed entities within the SEZ.</p> <p>This change may discourage some non-licensed investors who have been relying on the broad exemption, potentially affecting the flow of private investment into SEZs.</p> <p>Many investors do not themselves hold SEZ licences being non-SEZ entities but act as enablers of SEZ investments through acquisition, financing, or transfer of strategic property within SEZ zones. Removing their eligibility for CGT exemption will discourage private capital inflow into SEZ-linked developments, especially at early-stage investment when SEZ projects are capital intensive.</p> <p>The proposal introduces a fundamental shift in tax treatment with potential retroactive consequences. Investors who transacted based on the existing interpretation of the law—where all transfers within an SEZ zone were exempt from CGT—may now face unexpected tax liabilities or disputes.</p>
5.	Income Tax	Removal of 100% investment allowance	Clause 27 of the Bill proposes removing the tax incentive that provided for 100% investment deductions on hotel buildings, manufacturing sites and equipment for companies that:	We recommend the deletion of this proposal in its entirety.	The effect of this proposal is that capital allowances on capital expenditure for hotel buildings, manufacturing buildings, and machinery used in manufacturing will be claimed at 50% in the first year of

			<ul style="list-style-type: none"> • invested KES 250 million or more in a year, outside Nairobi or Mombasa counties; • made cumulative investments of at least KES 1 billion in the preceding three years; or • invested in SEZs. 		<p>use, with the remaining balance claimed in equal annual instalments of 25%.</p> <p>This is a move toward reducing the rate of taking the incentive in favour of spreading it over time. While it will likely boost short-term revenue, it may dampen long-term investment in underserved regions and SEZs unless alternative support mechanisms are introduced.</p>
6.	Income Tax	Removal of preferential rate for construction of up to 100 residential units	Clause 28 (b) (ii) of the Bill proposes scrapping the 15% preferential rate for companies that construct at least 100 residential units annually.	We recommend the deletion of this proposal in its entirety.	Preferential tax treatment was meant to encourage large-scale investment in residential housing, particularly in support of the Government's affordable housing agenda, and this move could undermine it.
7.	Income Tax	Removal of preferential rate for local motor vehicle assemblers	Clause 28 (b) (iii) of the Bill proposes scrapping the preferential CIT rate for the local motor vehicle assemblers applicable for the first five years from the commencement of operations and which can be extended for another five years.	We recommend the deletion of this proposal.	<p>This preferential rate was reinforced under the Finance Act, 2023 as part of Kenya's broader industrialisation and import-substitution strategy</p> <p>The removal of this incentive could discourage investment in Kenya's automotive assembly industry, which has been a focus area for manufacturing sector growth and local job creation.</p> <p>Investors who committed substantial capital based on the assurance of a stable 10-year incentive period are now being subjected to midstream policy reversal, potentially before they have begun to earn a return on investment.</p> <p>The expected short-term increase in tax revenue from withdrawing the 15% rate is likely to be marginal compared to the</p>

					long-term economic value created by the industry through employment, downstream supply chains, and technology adoption. Tax policy should consider holistic economic outcomes beyond immediate collections.
8.	Income Tax	Clarification on the minimum top up tax	The Bill proposes to introduce a requirement that the minimum top-up tax be payable by the end of the fourth month after company's year-end.	We recommend that clarity is given by the Bill that the four-month deadline applies to financial years after 1 January 2025.	<p>The concept of minimum top-up tax was introduced under the Tax Laws (Amendment) Act, 2024 and became effective on 27 December 2024. However, the proposed amendment in the Finance Bill, 2025 introduces a specific timeline for compliance—requiring payment by the end of the fourth month after year-end—without clarifying whether this timeline applies prospectively or retrospectively.</p> <p>For companies with a 31 December 2024 year-end, this payment deadline would fall on 30 April 2025. Given that the enabling amendment introducing the tax was only enacted in late December 2024, and the current Bill is yet to be passed, there is no clear legal basis for enforcing this timeline retroactively.</p> <p>As a result, taxpayers with a December year-end may unintentionally be found non-compliant, despite acting in good faith based on available legal provisions. This could expose them to penalties or interest, undermining principles of fairness, certainty, and legitimate expectation in tax law.</p>

