

## PROPOSED REGULATIONS

We would like to request input on the Finance Bill 2025

The Bill formulates the proposals announced in the Budget relating to liability, tax collection, and matters incidental thereto. Its principal object is to amend the laws relating to various taxes and duties.

Feedback should be provided in the following format:

The Clause Number	The wording of the Current Clause	Proposed Amendment	Rationale and Justification
1	<p><b>36. Section A of Part I of the First Schedule to the Value Added Tax Act is amended—</b>  <i>(k) by deleting paragraph 113:</i>  <i>Provided that an exemption that had been approved pursuant to paragraph 113 before the deletion of paragraph 113 came into effect shall continue to apply until the 30th June, 2026;</i></p>	Retain paragraph 113 as is	<p>Deletion of paragraph 113 shall impose 16% VAT on equipment meant for solar, wind and geothermal generation.</p> <p>This will imply a need to adjust generation tariffs higher and thus also increase consumer tariffs.</p> <p>VAT is already collected on every unit of electricity sold to the consumer and this deletion will introduce additional VAT to the capital cost of power plants. This will increase the cost of power for manufacturers and households alike.</p> <p>For context VAT for thermal plants is charged on the fuel, the equipment and on the electricity produced. 3-fold charge of VAT increases the cost of power.</p> <p>The targeted 3 technologies are renewable sources that Kenya is working hard to transition towards.</p>
2	<p><b>37. The Second Schedule to the Value Added Tax Act is amended in Part A—</b>  <i>(f) by deleting paragraph 32</i></p>	Retain Clause as is	<p>This deletion will remove zero-rate status on batteries used in the solar sector for both domestic and commercial installations.</p>

			The inability to claim VAT input will lead to an increase in cost of batteries and consequently the cost of production.	
	<p><b>By deletion of Section 15 (4) of the Income Tax Act, Chapter 470, of the Laws of Kenya</b> (the Income Tax Act) provides that <i>“where the ascertainment of the total income of a person results in deficit for that year of income, the amount of the deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding years of income”</i>.</p> <p>This provision allows for the carrying forward of taxable losses in perpetuity.</p>	<p><b>Retain clause as it is. Section 15 (4) of the Income Tax Act, Chapter 470, of the Laws of Kenya</b></p> <p>Since: Clause 8 (c) of the Finance Bill 2025 proposes to amend section 15(4) of the Income Tax Act to provide that <i>“where the ascertainment of the total income of a person results in deficit for that year of income, the amount of the deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding <u>five</u> years of income”</i>.</p> <p>This proposal restricts the carrying forward of tax losses to a maximum period of five (5) years.</p> <p>Clause 8 (d) of the Finance Bill 2025 also proposes to delete section 15 (5) of the Income Tax Act which provides that <i>“notwithstanding subsection (4), the Cabinet Secretary may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period”</i>.</p> <p>The effect of deletion of section 15 (5) is that taxpayers will be denied an opportunity to apply for an extension of period of deduction of tax losses.</p>	Tax losses can be carried forward in perpetuity. This is important for infrastructure projects that involve very high upfront costs leading to loss periods beyond 5years. IT is essential to attract investments in infrastructure such as power production, transmission, roads and others	
	By deletion of <b>Paragraph 1(A) of the Second Schedule to the Income Tax Act provides that notwithstanding</b>	<b>Retain 150% IDA.</b>	Staggered claiming of investment allowances means that most project companies would have tax losses arising over a period of three (3) years.	

	<p><b>paragraph</b>, the investment deduction shall be one hundred per cent (100%) where:</p> <p>(a) the cumulative investment value in the preceding three (3) years outside Nairobi City County and Mombasa City County is at least one billion;</p> <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>This tied to the issue of restriction of the carrying forward of tax losses is likely to lead to unnecessary tax disputes over which tax loss should have been forfeited and which should have been carried forward.</p>	
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