ORARO & COMPANY
ADVOCATES
An Affiliate Member of AB & DAVID AFRICA

A REVIEW OF THE FINANCE BILL, 2025

LEGAL ALERT

MAY 2025

INTRODUCTION

The National Assembly published the Finance Bill, 2025 **("the Bill")** on 6th May 2025 proposing various amendments that will improve tax administration and close loopholes rather than introduce new taxes.

The proposed changes are geared towards mainly aligning tax administration, procedures as well as regularizing inconsistencies in the various tax laws. However, certain proposals made will result in an increase in the cost of some commodities and business operations.

The proposed amendments are to come into force either on 1st July 2025 or 1st January 2026 as provided therein.

A. INCOME TAX ACT

The Finance Bill 2025 proposes to amend the Income Tax Act, Chapter 470, (ITA) as follows:

1. Definitional Section

1.1. Loan and loan stock no longer categorized as debentures

The Bill proposes to amend the definition of the term *"debenture"* by removing the specific inclusion of loans and loan stock for the purposes of section 7(1)(d) and (e) of the Act. This amendment is to align the definition with the current provisions of the ITA as these sections have already been deleted.

1.2. Individual retirement fund

The Bill proposes to amend the definition of an *"individual retirement fund"* by deleting the phrase "subject to the Income Tax (Retirement Benefit) Rules".

As a result of this amendment, the Income Tax (Retirement Benefit) Rules will no longer apply to individual retirement funds. This means that the specific requirements set out under those rules, such as those related to the registration of such funds, transfer of funds between qualified institutions, and mode of investments amongst others, will no longer be required.

1.3. Expanded definition of Royalty to include distribution of software

Effective 1st July 2025, the Bill proposes to expand the definition of *"royalty"* to include **software distribution where regular payments are made for its use through a distributor**.

This proposal appears to be a direct response to the High Court's ruling in ***Seven Seas Technologies Limited v Commissioner for Domestic Taxes [2024]***, where the court held that payments for the distribution of computer software did not attract withholding tax (**WHT**), as they did not constitute royalties. The Kenya Revenue Authority had argued otherwise, seeking to classify such payments as royalties subject to WHT.

If passed, the amendment would bring software distribution payments within the scope of WHT, where regular usage payments are involved. However, this move departs from international tax norms, particularly Article 12 commentary to the OECD Model Tax Convention, which states that payments for software distribution without rights of commercial exploitation should be treated as business profits, not royalties, and therefore not subject to WHT.

1.4. Expanded definition of related persons

The Bill proposes to expand the definition of who a related person is.

This expanded definition widens the scope to include not just those involved in day-to-day management, but also individuals with indirect or familial influence. The expanded definition of a related person is welcome as it will now align the duplication of the definition of *"related persons"* in the ITA in Section 2 of ITA and Eighth Schedule of ITA.

The amendment reflects the Bill's broader aim to improve tax administration and close loopholes, rather than introduce new taxes. It enhances clarity in determining related-party transactions, especially in cross-border contexts.

2. Taxation of Employees

2.1. Increase of tax free per diem threshold from Kenya shillings (KES) 2,000 to 10,000

The Bill proposes to amend section 5(2) of ITA thus increasing the threshold of tax free per diem from the current KES 2000 to KES 10,000, effective 1st of July 2025.

It is imperative to note that the current position is that **the first KES 2,000 per day** paid as per diem to an employee working away from their usual place of duty is considered a **reimbursement of expenses** and is **not subject to tax.** However, any amount exceeding this is **taxable,** unless the employee provides supporting documentation to justify the additional expenses.

The implication of an increased threshold of per diem deemed tax-free is a huge relief to employees who incur increased costs, especially when travelling outside their usual place of work in an official capacity, the current ceiling of tax free per diem set at KES. 2,000 is very low, hence the increased threshold is a welcome proposal.

2.2. Changes to the provisions on pensions and Gratuity payments

The Bill proposes to amend Section 8 of the Income Tax Act by replacing the term “husband” with the more inclusive term *“spouse.”* It also seeks to repeal subsections (4) to (9A), which currently govern the tax treatment of pensions and retirement benefits from both private schemes and the NSSF.

Additionally, effective 1st July 2025, the Bill proposes to amend the First Schedule by revising the proviso to paragraph 53 to exempt gratuity and other allowances paid under public pension schemes from taxation.

These changes represent a significant and welcome relief for retirees in both the public and private sectors, as they will ensure that all pension and gratuity payments are fully tax-exempt, regardless of age. This marks a shift from the current law, where only monthly pensions for individuals aged 65 and above were exempt. If enacted, retirees will be able to enjoy their retirement benefits without the burden of tax.

This is a positive and progressive move, as it removes the tax burden on pensioners and promotes retirement income security.

2.3. Application of PAYE Reliefs to Employees by Employers

Effective 1st July 2025 the Bill proposes that Employers will be mandated to apply all eligible tax reliefs, deductions and exemptions that an employee is entitled to when accounting for an employee Pay As You Earn (**PAYE**) taxes.

This proposal is a reprieve to employees as majority of employers ignored some of these reliefs and exemptions when accounting for PAYE taxes, this led to employees having to personally pursue refunds from KRA which is a tedious process.