9.	Income Tax	Re-introduction of the limit of carrying forward of tax losses	Clause 8 (c) of the Bill amends section 15(4) that allows taxpayers to carry forward their tax losses. The Bill proposes an amendment to restrict the carrying forward of tax losses to five years. The ITA currently allows tax losses to be carried forward indefinitely.	We recommend the deletion of this proposal.	<p>The move may reduce taxpayers' ability to fully utilise losses from prior periods, especially in capital intensive industries where recovery spans longer periods.</p> <p>Additionally, the removal of the provision allowing capital losses to be offset against future capital gains could result in taxpayers being taxed on gains despite having incurred previous losses, potentially leading to a higher overall tax burden and reduced relief in economically challenging periods.</p> <p>It would also negatively impact taxpayers who made certain decisions based on the current limit, for instance, in the computation and disclosure of deferred tax assets and liabilities in financial statements.</p>
10.	Income Tax	Extension of timeline for processing income exemption	Clause 26 (a) of the Bill proposes extending the timeframe for processing of exemption certificates application from 60 days to 90 days by Paragraph 10 entities (trusts and institutions established to alleviate poverty or for educational or religious purposes).	<p>We recommend the amendment of this proposal to ensure administrative accountability and certainty for taxpayers.</p> <p>Specifically, we propose the inclusion of a proviso to the effect that:</p> <p>"Provided that where the Commissioner fails to process and communicate a decision on the application within the prescribed period, the exemption shall be deemed to have been granted"</p>	<p>These entities—trusts and institutions focused on poverty alleviation, education, and religious purposes—play a critical role in supporting vulnerable communities. Delaying their access to exemption certificates risks disrupting operations, delaying programme implementation, and creating financial uncertainty, especially where donor funding and compliance depend on timely certification.</p> <p>There is no clear evidence that the current 60-day period is inadequate, and extending it appears to be an unnecessary administrative burden. Instead of increasing the waiting period, efforts should focus on improving internal efficiencies within the KRA to meet the</p>

					existing deadline. Maintaining the 60-day timeframe would better support the operational continuity and financial health of these essential public benefit organisations.
VALUE ADDED TAX					
11.	VAT	Removal of offset option for withheld VAT	Clauses 32 (a) of the Bill propose to delete Section 17 (5) (c) which allows taxpayers to offset any excess input VAT resulting from tax withheld by appointed VAT withholding agents or a refund	We recommend the retention of the paragraph	<p>The proposed deletion effectively removes the option for taxpayers to apply excess input VAT against other tax liabilities, with the available recourse now being a refund under section 17(5)(b).</p> <p>This move narrows the relief options for excess input VAT arising from withholding, making the system less flexible for businesses and increasing reliance on a refund process that is already under strain. Refunds under subsection (b) will still be allowed, but offsets will no longer be permitted, potentially increasing cash flow pressure and reliance on the KRA refund mechanism.</p>
12.	VAT	Timelines for applying for VAT refunds reduced to 12 months	Clause 32 (b) of the Bill propose to reduce the timelines for making a VAT refund from 24 months to 12 months.	We recommend the retention of the 24 months timeline	The proposed reduction in timelines will result in, taxpayers with excess input tax who are eligible for a refund will have a more limited timeframe to file their claims, thereby increasing the likelihood of their requests being deemed time-barred.

					This may result in taxpayers losing out on legitimate claims
13.	VAT	Change in the VAT status of goods for construction and equipping of specialized hospitals	Clause 36 (f) of the Bill proposes to change the supply of goods used in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty from their current exempt status to the standard rate.	We recommend the retention of the exempt status of these supplies as per the Finance Act 2023	<p>The exemption for goods used in the construction and equipping of specialised hospitals with a minimum bed capacity of fifty was introduced under the Finance Act 2023 as a deliberate policy intervention aimed at addressing critical gaps in Kenya's healthcare infrastructure.</p> <p>This exemption was intended to incentivise private sector investment in the health sector, reduce the cost of developing specialised medical facilities, and improve access to quality healthcare services, particularly in underserved regions.</p> <p>The periodic amendment of tax laws on a yearly basis is not an ideal step and goes against the principles of certainty and predictability as highlighted within the National Tax Policy.</p> <p>In addition, we also propose the retention of the current exempt status as this would encourage the development of additional health facilities to address specialized health cases in the country.</p> <p>Reversing this exemption would significantly increase the cost of constructing and equipping these hospitals. Given the capital-intensive nature of healthcare infrastructure projects, such a change could deter</p>

