

Ref: SCL/TAS/079

27<sup>th</sup> May 2025

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

Dear Sir,

### **Submission of Memoranda on the Finance Bill 2025**

We write to you in connection to your invitation through print media dated 13th May 2025 seeking public participation on the proposed Finance Bill, 2025. The Bill proposes amendments to the Income Tax Act (Cap 470), Value Added Tax Act (Cap 476), Excise Duty Act (Cap 472), Miscellaneous Fees and Levies Act (Cap 469C), and the Tax Procedures Act (Cap 469B). Please see below our contributions:

#### Withholding Tax on the Sale of Scrap

Withholding tax (WHT) on the sale of scrap in Kenya was introduced through the Tax Laws (Amendment) Act, 2024 which amended the Income Tax Act (ITA). Specifically, Section 35 of the ITA was revised to include payments for the sale of scrap as subject to WHT at a rate of 1.5% for both resident and non-resident persons.

Subsequently, the Finance Bill, 2025, proposes further amendments to the ITA, notably to Section 10(1), by adding new paragraphs:

(l) supply of goods to a public entity

(m) sale of scrap

These additions aim to clarify that income from such supplies is subject to income tax, thereby aligning with the introduction of WHT rates under Sections 35(1) and 35(3) of the ITA.

While the legislation was introduced with the goal of enhancing tax compliance and revenue collection from the informal sector, it has had far-reaching negative consequences that outweigh any intended benefits. The tax has significantly increased the cost of locally sourced scrap metal, making it more economical to import scrap, which contradicts national economic goals, undermines local industries, and threatens the livelihoods of thousands of Kenyans.

The scrap metal industry is a vital component of Kenya's circular economy. It supplies essential raw materials to local manufacturers, especially in the steel and aluminum sectors, supports thousands of jobs across the value chain—from collectors to processors—and contributes to environmental conservation through recycling. The imposition of withholding tax, however, has distorted the market. By increasing the cost of local scrap, the tax has made Kenyan scrap less attractive than imported alternatives. This price disparity has discouraged local sourcing, promoted a reliance on imports, and placed a financial strain on manufacturers who are already operating in a high-cost environment.

Rather than expanding the tax base, the law has had the opposite effect. It has driven informal sector participants further underground to avoid the tax, making monitoring and enforcement more difficult and reducing overall tax compliance. This has also opened doors to corruption and unregulated trade. Furthermore, legitimate businesses are struggling with reduced competitiveness and disrupted supply chains. Many have been forced to scale down operations, resulting in job losses, diminished industrial output, and increased economic vulnerability for families reliant on this sector.

The negative impact is not only economic but also environmental. The withholding tax has inadvertently discouraged recycling by reducing the incentives for scrap collection and processing. Kenya, which has committed to green growth and sustainability, is now undermining its own efforts to build a circular economy and reduce waste through localized resource use.

International comparisons further highlight the need for repeal. Neighboring countries such as Tanzania and Uganda have avoided or reversed similar policies after recognizing their harmful impact. If Kenya continues with this tax, the country risks losing its regional competitiveness in the scrap and metal recycling industry.

Given the scope of the damage caused by this tax, amendments or restructuring are insufficient. The only viable solution is a complete repeal of the withholding tax on scrap metal purchases. This would immediately reduce the cost burden on local buyers, stimulate domestic trade in scrap, restore competitiveness for local manufacturers, and re-incentivize recycling and formalization of the sector. It would also revive employment in the scrap metal value chain and foster broader economic stability.

In conclusion, the withholding tax on scrap metal purchases is a counterproductive policy that is harming the very sectors it was meant to support. The tax has proven ineffective in achieving its goals and has triggered a chain of economic and environmental consequences. We therefore respectfully call on the National Assembly to act urgently and repeal this law in its entirety to protect local industry, jobs, and Kenya's long-term economic interests.

### Limitation on the Carry Forward of Tax Losses

We wish to raise a concern regarding the proposed reintroduction of a limitation period for the carry forward of tax losses under Section 15(4) of the Income Tax Act (ITA), as outlined in the current Bill. The amendment restricts the utilization of tax losses to the year in which they arise and the subsequent five years.

