

# FINANCE BILL 2025 ANALYSIS



MAY 2025

# INTRODUCTION

Released on Wednesday, 30 th April 2025, the Kenya Finance Bill 2025 (the Bill) outlines a series of proposed changes that could significantly impact the tax obligations for both individuals and businesses across various sectors. These amendments touch on key areas such as income tax, Value Added Tax (VAT), and excise duty, while also introducing new rules aimed at streamlining tax compliance and administration. The proposals are consistent with the revenue mobilization objectives of raising tax to GDP ratio to about 16% by the Financial Year (FY) 2026/27.

Although the proposed changes are currently at the bill public participation stage, they are expected to be passed into law by 30 th June 2025, with most provisions taking effect from 1 st July 2025. However, two amendments, concerning Advance Pricing Agreements and the Commissioner's power to waive penalties and interest due to no fault of the taxpayer, will come into effect on 1st January 2026. In this article, we provide an overview of these proposed changes and their potential impact on businesses and individuals, helping you stay informed and prepared for the coming changes.

## DIRECT TAX PROPOSALS

### 1. INCOME TAX ACT

#### 1.1. Expanded Definition of Royalty

The Bill proposes to expand the definition of "royalty" to include payments for the distribution of software. Currently, software-related payments, such as licensing fees under distribution or end-user license agreements, are not subject to

Withholding Tax (WHT) in Kenya. This exclusion is grounded in the understanding that such payments do not confer any intellectual property (IP) rights to the payer. While this practice has been contested by the Kenya Revenue Authority (KRA), it has largely aligned with the High Court's ruling in *Seven Seas Technologies Limited v Commissioner of Domestic Taxes* [2021] KEHC 358 (KLR) and international tax norms as provided under Article 12 of the Organization for Economic Co-operation and Development Model Tax Convention on Income and on Capital (the OECD Convention). If this change is enacted, resident distributors of software could find themselves in a continual position where their tax credits exceed the amount of taxes owed. This situation arises due to the typically low profit margins on software distribution, which are often less than the 5% withholding tax on royalties. This imbalance could result in a situation where these distributors are unable to offset the excess credits against future tax liabilities, potentially creating cash flow challenges. Further, non-resident distributors may be unable to claim the withholding tax credits in their home countries prompting them to adjust their pricing strategies. In order to mitigate the impact of the increased tax burden, these distributors may revise their prices to safeguard their margins. Consequently, this change would likely increase the overall cost of software for Kenyan customers, as distributors pass on the higher tax costs to the end consumer.

**Effective Date: 1 st July 2025**

#### 1.2. New Definition of Related Person

The proposed definition of "related person" includes two persons who participate in the management, control, or

capital of each other's business. It also extends to any other person involved in these aspects of the two businesses, or an individual associated by marriage, blood, or affinity. Furthermore, it includes situations where the two persons have influence over the individual's business. This is particularly important as it aims to close gaps where certain relationships between related persons were not clearly defined, leading to inconsistencies in interpretation and potential disputes during tax audits.

Under the new definition, shareholders of related persons will be directly impacted when companies make payments either in cash or assets to or on behalf of such related persons. These payments will now be deemed to constitute a distribution, triggering a tax obligation. Additionally, it eliminates multiple definitions of "related person" currently found in different sections of the Income Tax Act, Cap. 470 (the ITA), such as those under capital gains tax (the CGT) and transfer pricing provisions.

For CGT purposes, any transfers between related persons, under the new definition, will need to be conducted at market value. Currently, the lack of a consistent definition has led to disputes and confusion in past audits. The new unified definition will provide greater clarity and consistency. This is a significant change, as it ensures that transactions between related parties are subject to the same arms-length standards applied to unrelated parties, thereby reducing opportunities for tax avoidance through undervalued transfers.

**Effective Date: 1 st July 2025**

### **1.3. Employment Income**

#### **i. Per diems**

The Bill proposes to raise the per diem allowance for employees from Kenya Shillings Two Thousand (KShs. 2,000.00) to Kenya Shillings Ten Thousand (KShs. 10,000.00) per day. This reflects the current economic realities of inflation and rising travel and accommodation costs. Employers can treat this amount as an allowable emolument without requiring an eTIMS-compliant invoice to substantiate the expense.

#### **ii. Allowable deductions**

The Bill introduces an amendment that mandates employers to apply all applicable deductions, reliefs, and exemptions before calculating the tax deductible from an employee's emoluments. This proposed change aligns with the recent reforms under the Tax Laws (Amendment) Act, 2024, and ensures that employees receive the full benefit of tax reliefs upfront, rather than having to claim refunds at a later date.

