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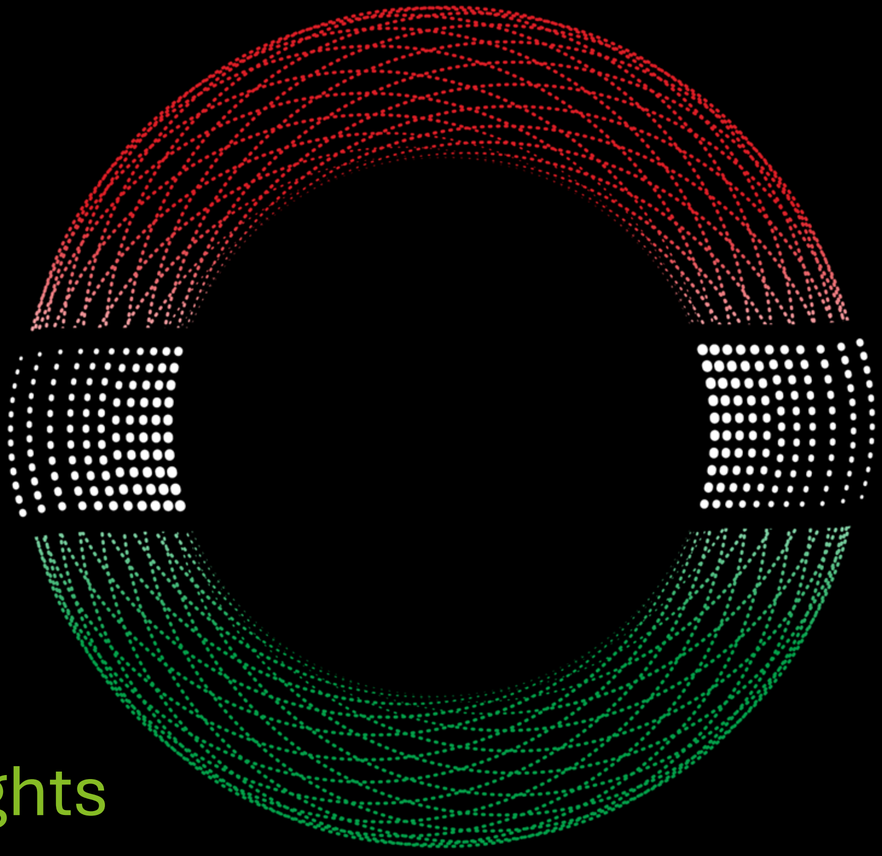

Finance Bill, 2025 Insights

On the Edge: Navigating Kenya's Fiscal Tightrope

May 2025

MAKING AN IMPACT THAT MATTERS since 1845

Introduction

The Finance Bill, 2025 ("the Bill") was published in the Kenya Gazette on 6 May 2025 and referred to the National Assembly's Departmental Committee on Finance and National Planning for consideration and public participation.

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), the Tax Procedures Act (Cap 469B) and the Stamp Duty Act (Cap 480).

Save for two clauses that are proposed to become effective on 1st January 2026, all other clauses in the Bill are expected to come into force on 1st July 2025. The two clauses proposed to commence on 1st January 2026 are the proposed introduction of advance pricing agreements and the waiver of penalties and interest arising from tax system errors.

This publication provides a detailed analysis of the key proposals in the Bill and their impact.

Corporate Tax

Corporate Tax

#	Proposal	Details	Our comments
1.	Limitation of period to carry forward tax losses	• The Bill proposes to reintroduce limitation of the period on the utilisation of tax losses in Section 15(4) of the Income Tax Act ("ITA"). Tax losses shall only be available for utilisation in the year of income in which they arise and the succeeding five years of income. The period limitation for tax losses had been repealed from the Income Tax Act through the Finance Act 2021 following the introduction of the now defunct minimum tax regime through the Finance Act, 2020, effective 1 January 2021. • The Bill has not provided room for extension of the time period beyond the five years. Instead, the Bill proposes to repeal the provision that allowed the Commissioner to extend the tax loss utilisation period beyond 10 years pre-2022 in section 15(5), which states that: *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.*	• This amendment may have been informed by the declaration of minimum tax to be unconstitutional by the Court of Appeal. One would also have hoped that an amendment to repeal the defunct minimum tax provisions in Section 12D of the ITA would be introduced. • The five-year period may be short for capital intensive investments and there may be need for extensions for be granted for specific cases. • Further, instead of repealing section 15(5), which allows the Commissioner to extend the tax-loss utilization period for deserving cases, we would recommend the provision to be retained, albeit with amendments, based on the period limitation that will finally be enacted in subsection 4. • We also note that the proposed amendment does not have a transitional provision for losses that may have arisen in prior years. We recommend the proposal to be amended to deem accumulated losses as of the date the provision comes into force to have arisen on that date.
2	Reintroduction of diminution allowance	• The Bill proposes to amend Section 15(2)(g) of the ITA to reintroduce the deduction in respect of diminution in value of any implement, utensil or similar article employed in the production of gains or profits not being machinery or plant in respect of which a deduction may be made under the Second Schedule to the ITA. • The proposed rate is 100%. The provision that existed prior to its repeal by the Finance Act, 2023 did not specify a rate, but indicated the amount to be that which the Commissioner determines to be just and reasonable. In practice, however, taxpayers claimed the allowance at 33.3% on straight-line for 3 years.	• The proposal seeks to remedy what appears to have been a drafting error in the Finance Act, 2023 which deleted the provision in Section 15(2)(g) but failed to introduce an alternative provision. • This proposal had been proposed in the defunct Finance Bill, 2024.

Corporate Tax

#	Proposal	Details	Our comments
3.	Repeal of deductions applicable to persons dealing in the sale of standing timber	• The Bill proposes to repeal Sections 15(2)(i) and (j) of the ITA. • Section 15(2)(i) entitles owners of land who accrue gains or profits from the sale of, or the grant of the right to fell, standing timber which was growing on such land at the time such owner acquired such land, to a deduction as follows: i. where such land was acquired for valuable consideration, so much of the consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or ii. where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time the owner acquired such land, as is attributable to such timber sold during such year of income. • Section 15(2)(j) on the other hand entitles a person who purchases the right to fell standing timber and accrues gains or profits from the sale of such timber to a deduction in respect of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during the year of income.	• The repeal of Section 15(2)(i) and (j) implies that only the general deduction provision in Section 15(1) applies. Section 15(1) entitles a person to a deduction in respect of expenditure which is wholly and exclusively incurred in the production of income.

Corporate Tax

#	Amendment	Details	Our comments
4	Deductibility of donations	• The Bill proposes to amend Section 15(2)(w) of the ITA to entitle a person to a deduction in respect of donations channeled towards construction of a public sports facility. • The Bill also proposes to repeal Section 15(2)(z) of the ITA, which entitles a person to a deduction in respect of expenditure incurred in sponsoring sports with the prior approval of the Cabinet Secretary responsible for Sports.	• The proposal to allow donations towards construction of public sports facilities is welcome, as it incentivizes organizations to sponsor construction of sporting facilities without the need to obtain prior approval. However, this proposal appears to limit the deduction to construction of a public sports facility which leaves out all the other forms of expenditure for sponsoring sports activity. There may be need to widen the scope of this measure to cover other expenditure that is vital for development of sports to encourage both individual and corporate sponsors • The proposal to repeal Section 15(2)(z), which entitles persons to a deduction in respect of expenditure in sponsoring sports activities is misinformed, as this move could discourage organisations from sports sponsorship. While some of the expenditure may qualify as advertising expenditure, it would be important to have an express provision for deductions in respect of sports-sponsorship to avert disputes with the Revenue Authority.
5.	Change of accounting year end.	• The Bill proposes to amend Section 27 of the ITA to deem an application for change of the accounting year end as allowed if the Commissioner does not respond within six months from the date the application was made.	• This is a welcome move as the proposal specifies the timeframe within which the Commissioner ought to respond to taxpayers seeking a change of accounting year end. Currently, the Commissioner is not bound by any timelines. We hope that the iTax system will also be reconfigured to automatically deem an application to have been allowed in line with the proposed amendment. Usually, amendments of taxpayer details on iTax require the Commissioner's intervention.
6.	Timeline for issuance of a tax exemption certificate	• The Bill proposes to amend Paragraph 10 of the ITA's First Schedule to increase the timeframe within which the Commissioner is required to issue a tax exemption certificate to an applicant from 60 days to 90 days.	• The proposal grants the Commissioner more time to conduct verification regarding fulfillment of the requirements for exemption. • It appears that the expanded timeframe is pursuant to the revised guidelines on deductibility of donations and exemption from income tax for charitable organizations. The guidelines enumerate tests that must be fulfilled prior to issuance of an exemption certificate.