					<p>potential investors, delay ongoing projects, and undermine the government's broader objectives under the Universal Health Coverage (UHC) agenda.</p> <p>Further the VAT cost is likely to be pushed to the patients who access the specialised hospitals which is against the government's agenda for universal and affordable healthcare.</p>
14.	VAT	Change in VAT status of the supply of locally assembled motor vehicles for transportation of tourists.	Clauses 36 (h) of the Bill propose to change the supply locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority	We recommend the retention of the exempt status of these supplies	<p>The Tourism Research Institute, in its 2023 Annual Tourism Sector Performance Report, highlights a 34% growth of the tourism sector from 2022. This signals that the tourism sector has rebounded from the ravages of the Covid-19 pandemic and a global recession.</p> <p>The exemption was introduced as a targeted fiscal incentive to support the growth of Kenya's tourism sector and promote local vehicle assembly and advancing the local manufacturing agenda under the "Buy Kenya, Build Kenya" policy framework.</p> <p>Accordingly, the Bil's proposed standard rating of locally assembled cars for the transportation of tourists, as well as goods used in the construction of tourism facilities, seems to be counterintuitive and ill-advised, as it will increase the costs for operators in the tourism sector. Given that the sector has just recently recovered and is finally on an upward trajectory, the enactment of these proposals would risk reversing these</p>

					<p>gains, and with them, the reversal of the tourism sector's contribution to Kenya's economy. It is therefore our recommendation that this proposal should not be enacted into law.</p> <p>The exemption contributes to localisation and industrialisation goals by encouraging the purchase of vehicles assembled in Kenya, thereby supporting job creation and technology transfer within the automotive sector.</p>
15.	VAT	<p>Change in VAT status of the supply of goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme.</p>	<p>Clauses 36 (i) of the Bill propose to change the supply of goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary from exempt to standard rate.</p>	<p>We recommend the retention of the exempt status of these supplies</p>	<p>The exemption was introduced as a deliberate fiscal measure to support the Government's Affordable Housing Programme — a key pillar of the national development agenda aimed at addressing the housing deficit and improving access to decent, affordable shelter for low- and middle-income households. By exempting inputs used in the construction of approved affordable housing projects, the policy sought to lower development costs, attract private sector participation, and ultimately ensure affordability for end-users.</p> <p>Reinstating VAT on these construction inputs would have the opposite effect: it would significantly increase the cost of delivering affordable housing units, undermine pricing targets, and reduce the economic feasibility of such projects for developers. These cost increases are likely to be passed on to prospective homeowners or tenants, thereby making affordable housing less accessible to the intended beneficiaries.</p>

16.	VAT	Change in VAT status of the supply of specialized equipment for the development and generation of solar and wind energy.	Clauses 36 (k) of the Bill propose to change the supply of specialized equipment for the development and generation of solar and wind energy from exempt to standard rate.	We recommend the retention of the exempt status of these supplies	<p>The government through the Finance Act 2021, introduced green incentives that enabled the supply of these goods to be exempt. Removing such incentives, could slow down the adoption of green energy and will affect various investments in the sector by increasing operation costs and could potentially scare away future investors due to reduced investor confidence, as such frequent changes create uncertainties.</p> <p>In addition, the standard-rating of these items is in apparent contradiction with the Government's aim to promote green and more ecofriendly energy use. Notably, these proposals are also contrary to the MTRS, which aims to review tax incentives that promote use of green energy and support the transition to a green economy.</p>
17.	VAT	Change in VAT status of the supply of inputs and raw materials used in the manufacture of passenger motor vehicles and locally manufactured passenger motor vehicles	Clauses 36 (m, n) of the Bill propose to change the supply of inputs and raw materials used in the manufacture of passenger motor vehicles and locally manufactured passenger motor vehicles from exempt to standard rate.	We recommend the retention of the exempt status of these supplies	<p>The exemption was introduced as a strategic incentive to stimulate local vehicle manufacturing, support industrialisation, and reduce Kenya's dependence on imported vehicles. It aligns with the government's "Buy Kenya, Build Kenya" initiative, which aim to promote value addition, create employment, enhance skills transfer, and build a globally competitive automotive industry.</p> <p>Removing the exemption would raise production costs for local manufacturers and increase the final cost of locally assembled vehicles, making them less competitive against imported</p>