#### **iii. Tax Compliance**

The Bill also seeks to clean up certain provisions, such as the requirement for employers to supply the Commissioner with a certificate as per outdated rules. With the introduction of the iTax system, the manual filing of P10 forms is no longer necessary, and the Bill reflects this shift to modern tax practices.

**Effective Date: 1 st July 2025**

### **1.4. Income from Pensions**

Currently, the Act provides an exemption on the payment of pension benefits from various pension schemes, including

registered pension funds, provident funds, individual retirement funds, public pension schemes, and the National Social Security Fund (NSSF). This exemption also applies to payments of gratuity and other allowances under a public pension scheme. The Bill proposes to separate this exemption into two distinct provisions:

- i. Payment of Gratuity; and
- ii. Other Allowances Paid Under a Public Pension Scheme

This separation aims at providing clearer distinction between gratuity payments and other types of allowances within public pension schemes, allowing for more precise tax treatment. The Bill maintains the existing exemptions for retirement annuities and withdrawals from pension schemes made prior to retirement age due to ill health or after 20 years of membership. These forms of pension-related income will continue to be exempt from taxation.

It also seeks to streamline the taxation of pension income by addressing the currently existing contradictory provisions. Notably, the recent amendments under the First Schedule clarify that pension income is exempt from income tax. This clean up ensures consistency in how pension income is treated across the tax system and also distinguishes gratuity payment from other various allowances within the public pension schemes .

**Effective Date: 1 st July 2025**

### **1.5. Withholding Taxes**

The Bill proposes to align Section 10 of the Income Tax Act with the changes introduced by the Tax Laws (Amendment)

Act 2024 by including the following;

- i. Supply of goods to public entity; and
- ii. The sale of scrap.

### **1.6. Non-resident ship owners' payments**

Currently, payments made to non-resident ship owners for income accrued in or derived from Kenya are subject to income tax at a rate of 2.5% on the gross amount received. The obligation to account for and remit such lies with the ship owner.

The Bill proposes to shift the responsibility of tax deduction to the resident individual or entity procuring services from the non-resident ship owner in the form of withholding tax at 2.5% of the gross amount received, which shall be deemed to be a final tax.

**Effective Date: 1 st July 2025**

### **1.7. Qualifying Dividend and Interest**

The Finance Act, 2023 introduced confusion by repealing Section 34 of the ITA which stated that withholding tax on qualifying interest and dividends was a final tax.

This proposal aims to resolve that ambiguity by explicitly confirming that withholding tax on both interest and dividends will now be treated as a final tax.

**Effective Date: 1 st July 2025**

### **1.8. Losses Carried Forward**

Currently, taxpayers can carry forward losses indefinitely. The Bill proposes to limit this carry-forward period to a maximum of 5 years from when the losses are incurred. This change could negatively affect entities with significant losses, especially in capital intensive and agricultural sectors, which

which often require longer periods to generate taxable profits. However, there is still some uncertainty, as the Bill does not clarify whether this limitation applies to both future losses and those already incurred. Additionally, the Bill proposes removing the provision that allows the Cabinet Secretary, upon the Commissioner's recommendation, to extend the loss carry-forward period beyond 10 years. This aligns with the proposed 5-year limit.

**Effective Date: 1 st July 2025**

### **1.9. Loss relief from sale of assets**

Currently, a taxpayer who incurs a capital loss from selling a property can offset that loss against a capital gain from selling another asset within the same year, or carry the loss forward to future years. The Bill proposes to remove this provision, meaning that taxpayers will no longer be able to offset a capital loss against capital gains from the disposal of an asset.

**Effective Date: 1 st July 2025**

### **1.10. Diminution in Value of Tools and Implements**

The provision concerning deductions for the decrease in value of tools, implements, utensils, or similar items (excluding machinery or plant covered under the Second Schedule) has been reintroduced. The proposed amendment establishes a clear 100% deduction rate for these items in the year the expense is incurred, recognizing their short life cycle.

**Effective Date: 1 st July 2025**

### **1.11. Taxation of Mortgages**

Under the current ITA, taxpayers are

allowed to deduct interest, up to Kenya Shillings Three Hundred and Sixty Thousand (KShs. 360,000.00) per year, on loans taken from specified financial institutions for purchasing or improving owner-occupied residential properties.

The Bill proposes to extend this deduction to include the construction of owner-occupied residential premises. This expansion is a positive development, as taxpayers can now benefit from interest relief for their primary residence.

**Effective Date: 1 st July 2025**

### **1.12. Sports Initiatives**

The Bill proposes to allow deductions for donations made towards the construction of public sports facilities. However, it also suggests removing the provision that permits deductions for expenses related to sports sponsorships, with prior approval from the Cabinet Secretary responsible for sports. This change will reduce the support for sports sponsorships and negatively affect funding for sports initiatives.

