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The Clerk
National Assembly
Parliament Buildings
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Nairobi, Kenya

22 May 2025

Dear Sir,

KPMG Advisory Services Limited

Memorandum for Consideration by the Departmental Committee on Finance and National Planning in the Matter of the Finance Bill, 2025

We refer to the public notice that the National Assembly published on 13 May 2025 requesting for comments from the public in respect to the proposals contained in the Finance Bill, 2025 (the Bill).

Please find enclosed KPMG's comments and proposed changes to the Finance Bill, 2025, for consideration.

The proposals featured in our submission are synced to the 2025 Budget Policy Statement theme, the Bottom-Up Economic Transformation Agenda, the National Tax Policy and the Vision 2030 economic blueprint. In preparing our submissions, we have sought to address issues that we believe to be critical for the efficient functioning of a good taxation regime whilst also aiding in the realization of the goals of the current Medium Term Revenue Strategy.

We would be delighted to provide any clarifications that you may require regarding our submissions even as we strive to collaborate in coming up with implementable tax policies that will positively impact the economy.

Yours sincerely,

Clive Akora
Partner – Tax & Regulatory Services

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1. Proposed changes to the Income Tax Act

Item	Section	Issue	Proposed amendment	Justification
1.	Clause 8(c) of the Finance Bill, 2025 Carry forward of losses to be capped to 15 years	The Bill proposes to introduce a 5-year cap on deductibility of tax losses. Currently, the law permits taxpayers to carry forward losses indefinitely.	Consider reviewing the cap to 15 years. In addition to the 15 years cap provide a proviso which reads as follows; “Provided the losses arising from investment allowances are carried forward indefinitely.”	Since the current practice is that tax losses can be carried forward indefinitely, introducing a 15-year cap would be more reasonable since some of the tax losses arise from the investment allowances legitimately provided for under the Income Tax Act. By the time the investment allowance is utilized fully, a company would have likely not exhausted the tax losses because 5 years is too short for capital-intensive projects.
2.	Clause 15 of the Finance Bill, 2025 Change of financial year	Currently, the Commissioner is required to respond to an application for change of year end within six months. The Bill proposes that where the Commissioner fails to give a decision within six months from the date of application, the change is automatically deemed to have been accepted by the Commissioner.	Consider adding the following part to accompany the proposed amendment: Where a valid application for change of year end has been submitted by a taxpayer, the change shall be auto approved on the tax system upon lapse of the six-month period.	While the proposal is a welcome move, in practice applying for such changes requires manual interventions which often take a lot of time. It would be advisable to have approvals done automatically on iTax once the 6 months proposed by the Bill lapses.
3.	Clause 16(a) of the Finance Bill, 2025 Withholding tax on payments made to non-resident ship owners or charterers.	The Bill proposes to subject to withholding tax services provided by a ship owner to the resident person procuring the service. Currently, the obligation to withhold tax on these services were listed in the Third Schedule of the ITA at 2.5% of the gross amount, however, they were not listed as part of income subject to withholding tax under Section 35.	We propose deletion of this proposal.	The implication of this proposal is that any person importing a good through sea freight would be obligated to account for withholding tax on the freight costs. The proposal would shift the compliance obligation to the consumers of the service as opposed to the ship owners which could potentially lead to lower compliance and reduced tax collection due to difficulties in