Corporate Tax

#	Amendment	Details	Our comments
7.	Penalty on underpayment of instalment taxes	• The Bill proposes to repeal Section 72C of ITA, which provides for a penalty of 20% on underpayment of instalment taxes.	• The repeal of the proposal is to align with Section 83A of the Tax Procedures Act, CAP 369B, which provides the applicable sanctions on late payment of taxes. The penalty under Section 83A is 5%.
8.	Deletion of the compensating tax definition in the ITA	• The Bill proposes to amend various sections of the ITA that refer to compensating tax as outlined below: - Deletion of the “compensating tax” definition in Section 2; - Deletion of the phrase “including compensating tax” in Section 16(2)(c), which prohibits a deduction in respect of any income tax or tax of a similar nature including compensating tax paid on income; - Deletion of Section 52B (4) of the ITA, which requires taxpayers to include in their self-assessment and return of income an assessment and return of any compensating tax due. In its place, the Bill proposes to introduce a provision that requires taxpayers to include in their self-assessment and return of income an assessment and return of any dividend distributed out of untaxed gains or profits and the tax so calculated thereof; and - Deletion of Paragraph 63 of the ITA’s First Schedule, which provides for income tax exemption in respect of compensating tax accruing to a company undertaking the manufacture of human vaccines.	• Compensating tax is imposed under Section 7A of the ITA. • Before 2019, the ITA required a person to maintain a memorandum account known as dividend tax account (“DTA”) that would track liability to compensating tax. Any income tax paid or 30/70 of dividends received would be credited in the DTA while any income tax refunds or 30/70 of dividends paid would be debited in the DTA. Compensating tax would arise if the debit side of the account exceeded the credit side. • The Finance Act 2018, repealed the compensating tax regime and introduced a simplified regime that requires dividends distributed out of gains or profits on which no tax is paid to attract corporate tax at the resident corporate tax rate. However, the tax continued to be known as “compensating tax”, hence the proposal to repeal the definition under Section 2 and any mention of or reference to compensating tax in the ITA. • The due date for compensating tax payment remains the due date for a self-assessment, which is the last date of the fourth month after year end. • While the proposed amendments may have little impact on many taxpayers, those who were previously exempt, such as manufacturers of human vaccine, will be impacted.

Corporate Tax

#	Amendment	Details	Our comments
9.	Incentives to companies certified by the Nairobi International Financial Centre Authority	• The Bill proposes a raft of amendments aimed at incentivizing entities certified by the Nairobi International Financial Centre Authority ("NIFCA"). They include: - – Introducing paragraph 75 into the ITA's First Schedule, to provide an income tax exemption on dividends paid by a company certified by the NIFCA in a year if the company reinvests at least KES250 million in that year of income. – A reduced corporate tax rate of 15% for companies certified by NIFCA for the first ten years and 20% for the subsequent 10 years, if; a) The company invests at least three billion shillings in the first three years of operation; b) The company is a holding company with at least 75% of the top management being citizens of Kenya; and c) The regional headquarters of the company are in Kenya and at least 60% of the top management are Kenyan citizens. – A reduced corporate tax rate of 15% for start-up companies certified by NIFCA for the first three years and 20% for the succeeding four years.	• The proposal seeks to promote the growth of NIFC which was established to attract global players by ensuring that they are provided with regulatory and infrastructure that meets international standards. • This is a welcome move though it appears to be inconsistent with the Medium-Term Revenue Strategy (MTRS) which indicates the intention to phase out the preferential tax regimes

Corporate Tax

#	Amendment	Details	Our comments
10.	Repeal of the accelerated investment allowances	• The Bill proposes to repeal Paragraphs 1A and 1B of the ITA's Second Schedule, which provide the accelerated investment allowance rates of 100% and 150% in the year of first use for investments made outside Nairobi and Mombasa Counties on buildings used for manufacture, hotel buildings and machinery used for manufacture. • The 100% rate applies where either: – The investment value outside Nairobi and Mombasa counties is at least KES 1 billion in the preceding three years of income; – The investment value outside Nairobi and Mombasa counties is at least KES 250 million in the year of income under consideration; or – The investment is incurred in a special economic zone ("SEZ"). • The 150% rate is applicable: – On investments made on or before 25th April 2020 if the applicable investment deduction rate was 150% provided the cumulative value of investment on or before 25 April 2020 in the preceding 3 years of income was at least 1 billion; and – Where the cumulative value of investment in the 4 years of income preceding 1 July 2022 or the 3 succeeding years of income after 1 July 2022 is at least 1 billion.	• The proposal may negatively affect capital investments outside of Nairobi and Mombasa counties, which may have been undertaken in anticipation of recovering the cost in the first year from a tax perspective. • The proposal may also adversely impact ongoing and prospective capital influx into the SEZ, which has recently been actively promoted by the government as a preferable investment destination. • These frequent changes should be avoided to afford investors a stable tax policy regime.

Corporate Tax

#	Amendment	Details	Our comments
11.	Fringe Benefit Tax rate specified	• The Bill proposes to amend the Third Schedule to the ITA to provide that fringe benefit tax, which is the tax applicable on loans provided to employees and directors at preferential rates, is taxable on the employer at the resident corporation tax rate.	• This clarifies the tax rate with respect to fringe benefit taxes following the deletion of Section 34 by the Tax Laws (amendment) Act, 2024. which created a legislative gap with effect from 27th December 2024 due to absence of a specific rate of tax for FBT. • It would be interesting to see if the Kenya Revenue Authority (KRA) would be willing to refund the FBT paid by taxpayers during this period.
12.	Repeal of preferential tax rates	• The Bill seeks to amend the Third Schedule to the ITA to repeal the preferential tax rate of 15% applicable to: - Companies engaged in construction of at least 100 residential units in a year; and - Businesses engaged in the local assembly of motor vehicles.	• The proposal aligns with the aim of the Medium-Term Revenue Strategy (“MTRS”) to progressively reduce preferential tax rates, thereby reducing the Government’s tax expenditure. • This move could negatively impact investment in the sectors impacted especially the affordable housing program.

Corporate Tax

#	Amendment	Details	Our comments
13.	Due date for payment of Domestic Minimum Top-up Tax	• The Bill seeks to introduce a deadline for payment of the Domestic Minimum Top-up Tax ("DMTT"), which was introduced through the Tax Laws (Amendment) Act, 2024 in Section 12G of the ITA. • The tax shall be payable by the end of the fourth month following the close of the relevant year of income. • The DMTT provision allows Kenya to levy an additional tax on computed excess profits of a **covered person** whose combined effective tax rate falls below 15% in a given year of income.	• The introduction of DMTT represented a positive step towards aligning Kenya's corporate tax regime with the OECD's Global Anti-Base Erosion (GloBE) Rules under Pillar Two, aimed at curbing profit shifting and ensuring large multinational enterprises (MNEs) are subject to a minimum effective corporate tax rate of 15% in each jurisdiction where they operate. • The proposed clarification of a specific due date ensures legal certainty and addresses the ambiguity that existed under the Tax Laws (Amendment) Act, 2024. This will enhance compliance. • To ensure effective operationalization of this provision, it is imperative that the remittance mechanism for DMTT is put in place, in particular, by including DMTT obligation within the iTax platform. • Large multinational entities with global turnover of more that EUR 750 million with operations in Kenya will be required to monitor their effective tax rates to ensure compliance with the minimum top-up tax requirement.

Corporate Tax

#	Amendment	Details	Our comments
14.	Introduction of Advance Pricing Agreements	• The Bill proposes to introduce Advance Pricing Agreements (“APA”) provisions on transactions between related parties subject to transfer pricing rules, vide Section 18G of the ITA. The APA provisions were first proposed vide the Finance Bill 2024, which was not assented by the President after wide protests. • Under the APA provisions, a taxpayer is allowed to agree with KRA the appropriate criteria for the determination of the arm’s length outcome for future related party transactions. The APAs shall be valid for a period not exceeding 5 years. • The APA will be declared null and void from the date of entry into force where the Commissioner determines that the APA was entered based on misrepresentation of facts. • The Cabinet Secretary is expected to issue regulations to facilitate better implementation of the APA provisions.	• This is a welcome move to enhance certainty and minimize transfer pricing disputes. • APAs are becoming increasingly popular worldwide as they provide taxpayers with some level of certainty regarding their transfer pricing arrangements. It will also be beneficial to the KRA because unlike traditional tax audits that review transactions which have already taken place to determine compliance, APAs allow for review of prospective transactions to provide clarity for both the taxpayer and the revenue authority regarding the arm's length nature of the transactions. • We anticipate further guidance on the APA application process, documentation requirements, and the administrative procedures around execution of the APAs. This clarity will encourage more taxpayers to pursue APAs. • The introduction of APAs aligns Kenya with OECD’s Pillar Two and BEPS frameworks and enhances the ease of doing business. It remains to be seen how the practical implementation of this provision will unfold.