**Effective Date: 1 st July 2025**

### **1.13. Investment Deductions**

The Bill proposes to remove the 100% special investment deduction rate for entities investing outside Nairobi City County and Mombasa County, as well as for those investing in Special Economic Zones (SEZs). Previously, businesses meeting specific investment criteria in these areas could claim a full deduction, greatly reducing their taxable income.

The affected sectors such as manufacturers and hotel building owners will no longer benefit from this incentive.

**Effective Date: 1 st July 2025**

#### **1.14. Digital Asset Tax (DAT)**

The Bill proposes to lower the DAT tax rate from 3% to 1.5%. This change is part of a larger strategy to enhance the digital economy and attract greater investment to the financial technology industry within Kenya while in alignment with OECD/G20 Base Erosion and Profit Shifting Actions (BEPS) Action 1.

**Effective Date: 1 st July 2025**

#### **1.15. Significant Economic Tax Presence (SEPT)**

The Bill proposes two significant changes to the SEPT tax. First, it aims to broaden the scope of SEPT by explicitly including income generated from businesses operating over the internet or electronic networks in Kenya. Currently, the provision only covers supplies made via digital marketplaces, where buyers and sellers trade on a digital platform. Second, the Bill proposes repeal of the exemption for non-residents with an annual turnover of less than Kenya Shillings Five Million (KShs. 5,000,000.00), eliminating the minimum threshold for SEPT applicability. As a result, non-resident entities that qualify for SEPT will be required to register and comply with the tax upon enactment.

**Effective Date: 1 st July 2025**

#### **1.16. Minimum Top Up Tax**

The Bill proposes to establish a due date for the payment of the minimum top up tax (MTT) by the end of the fourth month following the end of the year of income. The MTT was introduced by the Tax Laws (Amendment) Act, 2024, effective from 27 th December 2024. It applies to taxpayers in Kenya who are part of a multinational group

with a consolidated annual turnover of EUR 750 million or more in at least two of the previous four financial years and have a combined effective tax rate of less than 15% in a given year of income.

**Effective Date: 1 st July 2025**

#### **1.17. Advance Pricing Agreements (APAs)**

The Bill introduces a provision on Advance Pricing Agreements (APAs) under Section 18F of the ITA by providing that a taxpayer with transactions that fall under the ambit of transfer pricing regulations in Kenya can enter into an APA with the Commissioner in respect to the pricing of such transactions. APAs refer to a pre-determined deal between a company and a tax authority describing the methods of pricing on transactions between related parties, for instance subsidiaries of the same corporation operating in different countries.

This creates certainty of transfer pricing and eliminates disputes that arise from uncertainty of transfer pricing policies. It also encourages foreign investments as the investor will be able to negotiate with KRA on the terms of the transfer pricing with an aim of getting better deals. The introduction of this Section in the Bill is beneficial for Kenya's investment as it intends to create a stable investment hub and also enhances compliance with the OECD Transfer Pricing Guidelines and United Nations Transfer Pricing Manual. The APA will be valid for a period not exceeding 5 years.

**Effective Date: 1 st January 2026**

#### **1.18. Country by Country Reporting (CBC)**

A multinational (MNE) group with more than one constituent entity in Kenya may still designate one of them to file the Country by

Country Report. However, the law now explicitly requires that this designation be notified to the Commissioner by the last day of the group's reporting financial year in a form specified by the Commissioner. It further proposes that all designated resident entities must file the CBC report in Kenya regardless of whether the ultimate parent entity reports elsewhere.

**Effective Date: 1 st July 2025**

### **1.19. Transfer of Securities**

The Bill proposes to move the provision regarding gains from the transfer of securities traded on a securities exchange licensed by the Capital Markets Authority from the Third Schedule to the First Schedule. This change is part of an effort to consolidate all exemptions under the First Schedule. As a result, both trading gains and capital gains from the sale of securities will be exempt from income tax.

**Effective Date: 1 st July 2025**

### **1.20. Reduced Corporate Income Tax (CIT) Rates**

The Bill proposes a corporate income tax rate of 15% for the first 10 years and 20% for the subsequent 10 years for companies certified by the Nairobi International Financial Centre Authority (NIFCA) provided they meet specific investment and employment criteria such as that of Kenya Shillings Three Billion (KShs. 3,000,000,000.00) investment within the first three years in Kenya, a majority of Kenyan citizens in senior management and establishment of their regional headquarters in Kenya. Additionally, startups certified by NIFCA will enjoy a 15% tax rate for the first three (3) years and 20% for the next four (4) years. This is aimed at attracting global financial

players in order to strengthen Kenya's position as a regional financial hub and encourage long term investment in the country.