					alternatives. This would not only discourage investment in local assembly plants but also risk reversing the gains made in nurturing the domestic automotive value chain.
18.	VAT	Change in VAT status of inputs or raw materials locally purchased or imported for the manufacture of animal feeds	Clause 36 (p) of the Bill proposes the change in VAT status for inputs or raw materials locally purchased or imported for the manufacture of animal feeds from zero-rated to VAT-exempt	We recommend the retention of the zero-rated status of agricultural pest control products and raw materials needed for their manufacture.	<p>Changing the VAT status of agricultural pest control products from zero-rated to exempt means that their manufacturers and importers will not be able to claim input VAT, and will consequently pass down the costs to the farmers. The agriculture sector will therefore greatly suffer if this proposal is ultimately enacted.</p> <p>Also, these suppliers will need to consider VAT de-registration as persons dealing wholly in exempt supplies are not required to register for VAT. This could introduce administrative complexities, particularly if the VAT treatment is revised again within a short period, as has occurred in the past.</p>
19.	VAT	Exempting locally assembled and manufactured mobile phones.	Clause 36(p) of the Bill proposes the exempt locally assembled and manufactured mobile phones. This proposal will reverse the zero rate that was introduced through Finance Act, 2023.	We recommend the deletion of this proposal.	If this proposal is enacted, the cost of locally manufactured mobile phones will increase significantly. Noting the competition faced by locally made phones from foreign brands, the local sector will stagnate as Kenyans will continue to opt for cheaper foreign brands. As such, the zero-rate status as introduced by the Finance Act, 2023, was a great incentive to encourage the sector's growth and should continue in the interest of growing it further amidst stiff competition from foreign brands.

20.	VAT	Exempting status of inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments	Clause 36 (p) of the Bill proposes the change in VAT status for inputs or raw materials locally purchased or imported for the manufacture of animal feeds from zero-rated to VAT-exempt	We recommend the retention of the zero-rated status of the inputs and raw materials needed for pharmaceutical manufacture.	Changing the VAT status from zero-rated to exempt would prevent manufacturers from claiming input VAT, effectively increasing production costs. This cost increase may be passed on to consumers, undermining public health objectives and making essential medicines less affordable—particularly for low- and middle-income households.
21.	VAT	Exempting supply of motorcycles, electric bicycles and electric buses	Clause 36 (p) of the Bill proposes to exempt supply of motorcycles, electric bicycles and electric buses that was introduced through Finance Act, 2023 as zero-rated supplies	We recommend the deletion of this proposal.	<p>If this proposal is enacted, the costs for the supplies will increase significantly because the suppliers will not be entitled to a claim of input tax.</p> <p>Also, these suppliers will need to consider VAT de-registration as persons dealing wholly in exempt supplies are not required to register for VAT. This could introduce administrative complexities, particularly if the VAT treatment is revised again within a short period, as has occurred in the past.</p> <p>As such, the zero-rate status as introduced by the Finance Act, 2023, was a great incentive to encourage the sector's growth and should continue in the interest of growing it further amidst stiff competition from foreign brands.</p>

EXCISE DUTY					
22.	Excise Duty	Imposition of Excise Duty on services provided by non-residents through a digital platform.	Clause 22 of the Bill proposes to charge Excise Duty on excisable services offered in Kenya by a non-resident through a digital platform and mandates the payment to be made by the non-resident person offering the service.	We propose the removal of this clause.	<p>This proposal could be viewed as excessive, particularly for non-residents with no PE in Kenya, since their services are still subject to tax under other regimes such as Withholding Tax, Digital Service Tax and the proposed SEP tax.</p> <p>Regionally, we also note that none of our neighbours in the EAC have imposed excise duty on digital services therefore Kenya may drive itself out of benefits derived from non-resident's digital services. Accordingly, we aver that this proposal, which would be unfair and difficult to enforce if enacted, should be dropped from the Bill.</p>
23.	Excise Duty	Change in the excise duty rate of undenatured extra neutral alcohol of alcoholic strength exceeding 90%	Clause 42 (vii) of the Bill proposes to change the excise duty rate of undenatured extra neutral alcohol of alcoholic strength exceeding 90%	We propose the deletion of this proposal to change the tax base	The increase of excise duty will significantly raises production costs for local distillers and beverage manufacturers, which could mean hiked consumer prices or reduced profitability if costs cannot be transferred to the consumers.