Corporate Tax

#	Amendment	Details	Our comments
15.	Definition of related person	• The Bill proposes to amend the definition of related person in Section 2 of the ITA by substituting it with the following: *A related person in case of two persons means, either person who participates directly or indirectly in the management, control, or capital of the business of the other person,* - *Any other person who participates directly or indirectly in the management, control or capital of the business of the two persons,* - *An individual who:* a) *participates directly or indirectly in the management, control or capital of the business of the two persons; and* b) *Is associated to the two persons by marriage, consanguinity, or affinity; and* c) *the two persons participate in the management, control, or capital of the business of the individual.* • The Bill also proposes to amend Section 18 of the ITA by deleting subsection (6), which had a duplicated definition of related persons. Effectively, the definition of related person under Section 2 shall apply forthwith.	• The amendment is aimed at aligning and harmonizing the definition of related person applicable under the ITA including for transfer pricing purposes.

Corporate Tax

#	Amendment	Details	Our comments
16.	Country by country reporting on behalf of other related parties	• The Bill proposes an amendment in Section 18D of the ITA, which clarifies that a constituent entity in Kenya designated by the ultimate parent entity can file a country-by-country report and notify the Commissioner on behalf of other constituent entities in Kenya operating within the same MNE Group. • The proposal seeks to remove reference to such designated constituent entity as a surrogate parent entity.	• The clarity in the proposal is welcome as it will help in reducing the country-by-country reporting compliance costs for MNEs with multiple constituent entities in Kenya. This also enhances consistency of the CbCR filings. • However, the provision as framed may cause confusion, regarding the deadline of filing the country-by-country report as provided for under Section 18D (2) which provides for filing of the country-by-country report within twelve months from the financial year end.
17.	Exemption of the income of the Social Health Insurance Fund (SHIF) from tax	• The Bill seeks to replace the current paragraph 45A in Part 1 of the First Schedule to the Income Tax Act that exempts the income of the National Health Insurance Fund (NHIF) from tax with a paragraph exempting all contributions and other payments into and out of the SHIF from tax.	• Considering that NHIF is now defunct and its roles taken over by SHIF, this provision seeks to ensure alignment with the current position.

Withholding Tax

Withholding Tax

#	Amendment	Details	Our comments
1.	Definition of the term ***'royalty'*** expanded to include payments for distribution of software	• The Bill proposes to expand the definition of the term royalty in Section 2 of the ITA to include payments for the distribution of software where regular payments are made for the use of the software through the distributor.	• The proposal seeks to ensure that all payments in relation software, including payments under distribution arrangements, are subject to taxation in the source country. • Historically, software-related payments that did not grant intellectual property (IP) rights in the software to the payers were not subject to Withholding Tax ("WHT") in Kenya. Although the Kenya Revenue Authority (KRA) contested this practice, it aligned with the High Court's ruling in **Seven Seas Technologies Limited v Commissioner of Domestic Taxes, Income Tax Appeal 8 of 2017**, and adhered to international best practice. • The shift from international norms, as outlined in Article 12 of the Organisation for Economic Co-operation and Development's ("OECD") Model Tax Convention, may be counterproductive for Kenya. Imposing WHT on all the software related payments irrespective of whether they confer IP rights could increase the cost of doing business, as these additional tax burdens are likely to be passed on to the final consumer, ultimately affecting market competitiveness and economic growth.

Withholding Tax

#	Amendment	Details	Our comments
2	Payments from sale of scrap metal and supply of goods to a public entity to be deemed as income chargeable to tax	• The Bill seeks to amend Section 10 of the ITA to deem payments in respect of supply of goods to a public entity and sale of scrap to be income derived from Kenya.	• The proposal serves to remedy the drafting error vide the Tax Laws (Amendment) Act, 2024 which introduced WHT on payments in respect of the supply of goods to a public entity and sale of scrap without reflecting the same under the deeming section in Section 10.
3	Withholding tax on freight charges to ship owners or charterers	• The Bill proposes to amend Section 35(1) of the ITA to bring payments of freight charges to non-resident ship owners and charterers within the ambit of WHT.	• The proposal seeks to provide clarity on the tax collection mechanism applicable on freight payments to ship owners or charterers to bridge the existing gap from an implementation perspective. • In essence the payer will bear the responsibility to withhold tax and remit the tax to the KRA. Currently, the tax is collected through a self-assessment mechanism by agents of the non-resident vessel owners or operators.
4	Withholding tax on qualifying dividends and interest	• The Bill seeks to amend Paragraphs 1 and 5 of the Third Schedule to clarify that WHT deducted from qualifying interest (paid to individuals) and qualifying dividends is a final tax.	• This bridges the gap that was created upon repeal and replacement of Section 34 by the Tax Laws (amendment) Act, 2024.
5.	Repeal of Section 35(6A), (6C) and (6E)	• The Bill proposes to repeal Sections 35(6A), (6C) and (6E) of the ITA. • Section 35(6A) provides the implications to a person appointed by the Commissioner to be a withholding tax agent on immovable property rent who fails to comply with the withholding tax obligation, Section 35(6C) covers the provisions relating to appeals for a withholding tax dispute, while Section 35(6E) covers the provisions relating to objections.	• The repeal of the referenced subsections are aimed at cleaning up the ITA, as similar provisions are contained in the Tax Procedures Act.

Digital Taxes

Digital Taxes

#	Amendment	Details	Our comments
1.	Significant economic presence tax	• The Bill seeks to amend Section 12E of the ITA to expand the scope of significant economic presence tax (“SEPT”) to cover any income that is accrued in or derived from Kenya by a non-resident through a business carried out over the internet or an electronic network including through a digital marketplace. The current provision only captures income accruing to a non-resident from the provision of services through a digital marketplace. • The Bill further proposes to repeal the minimum threshold of KES 5 million.	• The proposal seeks to align the tax base for SEPT with the parameters provided under the charging section, Section 3 (2) (ca) of the ITA whilst the repeal of the minimum threshold seeks to expand the tax net. • The proposal to repeal the minimum threshold may require a rethink to ensure that the administrative burden does not outweigh the tax yield.
2	Tax rate for digital asset tax	• The Bill proposes to amend Paragraph 13 of the ITA’s Third Schedule to reduce the digital asset tax rate from three percent to one point five percent. • Digital asset tax was introduced with effect from 1 September 2023 and applies on the transfer or exchange of a digital asset.	• The proposal seeks to nurture the digital economy which is still in the nascent stages from a taxation perspective.

Capital Gains Tax

Capital Gains tax

#	Amendment	Details	Our comments
1.	CGT exemption on property transfers within a special economic zone	• The Bill proposes to amend Paragraph 72 of the ITA's First Schedule to limit the CGT exemption on gains accrued from the transfer of property within a special economic zone to only transfers where the transferor is a licensed special economic zone developer, enterprise or operator.	• The Bill seeks to limit application of the exemption to transactions initiated by a licensed transferor to avoid misuse of the provision.
2.	Transfer of property by an individual to a company where the individual, spouse and children hold 100% shares to be CGT exempt	• The Bill proposes to amend Paragraph 6(2)(h)(v) of the ITA's Eighth Schedule to provide that there is no transfer for Capital Gains Tax purposes where assets are transferred by an individual to a company in which the individual, spouses or a spouse and immediate family hold 100% shareholding. • The term "immediate family" is already defined to include children of spouses or former spouses.	• The existing provision is meant to apply mainly during succession planning, as it only exempts transfers to a company where spouses or a spouse and immediate family (which means children of the spouse or former spouse) hold 100%. • The proposal to include the transferor expands the applicability of the exemption beyond succession planning to where an individual transfers property to a company where they are the sole shareholders or to a family-owned entity, which is welcome.
3.	CGT exemption for securities traded on licensed securities exchanges extended to individuals	• The Bill proposes to amend the First Schedule to the ITA to introduce a CGT exemption for gains on transfers of securities traded on a licensed securities exchanges, such as the Nairobi Securities Exchange (NSE). • Presently, this exemption exists under Paragraph 2, Head B of the Third Schedule, meaning that it currently only expressly applies to companies..	• This is a welcome proposal in the Bill, since the current CGT exemption for securities traded on exchanges such as the NSE applies to companies. • By extending the exemption to cover all persons, including individuals, the exemption may be geared towards encouraging investment in the NSE and spurring its growth.
4.	Limitation on the deductibility of capital losses arising from the disposal of assets subject to CGT	• The Bill proposes to delete Section 15(3)(f) of the ITA, which currently allows transferors to deduct any capital losses arising from the disposal of assets subject to CGT under the Eighth Schedule to the ITA. • The provision currently specifically allows transferors to deduct such capital losses from any taxable capital gains arising in that year of income and in subsequent years of income.	• This proposal may have been aimed at cleaning up the ITA, noting that Section 15(4) of the ITA as presently drafted allows taxpayers to deduct tax losses from their total income in a year of income and in subsequent years of income. • However, the proposed deletion of Section 15(3)(f) could also be interpreted to mean that capital losses are no longer deductible. In our view, this would necessitate amendment of the Eighth Schedule.

