

# **MEMORANDUM ON PROPOSED AMENDMENTS IN THE FINANCE BILL 2025**

**Date:** 27/05/2025

**To:** Chairperson, Committee on Finance and Planning

**From:** CPA Kennedy Juma Onyach

## **1. Limitation to Carry Over Tax Losses**

**Current Provision:** Section 15(4) of the Income Tax Act allows businesses to carry forward tax losses indefinitely.

**Proposed Change:** The Finance Bill 2025 introduces a five-year cap on carrying forward tax losses.

**Implications:** Businesses with long investment cycles may struggle to offset losses beyond five years, impacting long-term tax planning.

**Suggestion:** Extend the carryforward period or provide exemptions for capital-intensive industries.

## **2. Deletion of Capital Loss Deduction Against Future Capital Gains**

**Current Provision:** Section 12 of the Income Tax Act allows capital losses to be deducted against future capital gains.

**Proposed Change:** The Bill seeks to repeal this provision, preventing investors from offsetting losses.

**Implications:** Investors will face higher taxable amounts, discouraging long-term investments.

**Suggestion:** Retain the provision to support investment resilience.

## **3. Deletion of Double Tax Relief on Capital Gains Tax**

**Current Provision:** Section 41 of the Income Tax Act provides relief for capital gains tax paid in other jurisdictions.

**Proposed Change:** The Bill proposes to remove this relief, leading to potential double taxation.

**Implications:** Could discourage foreign investment and cross-border transactions.

**Suggestion:** Retain the current provision to prevent double taxation.

## **4. Removal of Threshold for Significant Economic Presence Tax**

**Current Provision:** Section 12E of the Income Tax Act exempts non-resident digital businesses with turnover below Ksh. 5 million.

**Proposed Change:** The Bill seeks to remove this threshold, subjecting all non-resident digital businesses to taxation.

**Implications:** Increased compliance costs for small digital businesses.

**Suggestion:** Maintain the threshold to balance tax revenue with digital sector growth.

## **5. Fringe Benefit Taxes at Resident Corporation Tax Rate**

**Current Provision:** Section 12B of the Income Tax Act applies fringe benefit tax at a lower rate.

**Proposed Change:** The Bill proposes taxing fringe benefits at the resident corporation tax rate of 30%.

**Implications:** Increased tax burden on employers providing non-cash benefits.

**Suggestion:** Lower the rate to 10% or maintain the current provisions.

## **6. Reduction of Timeline for VAT Refunds**

**Current Provision:** Section 17(5) of the VAT Act allows businesses to apply for VAT refunds within 24 months.

**Proposed Change:** The Bill proposes reducing the VAT refund application period to 12 months.

**Implications:** Businesses will need to expedite refund claims, potentially increasing administrative burdens.

**Suggestion:** Maintain the current timeline or improve KRA processing efficiency.

## **7. Removal of VAT Exemption on Aircraft, Helicopters, and Parts**

**Current Provision:** The First Schedule of the VAT Act exempts aircraft, helicopters, and parts from VAT.

**Proposed Change:** The Bill seeks to remove this exemption.

**Implications:** Increased costs for aviation operators, potentially affecting tourism and air transport.

**Suggestion:** Retain the current tax provision of exemptions to support Kenya's aviation industry.

## **8. VAT Imposition on Tourism and Recreational Goods**

**Current Provision:** Tourism-related goods are currently exempt under the VAT Act.

**Proposed Change:** The Bill proposes applying VAT to these goods.

**Implications:** Could increase costs for tourism operators and reduce competitiveness.

**Suggestion:** Exempt key tourism-related goods.

## **9. Standard VAT Rate on Affordable Housing Goods**

**Current Provision:** Affordable housing goods are currently zero-rated under the VAT Act.

**Proposed Change:** The Bill proposes applying the standard VAT rate.

**Implications:** May increase housing costs, contradicting affordable housing initiatives.

**Suggestion:** Zero-rate VAT on these goods for affordable housing projects.

## **10. Removal of VAT Exemptions for Energy Sector Projects**

**Current Provision:** Renewable energy projects currently enjoy VAT exemptions under the VAT Act.

**Proposed Change:** The Bill seeks to remove these exemptions.

**Implications:** Could increase costs for renewable energy projects, affecting Kenya's green energy goals.

**Suggestion:** Maintain exemptions to support sustainability, though zero-rating would be more effective.

## **11. VAT on Locally Assembled Mobile Phones**

**Current Provision:** Locally assembled mobile phones are currently VAT-exempt.

**Proposed Change:** The Bill proposes applying VAT to these products.

**Implications:** Could raise consumer prices and hinder Kenya's digital transformation agenda.

**Suggestion:** Exempt VAT on inputs used in local phone assembly.

## **12. Change in VAT Status for Electric and Solar Products**

**Current Provision:** Electric and solar products are currently zero-rated.

**Proposed Change:** The Bill proposes reclassifying them to standard VAT rate.

**Implications:** May discourage investment in clean energy solutions.

**Suggestion:** Maintain zero-rated status for essential solar and electric products.

### **13.Reclassification of Food and Healthcare Products to Standard Rate**

**Current Provision:** Certain food and healthcare products are currently exempt.

**Proposed Change:** The Bill proposes applying the standard VAT rate.

**Implications:** Could increase costs for essential goods, affecting low-income households.

**Suggestion:** Continue exemptions on critical healthcare and food items.

### **14.Standard VAT Rate on Locally Produced Passenger Vehicles**

**Current Provision:** Locally produced passenger vehicles currently enjoy preferential VAT rates.

**Proposed Change:** The Bill proposes applying the standard VAT rate.

**Implications:** May increase vehicle costs, affecting local manufacturing competitiveness.

**Suggestion:** Exempt VAT rates for locally manufactured vehicles.

### **15.Reclassification of Zero-Rated and Standard-Rated Products to Exempt**

**Current Provision:** Certain products are currently zero-rated or standard-rated.

**Proposed Change:** The Bill proposes reclassifying them to exempt status.

**Implications:** Businesses may lose VAT refund eligibility, increasing costs.

**Suggestion:** Maintain zero-rated status for key products.

### **16.Proposed Amendments to the Tax Procedures Act**

**Current Provision:** The Tax Procedures Act currently limits KRA's ability to issue agency notices during judicial review.

**Proposed Change:** The Bill seeks to empower KRA to issue agency notices even during judicial review.

**Implications:** Could lead to undue tax enforcement actions.

**Suggestion:** Delete this requirement and maintain the current provisions.

### **17.Removal of Deductibility of Sports Sponsorship Expenditure**

**Current Provision:** Sports sponsorship expenditure is currently deductible under the Income Tax Act.

**Proposed Change:** The Bill proposes removing this deductibility.

**Implications:** Could discourage corporate sponsorships for sports development.

**Suggestion:** Retain the current provision to support sports funding.

## **18. Amendment of Railway Development Levy and Import Declaration Fee**

**Current Provision:** The Railway Development Levy and Import Declaration Fee are currently set at preferential rates.

**Proposed Change:** The Bill proposes increasing these rates.

**Implications:** Could increase import costs, affecting trade.

**Suggestion:** Maintain current rates to support economic growth

**Regards,**

**CPA KENNEDY JUMA ONYACH**