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The National Assembly
Office of the Clerk, First Floor
Main Parliament Buildings
Parliament Road
Nairobi, Kenya

Your ref: NA/DDC/F&np/2025/031

Email: cna@parliament.go.ke and financecommitteena@parliament.go.ke

Dear Sirs

Bowmans – Submissions on the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025)

1. Introduction

- 1.1 We refer to the Finance Bill, 2025 (National Assembly Bill No. 19 of 2025) (the **Bill**), which was gazetted on 6 May 2025 and tabled before the National Assembly shortly thereafter.
- 1.2 These submissions are made by and on behalf of Bowmans (Coulson Harney LLP) (**Bowmans**).
- 1.3 Bowmans is a Pan-African law firm with nine (9) offices in six (6) African countries and over six hundred and fifty (650) specialist lawyers that works for clients across numerous African jurisdictions on corporate, finance, competition, taxation, employment, technology, and dispute resolution matters.

2. General Comments

- 2.1 Bowmans appreciates that the Bill is crucial to enhance revenue mobilization, broaden the tax base, and align the tax regime with evolving economic and technological developments.
- 2.2 However, there are several proposed amendments in the Bill that raise significant policy, operational, and legal concerns. In Bowmans' view, these proposals may have unintended adverse consequences on various key sectors of the economy and the broader business environment.
- 2.3 Specifically, Bowmans' submissions address the following proposals:
 - 2.3.1 the proposed changes to the Income Tax Act, Chapter 470 of the Laws of Kenya (the **Income Tax Act**) to restrict claiming of tax losses, capital losses and investment allowances;
 - 2.3.2 the proposed changes to the Value Added Tax Act, No. 35 of 2013 (the **VAT Act**) to: (a) impose value added tax (**VAT**) at sixteen percent (16%) on solar and wind energy equipment and goods for use in geothermal, oil, or mining prospecting or exploration, (b) impose VAT on change of use; and (c) of various sustainability products such electric buses from zero-rated to exempt;
 - 2.3.3 repeal or amendment of digital asset tax provisions as they have been practically unenforceable since their introduction in 2023;
 - 2.3.4 introduction of excise duty on fees/commissions charged by virtual asset service providers for transactions involving consumers/users in Kenya, which would bring much needed government revenue;
 - 2.3.5 the proposal to amend the Excise Duty Act to define the phrase "digital lender" broadly to cover any person extending credit through electronic means other than a licensed bank, registered Sacco society or microfinance institution;
 - 2.3.6 the proposal to grant the Kenya Revenue Authority (**KRA**) power to enforce collection of disputed taxes by way of issue of agency notices even in instances whereby a taxpayer has filed an appeal against a decision of the Tax Appeals Tribunal (**Tribunal**) or a court of law upholding a tax assessment;
 - 2.3.7 the proposal to grant the KRA power to request that a person share data relating to (a) trade secrets and (b) private and personal data held on behalf of customers or collected in the course of business; and

2.3.8 value added tax (**VAT**) exemption on services provided by virtual asset service providers to ensure that the incentives granted to the traditional financial sector are extended to the digital financial sector.

2.4 We elaborate in detail below.

Yours Faithfully

Coulson Harney LLP (Bowmans)

BOWMANS SUBMISSIONS – FINANCE BILL, 2025 - (NATIONAL ASSEMBLY BILL NO. 19 OF 2025)

No	Clause	Description of the Clause	Proposal	Justification
1	8(c) 8(d) 8(b)(ii)	<p>The Bill proposes to restrict the carrying forward of tax losses to (5) five years. Currently, the carrying forward of tax losses is not restricted.</p> <p>The Bill also proposes to delete the provision allowing the Cabinet Secretary for Treasury on the recommendation of the Kenya Revenue Authority to extend the period of deduction beyond ten (10) years where a person gives evidence of inability to extinguish the deficit within the specified period.</p> <p>The Bill also proposes to repeal the provision allowing a taxpayer to deduct any capital loss realized against any capital gains.</p>	<p>We propose that these provisions in the Bill be deleted because:</p> <ul style="list-style-type: none"> (a) it would impose an unfair tax burden to because a loss-making taxpayer would bear a heavier burden than other taxpayers; (b) the provision is discriminatory as it would severely impact businesses in capital intensive sectors such as energy, projects and manufacturing compared to less capital intensive sectors that may be able to exhaust their losses within five (5) years; and (c) it would disincentivize investment; and (d) the proposals are quite punitive as it will result in taxpayers being required to 	<p><u>Introduction</u></p> <p>Currently, a loss-making taxpayer is allowed to carry forward the tax losses in the subsequent years of income as an allowable deduction in ascertaining their taxable income without any time limits. This provision allows businesses to fully claim their allowable expenses (including from prior years where the expenses exceeded the income) and only pay tax when they begin to generate income.</p> <p>1. Unfair tax burden on loss-making taxpayers</p> <p>If the provision is enacted as is, loss-making taxpayers would have a timeline of five (5) years to deduct their losses. Any losses incurred before five (5) years that are not deducted would not be carried forward after the five (5) years lapse.</p> <p>The provision does not have a grandfathering provision allowing for tax losses incurred before the provision entered into force being carried forward until exhausted.</p> <p>As a result, taxpayers that had incurred significant losses in prior years (for instance as a result of claim of investment deductions from capital investment) would face a situation where the law which had informed their investment has changed before they have the opportunity to fully claim their losses.</p>

No	Clause	Description of the Clause	Proposal	Justification
			<p>pay capital gains tax on the sale of property that results in a gain even though such a taxpayer may have sold prior property for a significant capital loss.</p>	<p>Profitable businesses would be paying the same amount of tax as loss-making taxpayers due to the disallowing of prior year losses (after the lapse of five (5) years). This would impose an unfair tax burden due to the heavier burden on the loss-making taxpayer as was held by the Court of Appeal in the Minimum Tax Judgment (<i>Kenya Revenue Authority v Waweru & 3 others; Institute of Certified Public Accountants & 2 others (Interested Parties) (Civil Appeal E591 of 2021) [2022] KECA 1306 (KLR) (2 December 2022) (Judgment)</i>).</p> <p>2. Discrimination against taxpayers in capital intensive sectors</p> <p>The claim of the investment allowances for specific capital-intensive sectors results in significant tax losses in the initial years of operation commencing.</p> <p>Ordinarily, investment allowances for significant capital expenditure such as on buildings, machines and equipment are not fully utilized against taxable profits in the first year of use (save for specific instances where an accelerated rate is allowed, which rate is proposed to be deleted in the Bill) unlike revenue costs that are fully expensed in the year that the cost is incurred.</p> <p>In capital intensive sectors such as energy, projects and manufacturing, the tax losses (after deducting the investment allowances) would for instance exceed KES 1 billion during the</p>