				<p>administering the tax, since the KRA would have to deal with thousands of importers rather than the current scenario where they only deal with the ship owners.</p> <p>Additionally, the proposal may increase the effective cost of maritime services for local companies, potentially affecting shipping costs and operational expenses.</p>
4.	<p>Clause 26(a) of the Finance Bill, 2025</p> <p>Extension of approval period for Income Tax exemption application</p>	<p>The Bill proposes to amend the First Schedule to the Income Tax Act by extending the period of approval of Income Tax exemption applications from 60 days to 90 days.</p>	<p>Consider retaining the current provision.</p>	<p>The proposed amendment will have taxpayers waiting longer to get an approval for Income Tax exemption approval.</p> <p>Additionally, the interim period creates confusion on the tax status of the person while the application is under review. This is because, under iTax a Taxpayer can only make an application for renewal once the existing exemption has expired. In the 90 days that the application is under consideration the taxpayer will be in limbo.</p>
5.	<p>Clause 28 (b) (ii) of the Finance Bill, 2025</p> <p>Removal of tax incentives for real estate developers</p>	<p>The Bill proposes to remove the 15% tax incentive under the Third Schedule to the Income Tax Act, for real estate developers that construct at least one hundred residential units annually.</p>	<p>Consider deleting the proposal.</p>	<p>The proposed amendment will disincentivize investment in the real estate sector.</p> <p>The incentive was designed to encourage developers to build at least 100 residential units annually, supporting Kenya's affordable housing agenda. Removing this incentive may reduce the financial attractiveness of such projects, potentially leading to fewer large-scale developments and slowing the supply of affordable housing.</p> <p>Additionally, there would be a possible increase in housing prices especially those under the affordable housing agenda due to higher developer costs.</p>

6.	<p>Clause 28 (b) (iii) of the Finance Bill, 2025</p> <p>Removal of tax incentives on local vehicle assemblers</p>	<p>The Bill proposes to remove the fifteen percent corporate tax incentive on local assemblers of motor vehicles.</p>	<p>Consider deleting the proposal</p>	<p>The proposal is likely to discourage investment in the local automotive industry. While the removal of the incentive could increase short-term revenue, it may reduce long-term economic activity in Kenya and job creation in the automotive sector.</p> <p>Removing this incentive could stall progress achieved in growing the local assembly industry for automobiles due to reduced after-tax profits.</p>
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2. Proposed changes on Transfer Pricing and International Tax

Item	Request	Issue with the clause	Proposed amendment	Justification
1.	<p>Clause 11 of the Finance Bill, 2025</p> <p>In subsection (8), by deleting the words surrogate parent entity" and substituting therefor the words.</p> <p>"to file a country-by-country report and notify the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify"</p>	<p>The proposed amendment to section 18 (D) (8) implies that the Country-by-Country report (CbCR) and notification shall be filed by the last day of the financial year of the group.</p> <p>This contradicts the provision of section 18(D)(2) which requires filing of CbCR not later than 12 months after the last day of the reporting period.</p>	<p>Consider wording as follows:</p> <p><i>"To file a country-by-country report as prescribed in Section 18(D)(2), and notify the Commissioner by the last day of the reporting financial year of that group in such form as the Commissioner may specify"</i></p>	<p>The original wording is ambiguous and could be interpreted to mean that both the filing of the Country-by-Country (CbC) report and the notification to the Commissioner will be required by the end of the reporting financial year, which contradicts the existing provision allowing 12 months for filing the report.</p> <p>Our proposed submission would clarify that the CbCR is to be filed not later than 12 months after the last day of the reporting period as per section 18(D)(2) of the ITA.</p>

3. Proposed changes to the Value Added Tax Act, 2013

Item	Request	Issue with the clause	Proposed amendment	Justification
1.	<p>Clause 36(o) of the Finance Bill, 2025.</p> <p>Introduction of Paragraph 156 and 157 to the 1st Schedule to the VAT Act, 2013</p>	<p>The Bill has proposed to exempt transportation of sugarcane from farms to milling factories, as well as inputs or raw materials, whether locally purchased or imported, or the manufacture of animal feeds.</p> <p>Changing the VAT status of the above from zero-rated to exempt is likely to have a significant impact on the agriculture sector and the broader economy due to the expected increase in production costs for suppliers, who may pass these costs on to farmers, ultimately leading to higher food prices.</p>	<p>We propose that Clause 36(o) of the Bill be deleted and retain zero-rating the transportation of sugarcane from farms to milling factories, as well as inputs or raw materials, whether locally purchased or imported, or the manufacture of animal feeds.</p>	<p>Implementing this proposal will lead to increased cost burden that would affect the most vulnerable segments of society, alleviating issues of food insecurity and poverty.</p> <p>Hence, maintaining the zero-rated status for transportation of sugarcane from farms to milling factories, as well as inputs or raw materials, whether locally purchased or imported, or the manufacture of animal feeds might be more beneficial for socio-economic stability.</p>
2.	<p>Clause 36(o) of the Finance Bill, 2025</p> <p>Introduction of Paragraph 155 to the 1st Schedule to the VAT Act, 2013</p>	<p>The Bill has proposed to introduce a new paragraph 155 in the First Schedule to move all inputs and raw materials whether produced locally or imported, supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments from zero-rated to exempt.</p> <p>This will lead to higher production costs of medicaments leading to higher medicine prices, thus undermining affordability and access to healthcare.</p>	<p>We propose that the new Paragraph 155 in Clause 36(o) of the Bill be deleted and retain the zero-rating of Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.</p>	<p>The proposed change to reclassify all inputs and raw materials whether produced locally or imported, supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments from zero-rated to exempt is likely to significantly impact the health sector.</p> <p>This reclassification is anticipated to raise production costs for manufacturers of pharmaceuticals, who will in turn pass these costs onto patients. Consequently, this will lead to higher medicine prices.</p> <p>Zero-rating the supplies will allow</p>