Personal Income Tax

Personal Income Tax

#	Amendment	Details	Our comments
1.	Increase of the tax-exempt limit for per diems	• The Bill proposes to amend Sections 5 (2) (a) (iii) of the Income Tax Act by increasing the threshold for tax exempt per diem from the current two thousand shillings per day to ten thousand shillings per day.	• This is a welcome move that has been long overdue considering the effect of inflation over the last 19 years since the initial limit was introduced. • Considering the time it has taken to review the limit for non-taxable per diem, our view is that the government should amend this clause further, so that the exempt limit for per diems is subject to periodic reviews by the Cabinet Secretary responsible to reflect prevailing economic conditions.
2.	Mortgage interest deduction to be extended to cover interest on loans for construction of residential premises	• The Bill proposes to amend Section 15(3)(c) of the ITA to extend the deductibility of owner occupied mortgage interest to loans borrowed for the construction of residential premises. • Currently, the ITA allows for the deduction of mortgage interest up to a maximum of KES 360,000 per annum. However, this deductibility is limited to interest on loans borrowed for the purchase or improvement of residential premises.	• This amendment is a welcome one, which would provide much-needed relief to persons who may take out mortgages or loans for the construction of houses. • It also enhances equity given the reality that taxpayers may take out mortgages or loans for the construction of residential houses and they should not be treated differently from those who utilise such loans for purchase or improvement of their residential property.

Personal Income Tax

#	Amendment	Details	Our comments
3.	Requirement for employers to grant deductions, reliefs and exemptions on payroll	• The Bill proposes to amend Section 37 of the Income Tax Act by introducing subsection 1A which will require employers to grant employees applicable deductions, reliefs and exemptions before computing the tax deductible on their emoluments.	• In practice, most employers grant eligible employees the applicable deductions and tax reliefs through payroll. However, since the practice is not mandated by law, some employers have not embraced the practice, thereby resulting in tax overpayment by employees. • This provision may be seeking to address the incidence of tax refunds arising from employment income, where employers are not considering deductions and reliefs. • If well managed through monthly payroll, this is a useful provision since it will reduce the administrative and logistical burden on individual taxpayers of following up for tax refunds. Additionally, it reduces the KRA's burden and time lost on verification of tax overpayments filed by employees through self-assessment returns. • If enacted, employers should consider developing a checklist to ascertain any deductions, exemptions or reliefs that employees are entitled to. This can be maintained as a record to indemnify the employer against any future claims occasioned by the employees' failure to disclose relevant information. • However, where the employee has many sources of income, there is potential for duplication of deductions.

Personal Income Tax

#	Amendment	Details	Our comments
4.	All gratuity paid upon attainment of retirement age now exempt from income tax	• The Bill is seeking to amend Paragraph 53 of the First Schedule to the Income Tax Act by deleting subparagraph (a) which exempts payment of gratuity or other allowances paid under a public pension scheme from Income Tax and introducing the following subparagraphs: a) payment of gratuity aa) other allowances paid under a public pension scheme;	• This amendment seeks to remedy the discriminative taxation of gratuity paid under private schemes. By splitting the current subparagraph into the two proposed subparagraphs to deal with gratuity and other allowances paid under a public pension scheme respectively, recipients of gratuity under a private scheme can now enjoy tax exemption. • However, the second subparagraph on allowances perpetuates discriminative taxation by limiting the exemption to allowances paid under a public pension scheme.
5.	Individual income tax rates not applicable to fringe benefits and qualifying interest	• The Bill has proposed an amendment to Head B of the Third Schedule to the Income Tax Act to specify that the total income comprising fringe benefits and the qualifying interest is not subject to graduated individual rates of tax.	• Fringe benefits as specified under Section 12B relates to benefits arising from loans granted by an employer at a rate below the market interest rate and is taxable on the employer. Conversely, qualifying interest is subject to withholding tax which is a final tax. • Therefore, in our view, this provision seeks to clarify that any fringe benefits and qualifying interest would not be subject to further taxation under the individual rates of tax.

Personal Income Tax

#	Amendment	Details	Our comments
6.	Amendment of the definition of individual retirement fund	• The Bill is proposing to amend the definition of individual retirement fund by removing the requirement to have the fund subject to the Income Tax (Retirement Benefit) Rules.	• This amendment is part of the government's effort to further simplify the definition of the individual retirement fund by removing the hurdles for contributors to be eligible for tax deductibility. This comes after the first round of amendments that removed the requirement to have the fund registered by the Kenya Revenue Authority for contributors to be eligible for tax deduction. This was done through Tax Laws (Amendment) Act that came into effect on 27 December 2024. • This benefit individuals who are not in employment and therefore not in an occupational or employer-run scheme.
7.	Repeal of provisions on tax exemption limits for pension withdrawals	• The Bill is proposing to delete subsections 4,5,6,7,9 and 9A of Section 8 of the ITA which stipulate the tax-exempt threshold for withdrawals from pension and provident funds as well as home ownership savings plans.	• The proposed deletion follows the recent amendments introduced through the Tax Laws (Amendment) Act, 2024 where payments from registered pension funds, provident fund and registered individual retirement fund are tax exempt where the person has attained retirement age, the individual has been a member of the fund for at least twenty years, or early withdrawals due to ill health. • In our view, the deletion is a cleanup exercise to align the Income Tax Act to the Tax Laws (Amendment) Act, 2024. • Overall, this a welcome move as it will encourage participation in retirement schemes and enhance the income of retirees.

Personal Income Tax

#	Amendment	Details	Our comments
8.	Repeal of the partial tax exemption of employment income of regional employees	• The Bill proposes to delete Section 15 (2) (r) of the ITA which allows a deduction of one-thirds of the employment income of individuals who are not citizens of Kenya and who are in Kenya solely for performance of their duties in relation to the employer's regional office. Other conditions to qualify for this deduction include: – The regional office has been approved as such by the Commissioner – Employer is a non-resident company or partnership trading for profit – The individual is absent from Kenya for 120 days or more in that year of income – The individual's employment costs are not deductible in ascertaining the taxable income of his employer or any company or partnership which controls or is controlled by the employer	• The deletion is potentially informed by the low uptake of this benefit considering the stringent conditions to qualify for the deduction. • In addition, it could be part of the effort by the government to reduce tax exemptions.

Value Added Tax

Value Added Tax

#	Amendment	Details	Our comments
1.	Definition of tax invoice	• The Bill proposes to amend Section 2 of the Value Added Tax Act (Cap 476) ("VAT Act") and introduce a definition for "tax invoice". • The Bill defines a tax invoice to include an electronic tax invoice issued in accordance with Section 23A of the Tax Procedures Act ("TPA").	• The Finance Act, 2023 introduced Section 23A into the TPA, to empower the Commissioner to establish an electronic system for the issuance of electronic tax invoices. Further, it requires taxpayers carrying on a business in Kenya to issue electronic tax invoices through this system and maintain records of stocks in the system. • The KRA subsequently implemented the Electronic Tax Invoice Management System (ETIMS). • The Bill clarifies that the definition of 'tax invoice' in the VAT Act includes a tax invoice referenced under Section 23A of the TPA.
2.	Clarification on place of supply for services provided by non-residents	• The Bill proposes to amend Section 8(2) of the VAT Act by introducing the word "and" at the end of the opening sentence to read as follows – *(2) If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person* ***and***— *(a) the services are physically performed in Kenya by a person who is in Kenya at the time of supply...*	• The proposed amendment provides clarity on the conditions to be met in order to determine whether the supply of services by non-residents should be deemed to be made in Kenya.

Value Added Tax

#	Amendment	Details	Our comments
3.	Introduction of internet, radio and television broadcasting services within the ambit of electronic services	• The Bill proposes to amend Section 8(2) of the VAT Act by deleting paragraph (c) which provides that *if the place of business of a supplier is not in Kenya, the supply of services are deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person and the services are radio or television broadcasting services received at an address in Kenya*. • The Bill also proposes to amend Section 8(3) of the VAT Act by deleting the words 'broadcast television' in paragraph (g) and substituting the words with 'internet, radio or television broadcasting services'.	• Currently, Section 8(3)(g) provides that *political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television* are electronic services to the extent that they are provided through a telecommunication network. • The proposed amendments aim to expand the scope of VAT on digital marketplace supplies to include *internet*, *radio or television broadcasting services* within the scope of VAT on digital marketplace supplies which is taxable under the simplified tax registration framework provided for in the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.
4.	Refund of withholding VAT credits	• The Bill proposes to amend Section 17(5) by deleting paragraph (c) which allows taxpayers to offset excess withholding VAT credits against other tax liabilities.	• The proposed change implies that taxpayers who do not apply for refund of excess withholding VAT credits will only be able to utilise the credits against future VAT liabilities. • This also appears to be a clean-up amendment to align the VAT Act with the provisions of the Tax Procedures Act on refund or offset of overpaid taxes.