No	Clause	Description of the Clause	Proposal	Justification
				<p>inception of the project. The income earned from the investments does not fully exhaust this loss for several years, approximately ten (10) years, however, this could be longer depending on the costs incurred.</p> <p>Therefore, the proposal would adversely impact: (a) already existing businesses that had incurred significant capital expenditure before the coming into effect of the provision; and (b) future projects in these capital intensive sectors.</p> <p>On the other hand, some businesses do not require extensive capital investment, for instance, consultancy or professional services. Therefore, businesses in capital intensive sectors would be discriminated against compared to businesses that do not require similar capital outlay.</p> <p>3. Discouraging investments</p> <p>As highlighted above, due to the slower rate of claiming capital expenditure, the tax losses may not be fully utilized within the five (5) year timeline. Further, the businesses incur capital expenditure on an ongoing basis such as for expansion and or improvements to the infrastructure. If the proposal is enacted, businesses would not be incentivized to incur the capital costs since they would not be able to exhaust the losses within five (5) years.</p>

No	Clause	Description of the Clause	Proposal	Justification						
				<p>It would be a significant barrier to entry into the capital intensive sectors because new businesses would not enjoy the benefit of fully exhausting tax losses that existing industry players had enjoyed at the time of setting up.</p> <p>The proposals are quite punitive as it will result in taxpayers being required to pay capital gains tax on the sale of property that results in a gain even though such a taxpayer may have sold prior property for a significant capital loss.</p> <p>Comparison with other jurisdictions</p> <p>Below is a table analyzing various jurisdictions on carrying forward of tax losses as obtained from Tax Foundation Europe, South Africa Revenue Service, Australian Taxation Office and Inland Revenue Authority of Singapore.</p> <table><tr><th>Jurisdiction</th><th>Limit on carryforward of losses (No. of years)</th><th>Limit on carryforward of losses (Amount)</th></tr><tr><td>United States</td><td>No limit</td><td>capped at 80% of taxable income</td></tr></table>	Jurisdiction	Limit on carryforward of losses (No. of years)	Limit on carryforward of losses (Amount)	United States	No limit	capped at 80% of taxable income
Jurisdiction	Limit on carryforward of losses (No. of years)	Limit on carryforward of losses (Amount)								
United States	No limit	capped at 80% of taxable income								

No	Clause	Description of the Clause	Proposal	Justification		
				United Kingdom	No limit	capped at 50% of taxable income exceeding GBP 5 million
				France	No limit	capped at 50% of taxable income exceeding EUR 1 million
				Germany	No limit	capped at 70% of taxable income exceeding EUR 1 million; for the local business tax, a lower cap of 60% applies
				South Africa	No limit	Capped to the higher of ZAR 1 million or 80% of the amount of taxable income. Provision was enacted in

No	Clause	Description of the Clause	Proposal	Justification		
						2021 but entered into force in 2023.
				Australia	No limit	No limit
				Singapore	No limit	No limit
				Other countries allow for carry-back of trading and capital losses as part of their business incentives as set out below based on information from the Inland Revenue Authority of Singapore . His Majesty Revenue Commission , and WTS Global		
				Jurisdiction	Provisions on carry-back of trading and capital losses	
				Singapore	loss and capital allowance for the current year can only be carried back for one year immediately preceding the year the loss is incurred subject to a cap of USD 100,000.	
				United Kingdom	Restricted to 1 year.	
				Germany	Restricted to 2 years and limited to EUR 1 million.	

No	Clause	Description of the Clause	Proposal	Justification	
				France	Restricted to 1 year and limited to EUR 1 million.
				Egypt	Losses incurred by construction companies in long-term contracts
				Ghana	Losses incurred in long-term contracts
				<p>Note that Kenya allows for carry back of losses for mining and petroleum operation entities while other jurisdictions extend the incentive to all businesses.</p> <p>Conclusion and proposal</p> <p>We propose that this provision in the Bill be deleted because:</p> <p>(a) it would impose an unfair tax burden because a loss-making taxpayer would bear a heavier burden than other taxpayers;</p> <p>(b) the provision is discriminatory as it would severely impact businesses in capital intensive sectors such as energy, projects and manufacturing compared to less capital intensive sectors that may be able to exhaust their losses within five (5) years; and</p>	

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				<p>(c) it would disincentivize investment such as in property, plant and equipment because the losses may not be fully claimable within five (5) years.</p> <p>(d) if the carry forward provisions are to be restricted, the Committee should retain the provision allowing taxpayers to apply to the Cabinet Secretary for National Treasury for extension of time where the losses could not be fully utilized within five (5) years.</p>
2	27(a) and 27(b)	<p>The Bill proposes to delete the provisions that provide for a claim of investment allowances at the rate of 100% of the capital expenditure in a particular year of income where:</p> <p>(a) the cumulative investment value (of a hotel building or a building used for manufacture or of machinery used for manufacture) in the preceding three (3) years outside Nairobi City County and Mombasa County is at least KES 1 billion; and</p>	<p>We propose that this provision be deleted because it would discourage investments outside Nairobi and Mombasa counties.</p>	<p>The rationale for the incentive was that a lot of investments were concentrated in Nairobi and Mombasa counties which deprived other regions in Kenya of the investment opportunities and associated benefits such as development of infrastructure and employment opportunities.</p> <p>This proposal will have a significant negative impact on investments outside the Nairobi and Mombasa counties as investors will no longer be incentivized to incur additional costs investing outside the two counties.</p> <p>At the moment, the ability to claim investment allowances at the rate of 100% of the capital expenditure in the first year of operation incentivizes investments outside the two counties since investors know that despite incurring additional costs in putting up</p>