**Effective Date: 1 st July 2025**

### **1.21. Dividends**

The Bill proposes to exempt dividends paid by companies certified by the Nairobi International Financial Centre Authority from tax, provided the company reinvests at least Kenya Shillings Two Hundred and Fifty Million (KShs. 250,000,000.00) shillings in Kenya within the year of income. The Bill also clarifies the ambiguity created by the Finance Act 2023 which deleted Section 34 of the ITA that provided for withholding tax on qualifying interest and dividend as final taxes. The proposal sets straight the lacuna by stating that withholding tax on both the qualifying interest and dividend are final taxes.

**Effective Date: 1 st July 2025**

### **1.22. Fringe Benefit Tax (FBT)**

The Bill proposes to clarify the chargeability of FBT and qualifying interest on individual taxes shall not be subject to the personal income tax bands as FBT is taxable on the employer and the withholding tax on qualifying interest is final. Further, the tax rate on fringe benefits provided by an employer shall be equal to the resident corporate tax rate for that year of income.

**Effective Date: 1 st July 2025**

### **1.23. Repeal of the reduced CIT rate for housing developers & Motor assemblers**

The Bill proposes to repeal the 15% Corporate Income Tax rate for companies whose business is local assembling of motor

ehicles and companies that construct at least one hundred residential units annually.

**Effective Date: 1 st July 2025**

#### **1.24. Capital Gains Tax (CGT)**

The Bill proposes to broaden the definition of “company” to specifically include members’ clubs and trade associations that are considered to be conducting business under Section 21 of the ITA. This change ensures that the transactions done by these entities will be subject to CGT if this proposal is passed thereby increasing the tax obligation for them.

Additionally, the Bill suggests adding the term “individual” in the provision concerning property transfers involving assets between spouses and immediate family members. If passed, this amendment would allow an individual to transfer property to a company fully owned by themselves and their spouse, their spouse and children or former spouse.

**Effective Date: 1 st July 2025**

#### **1.25. Application for change of Accounting Period End**

Applications to change the accounting year end is made at least 6 months prior. The Bill proposes to automatically allow such applications where the Commissioner has failed to make a determination within 6 months from the date the application was lodged.

**Effective Date: 1 st July 2025**

#### **1.26. Compensating Tax**

The Bill deletes references to compensating tax in various sections of the ITA, which was repealed through the Finance Act 2018 and introduced Section 7A to the Act, which

requires dividends distributed out of untaxed profits or gains to be taxed at the 30% resident corporate income tax rate

**Effective Date: 1 st July 2025**

#### **1.27. Income Tax Exemption**

The Bill proposes to extend the period for determination of an income tax exemption application from 60 days to 90 days. This offers a more structured timeline for processing exemptions while ensuring transparency and accountability in the approval process.

**Effective Date: 1 st July 2025**

## **INDIRECT TAX PROPOSALS**

### **2. VALUE ADDED TAX (VAT) ACT**

#### **2.1. Definition of a Tax Invoice**

Previously, the definition of a tax invoice was outlined in the Value Added Tax (Electronic Tax Invoices) Regulations, 2020. However, with the introduction of the Electronic Tax Invoice Management System (eTIMS) in 2023, the Bill proposes to include the definition of a tax invoice directly in the VAT Act. This amendment would align the definition of a tax invoice in the VAT Act with the one in the Tax Procedures Act, Cap. 469B.

Currently, the obligation to issue tax invoices under the VAT Act applies only to taxable supplies, excluding exempt supplies from this requirement. The proposal in the Bill aims to eliminate this distinction by extending the requirement to issue tax invoices to all supplies, regardless of their tax status. This change aligns with the Tax Procedures Act, which mandates tax invoices for all transactions.

The Tax Procedures Act exempts certain payments such as emoluments, imports, investment allowances, interest, airline ticketing and withholding tax payments from eTIMS invoicing. The Tax Procedures (Amendment) Act, 2024 introduced an exemption for payments subject to withholding tax, and the Bill seeks to clarify that only payments subject to withholding tax as a final tax will be exempt from eTIMS invoicing.

**Effective Date: 1 st July 2025**

## **2.2. Definition of Place of Supply of Services**

The current definition of the place of supply of services under the VAT Act states that a service is considered to be provided in Kenya if, among other conditions, it involves:

- i. radio or television broadcasting services received at a Kenyan address; or
- ii. electronic services delivered to a recipient in Kenya at the time of supply.

To streamline and clarify the VAT framework, the Bill proposes to reclassify radio and television broadcasting services as electronic services. This change is mainly administrative and is not expected to alter how these services are taxed with regard to their place of supply. As a result, radio and television broadcasting services received at a Kenyan address will still be considered to be supplied in Kenya, even when provided by non-resident suppliers without a business presence in the country.

