



Uber B.V.

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27 May 2025

The Clerk of the National Assembly  
Office of the Clerk  
Main Parliament Buildings  
P.O. Box 41842 – 00100  
**Nairobi, Kenya**

Attn: Samuel Njoroge, CBS

Dear Sirs,

**RE: SUBMISSIONS ON THE 2025 FINANCE BILL (NATIONAL ASSEMBLY BILL NO.  
19 OF 2025) (the Bill)**

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We refer to the above matter, which proposes several changes that impact Uber B.V.'s business in Kenya, as outlined in the submissions document.

Pursuant to the call to stakeholders and the general public to submit comments on the Bill, we set out below our comments and proposals for your kind consideration.

Our submissions detail recommendations regarding various aspects of the Bill, including proposals for amendments to the Income Tax Act (ITA) and the Tax Procedures Act (TPA). Key areas addressed in our submission include:

1. Harmonization of Withholding Tax (WHT) remittance timelines.
2. Clarification on the WHT base under Section 10(4) of the ITA, the scope of the WHT obligation for digital marketplace owners.
3. The definition of "property" under Section 10(4) of ITA.
4. The need for Significant Economic Presence Tax (SEPT) regulations, and
5. Exemptions from Electronic Tax Invoice Management System (ETIMS) requirements for ride-hailing services.

Yours faithfully,

Blair Radford  
Director  
**For and on behalf of Uber B.V**

No.	CLAUSE (as it is in the Bill)	DESCRIPTION / PROPOSED AMENDMENT AS PER THE CLAUSE	ISSUE	RECOMMENDATION AND JUSTIFICATION
1.	<b>New Proposal</b>	Amendment to section 35 of the Income Tax Act (the ITA).	<p>Under Section 35 (5) of the ITA, withholding tax (<b>WHT</b>) 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 Uber's business operations, this requirement to remit WHT to the KRA within 5 business days imposes an undue compliance burden which is costly for Uber and other businesses with similar business models.</p> <p>We note that non-residents (such as <b>Uber</b>) with SEPT, WHT and value added tax (<b>VAT</b>) obligations are currently facing compliance challenges given that the compliance date for the WHT imposed pursuant to section 10(4) of the ITA is different from the compliance date for SEPT and VAT obligations (which are due on the 20<sup>th</sup> day of the subsequent month).</p>	<p>Uber B.V. (<b>Uber</b>) proposes that the WHT obligations timelines under section 10(4) of the ITA be harmonised with compliance timelines relating to their VAT and SEPT obligations, such that WHT is remitted to the KRA on the same due date as SEPT and VAT.</p> <p><b><u>Recommendation</u></b></p> <p>In this regard, Uber recommends that the below proviso be added immediately after section 35 (5) of the ITA and 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 to the Commissioner no later than the 20th day</i></p>

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				<i>of the month following the month in which the tax is deducted.”</i>
2.	<b>New Proposal</b>	Amendment to section 35 of the ITA.	<p>Section 10 (4) of the ITA imposes a 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 marketplace or platform.</p> <p>However, the provision is silent on the revenue base on which the WHT is imposed and in particular whether the WHT under this section 10(4) is imposed on the net payment or gross payment from the non-resident or resident person to the payee resident in Kenya.</p>	<p>Section 15 of the ITA allows taxpayers to deduct expenses that have been incurred in the production of income.</p> <p>In this regard and in the context of Uber, Driver Partners are permitted under section 15 of the ITA to deduct all the expenses that have been incurred in the production of income, which include the services and commission fees charged by Uber in respect of using the Uber platform.</p> <p>In this respect, Uber proposes that the WHT in respect of the payments to Driver Partners be imposed on the net pay to the Driver Partners (having deducted Uber’s commission) and not on the gross pay (Fare collected on behalf of the drivers).</p> <p>Importantly, this proposal enhances Driver’s cashflows and would not result in a loss of revenue for the Government as the Driver Partners will in any event deduct the commissions charged as they compute their tax liability.</p> <p><b><u>Recommendation</u></b></p>

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				<p>Uber proposes 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 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>
3.	<b>New Proposal</b>	Amendment to section 10(4) of the ITA.	<p>Section 10(4) of the ITA imposes a WHT obligation on an owner or operator of a digital marketplace or platform, whether <b>resident or non-resident</b>, who either makes or facilitates payment in respect of services or property offered over the digital 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>