No	Clause	Description of the Clause	Proposal	Justification
		<p>(b) the cumulative investment in the year that a person is claiming the investment allowances is at least KES 250 million; or</p> <p>(c) the person has incurred investment in a special economic zone.</p>		<p>the necessary infrastructure, they will be able to recover such additional costs through the claim of investment allowances.</p> <p>The impact of this proposal is that capital allowances on capital expenditure relating to hotel buildings, buildings used for manufacture and machinery used for manufacture will be claimed at the rate of 50% in the first year of use and the balance in equal instalments of 25% which is a slower rate of claim.</p> <p>In addition, the Bill does not contain any grandfathering provisions meaning that it will negatively impact investors who have already commenced investments on the understanding that they shall be entitled to the additional investment allowances.</p>

No	Clause	Description of the Clause	Proposal	Justification
3	35	The Bill proposes that where a taxpayer imports or purchases goods or services that are exempt or zero-rated but subsequently disposes of or uses the goods or services in a manner inconsistent with the purpose for which the goods or services were exempted or zero-rated, the taxpayer would be required to pay VAT at the rate applicable at the time of the disposal or inconsistent use.	This provision should be deleted because it would create uncertainty and disputes with the revenue authority over the purpose of tax legislation.	<p>This provision would require taxpayers disposing or using VAT exempt or zero-rated goods to ascertain whether VAT is applicable on the basis that the disposal and/or use of the goods or services could be deemed to be inconsistent with the purpose for which the goods or services were exempted or zero rated. Kenyan courts for instance in Commissioner of Domestic Taxes v Airtel Networks Kenya Limited (Income Tax Appeal E062 of 2022) [2023] KEHC 25059 (KLR) (Commercial and Tax) (10 November 2023) (Judgment) have held that tax laws are to be interpreted strictly and there is no room for intendment in tax law.</p> <p>Note that the exemption and zero rating of products is generally based on the nature of the goods and services and does not necessarily apply to their use which would create ambiguity over how to interpret the notion of manner of use.</p> <p>Accordingly, this provision could result in taxpayer disputes with the revenue authority over the purpose/ intention of Parliament when classifying goods or services as VAT exempt or zero-rated.</p>
4	36(i) and 36(j)	The Bill proposes to delete the exemption from VAT with respect to:	We propose that these provisions be deleted because they would increase the cost of power in the country.	The national government has stated that guaranteeing access to affordable and reliable electricity remains a key priority.

No	Clause	Description of the Clause	Proposal	Justification
		<p>(a) taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license; and</p> <p>(b) specialized equipment for the development and generation of solar and wind energy. The effect of the deletion is that the items will be subject to VAT at the standard rate, currently sixteen percent (16%)</p> <p>In deleting the provisions, the Bill proposes that any exemptions that had been granted before the coming into effect of the Bill continue to apply until 30 June 2026.</p>		<p>However, the proposed imposition of VAT on goods purchased or imported for the development of geothermal energy and on specialized equipment for the development and generation of solar and wind energy directly contradicts the stated objective.</p> <p>The imposition of VAT as proposed by the Bill will directly lead to an increase in the cost of power in the country since the developers of geothermal and solar energy will pass on the cost of the VAT paid to the Kenya Power and Lighting Company which will in turn pass on this cost to the power consumers.</p> <p>Accordingly, this proposal should be deleted as it contradicts the National Government's agenda with respect to affordable energy.</p>

No	Clause	Description of the Clause	Proposal	Justification
5	36(o) and 37(d), (e), (f), and (g)	<p>The Bill proposes to change the VAT status for the following products from zero-rated to exempt:</p> <ul style="list-style-type: none"> (a) the supply of motorcycles of tariff heading 8711.60.00; (b) the supply of electric bicycles; (c) the supply of solar and lithium ion batteries; and (d) the supply of electric buses of tariff heading 87.02. 	<p>We propose that these provisions be deleted because it would increase the cost of products that are intended to move Kenya towards sustainability.</p>	<p>The change in status of the goods from zero rated to exempt means that the local assemblers and manufacturers will not be entitled to deduct input tax incurred to make these supplies. This also means that such assemblers and manufacturers will not be able to make claims for refund of input VAT incurred in the supply of the goods. This proposal will result in local assemblers and manufacturers increasing the costs of their products to take into account the lost input VAT tax and pass on the VAT burden to consumers.</p> <p>The proposed changes may discourage investments in e-mobility that would result in increased and continued use of transport that utilises non-environmentally sustainable fuels.</p> <p>Kenya's National Green Fiscal Incentives Policy Framework (the Policy) needs to be implemented for the various fiscal incentive measures to support the climate action resilience plan. In the Policy, the government stated that it will provide incentives for import, manufacture and assembly of electric motor vehicles, electric motorcycles, and their spare parts.</p> <p>Therefore, there is a disconnect between the government's Policy and actions since the proposed VAT, on the e-mobility sector may discourage consumption of the e-mobility products.</p>

BOWMANS – DIGITAL ASSET TAX – SUBMISSIONS ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 19 OF 2025)

BOWMANS – DIGITAL ASSET TAX – SUBMISSIONS ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 19 OF 2025)