By reclassifying these services as electronic services, they will also fall under the scope of the Digital Services Tax (DST). This means that suppliers offering such services will need to register for VAT under the simplified registration system, charge VAT on DST, and

will not be able to claim input VAT incurred in providing these services.

**Effective Date: 1 st July 2025**

## **2.3. Refund of Withholding VAT Credits**

Under the current VAT Act, taxpayers can apply for refunds of excess withholding VAT credits and can also offset these credits against other tax liabilities. However, the Bill proposes to amend the VAT Act by removing the option to offset excess withholding VAT credits against other tax obligations, while still allowing taxpayers to apply for a refund of these credits.

This means that taxpayers who do not request a refund will only be able to use the excess credits to offset future VAT liabilities, which could result in them remaining in a continuous credit position with no resolution.

**Effective Date: 1 st July 2025**

## **2.4. Timelines for VAT Refunds**

The VAT Act currently allows VAT refund applications to be made within 24 months from the date the tax became due. However, this conflicts with the Tax Procedures Act (TPA), which, after the 2024 Tax Laws Amendment Act, stipulates a 12-month period for VAT refund applications. The Bill seeks to harmonize these timelines by aligning the VAT refund application period with the 12-month limit set by the TPA. This change is mainly administrative and aims to ensure consistency between the VAT Act and the TPA regarding the timeframes for applying for refunds.

**Effective Date: 1 st July 2025**

## **2.5. Refund of Excess Credits from Supplies to Official Aid-Funded Projects**

Before 27 th December 2024, the VAT Act allowed manufacturers to apply for VAT refunds on any excess input tax incurred from taxable supplies made to official aid-funded projects, subject to Cabinet Secretary approval. However, the Tax Laws Amendment Act, 2024, removed the provision that permitted the deduction of such input tax, rendering the refund provision obsolete. Consequently, the Bill proposes to formally eliminate this provision as it is no longer applicable following the recent amendments.

**Effective Date: 1 st July 2025**

## **2.6. Refund of Tax on Bad Debts**

Under the current VAT Act, taxpayers can apply for a refund of VAT on bad debts if the debt has remained unpaid for 3 years from the date of supply, with applications allowed within a 10-year period. The Bill proposes reducing the waiting period from 3 years to 2 years, allowing taxpayers to apply for VAT refunds on bad debts after just 2 years of non-payment. Additionally, the Bill seeks to expand the scope of VAT refunds on bad debts by allowing taxpayers to offset the refund not only against future tax liabilities but also against any outstanding VAT obligations, whether past, present, or future.

The VAT Act currently contains two conflicting provisions regarding the timeline for remitting VAT recoveries on bad debts. One provision mandates remitting recovered VAT to the Commissioner within 30 days, while another stipulates a 60-day period. The Bill aims to resolve this inconsistency by clarifying that recoveries must be remitted within 30 days. If

not, the amounts will incur interest at a rate of 2% per month.

**Effective Date: 1 st July 2025**

## **2.7. Tax Avoidance Schemes**

To prevent tax avoidance in situations where goods or services are purchased with an exemption or zero-rating based on their intended use but are later used for a different purpose, the Bill proposes stricter measures for recovering tax in such cases. Specifically, the Bill states that if a person imports or buys goods or services that are exempt or zero-rated and later disposes of or uses them in a way that does not align with the original purpose for which the exemption or zero-rating was granted, they will be required to pay tax on those goods or services at the applicable rate at the time of disposal or improper use.

This proposal is in line with a similar provision in the East African Community Customs and Management Act. If implemented, this measure aims to prevent tax revenue loss resulting from changes in the use of goods or services by taxpayers.

**Effective Date: 1 st July 2025**

## **2.8. Removal of items from zero rated status to exempt status**

The proposed amendments to the Schedules of the VAT Act are aimed at aligning the VAT framework with shifting tax policy priorities and economic considerations. Proposed products include locally assembled and manufactured mobile phones, electric bicycles, inputs for manufacture of animal feeds, solar and lithium-ion batteries.