Value Added Tax

#	Amendment	Details	Our comments
5.	Timelines for application of VAT refunds	• The Bill proposes to reduce the timeline to lodge VAT refunds under Section 17(5)(d) from 24 months to 12 months.	• The proposed change aims to align with the TPA with respect to refund application guidelines. • The Tax Laws Amendment Act 2024 ("TLAA, 2024") amended Section 47 of the TPA by limiting the timeframe for refund applications in respect of all taxes, save for income tax, to within twelve months from the date of overpayment. The timeframe for income tax was retained at five years.
6.	Refund of excess credits arising from supplies made to official aid funded projects	• The Bill proposes to amend Section 17(5) by deleting paragraph (e) which allows registered manufacturers to apply for refund of excess input tax with respect to taxable supplies made to an official aid funded project.	• The TLAA, 2024 deleted Section 17(8) which allowed VAT registered manufacturers who make taxable supplies to approved official aid funded projects that are exempt from VAT to take a deduction of input tax incurred in the process of providing the supplies. • Consequently, the provision that allowed a refund of excess input tax with respect to taxable supplies made to an official aid funded project became obsolete. • The proposal aims to remove the VAT refund provision to align with the change introduced by the TLAA, 2024.

Value Added Tax

#	Amendment	Details	Our comments
7.	Change in timeline within which a taxpayer may apply for a refund of VAT paid on bad debts	• The Bill proposes to amend Section 31(1)(a) of the VAT Act to allow taxpayers to apply for a refund of VAT paid on bad debts where the debt has been outstanding for two years. • Currently, the provision allows taxpayers to apply for such refunds where the debt remains unpaid for three years.	• The proposed amendment is a welcome move as taxpayers can now apply for refunds on bad debts which have been outstanding for a shorter period of 2 years. This might help to better manage cashflows, especially where the VAT incurred on unpaid debts is significant.
8.	Application of approved refund of VAT on bad debts	• The Bill proposes to amend Section 31(1) of the VAT Act in the proviso by introducing paragraph (ca) which states that '*the amount may be used to offset any other value added tax liability, upon approval by the Commissioner*.	• Currently, paragraph (c) provides that a refund of VAT on bad debts may be credited to the taxpayer's record for use against *future VAT liabilities*. • The proposed amendment aims to expand the utilisation of refund of VAT paid on bad debts by allowing taxpayers to offset such amounts against any other VAT liability arising from the past, current or future liabilities.
9.	Clarification on timeline for remitting recovery of previously refunded VAT on bad debts to the Commissioner	• The Bill proposes to amend Section 31(1) of the VAT Act in the proviso by deleting paragraph (d) and (e). Specifically, paragraphs (d) and (e) of the proviso state that: *d) where the tax refunded under sub-section (1) and (2) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within sixty days of the date of recovery;* *e) if the payment is made within the time specified under subsection (1) and (2), an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable and the interest shall not exceed one hundred per cent of the refunded amount.*	• The VAT Act has two contradicting provisions on the timeline for paying back the Commissioner the refunds received once the debt is recovered from the customer. Section 31(1)(d) provides a 60-days timeline while Section 31(2) provides a 30-days timeline. • The proposed amendment clarifies that the timeline for remitting recovery of previously refunded VAT on bad debts to the Commissioner is 30 days. • Paragraph e) of the proviso was ambiguous as it was penalizing taxpayers for paying back the Commissioner the refunded amount within the required timelines. Its deletion is a clean-up of the VAT Act.

Value Added Tax

#	Amendment	Details	Our comments
10.	Requirement to issue tax invoices for all supplies	• The Bill proposes to amend Section 42(1) by deleting the word 'taxable'. • Section 42(1) currently provides that *"(1) Subject to subsection (2), a registered person who makes a* ***taxable*** *supply shall, at the time of the supply furnish the purchaser with the tax invoice containing the prescribed details for the supply…"*	• The Finance Act 2023 introduced Section 23A in the TPA, to empower the Commissioner to establish an electronic system for the issuance of electronic tax invoices. • Further, it requires taxpayers carrying on a business in Kenya to issue electronic tax invoices through the above-mentioned system and maintain records of stocks in the system. • The proposed amendment aligns with Section 23A of the TPA and clarifies that taxpayers should issue tax invoices for all supplies, irrespective of the VAT status of their supplies.
11.	Liability to pay tax for exempt and zero-rated supplies	• The Bill proposes to introduce Section 66A as follows: *"66A. Where a person imports or purchases goods or services which are exempt or zero-rated and the person subsequently disposes of, or uses, the goods or services supplied in a manner inconsistent with the purpose for which the goods or services were exempted or zero rated, the person shall be liable to pay tax on the goods or services at the applicable rate at the time of disposal or inconsistent use."*	• The proposal aims to prevent tax avoidance in cases where tax exempt or zero-rated goods or services are purchased based on their intended use but are subsequently not utilized for the specific purpose that justified the VAT preferential treatment. • Therefore, where a person imports or purchases goods or services that are tax exempt or zero-rated, but later disposes of or utilises them in a way that is not aligned with the intended purpose, the person will be liable to pay VAT on the goods or services at the time of disposal or inconsistent use. • It is not clear which mischief this new provision seeks to cure because the goods or services listed in the First and Second Schedule to the VAT Act retain the same exempt and zero-rating status irrespective of the number of times they are supplied, so long as the goods or services meet the VAT exempt or zero-rating conditions provided under the VAT Act.

Value Added Tax

#	Amendment	Details	Our comments
12.	Amendments to Part I of the First Schedule to the VAT Act.	• The Bill proposes to delete Paragraph 49 which exempts all goods of chapter 88 and parts thereof from VAT. • However, we note that the following items of Chapter 88 are still exempt under the First Schedule of the VAT Act: - *8802.30.00 - Aeroplanes and other Aircrafts of unladen weight exceeding 2,000 kgs but not exceeding 15,000kgs.* - *8802.40.00 - Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs.* - *8802.60.00 - Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.*	• The proposed amendment limits the exemption to the items under the deleted Paragraph to aeroplanes and other aircraft of tariff number 8802.40.00, 8802,40.00 and 8802.60.00. Thus, all other goods of Chapter 88 will be subject to VAT at 16%.
		• Paragraph 51 exempts taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury. • The Bill proposes to amend paragraph 51 by inserting the words "excluding fuels, lubricants and tyres for vehicles" immediately after the words "funded project“.	• The proposed amendment implies that fuels, lubricants and tyres for vehicles imported or purchased for direct and exclusive use in the implementation of official aid funded projects will be taxable.

Value Added Tax

#	Amendment	Details	Our comments
12.	Amendments to Part I of the First Schedule to the VAT Act...cont'd	• The Bill proposes to delete Paragraph 58 which exempts direction-finding compasses, instruments and appliances for aircraft.	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%.
		• The Bill proposes to delete Paragraph 62 which exempts taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• This proposed measure affects the tourism sector in the country and negates the efforts by the Government in the recent past to promote tourism in Kenya.

Value Added Tax

#	Amendment	Details	Our comments
12.	Amendments to Part I of the First Schedule to the VAT Act…cont'd	• The Bill proposes to delete Paragraph 63 which exempts taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• The proposed measure deletes this Paragraph which was reinstated vide the Finance Act 2023. The exemption of construction material for specialized hospitals was intended to reduce the cost of and access to healthcare in the country. • This proposal will lead to the increased cost of putting up health facilities.
		• Paragraph 89 exempts *any* ***other aircraft spare*** *parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation*. • The Bill proposes to amend Paragraph 89 by deleting the words '**other aircraft spare**' and substituting therefor the word '**aircraft**'.	• The proposed measure aims to clarify that the VAT exemption is applicable to aircraft parts provided the stipulated conditions are met.

Value Added Tax

#	Amendment	Details	Our comments
12.	Amendments to Part I of the First Schedule to the VAT Act...cont'd	• The Bill proposes to delete Paragraph 91 which exempts from VAT, specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion.	• The proposal means that these tourist motor vehicles will be subject to VAT at 16%. The proposed measure will impact the tourism sector.
		• The Bill proposes to delete Paragraph 109 which exempts goods imported or purchased locally for the direct and exclusive 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. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%. This will result in an increase in cost of constructing the houses which raises the question of whether the houses will remain affordable to the majority of Kenyans.

Value Added Tax

#	Amendment	Details	Our comments
12.	Amendments to Part I of the First Schedule to the VAT Act...cont'd	• The Bill proposes to delete Paragraph 112 which exempts 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 in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Petroleum Act, 2019, or a mining license in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%. • The cost of geothermal, oil or mining prospecting or exploration is capital intensive. Thus, the removal of this exemption may discourage investors in Kenya's extractive sector.
		• The Bill proposes to delete Paragraph 113 which exempts specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%. • The proposal is likely to impact Kenya's goal to generate 100% of its electricity from clean energy sources by 2030. It will also increase the cost of accessing solar energy and negatively impact those that rely on solar energy.