No	Clause	Description of the Clause	Proposal	Justification
1.	28(d)	The Finance the Bill proposes to decrease the rate of digital asset tax (DAT) from 3% to 1.5% .	<p>The proposal to reduce the DAT rate from 3% to 1.5% will not address the challenges of implementing the DAT provisions as currently contained under the Income Tax Act. We propose the following options in respect of DAT:</p> <p>(a) Repeal digital asset tax provisions by repealing section 12F and paragraph 13 of the Third Schedule of the Income Tax Act as there have been numerous compliance difficulties with the provisions as currently enacted;</p> <p>(b) Amend digital asset tax provisions by repealing subsection 12F(2) and (3) and providing that the Cabinet Secretary for Treasury and National Planning shall implement regulations to provide for the</p>	<p><u>Introduction</u></p> <p>DAT is applicable to virtual assets that are generated through cryptographic means (or otherwise) and provide a digital representation of value, cryptocurrencies, non-fungible tokens or other similar tokens.</p> <p>Digital asset tax as currently enacted requires: (a) the owner of a platform; or (b) the person who facilitates the exchange or transfer of a digital asset to deduct DAT and remit it within five (5) working days to the Kenya Revenue Authority (the KRA).</p> <p>After a user completes registration of an account on a cryptocurrency exchange website or app (Platform), such as Coinbase, Binance or Kraken, the user is able to: (a) post an advertisement offering the sale of digital assets; or (b) respond to an advertisement to purchase the offered digital asset.</p> <p>The owner/operator of the Platform acts as an escrow that holds the digital assets pending the confirmation by the buyer and seller that the required payment (which could be cash or another digital asset) has been transferred to the wallet (in the case of digital assets) or preferred payment option (such as bank account) of the seller.</p> <p>Accordingly, the owner/operator of the Platform does not have sight of the fiat currency payments exchanged between the buyer and seller of the digital</p>

			<p>definition of DAT, the scope of transactions chargeable to DAT and exclude stable coins from the ambit of DAT as they are not held for value but used as a means of payment; or</p> <p>(c) Reduce DAT rate to say 0.1% to take into account that the commissions earned by platforms such as Binance are between 0.1% - 0.5%.</p>	<p>asset since these payment options are not owned or operated by the Platform owner.</p> <p>1. Platform owners/operators do not have access to the fiat currency transactions between users on its platform</p> <p>As set out above, Platform owners/operators are unable to withhold and remit DAT in fiat currency for digital asset trading transactions because Binance offers escrow services for digital assets in a trading transaction. Accordingly, the fiat currency transactions are between the buyer and seller of the digital assets outside the Platform through their preferred third-party payment service providers such as bank accounts.</p> <p>2. DAT is significantly higher than Platform fees for a transaction and therefore Platforms are not able to fund DAT payment from its fees</p> <p>Platform owners/operators' fees on transfer of a digital asset (whether in exchange for fiat or for crypto) is lower than 3%.</p> <p>See link here https://flipster.io/en/blog/crypto-exchanges-ranked-by-lowest-fees-comparison-guide and https://www.investopedia.com/tech/how-much-does-it-cost-buy-cryptocurrency-exchanges/ for general fees charged by crypto Platforms.</p> <table><tr><th>Platform</th><th>Maker's Fee</th><th>Taker's Fee</th></tr><tr><td>Coinbase</td><td>0.4%</td><td>0.6%</td></tr></table>	Platform	Maker's Fee	Taker's Fee	Coinbase	0.4%	0.6%
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				<table><tr><td>Bybit</td><td>0.15%</td><td>0.2%</td></tr><tr><td>Kraken</td><td>0.25%</td><td>0.4%</td></tr></table> <p>DAT tax risk is up to 15 times Exchange's fees.</p> <table><tr><th>Particulars</th><th>Amount</th></tr><tr><td>Assume a seller places an offer to sell Bitcoin which a buyer agrees to purchase at the selling price. Assuming 1 Bitcoin = KES 13,544,507.47</td><td>KES 10,000,000 of Bitcoin (0.74 bitcoins)</td></tr><tr><td>The transaction (@0.1% of the virtual asset)</td><td>0.00074 Bitcoins (approx. KES 10,031.83).</td></tr><tr><td>Digital asset tax (DAT) (@3% of the transfer value)</td><td>0.0222 Bitcoins (approx. KES 301,359.25)</td></tr></table> <p>3. Challenges faced when accounting for DAT</p> <p>In Kenya tax payments are required to be made in KES, while the transfers and transactions subject to DAT will be in the respective cryptocurrencies/tokens.</p> <p>In order to account for DAT, the Platform owner/operator would have to source for market and liquidate the digital assets in order to finance the tax.</p> <p>The liquidation by the Platform owner/operator on its platform would amount to a transfer under the current regime.</p> <p>Given the volatility of the crypto market, it is possible for the value of the digital assets to reduce between the time of transfer and subsequent liquidation by Platform owners/operators.</p>	Bybit	0.15%	0.2%	Kraken	0.25%	0.4%	Particulars	Amount	Assume a seller places an offer to sell Bitcoin which a buyer agrees to purchase at the selling price. Assuming 1 Bitcoin = KES 13,544,507.47	KES 10,000,000 of Bitcoin (0.74 bitcoins)	The transaction (@0.1% of the virtual asset)	0.00074 Bitcoins (approx. KES 10,031.83).	Digital asset tax (DAT) (@3% of the transfer value)	0.0222 Bitcoins (approx. KES 301,359.25)
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				<p>If the liquidation is done and the proceeds subsequently converted into foreign currency and translation of the same into KES amounts to exchange losses, it would result in the Platform owner/operator bearing the cost arising from the exchange losses.</p> <p>4. Repealing DAT</p> <p>The repeal of DAT would ensure that there is no double taxation of income earned by persons trading in digital assets. Currently, income tax or capital gains tax (CGT) is applicable on the trading profits or capital gains of Kenyan resident persons or persons with a permanent establishment in Kenya. Further DAT is also applicable as a withholding tax, however, there is no credit offered to the persons who have been subject to DAT.</p> <p>5. Expressly requiring regulations implementing DAT</p> <p>The DAT provisions as currently drafted are vague as it is not clear the type of assets subject to tax, how income from DAT transactions is deemed to have accrued or derived from Kenya for tax purposes, the term transfer is not defined to clearly specify transactions that would be deemed taxable and those that would not be taxable. Some trading transactions involve exchange of cryptocurrency from one type to another, such as from Ethereum to Bitcoin. Fiat is not needed to trade. This approach of introducing regulations for the digital sector has resulted in significant benefits in terms of revenue generation as has been the case with digital service tax and VAT on digital market place supplies.</p> <p>6. Impact of DAT with similar features in other countries</p>
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				<p>a) Indonesia: trading volume decreased by approximately 60% post the implementation; and</p> <p>b) India: trading volume of crypto exchanges dropped from the highs of USD 500M weekly to the lows of USD 2M weekly post implementation.</p> <p>Below is a comparison with other jurisdictions.</p> <table> <tr> <th>Jurisdictions</th><th>Subject to CGT?</th><th>Income Tax Rate</th><th>Subject to VAT?</th><th>Tax Collected Upfront / at source</th></tr> <tr> <td>Australia</td><td>Yes</td><td>0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset held more than 1 year receives 50% capital gain tax reductions.</td><td>No</td><td>No</td></tr> </table>	Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source	Australia	Yes	0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset held more than 1 year receives 50% capital gain tax reductions.	No	No
Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source										
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							is exempt of income tax			
						India *	Yes (30%)	1% of Transactions Value ("TDS")	No	Yes
						Indonesia	Yes (tax collected by agent)	0.1% of Transaction Value 0.2% of Transaction Value (if exchange is not registered with relevant government authority)	Yes at 0.11%	Yes
						Malaysia	No	Malaysia does not tax capital gain, except active trader	No	No
						Singapore	No	Singapore does not tax capital gain, except active trader	No	No