**Effective Date: 1 st July 2025**

## 2.9. Other changes in VAT Rates:

Supplies(Goods/Services)	Proposed Rate	Current Rate
Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale.	16%	Exempt
Weighing machinery (except for balances with a sensitivity of 5cg or better) under tariff number 8423.10.00 can be purchased or imported by registered hospitals, but only with approval from the Cabinet Secretary in charge of health matters. Any exemptions that were approved before the deletion of paragraph 129 of the VAT Act will still apply until June 30, 2026.	16%	Exempt
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.	Exempt	0%
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.	Exempt	0%
Inputs and raw materials used in the manufacture of passenger motor vehicles.	16%	Exempt
Locally manufactured passenger motor vehicles: Provided that in this paragraph - "locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.	16%	Exempt
The supply of motorcycles of tariff heading 8711.60.00.	Exempt	0%

<b>Supplies(Goods/Services)</b>	<b>Proposed Rate</b>	<b>Current Rate</b>
The supply of motorcycles of tariff heading 8711.60.00.	Exempt	0%
The supply of electric buses of tariff heading 87.02.	Exempt	0%
Transportation of sugarcane from farms to milling factories.	Exempt	0%
Packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture.	Exempt	16%
Specialized equipment used for generating solar and wind energy, such as solar panels, charge controllers, inverters, and batteries that store solar power, can be purchased or imported with the approval of the Cabinet Secretary in charge of energy. Any exemptions that were approved before paragraph 113 was deleted will still apply until June 30, 2026.	16%	Exempt
The supply of solar and lithium-ion batteries.	Exempt	0%
Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).	Exempt	0%
Taxable goods, except for motor vehicles, imported or purchased for use in geothermal, oil, or mining exploration or prospecting by a company with the relevant license under the Energy Act, Petroleum Act, or Mining Act, with approval from the Cabinet Secretary in charge of petroleum or mining. Any exemptions approved before paragraph 112 was deleted will still apply until June 30, 2026.	16%	Exempt

Supplies(Goods/Services)	Proposed Rate	Current Rate
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. (Provided that an exemption that had been approved pursuant to paragraph 109 of the VAT Act before the deletion of paragraph 109 of the VAT Act came into effect shall continue to apply until 30 th June 2026).		
Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects excluding fuels, lubricants and tyres for vehicles upon approval by the Cabinet Secretary responsible for the National Treasury.	Exempt	Exempt
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(Provided that an exemption that had been approved pursuant to paragraph 128 before the deletion of paragraph 128 came into effect shall continue to apply until 30 th June 2026.	16%	Exempt
The supply of locally assembled and manufactured mobile phones.	Exempt	0%

## 3. EXCISE DUTY ACT

### 3.1. Definitions

The Bill proposes to revise the definition of a digital lender by classifying them as entities that provide credit through an electronic platform. However, it specifically excludes those licensed under the Banking Act, Microfinance Act, and Co-operative Societies Act.

The current definition, introduced under the Tax Laws (Amendment) Act 2024, defines a digital lender as one with a valid digital credit provider license issued by the Central Bank of Kenya (CBK). The new definition broadens this scope to include digital credit providers that may not be licensed by the CBK, thereby expanding the tax base. As a result, fees charged by entities offering digital credit would be taxed at 20%, regardless of whether they are licensed by the CBK.

Additionally, this revision ensures that entities licensed under the mentioned Acts and offering credit via electronic platforms are not subject to double taxation, as their fees are already subject to excise duty under the Excise Duty Act. The proposed definition also aligns with the Central Bank of Kenya Act's definition of a digital lender.

**Effective Date: 1 st July 2025**

### 3.2. Excisable services offered digitally by non-residents

The Bill proposes that non-resident entities providing excisable services through the internet, an electronic network, or a digital marketplace must register, charge and remit excise duty on such services. These non-residents will be responsible for paying

the excise duty. The Bill also introduces a definition of a "digital marketplace" as an online platform that allows users to sell goods or provide services to other users, which aligns with the existing definition under the VAT Act. This aligns with the requirement for non-residents offering digital services through the internet, electronic networks, or digital marketplaces to also register and charge VAT on those services.

However, this raises uncertainty on how to calculate the taxable value for excise duty in cases where services are subject to both excise duty and VAT, such as advertising on the internet for alcoholic beverages. A non-resident is defined as someone whose business is located outside Kenya. If the excisable service is offered by a non-resident, and the place of business is outside Kenya, the service will be considered as supplied in Kenya if it is consumed in the country.

**Effective Date: 1 st July 2025**

### 3.3. Excise License Application Timelines

The Bill proposes that the Commissioner to issue a license application decision within 14 days of receipt of the required documents.

**Effective Date: 1 st July 2025**

### 3.4. Goods classification in line with EACCMA Protocol

The Bill proposes classification of goods by reference to the tariff codes set out in Annex 1 to the Protocol on establishment of the EAC Customs Union. This proposed amendment establishes a statutory connection between Kenya's excise duty

classification and the East African Community (EAC) Common External Tariff (CET) framework. This ensures that the same product classification rules used for customs and import duties are also applied to excise taxation, promoting consistency and clarity in the system.

