
TO: THE NATIONAL ASSEMBLY

FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)

FKE MEMORANDUM ON THE FINACE BILL, 2025

1. BACKGROUND

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation's members employ 70% of formal private sector wage employees in Kenya. The role of the Federation is to build the capacity of employers and to influence the business environment through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, Confederation of IGAD Employers, BUSINESS Africa-Employers Confederation, the International Organization of Employers (IOE), and the International Labour Organization (ILO), and other global forums.

In taking a policy position, FKE is guided by the need to ensure a balanced and sustainable policy environment that promotes:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair labour practices
- Resilient and competitive businesses
- Harmonious industrial relations
- Social Justice
- Feasibility and affordability of the costs associated with implementation of the policy.

The above mandate guided FKE position on the proposed Finance Bill, 2025.

2. THE FINANCE BILL, 2025

This is a proposed Bill for an Act of Parliament to amend the law relating to various taxes and duties, and for matters incidental thereto. As a Federation, we understand that the Bill proposes taxation measures that the government will undertake to raise revenue for financing its operations. We hereby submit our views/proposals on the Bill for your consideration and incorporation.

FKE Comments on the Proposed Finance Bill, 2025

No.	Finance Bill Section/Clause	What is in the Finance Bill 2025	FKE's Proposal	Justification/Rationale
		INCOME TAX ACT, CAP 470		
1.	Section 2 (a) (iii) of the Finance Bill 2025	<p>Section 2 of the Income Tax Act Cap 70 on the definition of royalty.</p> <p>The Bill proposes to expand the definition of royalty to include transactions relating to distribution of software where regular payments are made for</p>	Delete Section 2 (a) (iii) of the Finance Bill 2025	<p>This proposal is in direct conflict with the Ruling in the High Court decision in Income Tax Appeal no. 8 of 2017 <u>Seven Seas Technologies Limited Vs the Commissioner of Domestic Taxes</u> where the High Court ruled that the purchase of software for resale does not give rise to a royalty to the extent that the software reseller does not acquire the rights to enable them to commercially exploit the software.</p>

		the use of the software through the distributor.		
2.	Section 5 of the Finance Bill 2025	Section 10 of the Income Tax Act cap 70 on the enforceability of Withholding Tax on Scraps and Public supplies.	Delete Section 5 of the Finance Bill 2025	The formalization of scrap sales through withholding tax could discourage informal or unregistered scrap transactions leading to reduced margins or price increases, as sellers may pass the tax burden onto buyers.
3.	Section 8 (a) (ii) and (iii) of the Finance Bill 2025	Section 15 (2) (ii) (iii) of the Income Tax Act Cap 70 The Bill proposes to repeal the provisions that empower the Commissioner to determine the just and reasonable cost attributable to the cost of timber sold during a year of income.	Delete Section 8 (a) (ii) and (iii) of the Finance Bill 2025	This amendment would likely result in higher taxable income for both landowners and purchasers of timber rights, as they would no longer be able to offset income with these timber-related cost deductions. It may also discourage timber-related transactions or increase the effective tax burden on such activities.
4.	Section 8(b) (ii) of the Finance Bill 2025	The Bill proposes to delete Section 15(3)(f) of the Income Tax Act Cap 470 that allows for the carrying forward of losses	Delete Section 8(b) (ii) of the Finance Bill 2025	This proposal is unfair to employers as it contradicts the principle of taxing net gains and penalizes genuine economic losses. This may discourage investment, distort

		incurred in the transfer of property.		taxpayers' financial positions, and create unfairness by taxing profits while ignoring related losses, ultimately harming economic efficiency.
5.		The Bill proposes to introduce a 5-year cap on deductibility of tax losses. Currently, the law permits taxpayers to carry forward losses indefinitely.	Delete Section 8(d) of the Finance Bill 2025 and insert a new paragraph to read as follows: <i>"Notwithstanding subsection (4), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction beyond five years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period."</i>	Introducing the aspect of extending the period of deductibility of tax for another five years strikes a fair balance between revenue protection and business recovery. Many sectors require more time to become profitable, and a five-year extension ensures legitimate losses are fairly utilized.

6.	Section 19 of the Finance Bill 2025	The Bill proposes to charge tax to dividends distributed out of untaxed gains or profits	Amend Section 19 of the Finance Bill 2025 to define the phrase “untaxed profits”	Clearly defining the term untaxed profits will eliminate the ambiguity of what constitutes untaxed profits.
7.	Section 26 (a) of the Finance Bill 2025	The Bill proposes to extend the timelines for approval for an Income Tax exemption certificate from sixty to ninety days	Amend Section 26 (a) of the Finance Bill 2025 to delete the word “ninety” and substituting with the word ‘thirty’	The proposal to extend the approval timeline for an Income Tax exemption certificate from 60 to 90 days is a step in the wrong direction. Instead, this period should be reduced to 30 days to enhance efficiency, especially with the government's ongoing investment in digitized tax systems, there is no justification for prolonged delays.
8.	Section 27 of the Finance Bill 2025	The Bill proposes to delete the incentive of claiming one hundred percent on cumulative investments done outside Nairobi and Mombasa or within the special economic zone with respect to hotel buildings, buildings used for manufacture and machinery used for manufacture where;	Delete Section 27 of the Finance Bill 2025	The proposal is likely to discourage major capital investments in regions outside Nairobi and Mombasa, and in Special Economic Zones (SEZs). It may also deter investment in the tourism sector, a vital source of foreign exchange. Consequently, this could lead to slower economic growth in non-urban areas and reduced activity in SEZs.