				Thailand	Yes	Up to 35%	No	No
				United Kingdom	Yes	Up to 20% depending on the personal tax bracket.	No	No
				USA	Yes	Depending on personal tax bracket, short term capital gain (held less than a year) are taxed up between 0% - 37% Long term capital gain are taxed between 0-20%	No	No
				South Africa	Yes	18% of net gains based on the income tax rates	Exempt – financial services	No

				<table> <tr> <td>Nigeria</td><td>Yes</td><td>Net gains. The percentage of gains that are taxable depends on an individual's overall income for the tax year</td><td>Yes – 7.50%</td><td>No</td></tr> </table>	Nigeria	Yes	Net gains. The percentage of gains that are taxable depends on an individual's overall income for the tax year	Yes – 7.50%	No
Nigeria	Yes	Net gains. The percentage of gains that are taxable depends on an individual's overall income for the tax year	Yes – 7.50%	No					
7.	New provision	Introducing VAT exemption for services offered by virtual asset service providers to attract these players to Kenya.	<p>We propose amending the First Schedule of the VAT Act to expressly provide that services provided by virtual asset service providers would be exempt from VAT.</p> <p>Virtual asset service providers would have the meaning assigned to it under section 3 of the Virtual Asset Service Providers Bill, 2025 which is also before the Committee.</p> <p>Examples include virtual asset wallet providers, exchanges, payment processors, brokers, investment advisors, among others.</p>	<p>The virtual asset sector in Kenya has not yet been regulated by way of legislation and therefore, it is still in its developmental phase. This exemption proposal is intended to encourage leading sector players to register in Kenya to offer virtual asset services.</p> <p>Other financial services provided by traditional financial institutions such as banks are exempt from VAT. This proposal has significantly encouraged the growth of the financial sector in Kenya as it encourages transactions through the financial institutions.</p> <p>Further, from the comparison of jurisdictions above, only Indonesia charges VAT on services provided by virtual asset service providers. Leading economies such as the United States of America, United Kingdom, Germany and France do not impose VAT on virtual asset transactions.</p>					
8.	New provision	Introducing excise duty at a rate of five percent (5%) on the	We propose a new provision introducing excise duty at a rate of five percent (5%) on	Excise duty based on the fee charged by the virtual asset service providers would provide relatively quick and easy access to revenue for the government. However, to ensure that the virtual asset sector players are incentivized to offer					

		fees/commissions charged by virtual asset service providers.	<p>the fees/commissions charged by virtual asset service providers.</p> <p>Virtual asset service providers would have the meaning assigned to it under section 3 of the Virtual Asset Service Providers Bill, 2025 which is also before the Committee.</p> <p>Regulations should prescribe how excise duty would be computed and remitted to KRA.</p>	<p>their services to Kenyans, the repeal of DAT and introducing a VAT exemption is crucial.</p> <p>According to Chainalysis, https://www.chainalysis.com/blog/subsaharan-africa-crypto-adoption-2024/</p> <p>Sub-Saharan Africa accounts for 2.7% of transaction volume in cryptocurrency (approximately USD 125 billion). Kenya ranked as 28th globally in adoption of cryptocurrencies.</p> <p>In the Virtual Assets and Virtual Asset Service Providers Money Laundering and Terrorism Financing Risk Assessment Report for Kenya, 2023, 86% of respondents were familiar with cryptocurrency. The common cryptocurrencies owned include Bitcoin (20%), Ether (17%), Tether (10%). 53% of respondents had invested funds below KES 100,000, however, other respondents had invested above KES 100,000 including amounts as high as more than KES 10 million.</p> <p>There is opportunity for revenue to be raised, however, the law introducing the tax has to be clear on the scope, how to attribute the transactions to Kenyan users, and compliance measures.</p>
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No	Clause	Description of the Clause	Proposal	Justification			
1.	37(c)	The proposal to change from zero-rated to VAT exempt, the supply of locally assembled and manufactured mobile phones.	We propose that either: (a) clause 37(c) be deleted so that the supply of locally assembled and manufactured mobile phones remains zero-rated; or (b) the Bill be amended to additionally exempt from VAT taxable imported goods, inputs and raw materials purchased by a company involved in the local assembly or manufacture of mobile phones. These inputs include "disassembled or unassembled kits for manufacture of mobile phones" as already exempted from excise duty under the Excise Duty Act.	Sample scenario for locally assembled mobile phones	Zero rated	Exempt	Vatable
				Assumed cost of inputs for manufacture of locally assembled mobile phones	5,000	5,000	5,000
				Add: VAT (@16%)	800	800	800
				Total cost of manufacture	5,800	5,800	5,800
				Mark up of 20% for selling price purposes	1,160	1,160	1,160
				Expected selling price	6,960	6,960	6,960
				Less: VAT recovered	(800)	-	(800)
				Selling price	6,160	6,960	6,160
				VAT on selling (@16%)	-	N/A	986
				Total selling price inclusive of VAT	6,160	6,960	7,146
				Clause 37(c) of the Bill proposes to exempt from VAT the supply of locally assembled and manufactured mobile phones. Currently, the supply of locally assembled and manufactured mobile phones is zero-rated meaning that VAT is charged at the rate of 0%.			
				The proposal to exempt from VAT the supply of locally assembled and manufactured mobile phones would mean that local assemblers and manufacturers would not be entitled to recover the input VAT incurred in the production process through the input output VAT credit mechanism.			
				Instead, all the input VAT incurred by such entities would constitute a cost of production which would have to be passed on to local consumers by way of an increase in prices. The immediate and direct impact of the proposal would be an increase in the retail price of locally produced mobile phones by at least 16%. The increase in cost would make such mobile phones less competitive pricewise when compared to imported alternatives.			