**Effective Date: 1 st July 2025**

**3.5. Excise Duty on spirits**

The Bill proposes to impose excise at Kenya Shillings Five Hundred (KShs. 500.00) per litre on spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spiritous beverages.

**Effective Date: 1 st July 2025**

**3.6. Changes to Excise Rates:**

Goods	Proposed Rate	Current Rate
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	35% of the excisable value of Kshs. 200 per kg whichever is higher	35% of the customs value or KShs. 200 per kg
Coal	2.5% of the excisable value	2.5% of the customs value

**3.7. The Bill proposes to delete excise duty on the following goods:**

Goods	Rate
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%

Goods	Rate
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
Imported self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics, whether or not in rolls of tariff numbers 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	25% or Kshs. 75 per Kg, whichever is higher
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	25% or KShs. 200 per Kg, whichever is higher

### 3.8. The Bill seeks to introduce excise duty on the following items:

Goods	Rate
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, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or KShs. 200 per Kg, whichever is higher

Goods	Rate
<p>Imported printed polymers of ethylene of other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.</p>	<p>25% of excisable value or KShs. 200 per Kg, whichever is higher</p>
<p>Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.</p>	<p>25% of excisable value or KShs. 200 per Kg, whichever is higher</p>
<p>Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.</p>	<p>25% of excisable value or KShs. 200 per Kg, whichever is higher</p>
<p>Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community Rules of Origin.</p>	<p>25% of excisable value or KShs. 200 per Kg, whichever is higher</p>

Goods	Rate
Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or KShs. 200 per Kg, whichever is higher
Gummed paper and paperboard of tariff number 4811.49.00, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% of excisable value or KShs. 200 per Kg, whichever is higher
Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages.	KShs. 500 per litre

## TAX ADMINISTRATIVE PROPOSALS

### 4. TAX PROCEDURES ACT

#### 4.1. Agency Notices

Currently, the Commissioner's authority to issue agency notices is limited to taxpayers (those liable to pay tax). The Bill proposes to extend this authority to include non-resident persons who are subject to tax in Kenya. If enacted, this would impact non-residents who are liable for digital service tax (DST) or VAT on supplies made through an electronic network. This change may be driven by the Commissioner's inability to enforce tax collection from non-residents. However, this could be challenging for retail service providers subject to DST, SEPT, or VAT on digital supplies, as well as the proposed excise duty (e.g., online TV subscription services).

The Bill also proposes a clean up regarding the prohibition on issuing agency notices when objection decisions are under appeal, which could create confusion about the Commissioner's ability to issue agency notices when a dispute reaches the High Court or higher levels.

**Effective Date: 1 st July 2025**

#### 4.2. Penalties & Interest arising from eTIMS & iTax Errors

The implementation of the eTIMS system by the Commissioner has faced several challenges, including issues such as failing to record some sales, incorrectly assigning

data to the wrong taxpayer accounts, and not recognizing expenses declared by suppliers. These problems have resulted in unfair tax liabilities for taxpayers, with issues in the iTax system further penalizing them.

To address this, the Bill proposes to grant the Cabinet Secretary for Finance (based on the Commissioner's recommendation) the authority to waive penalties and interest that were wrongly incurred due to system errors. This proposal is important as it helps prevent the unfair imposition of penalties on taxpayers. However, the Bill uses the term whole or part in reference to waiving these liabilities, which should instead focus on waiving the entire liability, as the errors causing these issues are attributable to the Commissioner's system.

**Effective Date: 1 st January 2026**

#### **4.3. Computation of Time for Objections and Appeals**

The Tax Procedures (Amendment) Act 2024 changed the calculation of time for tax matters from calendar days to working days in December 2024. However, the Bill proposes to revert to the previous system just 6 months after this change. This could lead to confusion for ongoing disputes and shorten the time available for taxpayers to file objections and appeals. While the Commissioner has a 5-year period to assess taxes, which is ample time, taxpayers only have 30 days to object to these assessments. As a result, the Commissioner has always had the advantage when it comes to timeframes.

**Effective Date: 1 st July 2025**

#### **4.4. Penalty for failure to withhold tax**

Currently, if a taxpayer fails to withhold tax on a payment, they are required to pay the principal withholding tax to the Commissioner, even if the recipient (withholdee) has already declared and paid tax on the transaction. Taxpayers have found this requirement burdensome, as the withholder cannot recover or expense the withheld tax. The Bill proposes to amend this provision, allowing the withholder to be exempt from paying the principal withholding tax if the withholdee has already accounted for the tax on the payment.

However, the withholder would still be liable for any interest or penalties resulting from the failure to withhold tax. This is a positive proposal, as it helps prevent double taxation on taxpayers. While it may be difficult for the taxpayer to prove that the supplier has accounted for the tax, the implementation of eTIMS enhances the Commissioner's ability to verify that the supplier has properly reported and paid the tax.