				manufacturing entities to claim input VAT therefore preventing input VAT expenses from being passed down to the final consumer.
3.	<p>Clause 36(o) of the Finance Bill, 2025</p> <p>Introduction of Paragraph 159, 160, 161 and 162 to the 1st Schedule to the VAT Act, 2013</p>	<p>The Bill has proposed to move supply of supply of motorcycles of tariff heading 8711.60.00, electric bicycles, electric buses of tariff heading 87.02 and solar and lithium-ion batteries from zero-rating to exempt.</p> <p>The proposed reclassification is expected to increase prices that could impede the implementation of the green economy agenda by making these eco-friendly transportation options and lighting less accessible to the public.</p>	<p>We propose that Clause 36 (o) which moves supply of electric bicycles and electric buses of tariff heading 87.02. from zero-rating to exempt be deleted.</p>	<p>One of Kenya's government priority agenda items is to promote the use of clean and environment friendly energy sources.</p> <p>The proposed shift to exempt status from zero-rated will likely see increased costs of electric bicycles and buses through which might discourage their adoption, consequently, slowing down the transition to widespread adoption of sustainable energy in the transportation industry. This move could undermine efforts to reduce carbon emissions and combat climate change.</p>
4.	<p>Clause 36(h) of the Finance Bill 2025</p> <p>Deletion of Paragraph 109</p>	<p>The Bill proposes to repeal the exemption from VAT of taxable supplies for use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.</p> <p>The proposed reclassification is contrary to the government's agenda of affordable housing as standard rating the materials used in construction will result in higher costs.</p>	<p>Retain Paragraph 109 of the 1st Schedule to the VAT Act, 2013</p>	<p>The Bill's proposal will negatively affect the government's affordable housing program because the increased cost of construction material will lead to higher purchase prices for the final buyers of the houses.</p>
5.	<p>Paragraph 36(d) and (g)</p> <p>Deletion of Paragraph 62 and 91 of the 1st</p>	<p>The Bill proposes to repeal the exemption from VAT of taxable supplies for use in construction of tourism facilities, recreational parks, convention, and conference facilities and specially designed locally assembled motor vehicles for</p>	<p>Retain Paragraph 62 and 91 of the 1st Schedule to the VAT Act, 2013</p>	<p>The proposal counters Government's efforts to encourage investment in the tourism sector. This is despite intense efforts by the Government to promote the growth of the sector.</p> <p>Kenya is heavily reliant on international tourism</p>

	Schedule to the VAT Act, 2013	<p>transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles are exclusively used for transportation of tourist, licensed under the Tourism Vehicle Regime.</p> <p>The reclassification will impact tourism sector negatively due to introduction of VAT that shall be transferred to the end user who might not be able to claim input VAT countering government's effort to encourage investment in the tourism sector.</p>		as a source of foreign exchange. Additionally, domestic tourism has been on an upward trajectory and the proposal may slow down the growth of the sector
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4. Proposed changes to the Excise Duty Act