				<p>An alternative proposal to ensure that locally produced mobile phones continue to be competitive while balancing the government's concerns regarding tax expenditure would require that the Bill be amended <u>to also exempt from VAT all imported inputs and raw materials</u> used in the local production of mobile phones. This would ensure that the local entities undertaking the assembly do not incur VAT in the value chain and consequently do not pass down any VAT to the final consumer.</p> <p>We appreciate that the proposed amendment to exempt from VAT locally assembled or manufactured devices will mitigate the increased cost of financing borne by device manufacturers and assemblers due to the significant outstanding VAT refunds owed to them by the KRA. However, the current proposal to only exempt from VAT the supply of locally produced mobile phones is not feasible. This is further elaborated as follows:</p> <p>The proposal goes against the government's goal of digital inclusion</p> <p>On 30 October 2023, the President presided over the launch of a mobile assembly plant that aimed at producing locally assembled smartphones for sale in the local market at a price that was estimated as being thirty percent (30%) lower than the cost of similar imported smartphones.</p> <p>At the time of the launch, there were about 29.7 million active smartphone devices in the country per estimates by the Communications Authority of Kenya (CAK). On the other hand, there were approximately 33.7 million active feature phones (phones that lack the advanced functionality of smartphones).</p>
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				<p>As at the end of January 2025, the CAK reported that there were approximately 37.4 million active smartphone devices in Kenya (approximately a 25.9% increase from the year 2023 numbers). However, the statistics still indicate that nearly a 1/3 of Kenyans (14.1 million persons) are still using feature phones (phones that lack the advanced functionality of a smartphone) as their primary mobile device.</p> <p>The significant cost of smartphones has been indicated as being a key hindrance to the transition to smartphones especially among Kenyans living in rural areas. cost of mobile phones a hindrance</p> <p>The zero-rating of the supply of locally assembled and manufactured mobile phones back in July 2023 was aimed at making locally produced mobile phones affordable to a majority of Kenyans. Accordingly, changing the VAT status from zero-rated to exempt from VAT will inevitably lead to an increase in cost of such locally assembled mobile phones and reverse the gains made in transitioning more Kenyans to smartphones.</p> <p>The proposal would have widespread negative consequences for the local economy</p> <p>The initial intent of zero-rating the locally assembled mobile phones was to ensure citizens could access services that the government had already digitized.</p> <p>Mobile phones including smartphones play a crucial role in improving the social-economic livelihoods of Kenyans.</p> <p>As a start, Kenyans are able to easily and safely make payments for goods and services through their mobile phones. To illustrate this, as at 31 March 2025, more than 35 million people were transacting using mobile money monthly. These transactions supported numerous trade activities and payments for government services.</p>
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				<p>In addition, smartphones enable Kenyans to run online businesses and therefore create a source of livelihood.</p> <p>In the agricultural sector, mobile phones have proven to be particularly important in disseminating critical information to farmers who are in remote areas and therefore out of reach of such services. In addition, farmers are able to easily market and sell their produce to a wider market using their mobile phones.</p> <p>In the health sector, mobile phones have enabled Kenyans access healthcare information and eased communication between healthcare practitioners and their patients.</p> <p>In addition, the zero-rating of locally produced phones was not an isolated fiscal tweak. Instead, it was part of a deliberate industrial policy to spur local electronics assembly, technology transfer, and employment.</p> <p>By allowing manufacturers to deduct and make a claim for refund of input VAT, the policy lowered production costs and improved cashflow, making it more attractive to invest in local assembly plants.</p> <p>If this incentive is withdrawn, Kenya's goal of becoming an assembly hub would suffer significant setbacks. Local assemblers would have to incur the cost of VAT on components such as phone kits, batteries, chips, screens and such VAT would then be passed on to the final consumers. The result is that the locally made phones would lose their competitive edge against imported mobile phones.</p>
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				<p>The benefits of widespread access to mobile phones has also been recognized in other countries. In the year 2021, Tanzania waived VAT on smartphones, tablets, and modems specifically “to make device prices affordable” and boost broadband penetration from 38% to 80% by 2025. Tanzanian authorities explicitly recognized that cheaper smartphones would “<i>promote digital inclusion and boost the digital economy</i>”. Smartphones exempted from VAT</p> <p>Accordingly, our position is that the proposal should be to determine how to further incentivize local assemblers and manufacturers of mobile phones to make mobile phones cheaper rather than making locally produced mobile phones more expensive.</p> <p>Inconsistency with the national tax policy</p> <p>The proposal comes barely two (2) years after the VAT Act was amended through the Finance Act 2023 to provide for the current treatment, being zero-rating of locally produced mobile phones. The National Tax Policy expressly provides that there is a need to move away from the practice of constantly amending tax laws that leads to unpredictability in the tax system and additional costs of compliance.</p> <p>The supply of locally assembled and manufactured mobile phones has been zero rated for less than two years. Accordingly, more time is needed for the full impact and goal of the zero-rating to be felt and therefore the proposal to exempt such a supply would unnecessarily distort the local assembly ecosystem and deny Kenyan consumers the benefit affordable locally made mobile phones.</p>
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				In conclusion, the proposed VAT amendment is misaligned with Kenya's economic policy trajectory. It undermines digital inclusion efforts, contradicts manufacturing promotion, and could slow progress toward the country's development targets. Our proposal is to maintain zero-rating in line with Kenya's long-term vision of a digitally connected, industrialized, and inclusive economy.
2.	47(m)(v)	Clause 47(m)(v) proposes to delete the provision which prohibits the KRA from issuing agency notices where a taxpayer has lodged an appeal before the Tribunal or courts (High Court, Court of Appeal or Supreme Court).	We propose that Clause 47(m)(v) be dropped. Accordingly, the current position would remain in that the KRA would not be able to issue agency notices in instances where a taxpayer has lodged a valid appeal against a decision of the Tribunal or a court of law upholding a tax assessment.	<p>The Tax Procedures Act currently prohibits the KRA from issuing agency notices to a third party who holds money on account of a taxpayer (such as a bank) requiring such a third party to remit to the KRA any amounts held in satisfaction of a tax debt owing by a taxpayer where the taxpayer has an active appeal against a decision of the Tribunal or any other court upholding a tax assessment. This proposal should be deleted for the following reasons:</p> <p>The proposal is an affront to constitutionally established safeguards</p> <p>Deleting this provision as currently proposed would undermine several constitutional safeguards as follows:</p> <p>Article 47 – fair administrative action: Article 47 of the Constitution of Kenya 2010 (the Constitution) every person has the right to administrative action that is expeditious, lawful, reasonable, and procedurally fair. By halting enforcement regarding disputed taxes whilst an appeal is pending, the Tax Procedures Act ensures that taxpayers are treated fairly and reasonably.</p> <p>If KRA were allowed to enforce collection of taxes by way of issuance of agency notices before an appeal is conclusively determined, it would effectively amount to determination of the tax disputes before a final determination can be made and which would be against</p>