TAX PROCEDURES					
24.	Tax procedures	Commissioner to issue agency notices even when a taxpayer has lodged an appeal.	Clause 47 proposes to delete the provision which restricts the Commissioner from issuing agency notices to a taxpayer even where a taxpayer has lodged an appeal on the disputed tax either at the Tax Appeals Tribunal or in Court.	We recommend that the proposal be deleted in its entirety.	<p>The deletion of this restriction would grant the Commissioner powers to enforce collection of disputed taxes even while the matter is still under appeal, effectively undermining the taxpayer's right to due process and appeal. It would subject taxpayers to premature enforcement action, without the benefit of an independent determination on the merits of the case and limit the taxpayer's right to access justice. This could lead to serious cashflow constraints and potentially irreversible harm—especially where the tax is ultimately found not to have been due. The timing is also wrong considering the current problematic scenario of lack of cash for refunds.</p> <p>Separately, the process could be abused without giving the taxpayer access to recourse especially where tax assessments are grossly overstated and erroneous.</p>
25.	Tax procedures	Extension of tax refund/offset processing timelines.	Clause 50 proposes extending the period within which the Commissioner must determine an application for offset or refund of overpaid tax from 90 days to 120 days.	We propose to retain the current timeline of 90 days.	Delays in processing tax refunds or offsets can place significant financial strain on taxpayers, particularly SMEs, exporters, and capital-intensive businesses that depend on prompt VAT or income tax refunds to maintain their cash flow and meet operational obligations.

					Extending the statutory refund period from 90 to 120 days would further increase this strain, leading to tighter liquidity positions. At a macroeconomic level, such delays constrain the circulation of funds within the economy, potentially slowing down business activity and investment, thereby undermining broader economic growth objectives.
26.	Tax procedures	Extension of refund audit timelines.	Clause 50 proposes extending the timeline for determining the application from 120 days to 180 days in cases where a tax refund application is subjected to an audit	<p>We propose that Clause 50 be deleted to retain the 120-day period as the general maximum.</p> <p>Alternatively, if an extension is considered necessary, the provision should:</p> <ul style="list-style-type: none"> a) Limit the extended period to an additional 30 days (total 150 days), and b) Require the Commissioner to notify the taxpayer in writing within the initial 120 days, specifying: <ul style="list-style-type: none"> i. That the refund is under audit, ii. The reason for the extension, and iii. The expected timeline for completion. 	<p>Extending the refund determination period from 120 days to 180 days in audit cases poses significant challenges to taxpayers and undermines the principles of fair tax administration and efficient revenue management.</p> <p>Timely refunds are critical to taxpayer cash flow, particularly for businesses operating on thin margins, and any prolonged delay can disrupt operations and discourage compliance. Moreover, an open-ended or extended timeline erodes predictability and certainty—key pillars of Kenya’s tax policy framework that are essential for fostering investor confidence and voluntary compliance.</p> <p>The proposed extension also creates the risk of arbitrary or excessive delays, especially where no statutory safeguards or obligations exist to require the Commissioner to justify or communicate such delays. A more balanced approach would be to retain the 120-day limit or allow only a modest, conditional extension—subject to written notice and justification by the Commissioner—to</p>

					protect taxpayer rights while preserving administrative flexibility.
27.	Tax procedures	Removal of restriction on data sharing relating to trade secrets and customer information	Clause 52 proposes to remove the current limitation on the KRA from requiring a person to integrate or share data relating to trade secrets and private or personal data held on behalf of customers or collected in the course of business	<p>We propose to delete this clause in its entirety.</p> <p>Alternatively, if Clause 52 is retained, the law should be amended to provide that:</p> <ul style="list-style-type: none"> i. The Commissioner may only require access to personal or commercially sensitive data subject to a judicial warrant or Tribunal order; and ii. The request must be proportionate, specific, and justifiable, with strict safeguards against misuse or unauthorized disclosure. 	<p>This proposal raises serious concerns regarding data protection, confidentiality, and commercial competitiveness. The current provision protects taxpayers—especially those in data-sensitive sectors like fintech, healthcare, legal services, and e-commerce—from being compelled to disclose client information, trade secrets, or sensitive personal data in a manner that could contravene Kenya's Data Protection Act, 2019, constitutional privacy rights, or professional obligations (e.g., client confidentiality).</p> <p>Removing this safeguard could expose businesses to regulatory conflicts, litigation risk, and loss of customer trust, especially in cases where there is no judicial oversight or clear limitation on the scope of data being requested.</p>