This represents a significant shift from the current regime, where such limitations were removed by the Finance Act, 2021, following the introduction of the now-defunct minimum tax regime under the Finance Act, 2020. The proposed amendment further seeks to repeal Section 15(5), which currently empowers the Cabinet Secretary, upon recommendation by the Commissioner, to extend the deduction period beyond ten years in exceptional cases.

We believe this repeal is ill-advised, particularly for capital-intensive investments that often require longer horizons to recover initial losses. Instead of eliminating this flexibility, we recommend that Section 15(5) be retained with appropriate amendments to align with any revised limitations under Section 15(4).

Additionally, the current proposal lacks transitional provisions for tax losses accumulated in previous years. To ensure fairness and certainty for taxpayers, we recommend that the provision be amended to deem all tax losses accumulated prior to the effective date as having arisen in the year the amendment comes into force.

We also note with concern that no corresponding amendment has been proposed to repeal Section 12D of the ITA, which introduced the now-unconstitutional minimum tax regime. We strongly urge the inclusion of such a repeal for legal consistency.

### Repeal of Accelerated Investment Allowances

We also wish to express our concern regarding the proposed repeal of Paragraphs 1A and 1B of the Second Schedule to the Income Tax Act, which currently provide for accelerated investment allowances of 100% and 150% in the year of first use for qualifying capital investments.

These provisions have been instrumental in incentivizing large-scale investments outside Nairobi and Mombasa Counties, as well as in Special Economic Zones (SEZs). Specifically, the 100% investment allowance applies where the investment outside Nairobi and Mombasa counties meets a threshold of KES 1 billion over three years, KES 250 million in a single year, or where the investment is made in an SEZ. The 150% rate applies to qualifying investments made on or before 25th April 2020 or in relation to a cumulative investment value of at least KES 1 billion over a specified period surrounding 1st July 2022.

The repeal of these allowances may discourage capital-intensive investments in regions outside Nairobi and Mombasa, which have often been undertaken with the legitimate expectation of accelerated tax relief. It may also significantly reduce the attractiveness of SEZs, despite the government's ongoing efforts to promote them as key investment hubs. Moreover, frequent and retroactive changes to such critical tax incentives risk undermining investor confidence and long-term planning.

We urge the National Assembly to reconsider this repeal and maintain these allowances to ensure regional investment growth and to support Kenya's broader industrial and economic development goals.

#### Repeal of Preferential Tax Rates

We also wish to raise concern over the proposed amendment to the Third Schedule of the Income Tax Act, which seeks to repeal the preferential corporate tax rate of 15% currently granted to two key sectors: companies involved in the construction of at least 100 residential units annually, and businesses engaged in the local assembly of motor vehicles. While the proposal is in line with the Medium-Term Revenue Strategy (MTRS) objective of streamlining tax incentives and reducing overall tax expenditure, its implementation could have significant negative consequences.

The removal of these preferential rates may undermine ongoing efforts to attract investment into the affordable housing sector, which is a flagship initiative of the government, and could similarly deter growth in the local motor vehicle assembly industry—a critical area for industrialization and job creation.

We urge the National Assembly to weigh the long-term economic benefits of targeted tax incentives against short-term revenue considerations and to consider retaining these preferential rates as part of a broader strategy to stimulate investment, promote local manufacturing, and support national development goals.

#### **Conclusion**

In light of the foregoing, we respectfully urge the National Assembly to critically evaluate the proposed tax amendments and their broader implications on investment, industrial growth, job creation, and national development objectives.

While we recognize the government's need to enhance revenue collection, we emphasize the importance of maintaining a stable, predictable, and supportive tax environment that encourages long-term investment and economic resilience. Repealing incentives and imposing restrictive measures without adequate transitional frameworks or sector-specific considerations risks undermining key pillars of the economy, including manufacturing, affordable housing, environmental sustainability, and regional equity.

We therefore call upon this esteemed House to reconsider and revise the proposed provisions in consultation with industry stakeholders, and to adopt a more balanced approach that safeguards both fiscal goals and national development priorities.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Amir".

For: Sannabil Consulting Ltd