Value Added Tax

#	Amendment	Details	Our comments
12.	Amendments to Part I of the First Schedule to the VAT Act…cont'd	• The Bill proposes to delete Paragraph 128 which exempts discs, tapes, solid-state non-volatile storage devices, "smartcards" and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%.
		• Paragraph 129 exempts weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health. • However, the Bill proposes a transition period for an exemption that had been approved before the deletion came into effect to continue to apply until the 30th June 2026.	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%.
		• The Bill proposes to delete Paragraph 143 which exempts inputs and raw materials used in the manufacture of passenger motor vehicles. • The Bill also proposes to delete Paragraph 144 which exempts from VAT locally manufactured passenger motor vehicles.	• The Finance Act, 2022 introduced VAT exemption on locally manufactured passenger motor vehicles as well as inputs and raw materials used in the manufacture of passenger motor vehicles in a bid to reduce the importation of used motor vehicles and to boost the local manufacturing sector. • The proposed amendment will increase the cost of locally manufactured passenger motor vehicles thus negating the government's efforts to promote this sector.

Value Added Tax

#	Amendment	Details	Our comments
13.	Goods moved from zero-rating to exemption schedule	• The Bill proposes to introduce the following new paragraphs under Part I of the First schedule to the VAT Act. The goods in these paragraphs are currently listed in the Second Schedule to the VAT Act as zero-rated supplies. - Paragraph 155 which exempts 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 for the time being responsible for matters relating to health. - Paragraph 156 which exempts inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for the time being responsible for agriculture. - Paragraph 157 which exempts transportation of sugarcane from farms to milling factories. - Paragraph 158 which exempts the supply of locally assembled and manufactured mobile phones. - Paragraph 159 which exempts the supply of motorcycles of tariff heading 8711.60.00. - Paragraph 160 which exempts the supply of electric bicycles. - Paragraph 161 which exempts the supply of solar and lithium-ion batteries. - Paragraph 162 which exempts the supply of electric buses of tariff heading 87.02. - Paragraph 163 which exempts bioethanol vapour (BEV) stoves classified under HS Code 7321.12. 00 (cooking appliances and plate warmers for liquid fuel).	• The move from zero-rating to exemption means that businesses will bear the incidence of VAT incurred on taxable supplies that such businesses acquire for production purposes. Such VAT will expectedly result in higher business costs and, perhaps, a proportionate increment in the prices charged to the customers purchasing these goods. • We note that the proposed amendments are aligned with the Government's intention of managing its tax expenditure which includes VAT refunds emanating from zero-rating.

Value Added Tax

#	Amendment	Details	Our comments
14.	Exemption of packaging materials for tea and coffee from VAT	• The Bill proposes to introduce paragraph 164 under Part I of the First schedule to the VAT Act. The paragraph exempts packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture.	• The proposed measure may lead to lower cost of packaging materials used in packing tea and coffee.

Excise Duty

Excise Duty

#	Amendment	Details	Our comments
1.	Amendment of the definition of a digital lender	• The Bill proposes to amend the definition of a digital lender under Section 2 of the Excise Duty Act, 2015 (EDA) to mean a person extending credit through an electronic medium but does not include a bank licensed under the Banking Act, a sacco society registered under the Co-operative Societies Act or a microfinance institution licensed under the Microfinance Act.	• The EDA as amended by the Tax Laws (Amendment) Act 2024 (TLAA) defines a digital lender as a person holding a valid digital credit providers licence issued by the Central Bank of Kenya (CBK). • The Business (Laws) Amendment Act, 2024 replaced reference to digital credit providers in the CBK Act with non deposit taking credit providers rendering the definition of digital lenders in the EDA irrelevant. • In our view, the proposed amendment is aimed at correcting the error in the initial definition and aligning the definition of digital lenders to the ordinary definition. Additionally, the new definition seeks to provide clarity that digital lenders who fall within the scope of financial institutions under the EDA will not be considered as digital lenders for excise duty purposes.
2.	Amendment of scope of excisable services offered by non-residents	• The Bill seeks to amend Section 5(1)(d) of the EDA to read as follows: *excisable services offered in Kenya by a non-resident person over the internet, an electronic network or through a digital marketplace*. • Section 5(d) currently provides for charging of excise duty on excisable services provided by non-residents through a digital platform. • The Bill further proposes to define a non-resident person to mean a person outside Kenya.	• The proposed amendment aims at broadening the scope of excisable services provided by non-residents to include services delivered through other forms such as over the internet, electronic network or through a digital marketplace. • The proposed amendment aligns with existing tax provisions on digital services and enhances consistency across tax statutes.

Excise Duty

#	Amendment	Details	Our comments
3.	Definition of digital marketplace	• The Bill proposes to define a digital marketplace under Section 2 of the EDA to mean an online platform which enables users to sell goods or provide services to other users.	• The Bill has proposed to bring into the ambit of excise duty, excisable services provided by non-residents through a digital marketplace. • The proposed definition is therefore aimed at providing clarity on the scope of these services.
4.	Clarification on tariff classification of excisable goods	• The Bill proposes to amend Section 2 of the EDA to clarify that excisable goods in the EDA will be classified in accordance with the East African Community Common External Tariff (EACCET).	• The EDA refers to some excisable goods based on their tariff codes to ensure clarity and uniformity in interpretation of the law. Whereas the EDA does not expressly refer to the EACCET, it is inferred that the tariff codes are those set out in the EACCET. • Goods imported into Kenya are classified in accordance with the EACCET as provided for under Annex 1 to the East African Community Customs Union Protocol. Further, classification of goods in the EACCET is governed by the General Rules of Interpretation (GIR) as set out in the appropriate order. • The proposal is geared towards providing clarity on the basis of tariff classification of excisable goods.

Excise Duty

#	Amendment	Details	Our comments
5.	Place of supply of excisable services	• The Bill proposes to amend Section 13 of the EDA on the place of supply of excisable services by introducing the following paragraph: *If the place of business of the supplier is outside Kenya, the supply of the services shall be deemed to be made in Kenya if the services are consumed by a person in Kenya through the internet, an electronic network or a digital marketplace.*	• Section 5 (b) of the EDA provides for excise duty on excisable services supplied in Kenya. Further, Section 13 of the EDA clarifies that services are deemed to be made in Kenya if they are supplied from a place of business of the supplier in Kenya. • Following the introduction of excise duty on excisable services offered in Kenya by non-residents under Section 5(d) of the EDA, this amendment seeks to widen the scope of services subject to EDA by deeming services provided from a place of business outside Kenya to be made in Kenya.
6.	Timeline for issuing excise duty license	• The Bill proposes to amend Section 17(1) of the EDA to establish a 14-day period for the Commissioner to review and reply to an application for an excise duty licence, following the receipt of all necessary valid documents. • Currently, the EDA does not provide for timelines for the Commissioner to respond to an application for excise duty license.	• The proposal is aimed at providing certainty in processing of excise duty licenses and is expected to enhance efficiency in the processing and issuance of licenses.

Excise Duty

#	Amendment	Details	Our comments
7.	Amendment of excise duty on printed paper, paperboard products and imported self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics	• The Bill proposes to amend the First Schedule of the EDA by deleting "*Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin* and replacing it with the following items: *a) Printed self-adhesive paper of tariff number 4811.41.90* *b) Gummed paper and paperboard of tariff number 4811.49.00* • The proposed list of items excludes those originating from East African Community Partner States that meet the East African Community Rules of Origin. • The Bill also proposes to delete a duplicate description in the First Schedule with a different excise duty rate.	• The proposed amendment seeks to correct what appears to be a drafting error in the EDA introduced by the TLAA, which resulted in duplicate descriptions with different rates. The duplication created confusion amongst taxpayers on which excise duty rate to use on the aforementioned products.

Excise Duty

#	Amendment	Details	Our comments
7.	Amendment of excise duty on printed paper, paperboard products and imported self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics	• The Bill proposes to delete the description *“imported self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics, whether or not in rolls of tariff number 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin”* and replace with the following descriptions; a) Imported printed polymers of ethylene of other plates, sheets, film, foil and strip of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90. b) Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil, strip of plastics, noncellular and not reinforced, laminated ,supported or similarly combined with other materials of tariff number 3920.43.90. c) Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil, strip of plastics, noncellular and not reinforced, laminated ,supported or similarly combined with other materials of tariff number 3920.62.90. d) Imported other Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90. e) Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90. • The proposed items exclude those originating from the East African Community Partner States that meet the East African Community Rules of Origin. • The proposed excise duty rate for the above items is 25% of the excisable value or KES 200 per Kilogram whichever if higher.	• This proposal is a clean-up of the First Schedule of the EDA to correct duplicated provisions introduced by the TLAA. • The proposal also aims at providing more specific descriptions of items subject to excise duty in accordance with the EACCET descriptions.