Other Proposals:

1. **Tax amnesty-** We propose an amendment to Section 37E of the TPA to extend the sunset date of the ongoing tax amnesty programme from 30 June 2025 to 30 June 2026. We also recommend that the covered period should include the year of income ending 31 December 2024. With the increased collections witnessed by the KRA from this programme, as well as from the previous Voluntary Tax Disclosure Programme ("VTDP"), extending the current amnesty programme may boost revenue collection by encouraging self-disclosure of liabilities by taxpayers. It will also grant more taxpayers an opportunity to clean up their tax ledgers, and consequently, help the KRA to clean up its receivables.
2. **Indirect transfers for CGT purposes** – We propose an amendment to Paragraph 2(b) of the Eighth Schedule to the ITA, to increase the threshold for the value of interest derived from immovable property in Kenya from 20% to 50%. This will align Kenya with global best practices as recommended under Articles 13(4) of the OECD and UN Model Tax Conventions, which similarly provide for a threshold of 50%.
3. **Deductibility of expenses-** We recommend the deletion of Section 16(1)(c) of the ITA, as introduced by the Finance Act, 2023. This provision currently disallows the deduction of expenditure or loss which is not supported by an eTIMS invoice, with effect from 1 January 2024. The continued effect of this provision risks the disallowance of genuine expenses incurred exclusively in the production of income, and the consequent bearing of an unfair tax burden. Such effects will likely be exacerbated by the low uptake of eTIMS among taxpayers, implying that a significant proportion of business expenses for the current year of income will not be eTIMS-supported.
4. **Refund mechanism for exempt taxpayers:** We recommend amending Section 47 (5) of the TPA to allow for cash refunds rather than refund adjustment vouchers for exempt taxpayers who do not have tax liabilities. Since these taxpayers have no tax liabilities against which the voucher can be applied, the current system creates inefficiencies and cash flow constraints. Additionally, we propose the removal of the KES 3 million cap on such refunds, as it unfairly limits legitimate claims by exempt entities.
5. **Clarity on SEZs:** Section 35(5) of the SEZ Act clarifies that tax benefits for SEZ developers, operators and enterprises last up to 10 years from the license issuance date, providing greater certainty for investors but also reducing the period for tax exemption. Paragraph 2 (h) of the Third Schedule still retains the phased preferential CIT rates of 10% for ten years and 15% for another ten years. We recommend harmonising the legislation for certainty and to ensure consistency in the application of SEZ incentives.
6. **VAT Treatment on disposal of seized assets:** Paragraph 1 (h) of Part 2 of the First Schedule to the VAT Act exempts advancements on loans and credit facilities from VAT. However, the sale of collateral or seized assets to recover defaulted loans is not explicitly addressed, despite being part of the same credit cycle. We propose amending the VAT Act to exempt such disposals, aligning it with existing provisions under the Income Tax Act and the Movable Property Security Rights Act, 2017.

For example, for capital gains tax (CGT) purposes, when a bank sells property to enforce a security, it is deemed that the debtor is the one making the sale, even though the bank is physically conducting the transaction. In such a case, it is the debtor that is responsible for paying CGT on the transaction as the legal and beneficial owner of the property. Similarly, the Movable Property Security Rights Act, 2017 recognises that a bank only has a security right in the charged asset unless there is an outright transfer of a receivable which would not apply in the case of a joint registration of a log book between the bank and a borrower since the effect of such joint registration is to note the bank's interest as a secured creditor.

Tax Simulation

	Currently	After introduction of the proposal on 1 July 2025
	(KES)	(KES)
Gross Pay	100,000	100,000
NSSF Tier 1	(480)	(480)
NSSF Tier II	(3,840)	(3,840)
Social Health Insurance Fund (SHIF)	(2,750)	(2,750)
Housing levy	(1,500)	(1,500)
Personal relief	-	(2,400)
Allowable Deductions	(8,570)	(10,970)
Taxable Pay	91,430	89,030
PAYE (Graduated Scale)	22,212	21,492
Personal relief	(2,400)	-
PAYE Payable	(19,812)	(21,492)
SHIF	(2,750)	(2,750)
NSSF	(4,320)	(4,320)
Affordable Housing Levy	(1,500)	(1,500)
Total Deductions	(28,382)	(30,062)
Net Pay	71,618	69,938