**Effective Date: 1 st July 2025**

#### **4.5. Extension of Refund Decision Timelines**

Currently, the Commissioner is required to process a refund application within 90 days if no audit is needed, and within 120 days if the refund is subject to an audit. The Bill proposes to extend these processing periods to 120 days and 180 days, respectively. While this change would give the Commissioner more time to verify refunds, it could negatively impact taxpayers cash flow, as they would have to

#### 4.6. Increased access to taxpayer data

Taxpayers providing information under a Data Management and Reporting System are not required to divulge trade secrets and personal or private data of clients. The Bill proposes to delete this provision essentially giving the Commissioner powers to demand for trade secrets, private data and personal data. This is rather concerning as the Commissioner is subject to the Data Protection Act and trade secrets are considered a crucial aspect of intellectual property.

**Effective Date: 1 st July 2025**

#### 4.7. Amended Assessments

The Commissioner in its capacity as an administrative body is required to provide reasons for amended assessments under the Fair Administrative Action Act. However, the Commissioner frequently issues iTax assessments that do not contain reasons. The Bill proposes to amend the TPA to require the Commissioner to provide reasons within the amended assessment.

**Effective Date: 1 st July 2025**

#### 4.8. Penalty for failure to file a tax return

The Commissioner has the power to issue default assessments when a taxpayer fails to file a tax return. Since there is no provision in the TPA to empower the Commissioner to charge a non-filing penalty, the Bill proposes to introduce a non-filing penalty with similar implications as a late filing penalty.

**Effective Date: 1 st July 2025**

### 5. MISCELLANEOUS FEES AND LEVIES ACT

#### 5.1. Reduced IDF/RDL exemptions

The Export and Investment Promotion Levy was introduced in the Finance Act, 2023, with the goal of generating funds to support manufacturing, increase exports, create jobs, conserve foreign exchange, and promote investment. This levy currently applies to items such as clinker, semi-finished iron or non-alloy steel, bars and rods of non-alloy steel, kraft paper, sacks, and bags. The introduction of this levy led to significant price increases for these materials, which in turn raised construction costs. Additionally, it created a substantial price gap between locally sourced and imported versions of these products.

#### 5.2. The Bill proposes to reduce the levy rate on these items from 17.5% to 5%.

Tariff No	Tariff Description	Proposed Rate	Current Rate
7207.11.00	Semi-finished products of iron or non- alloy steel containing by weight, & 0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	5% of the customs value	17.5% of the customs value

Tariff No	Tariff Description	Proposed Rate	Current Rate
7207.11.00	Semi-finished products of iron or non- alloy steel containing by weight, & 0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	5% of the customs value	17.5% of the customs value
7213.91.10	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	5% of the customs value	17.5% of the customs value
7213.91.90	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; other	5% of the customs value	17.5% of the customs value

Whereas this may reduce the cost of such imports, the existence of the levy will still negatively impact the price of the imports compared to local supplies.

**Effective Date: 1 st July 2025**

### 5.3. Imposition of Levies and Fees

The Act currently stipulates that refunds for fees and levies paid erroneously or in excess should be governed by Section 47 of the Tax Procedures Act (TPA). The Bill proposes to amend this so that refunds will be governed by the TPA as a whole.

This change aims to align the Miscellaneous Fees and Levies Act with the broader provisions of the Tax Procedures Act.

**Effective Date: 1 st July 2025**

### 5.4. Reduced IDF & RDL Exemptions

Currently, aircraft, spacecraft, and their parts are exempt from the Import Declaration Fee (IDF) and Railway Development Levy (RDL). The Bill proposes to limit this exemption, applying it only to aircraft weighing over 2 metric tonnes (unladen) and parts under Chapter

## 5.5. Upcoming Actions

This analysis is based on the draft of the Finance Bill, 2025, which is currently circulating and awaiting official publication in the Kenya Gazette. Once the Bill is published, it will go through a public consultation process, as required by Article 118 of the Constitution of Kenya. The Departmental Committee on Finance and National Planning will manage this process, seeking both written and oral feedback from the public and key stakeholders.

This stage offers a valuable opportunity for engagement and input. Following this, the Committee will prepare a report with its findings and recommendations, which will be debated in the National Assembly. Members of Parliament will have the chance to propose additional

amendments. If the Bill is approved, it will be sent to the President for assent. Once signed, the law will take effect on 1 July 2025, with certain provisions starting on 1 January 2026.

We encourage all interested parties, whether individuals, businesses, or professional groups, to participate in the consultation process, ensuring that the final law is fair, comprehensive, and in line with Kenya's economic objectives.

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