				<p>the principles of fair administrative action;</p> <p>Article 50 – right to a fair hearing: Article 50(1) of the Constitution guarantees every person the right to have any dispute resolved in a fair and public hearing before a court or independent tribunal. The right to a fair hearing encompasses more than just the courtroom procedure – it requires that the hearing be meaningful and not rendered illusory. Should the KRA be allowed to collect disputed taxes before a matter is finally determined, appeals to the higher courts such as the High Court would be rendered moot and undermine the taxpayer's rights.</p> <p>In addition, the practical implications of the proposal would be that many taxpayers would conclude that pursuing an appeal is futile even if they have strong grounds. This would result in fewer appeals against decisions of the Tribunal, not because the Tribunal is always correct, but because taxpayers (especially small and medium enterprises or cash-strapped individuals) simply cannot afford to litigate after paying a huge sum upfront; and</p> <p>Article 40 – protection of property rights: Article 40 of the Constitution protects the right to property and prohibits Parliament from enacting any law that allows arbitrary deprivation of property. Forcing taxpayers to surrender monies in relation to disputed taxes while a case is unresolved is, in effect, a deprivation of property (being the monies) without a conclusive legal basis.</p> <p>Whilst the disputed tax is alleged to be due, to confiscate the funds while the matter is under appeal is potentially arbitrary, especially if the decision of the Tribunal is later overturned. While a taxpayer who eventually wins an appeal would expect a refund, that is not an adequate safeguard. The intervening deprivation – possibly lasting months or years – causes harm such as cashflow disruptions that a refund cannot fully remedy since the taxpayer would for instance be forced to acquire costly financing such as bank</p>
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				<p>overdrafts to bridge the gap.</p> <p>Undermining certainty in tax</p> <p>Beyond the clear constitutional issues, the proposed amendment would deal a blow to tax certainty and fairness in Kenya's fiscal regime.</p> <p>Tax certainty is widely recognized as a cornerstone of a healthy investment climate and a fair tax system. The Organization for Economic Co-operation and Development (OECD) notes that <i>"tax certainty is a fundamental goal that ensures stability and predictability"</i> for both taxpayers and administrations, and it is achieved through effective dispute resolution processes. Allowing KRA to enforce disputed taxes during an ongoing appeal would result in significant uncertainty as taxpayers as illustrated below:</p> <p>unpredictability for taxpayers: under current law, a taxpayer who lodges a timely appeal can be confident that the disputed amount will not be collected until the appeal is conclusively heard and determined. This predictable pause enables businesses to plan their finances and operations during the litigation period. If the proposal is enacted, taxpayers will face the risk that even a good-faith appeal will not prevent immediate collection action. The prospect of sudden account freezes or fund seizures while a matter is still before the courts creates a climate of fear and unpredictability. Taxpayers may feel deterred from exercising their right to appeal, knowing that it offers no protection against enforcement;</p> <p>uncertain investment climate: Kenya has put considerable effort to attract investment by, among other things, providing clear legal pathways to resolve tax disputes. Legal certainty means that investors and businesses can assess their potential tax exposure and have confidence in the stability of enforcement practices. The Tax Procedures Act has been a</p>
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				<p>stabilizing factor assuring investors that if a tax assessment is contested in good faith, their assets won't be summarily seized before issuance of a final verdict by a competent court or tribunal. Taking away this protection through the proposed amendment would increase the level of unpredictability in Kenya's tax regime.</p> <p>erosion of the right of appeal: from a practical perspective, a right that cannot be exercised without ruinous consequences is not a real right.</p> <p><u>Conclusion</u></p> <p>Kenya's commitment to fair tax administration would be best showcased by retaining section 42(14)(e) of the Tax Procedures Act as is currently drafted and thereby affirming that Kenya stands with the global best practices that uphold fairness, certainty, and respect for the judicial process in tax matters.</p>
3.	38 (a)(i)	<p>Clause 38(a)(i) proposes amend the definition of the term "digital lender" to mean a person extending credit through an electronic medium but does not include a bank licenced under the Banking Act, a Sacco society registered</p>	<p>We propose that:</p> <p>(a) the proposed clause be deleted; or</p> <p>(b) in the alternative the definition of the term "digital lender" should provide as follows</p> <p><i>"means a person extending credit through an electronic medium but does not include a bank</i></p>	<p>Kenya has witnessed a proliferation of an alternative form of financing whereby the entity providing goods and services also provides financing options to the consumer. This enables consumers to conveniently buy a wide variety of products ranging from mobile phones to household electronics and pay for such items later or on an instalment basis.</p> <p>This also alleviates the burden of a consumer having to borrow such funds from digital credit providers who often charge exorbitant interest or fees on provision of financing services.</p> <p>Currently, sellers providing such forms of alternative financing (financing that is incidental to their core business) are not required to charge excise duty on the fees charged for such financing. This is because the Central Bank of Kenya (Digital Credit Providers) Regulations 2022 expressly provide that the provision of credit by a person that is merely incidental to</p>