Item	Request	Issue with the clause	Proposed amendment	Justification
1.	<p>Clause 42 (a)(iii) of Finance Bill, 2025</p> <p><i>Change in excise duty rate on "Imported float glass and surface ground or polished glass"</i></p>	The Bill references tariff code 7005 instead of tariff code 7007 as referenced under Part 1 of the First Schedule to the Excise Duty Act.	Amend the clause to reference tariff code 7007 to align with the Excise Duty Act.	<p>The proposed amendment will correctly reference tariff code 7007 avoiding ambiguity and potential misapplication of excise duty rates.</p> <p>This alignment with the Act promotes legal clarity, facilitates proper tax administration, and prevents unintended tax burdens on unrelated imports.</p>
2.	<p>New clause</p> <p><i>Definition of internet</i></p>	The Excise Duty Act does not provide for definition of "internet". This has resulted in multiple tax disputes as there are varying interpretations by taxpayers, the revenue authority and even the courts, as the definition at times has been misinterpreted to include internet infrastructure.	<p>We propose an amendment to the section 2 — Interpretation of Schedule to include the definition of internet as follows:</p> <p><i>"Means a global network that connects billions of computers across the world with each other and to the World Wide Web. It</i></p>	The lack of interpretation of what constitutes internet for purposes of excise duty has created challenges in implementation of the tax. Recently there has been disputes on the interpretation on internet with KRA including infrastructure as internet.

			<i>excludes private connections, infrastructure, and protocols.”.</i>	<p>In the absence of an express definition of internet data services within the tax statute, taxpayers rely on the common understanding that the internet data services relate to data bundles/capability to access to the World Wide Web.</p> <p>Internet data services refer to the various forms of access and functionalities provided over the internet, enabling users to exchange, retrieve, and utilize digital information. These services are essential for communication, business operations, entertainment, and more.</p> <p>Internet should not include infrastructure and Private intranets and isolated networks.</p> <p>A clear definition in the Excise Duty Act would avoid misinterpretation in application of the law by KRA in seeking duty owed by telecommunication companies.</p>
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5. Proposed changes to the Miscellaneous Fees and Levies Act

Item	Request	Issue with the clause	Proposed amendment	Justification
1.	<p>Clause 58 of Finance Bill, 2025</p> <p><i>Amendment of Part A and Part B of the Second Schedule to the Miscellaneous Fees and Levies Act.</i></p>	<p>The current Miscellaneous Fees and Levies Act exempts all parts of aircrafts and spacecrafts from import declaration fee (IDF) and railway development levy (RDL) and goods of Heading 8802.30.00 and 8802.40.00</p> <p>The Bill proposes that these parts be subject to IDF at the rate of 2.5% and RDL at the rate of 1.5% RDL of the customs value.</p>	We propose the present section of the Miscellaneous Fees and Levies Act remain as it is.	<p>Should the proposed amendment be effected, it would negatively affect key aviation industry players with imports weighing less than 2,000kg and those exceeding 15,000kg.</p> <p>Narrowing down the exemption would have the ripple effect of increasing ticket prices for small aircrafts and helicopters.</p>

6. Proposed changes to the Tax Procedures Act, 2015

Item	Request	Issue with the clause	Proposed amendment	Justification
1.	Clause 43 of the Finance Bill, 2025 Restriction of the scope of payments excluded from issuing an electronic tax invoice	<p>The Bill proposes to update the transactions that do not require the issuance of electronic tax invoices. The proposed provision states that an electronic tax invoice may exclude payments of emoluments, imports, interest, transactions for accounting of investment allowances, airline passenger ticketing and payments subject to withholding tax as a final tax.</p> <p>The proposal fails to consider exclusion of other applicable payments such as insurance claims and foreign currency gains and losses.</p>	<p>Consider including insurance claims by consumers as part of the excluded forms of payments.</p> <p>Alternative, Section 23 can be amended and provide that only payments that qualify for eTIMS invoices as per the amendment introduced by the Tax Laws (Amendment) Act 2024 will be eligible for issuance of electronic tax invoices.</p>	<p>It is a mandatory requirement under Section 16 1(c) of the Income Tax Act that no deduction shall be allowed in respect of any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act. As such the said mandatory requirement has been a big compliance and ascertainment hurdle especially for Insurance companies when dealing with insurance claims raised by policyholders. As such it would be prudent to have insurance claims by consumers as part of the excluded forms of payments.</p>
2.	Clause 47 (m)(v) of Finance Bill, 2025 <i>Issuance of agency notices despite an appeal being filed at the Tax Appeals Tribunal</i>	<p>The Bill proposes to empower KRA to issue agency notices to third parties owing a taxpayer despite the tax assessments being subject to ongoing appeal before the Tax Appeals Tribunal or higher courts. The proposal conflicts with the sanctity of the right to appeal tax assessments.</p>	<p>Consider deletion of the proposed clause.</p>	<p>Empowering the Commissioner to issue agency notices despite an appeal being filed at the Tax Appeals Tribunal defeats the rationale of appealing against the Commissioner's decision. This would force taxpayers lodging an appeal to apply for stay orders preventing the Commissioner from effecting an issued agency notice.</p> <p>This clearly goes against the right for a fair trial under Article 50(2)(a) where every person ought to be to be presumed innocent until the contrary is proved.</p> <p>Forcing taxpayers to pay taxes in dispute during an ongoing appeal would have a cash impact on the taxpayers' businesses. Additionally, where the taxpayer becomes successful in an appeal, this would present an</p>