Excise Duty

#	Amendment	Details	Our comments
8.	Change in excise duty rate of neutral alcohol of alcoholic strength exceeding 90%	• The Bill proposes to change the excise duty rate of spirts of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spiritous beverages from KES 10 per centilitre of pure alcohol to KES 500 per Liter.	• Extra neutral spirit is the key raw material in the manufacture of spiritous beverages. • The TLAA increased the excise duty rate on extra neutral spirit from KES 356 per litre to KES 10 per centilitre of pure alcohol (.i.e. KES 900 per litre for spirits with 90% alcohol strength) significantly increasing the operational costs of manufacturers of spirits. • The Bill proposes to reduce the excise duty rate to KES 500 per litre in a bid to reduce the cost of procuring neutral spirits by local manufacturers of spiritous beverages.
9.	Changes in excise duty tax base of various goods	• The Bill proposes to amend the basis of computing excise duty from customs value to excisable value on the following items: - Coal from 2.5% of the customs value to 2.5% of the excisable value - Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7005 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin from 35% of the customs value or KES 200 per Kilogramme whichever is higher to 35% of the excisable value or KES 200 per Kilogramme whichever is higher.	• In our view, the proposal is aimed at aligning the taxable value applied on the 2 items with the taxable value applied on other excisable goods. • The taxable value for imported goods is the customs value plus import duty while the taxable value for locally manufactured goods is the price payable excluding the cost of returnable bottles and VAT.

Miscellaneous Fees and Levies

Miscellaneous Fees and Levies

#	Amendment	Details	Our comments
1.	Amendment of the refund provisions for IDF and RDL	• The Bill proposes to amend Section 9B of the Miscellaneous Fees and Levies Act (MLFA) by deleting the expression *“provisions of Section 47 of the”* • Section 9B of the MFLA currently provides that: - *The provisions of section 47 of the Tax Procedures Act, 2015 (TPA) shall apply for the purposes of –* *a) an application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error under this Act; or* *b) the determination by the Commissioner of penalties and interests on fees and levies that remain unpaid.*	• The imposition of penalties and late payment interest on unpaid tax is provided for in Section 83A and 38 of the TPA, respectively. • Section 47 of the TPA provides for offset or refund of overpaid tax. Referencing Section 47 of the TPA on determination of penalties and interests on unpaid tax is therefore erroneous. • The proposed amendment is therefore aimed at correcting the above-mentioned error.
2.	Amendment of the exemption provided for Aircraft and Aircraft Parts	• The Bill proposes to restrict the current exemption of IDF and RDL on all aircraft and aircraft parts to aeroplanes and other aircrafts of unladen weight exceeding 2,000kgs and all parts of Chapter 88. • The MLFA currently provides for the exemption of IDF and RDL on all goods and parts thereof of Chapter 88 and any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation, respectively.	• Most airlines especially Kenyan based airlines have in the past grappled with high operational costs due to the global increase in the price of fuel and other externalities. The Finance Act 2023 exempted all aircrafts and spare parts to reduce operational costs of local airlines in a bid to improve profitability of the airlines. • Since most airlines operate heavy aircraft exceeding 2,000 Kgs, they will continue to enjoy IDF and RDL exemption on the aircrafts and some aircraft parts (parts of Chapter 88). However, IDF and RDL will apply on parts classified elsewhere including engines if the proposal is adopted.

Miscellaneous Fees and Levies

#	Amendment	Details	Our comments
3.	Reduction in Export and Investment Promotion Levy (EIPL) on certain steel products	• The Bill proposes to reduce the Export and Investment Promotion Levy (“EIPL”) rate on the following goods: - Semi-finished iron or non-alloy steel containing by weight <0.25% of carbon, of rectangular (including squares) cross-section, the width measuring less than twice the thickness from 17.5% to 10% of the customs value. - Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8mm from 17.5% to 5% of the customs value. - Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8mm from17.5% to 5% of the customs value.	• The proposed amendment is a welcome move for the construction and manufacturing industries. The proposed reduced levy will make it cheaper to import key steel inputs, which could lower costs for builders and support domestic manufacturers that rely on these raw materials. • This move supports the ‘Buy Kenya, Build Kenya’ industrial policy by focusing the tax cut on raw materials (not finished goods), in order to encourage value addition within the country – a strategy also seen with textile and pharmaceutical inputs in recent years.

Tax Administration

Tax Administration

#	Proposed change	Details	Our comments
1.	Exclusions from eTIMS invoice requirements.	• The Bill proposes to amend Section 23A of the TPA to exclude payments of employee emoluments, imports, interest, investment allowances, airline passenger ticketing and payments subject to final withholding tax (WHT) form the eTIMS invoice requirement. • Currently, Section 23A of the TPA excludes most of the above transactions from eTIMS requirements, save for the last items which presently include "***the payment of withholding tax***" and "similar payments".	• The proposed amendment seeks to correct an apparent drafting error that was introduced by the Tax Procedures (Amendment) Act, 2024 (TPAA), which excluded the payment of WHT from eTIMS requirements. The payment of withholding taxes does not typically attract the obligation to issue a tax invoice. • The proposed amendment therefore seeks to clarify that it is actual payments subject to WHT as final tax that would be exempt from the obligation to issue an eTIMS invoice. • Under the ITA, such payments include qualifying interest, qualifying dividends, pension and winnings paid to resident persons, as well as all other payments e.g. for management or professional fees paid to non-residents with no permanent establishments (PEs) in Kenya.
2.	Commissioner to provide reasons for amended assessments.	• The Bill proposes to amend Section 31 of the TPA to introduce a requirement for the Commissioner to include reasons for amending an assessment in the written assessment notice typically sent to taxpayers.	• This is a welcome proposal which is aimed at addressing some of the amended assessments received by taxpayers at present, which may not necessarily include express justifications or reasons for the amendment from the Commissioner. • In the absence of clear reasons for amending assessments, taxpayers are at a disadvantage when lodging objections as they are denied the chance to effectively respond to the Commissioner. The absence of reasons also violates the constitutional imperative to give reasons under Article 47 of the Constitution of Kenya, 2010 (CoK). • The Bill's proposed amendment will therefore require the Commissioner to give reasons for their amended assessments, which is an auspicious development for taxpayers' rights.

Tax Administration

#	Proposed change	Details	Our comments
3.	Duty to deduct, withhold and remit taxes on qualifying payments.	• The Bill proposes to amend Section 39A of the TPA to provide that where a person does not deduct, withhold and remit taxes on payments (e.g., WHT, withholding VAT), they shall not be required to remit the un-deducted tax where the recipient of the payment has accounted for the full principal tax in their hands. • Currently, Section 39A of the TPA provides that any un-deducted tax is to be recovered from the payer, regardless of whether the recipient has accounted for the full principal tax on their end.	• The proposed amendment is welcome, as it seeks to cure the apparent double taxation that currently arises where the Commissioner demands un-deducted WHT and withholding VAT from payers, despite the recipient accounting for the full income tax and VAT liability on the transactions in their hands. • This is therefore a positive development which may pre-empt tax disputes involving payers who do not deduct the required taxes from qualifying payments. We believe this move is necessitated by the adoption of eTIMS, which is expected to increase self-assessment compliance by taxpayers. • From a practical angle, it may be necessary for payers to routinely obtain proof of income tax and VAT remission on qualifying transactions from recipients to ensure that they are covered under the proposed provision. The KRA may also witness a reduction in weekly or monthly withholding tax collections should this proposal be enacted into law.
4.	Stamp duty exemption for transactions where the Commissioner has security over property for unpaid tax.	• The Bill proposes to amend Section 40 of the TPA to exempt the following from stamp duty, where the Commissioner opts to exercise its powers to use a taxpayer's property as security for unpaid tax: a) The registration of the Commissioner's interest in the property by the Registrar (e.g., Land Registrar) to secure the unpaid tax; and b) The transfer of property to recover the unpaid tax where the taxpayer fails to settle the amount as per the agreed payment plan.	• Section 40 of the TPA empowers the Commissioner to register security over a taxpayer's property for unpaid taxes. This proposal seeks to exempt transactions undertaken by the Commissioner under this mechanism from stamp duty, including the eventual transfer of the property to recover the unpaid tax. • This proposal is aimed at providing clarity, noting that the Stamp Duty Act and Section 131 of the ITA already exclude transactions concluded by, on behalf of, or in favour of the Government and the Commissioner from stamp duty. The Bill also proposes to delete Section 131 of the ITA.