	<p>under the Co-operative Societies Act or a microfinance institution licensed under the Microfinance Act.</p> <p>Currently, the phrase "digital lender" means a person holding a valid digital credit providers licence issued by the Central Bank of Kenya.</p>	<p><i>licensed under the Banking Act, a Sacco society registered under the Co-operatives Societies Act, a microfinance institution licensed under the Microfinance Act or a person providing credit in a transaction that is merely incidental to the core business of providing goods and services (other than lending services)".</i></p>	<p>that person's primary business of the provision of goods or services is outside the ambit of digital lending.</p> <p>The result of this express exemption has been that Kenyans now have access to a wide array of affordable financing options since the providers of such alternative forms of financing are not required to charge excise duty on the fees charged to the borrowers.</p> <p>The proposed expansion of the definition of the term "digital lender" to refer to the extending of credit through an electronic medium will mean that any persons providing financing including persons whose core business is not lending will be required to charge excise duty at the rate of 20% on any fees that they charge to customers. In most instances, the cost of capital is normally inbuilt into the product price and therefore, there would not be a separate fee charged for the services. Unbundling the costs for purposes of excise duty would impact the product price. This fee would be passed on to the borrowers making borrowing unaffordable for such consumers who often do not have any other alternative means of accessing credit.</p> <p>Most Kenyans who take advantage of the ability to make instalment payments are Kenyans who would otherwise not have been able to make an outright purchase of the item. Accordingly, ensuring that there are affordable financing options available to such persons is critical and this would only be possible by ensuring that excise duty is not charged with respect to such financing.</p> <p>This proposal would negatively impact entities whose core business is the sale of goods and services (other than lending) but which, due to market demand, provide financing options to customers to enable them to purchase such goods or services without having to pay the entire amount upfront. Such businesses would be required to charge excise duty on any fee charged to customers for purchase of un-excisable goods and services and thus</p>
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				increasing the cost of extended credit arrangements beyond reach for most Kenyans.
4.	52	Clause 52 of the Finance Bill 2025 proposes to delete the provision which currently prohibits the KRA from requiring taxpayers to share or integrate data relating to trade secrets or private, or personal data held on behalf of customers or collected during business.	We propose that Clause 52 be deleted. Accordingly, the KRA would be restricted from accessing trade secrets and private and personal customer data as per the current provisions.	<p>The Tax Procedures Act currently embodies the balance between the right to privacy and the right of the KRA to collect taxes since it prohibits the KRA from requiring any person to integrate or share data relating to (a) trade secrets and (b) private or personal data held on behalf of customers or collected in the course of business.</p> <p>Clause 52 of the Bill proposes to delete the crucial protection, and which would result in a conflict between the provisions of the Tax Procedures Act and the Kenyan Data Protection Act which provides that any processing of personal data must be lawful, fair, limited to specified purposes, and subject to technical safeguards.</p> <p>The result of the proposal would be that proprietary business information and personal data would be accessible by the KRA without the clear, specific legal basis, proportionality, or oversight required by the Kenyan Data Protection Act.</p> <p>The immediate risk arising is that critical and sensitive data such as pricing models, supplier lists, research and development etc. that would be accessible to the KRA could potentially be leaked to competitors. In such a scenario, very minimal remedies would be available to sufficiently compensate aggrieved taxpayers.</p> <p>Customer personal data – names, addresses, transaction histories, identifiers – would similarly be swept into KRA systems, multiplying the risk of data breaches or unauthorized disclosures.</p> <p>Due to these clear gaps, the immediate and direct impact of this proposal would be that there would be a decline in foreign direct investments since most investors would be wary of (a) their trade secrets being leaked or (b) lawsuits in relation to breach of data privacy.</p>

				<p>These concerns would particularly be significant for investors coming from jurisdictions where there are robust data privacy laws.</p> <p>International norms and comparative practice</p> <p>Globally, best practice accords great weight to informational privacy even in tax administration. The OECD Privacy Guidelines – the first internationally agreed data-protection principles – emphasize that privacy and data protection are “critical conditions for the free flow of personal data” and for public confidence in government use of information. EU law requires that tax authorities may only request personal data when expressly authorized by law, with clear limits on scope and purpose.</p> <p>For example, the Court of Justice of the European Union in case number 175/20 has held that a tax agency seeking customer data from a company must have a specific legal mandate, must specify a limited purpose for the request, and must respect the General Data Protection Regulation’s data minimization principle.</p> <p>In South Africa, the Constitutional Court in the case <i>Arena Holdings Ltd t/a Financial Mail and Others vs. South African Revenue Service</i> 2023 reaffirmed that broad confidentiality of tax records is paramount and that any “public interest override” to access taxpayer data must be “carefully crafted and restrained” to maintain the “high level of confidentiality” owed to all taxpayers.</p> <p>India’s recent debates similarly recognize privacy concerns – a parliamentary committee warned that granting tax officials unlimited access to electronic data raises serious risks of excessive and constant surveillance, privacy violations, and potential misuse. Review of the Indian Tax Bill 2025</p> <p>In short, no leading jurisdiction strips away all protection for customer or business data in</p>
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				<p>tax enforcement; rather, they insist on narrow, proportionate access under strict legal controls.</p> <p>Conclusion</p> <p>Tax authorities have broad investigative tools already (e.g. audits and summons) to enforce collection of taxes without requiring a breach of the data privacy principles.</p> <p>The Tax Procedures Act and other relevant tax laws does not hinder legitimate tax collection, instead, it simply ensures it is done in a way that respects privacy and confidentiality. Repealing these safeguards, by contrast, would upset that balance. Kenya can enforce tax laws effectively without requiring businesses to hand over all customer or proprietary data. Any legitimate access to data should require, at minimum, a court order, reasonable suspicion of evasion, or specific legal provision – in keeping with Article 47's requirement of lawful, reasonable action.</p>
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