				<p>administrative burden on the taxpayer who would be required to apply for a refund.</p> <p>Tax Refunds delays are already a huge hurdle for businesses who are straining due to lack of cashflow.</p>
3.	<p>Clause 54 of the Finance Bill, 2025</p> <p><i>Inclusion of weekends and public holidays in computation of time</i></p>	<p>Currently, the computation of statutory time for lodging Appeals and objections excludes weekends and public holidays in compliance with the Tax Laws Amendments Act 2024. The Bill proposes to include weekends and public holidays in computation of the statutory time for lodging tax objection and appeals.</p>	<p>Consider deleting the clause.</p>	<p>The proposed amendment is likely to increase risks of missed filings of appeals and objections due to shorter deadlines. Additionally, the shorter timeframe is not ideal for taxpayers who may have to retrieve copious documents in support of their case. The shorter timelines may effectively deny taxpayers fair justice.</p> <p>Further, the proposed amendment will create uncertainty in administration of tax disputes because the provision in the Tax Laws Amendment Act, 2024 was enacted just six (6) months ago</p> <p>This also goes contrary to Article 50(2)(c) where every person has the right to have adequate time and facilities to prepare a defence.</p> <p>Additionally, the said provision will be going contrary to: -</p> <p>Section 57 of the Interpretation and General Provisions Act, Order 50 of the Civil Procedure Rules and Rule 15 of the Supreme Court Rules 2020 all of which in computation of time exclude weekends and public holidays in computation.</p>

4.	<p>Clause 52 of the Finance Bill, 2025</p> <p>Commissioner empowered to request personal data and trade secrets information for integration of electronic tax systems</p>	<p>The Bill proposes to allow the Commissioner to access trade secrets and personal data information for integration into the electronic tax management system. The proposed amendment, if implemented, is likely to result in loss of confidentiality of customer data and unwarranted disclosure of business proprietary information.</p>	<p>Consider deletion of the clause</p>	<p>The proposed amendment poses a risk of data breaches and complaints against the Commissioner before the Office of the Data Protection Commissioner.</p> <p>Further, the Bill fails to impose on KRA, the onus to provide technical and organizational safeguards to ensure that the personal data collected from taxpayers is well protected.</p> <p>Additionally, the absence of confidentiality and data privacy protections could erode taxpayer trust in KRA leading to resistance or non-compliance with data submission requirements, thereby hampering growth of the tax base.</p>
5.	<p>Clause 50 (b) & (c) of the Finance Bill, 2025</p> <p>Increase in timeframe for review of an application for overpaid tax and for review of an overpayment claim subjected to audit.</p>	<p>The Bill seeks to extend timelines for review of tax overpayment claims from 90 days to 120 days, and overpayment claims subject to audit from 120 days to 180 days.</p>	<p>Consider deletion of Clause 50 (b) & (c)</p>	<p>The proposed amendments are likely to result in delayed resolution of tax overpayment claims by taxpayers potentially affecting cashflow and financial planning.</p> <p>Many businesses who are heavily reliant on cashflow are already struggling due to delays in settling their claims.</p>