		<ul style="list-style-type: none"> • The cumulative investment value in three preceding years outside Nairobi and Mombasa counties exceeds one billion shillings; • The investment value outside Nairobi County and Mombasa County exceed two hundred and fifty million shillings in that year of income; or • The person has invested in a special economic zone. 		
9.	Section 28 (b) (ii) of the Finance Bill 2025	The Bill proposes to remove the 15% tax incentive for real estate developers that construct at least one hundred residential units annually.	Delete Section 28 (b) (ii) of the Finance Bill 2025	The proposed amendment is likely to discourage investment in the real estate sector and seems not to align with the Government's affordable housing agenda, potentially undermining the progress achieved in the sector so far.

10.	Section 28 (b) (iii) of the Finance Bill 2025	The Bill proposes to remove the fifteen percent corporate tax incentive on local assemblers of motor vehicles.	Delete Section 28 (b) (iii) of the Finance Bill 2025	The proposed proposal may deter investment in the local automotive industry. Although eliminating the incentive could boost short-term revenue, it risks diminishing long-term economic activity and job creation within the sector.
VALUE ADDED TAX, CAP 476				
11.	Section 31 (b) of the Finance Bill 2025	The Bill seeks to include internet, radio or television broadcasting services as Vatable	Amend Section 31 (b) of the Finance Bill 2025 to define the phrase 'broadcasting services'	The current lack of definition creates legal uncertainty, especially given the evolving nature of content delivery through digital and online platform.
12.	Section 36 (e) of the Finance Bill 2025	The Bill proposes to charge VAT to taxable goods for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty.	Delete Section 36 (e) of the Finance Bill 2025	Imposing VAT on these goods would significantly increase the cost of establishing such critical infrastructure, potentially discouraging investment in specialized healthcare facilities. Exemption helps lower project costs, promotes access to quality medical services, and supports the achievement of universal health coverage, especially in underserved regions.

13.	Section 36 (g) of the Finance Bill 2025	The Bill proposes to charge VAT on specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators	Delete Section 36 (g) of the Finance Bill 2025	This exemption should be retained to promote investment in the local tourism and automotive sectors. This exemption encourages local assembly, supporting job creation and industrial growth while also aligning with the government's goal of boosting tourism which is a key foreign exchange earner.
TAX PROCEDURES ACT, CAP 469B				
14.		The Bill seeks to increase the timeframe for determination of an overpayment of tax application by KRA from 90 days to 120 days.	Deletion of Section 50 (b) of the Finance Bill 2025	The proposed amendment may lead to delays in resolving taxpayers' overpayment claims, which could negatively impact their cash flow and disrupt financial planning.
15.		The Bill proposes to increase the timeframe to review an application for refund of overpaid taxes subject to an audit by the Commissioner from 120 days to 180 days.	Deletion of Section 50 (c) of the Finance Bill 2025	The proposed amendment may result in prolonged delays in the resolution of overpayment claims, potentially straining taxpayers' cash flow and disrupting their financial planning.

16.	Section 52 of the Finance Bill 2025	The Bill proposes to allow the Commissioner to access trade secrets and personal data information for integration into the electronic tax management system.	Delete Section 52 of the Finance Bill 2025	These restrictions will help balance effective tax enforcement with the protection of businesses' proprietary information and individuals' privacy rights. They also foster trust between taxpayers and the Kenya Revenue Authority encouraging voluntary compliance without fear of data misuse.
17.	Section 54 of the Finance Bill 2025	The Bill proposes to remove weekends and public holidays in the computation of time for lodging objections and appeals	Delete Section 54 of the Finance Bill 2025	The proposal to exclude weekends and public holidays from the computation of time for lodging objections and appeals should not be adopted because it undermines the principle of efficiency and timely resolution of tax disputes.
18.	Section 56 (5A) of the Finance Bill 2025	The Bill proposes to waive penalties and interests on errors generated from the electronic tax system upon recommendation by the Cabinet Secretary	Amend Section 56 (5A) of the Finance Bill 2025 to remove for the CS's approval	Errors caused by the system are beyond the taxpayer's control, and relief from penalties and interest in such cases should be automatic and clearly provided for in law not subject to bureaucratic approval.

MISCELLANEOUS FEES AND LEVIES ACT, CAP 469C				
19.	Section 58 of the Finance Bill 2025	The Bill seeks to narrow the Import Declaration Fee (IDF) and Railway Development Levy (RDL) exemptions to only apply to spare parts under Chapter 88 and aeroplanes and aircraft over 2,000 kg but below 15,000kg as well as those over 15,000 kg.	Deletion of Section 58 of the Finance Bill 2025	<p>The airline industry already contributes to various revenues to the government through existing taxes such as:</p> <ul style="list-style-type: none"> • Air navigation and landing fees; • Passenger service charges; • Fuel levies and excise duties; • Corporate income tax; and • Employment-related taxes like PAYE and training levies. <p>Removal of this exemption could adversely affect certain players in the industry who may be required to pay additional import taxes including the 1.5% RDL and 2.5% IDF if their imported aircraft do not fall under HS Codes 8802.30.00 or 8802.40.00.</p>

3. EMPLOYERS ASK AND PROPOSED WAY FORWARD

The Federation of Kenya Employers humbly requests that employers' views be taken into consideration and the Bill amended to incorporate them.

Signed for and on behalf of the
FEDERATION OF KENYA EMPLOYERS



Jacqueline Mugo (MRS), EBS, MBS, OGW
EXECUTIVE DIRECTOR & CEO

27/05/2025