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				<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><b><u>Recommendation</u></b></p> <p>In this regard, Uber recommends that the WHT obligation under Section 10(4) be limited to <b>non-resident platform owners</b>. This would help reduce the compliance burden on resident platform owners who are already within the Kenyan tax net.</p>
4.	<b>New Proposal</b>	Amendment to section 10(4) of the ITA.	<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 <b>property</b> offered over the digital marketplace or platform.</p> <p>We note that the term “property” is not defined under the ITA and thus taxpayers are unclear on what items are captured under this section 10(4) of the ITA and thus subject to WHT.</p>	<p>Uber proposes that the term “<i>property</i>” as used under Section 10(4) of the ITA be clearly defined to provide taxpayers with clarity on the items captured under this WHT regime.</p> <p>Currently, taxpayers are compelled to rely on the definition of “<i>property</i>” as provided under Section 2 of the Interpretation and General Provisions Act (CAP 2), which includes items such as money, land, easements and every description of estate, interest, and profit.</p> <p>This broad definition leads to absurd outcomes, as it may result in the imposition of WHT on items that were never intended to be subject to WHT in the course of trade.</p> <p><b><u>Recommendation</u></b></p> <p>In this regard, Uber recommends that the term “<i>property</i>” be expressly defined under Section 2 of</p>

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				the ITA to provide clarity on the specific items captured under Section 10(4) of the ITA.
5.	<b>New Proposal</b>	N/A	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>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 a presence is established.</p> <p><b><u>Recommendation</u></b></p> <p>Uber therefore recommends that the Cabinet Secretary issues SEPT regulations to govern the implementation of the SEPT regime. The regulations should clarify various key issues including the following:</p> <ol style="list-style-type: none"> <li>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 the SEPT;</li> </ol>

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				<ol style="list-style-type: none"> <li>2. The mechanisms and thresholds for establishing a significant economic presence in Kenya;</li> <li>3. How the income which is subject to SEPT will be determined; and</li> <li>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.</li> </ol>
6.	<b>New proposal</b>	N/A	<p>Section 16(1)(c) of the ITA stipulates that any expenditure or loss where the invoices for the transactions are not generated from an electronic tax invoice management system (<b>ETIMS</b>) shall not be deductible, save where the transactions have been exempted from the application of the ETIMS requirements.</p> <p>Additionally, Section 23(3A) of the Tax Procedures Act, (the <b>TPA</b>) for purposes of ascertaining tax liability, imposes a reverse-invoicing obligation on purchasers who receive supplies from small businesses which do not exceed turnover of five million shillings. This presents a challenge for Uber App users, who are now required by law to reverse-invoice for transportation services provided by Driver Partners who fall within the five million threshold for ETIMS exemption.</p>	<p>As previously noted, Section 23A(3A) of the TPA imposes a reverse-invoicing obligation on taxpayers to self-invoice for trips received from Driver Partners, by virtue of the fact that most Driver Partners constitute small business owners and thus are exempted from the requirements of issuing ETIMS compliant invoices as this responsibility has been passed to the App users (Riders).</p> <p>Uber notes that the requirement to self-invoice for riders imposes an undue compliance burden on riders, most of whom are unsophisticated and are not able to self-invoice for trips.</p> <p>In this respect, Uber proposes that an exemption be introduced to Section 23 (4) of the TPA, exempting ride-hailing applications’ invoices from ETIMS requirements. This will reduce the compliance burden on App users, who are now required by the TPA to self-invoice for transportation provided by the Driver Partners.</p>

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				<p><b><u>Recommendation</u></b></p> <p>Uber thus recommends that section 23A (4) of the TPA be amended to exempt ride-hailing invoices from the ETIMS requirements such that customers are able to expense rides from ride-hailing platforms without the invoices being ETIMS compliant.</p> <p>The following language may be considered:</p> <p><i>“The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing, <b>ride-hailing transport services</b>, payment of withholding tax and similar payments”</i></p> <p>We further recommend that a corresponding amendment be included in the Tax Procedures (Electronic Tax Invoice) Regulations, 2024.</p>