Tax Administration

#	Proposed change	Details	Our comments
5.	Agency notices to be issued to agents of non-resident persons subject to tax in Kenya	• The Bill proposes to amend Section 42 of the TPA to allow the Commissioner to issue agency notices to agents of non-resident persons subject to tax in Kenya.	• The proposal seeks to empower the Commissioner to use agency notices to recover unpaid taxes from non-resident persons as well. In our view, this is aimed at using this enforcement power against non-resident persons who are liable to pay taxes such as digital asset tax, significant economic presence tax (SEPT), VAT and excise duty on digital marketplace supplies in Kenya . • Non-resident persons who are liable to these taxes in Kenya should therefore take note of this proposal, and recognize that their agents in Kenya, including their banks and any other person with whom they transact, may be required to remit their funds to the KRA for unpaid taxes. • For resident persons with transactions with non-residents e.g., banks and recipients of imported digital services or software, the proposed amendment means that they can expect an agency notice from the Commissioner, particularly where the Commissioner is unable to reach the non-resident person.
6.	Agency notices to be issued where a taxpayer has appealed against a TAT or court decision.	• The Bill further proposes to amend Section 42 of the TPA to allow the Commissioner to issue an agency notice where a taxpayer has appealed against an assessment specified in a decision of the Tax Appeals Tribunal (TAT) or court of law. • Currently, the Commissioner is precluded from issuing an agency notice where a taxpayer has appealed against an adverse TAT or court decision within the required statutory timelines.	• If enacted into law, this proposal will empower the Commissioner to enforce adverse judgements against taxpayers through agency notices, even in cases where an appeal has been filed at higher courts. • This would be a negative development in our view, which would not only result into unnecessary cashflow problems for taxpayers. There is also the risk of encouraging higher assessments as witnessed in jurisdictions which have adopted the ‘pay first, argue later’ policy • There is also the challenge off recovering money collected by the KRA should the taxpayers’ appeals prevail in court. Due to existing administrative inefficiencies and cashflow limitations, refunds are problematic. The government should therefore consider dropping this proposal from the Bill.

Tax Administration

#	Proposed change	Details	Our comments
7.	Penalty for failure to deduct and remit withholding VAT	• The Bill proposes to amend Section 42A of the TPA to clarify that the penalty for failure to deduct and remit withholding VAT by the 5th day of the following month shall be 10%. This penalty can be enforced without the need for conviction by a court of law.	• The proposal seeks to clean up Section 42A of the TPA, which currently provides for the applicable penalty in two subsections.
8.	Commissioner's powers to appoint digital service tax agents to be repealed	• The Bill proposes to repeal Section 42B of the TPA, which allows the Commissioner to appoint an agent for purpose of collecting and remitting digital service tax (DST).	• The proposed amendment seeks to align the TPA with recent changes to the ITA, specifically, the replacement of DST with SEPT. Additionally, with the Bill proposing to amend Section 42 to allow the Commissioner to issue agency notices to resident persons for the liabilities of non-resident persons e.g., SEPT, the current Section 42B would be an unnecessary duplication in the law. • We also note that at the time of introduction of this provision, it was still unclear on whether DST would be by way of Self Assessment or by way of appointed agents. With clarity that SEPT is a self-assessment mechanism, it would be unnecessary to retain the provision in the law.
9.	Changes to the tax refund and offset framework	• The Bill proposes to introduce the following changes to Section 47 of the TPA, which provides the mechanisms for taxpayers to apply for refund or offset of overpaid taxes: a) Clarification that overpaid taxes cannot be offset against input VAT; b) Increase of the timeline for the Commissioner to determine a refund or offset application from 90 days to 120 days; and c) Increase of the timeline for the Commissioner to determine a refund or offset application from 120 days to 180 days where the refund or offset application is subjected to an audit.	• The first proposal aims to limit the taxes that taxpayers will still be allowed to offset tax overpayments against. If passed into law, it may arguably be difficult for taxpayers to be able to utilize tax overpayments against VAT. • The second and third proposals seek to grant the Commissioner more time to determine refund or offset applications. This may be beneficial in cases that require detailed audit or review. However, it could lead to taxpayers wait longer wait times before one can utilize or get a refund for valid tax overpayments. • There may be need for a further amendment to subsection (3) to align the proposed timelines, since the provision expressly refers to the current 90 days.

Tax Administration

#	Proposed change	Details	Our comments
10.	Timeline for issuance of objection decision to start from the day the objection is lodged where the taxpayer is allowed to lodge a late objection	• The Bill proposes to amend Section 51 of the TPA to provide that where the Commissioner has allowed a taxpayer to lodge an objection out of time, the Commissioner shall issue an objection decision within 60 days of the day the objection is lodged.	• The proposal aims to plug a gap in the existing provision, by specifically addressing cases where taxpayers lodge objections out of time.
11.	Taxpayers to share data relating to sensitive trade or personal data	• The Bill proposes to repeal Section 59A(1B) of the TPA, which presently provides that taxpayers shall not be required to integrate or share data with the Commissioner relating to trade secrets and private or personal data.	• The proposed amendment, if enacted into law, will imply that taxpayers who integrate their systems with KRA will be required to share almost all data, including that relating to sensitive trade and personal data. • Due to potential data security and confidentiality breaches, there may be need to incorporate specific provisions in tax law that would commit the revenue authority to secure such data.
12.	Computation of time for the lodgment of objections and appeals.	• The Bill proposes to repeal Section 77(2) of the TPA, which currently provides that in computing the period for the lodgment of appeals and objections, the computation shall not include weekends and public holidays.	• The proposal seeks to undo a provision that was introduced recently in December 2024 by the TPAA. If enacted into law, the computation of the 30 days required for taxpayers to lodge appeals to the TAT or courts of law, or to object against a tax decision, shall now include non-working days. • It is unclear why this is being reversed barely five months since its introduction in the law.

Tax Administration

#	Proposed change	Details	Our comments
13.	Penalty for failure to submit a tax return.	• The Bill proposes to amend Section 83 of the TPA to clarify that the penalty for failure to submit a tax return shall be: a) The higher of 25% or KES 10,000 for employment income; b) KES 1,000 for turnover tax; c) The higher of 5% or KES 10,000 for VAT or excise duty; and d) The higher of 5% and KES 20,000 for non-individuals; or KES 2,000 for individuals.	• The proposal aims to correct an apparent omission in the existing provision, which only specifies the penalty for submitting a tax return after the due date, but no express penalty for failure to submit a tax return.
14.	Waiver of penalties or interest arising due to errors.	• The Bill proposes to amend Section 89 of the TPA to empower the Cabinet Secretary, National Treasury, upon the Commissioner's recommendation, to waive penalties and interest imposed due to the following: a) Errors generated by an electronic tax system; b) Delays in updating an electronic tax system; c) Duplication of penalties or interest in an electronic tax system; or d) Incorrect registration of a taxpayer's obligations.	• The proposed amendment, if enacted into law, is a positive development which will allow taxpayers to seek waivers of penalties and interest arising out of circumstances beyond their control, specifically involving system errors on platforms such as iTax. • There may be need for the refinement of this proposal to provide timelines within which taxpayers should seek such waivers, as well as to provide for recourse where the waiver applications are not determined within the timelines or are rejected. • In addition, it may be worthwhile to expand the scope of penalties and interest that would be eligible for waiver to cover other instance where the taxpayer is not at fault or has a compelling case. With the expansion of the scope, the law could empower the Cabinet Secretary to publish guidelines or the criteria for the waiver to prevent abuse of the discretion and promote equity and fairness.

Stamp Duty

Stamp Duty

#	Amendment	Details	Our comments
1.	Stamp duty exemption on transfer of property by a company to its shareholders	• The Bill proposes to amend Section 117 of the Stamp Duty Act to introduce a stamp duty exemption on the transfer of property by a company to its shareholders as part of an internal reorganization, provided that: a) The property is transferred to shareholders in proportion to their shareholding immediately before the transfer; and b) Where the property is shares, such shares should be in a subsidiary of the company undertaking the transfer.	• In our view, the proposed amendment is a welcome move, which is aimed at aligning the current stamp duty exemptions on internal restructuring to consider transactions where property and shares are transferred by a company to its shareholders. • Notably, the term "shareholders" as used in this proposal includes companies, which means that the proposed exemption would apply in complex restructuring transactions involving share transfers among entities in the same group.

Contacts

For clarification on this publication

Maurice Lugongo
Associate Director, Tax & Legal
mlugongo@deloitte.co.ke

Fredrick Kimotho
Associate Director, Tax & Legal
fkimotho@deloitte.co.ke

Peter Njenga
Associate Director, Tax & Legal
pnjenga@deloitte.co.ke

Patrick Chege
Associate Director, Tax & Legal
pchege@deloitte.co.ke

David Mwiti
Associate Director, Tax & Legal
dmibari@deloitte.co.ke

Ann Magondu
Senior Manager, Tax & Legal
amagondu@deloitte.co.ke

Nicholas Gathecha
Senior Consultant, Tax & Legal
ngathecha@deloitte.co.ke

Tax & Legal Leaders

Fred Omondi
Tax & Legal Leader,
Deloitte East Africa
fomondi@deloitte.co.ke

Lillian Kubebea
Tax & Legal Partner
lkubebea@deloitte.co.ke

Walter Mutwiri
Tax & Legal Partner
wmutwiri@deloitte.co.ke

Doris Gichuru
Tax & Legal Partner
dgichuru@deloitte.co.ke

Doreen Mbogho
Tax & Legal Partner
dmbogho@deloitte.co.ke

James Mwendia
Tax & Legal Partner
jmwendia@deloitte.co.ke

Office

Kenya
Deloitte Place
Waiyaki Way, Muthangari
Nairobi
Tel: +254 719 039 000