This proposal is informed by the need to enhance efficiency in tax administration by preventing employees from having fictitious tax refunds applications to KRA.

3. Changes to Withholding Tax

3.1. Withholding Tax on payments with respect to the Supply of goods to a public entity

Effective 1st July 2025, the Bill proposes to introduce WHT on payments from the supply of goods to a public entity. Currently, there is no legal provision that subjects WHT to the supply of goods to public entities.

This proposal is in tandem with the objective of the Finance Bill 2025 on enhancing the efficient administration of taxes, this proposal is tailored to ensure maximum efficiency in the collection of taxes from business persons that supply goods to public entities.

3.2. Withholding Tax on payments in respect to scrap

As of 1st July 2025, the Bill proposes to introduce WHT on payments with regard to the sale of scrap.

The implication of this proposal is geared towards discouraging the business of the sale of scrap metal and where such business is undertaken then the income earned must be subjected to tax. We expect guidelines from KRA on how WHT on the sale of scrap will be effected bearing in mind that the sale of scrap is substantially informal.

3.3. Deductions of Withholding Tax on payments made to a non-resident carrying on the business of ship owner, charterer

Effective 1st July 2025, the Bill proposes to subject gains or profits earned by non-resident ship owners or air charterers from the carriage of passengers, cargo, or mail embarked at any port in Kenya. We however note that there is no corresponding amendment stipulating the rate applicable under Paragraph 5 of the Third Schedule of the ITA as the current withholding tax (**WHT**) rate is 2.5% under Paragraph 3 of the Third Schedule of the ITA.

The obligation to deduct and remit this tax will fall on the resident person making the payment to the non-resident entity. This measure aims to improve tax administration efficiency as will be a final tax.

4. Taxing of the Digital Economy

4.1. Removal of the annual turnover and clarity on chargeability of Significance Economic Presence Tax (SEPT)

Effective 1st July 2025, the Bill proposes removing the exemption for non-residents with an annual turnover of less than KES 5 million from paying SEPT. This means any non-resident earning income from Kenya through services provided via the internet or electronic networks will be subject to SEPT, regardless of turnover.

This amendment expands the tax base, increasing government revenue and improving the taxation of intangibles. However, it could impose an administrative burden on KRA, especially when non-residents with minor income are subjected to SEPT, which may contradict the Finance Bill 2025's focus on efficient tax administration.

The Bill also clarifies the definition of *"digital marketplace"* in Section 12E of the ITA, resolving previous ambiguities. It now specifies that SEPT applies to business conducted via the internet or electronic networks, including digital marketplaces, ensuring clearer guidelines on liability to pay SEPT on income earned from Kenya.

4.2. Reduced Tax rate on digital assets

Effective 1st of July 2025 the Bill proposes to reduce the rate of Digital Asset Tax from 3% to 1.5%.

This proposal aims to encourage the exchange of virtual assets, such as cryptocurrency, and reduce the cost of transactions involving virtual assets.

4.3. Clarity On When Minimum Top-Up Tax Is Due

Effective 1st July 2025, the Bill proposes to amend Section 12G of the Income Tax Act by introducing a clear deadline for the payment of minimum top-up tax, requiring it to be paid within four months after the end of the income year.

This amendment addresses the current gap in the law, which lacks a specified due date, and therefore removes uncertainty for taxpayers regarding when the tax should be remitted to the KRA.

5. Removal of timber-related tax deductions

The Bill proposes to delete paragraphs (i) and (j) of Section 15(2) that allow for deductions on the sale of, or the grant of the right to cut down standing timber.

Currently, landowners can deduct either the portion of the land's purchase price attributable to timber or the value of the timber at the time the owner acquired the land. This allows the owner to recover their initial investment (either the cost or the initial value) before being taxed on any profit. Further, those with a license to fell timber can deduct a portion of the price paid for that right.

If the Bill passes, the gross profits from selling the timber would be taxed without any offset rights, thereby leading to a higher income tax burden for both landowners selling their own standing timber and those who purchase the right to fell and sell timber.

6. Special deductions for certain non-citizens

The Bill proposed to remove the special deductions awarded to expatriates who are employed by a regional office that carries on no business in Kenya and if they are absent from Kenya on business for at least 120 days in any tax year.

Eliminating this deduction would increase the income tax liability for the affected expatriate employees.

7. Shortening the Period for Carrying Forward Tax Losses

The Bill proposes to reduce the period within which taxpayers can carry forward tax losses from an indefinite timeframe to a maximum of five (5) years.

If this proposal passes, this change would particularly impact businesses engaged in long-term projects or operating in high-risk sectors, where profitability is often delayed. These businesses may be unable to fully utilize their accumulated losses within the shorter window, resulting in a higher tax burden during profitable years, as unused losses would expire.

8. Requirement of filing of country-by-country report (CbCR)

Effective 1st January 2026, Multinational Enterprises (MNEs) with several constituent entities resident in Kenya will designate one of its constituent entities to file country-by-country reports and notify KRA by the last day of the MNE's financial year.

The Bill proposes to eliminate the option of filing through a Surrogate Parent Entity and shortens the filing timeline from 12 months after year-end to the end of the reporting year itself.

This tighter deadline may create compliance challenges, as the CbCR requires detailed and technical information, such as revenue, profits, taxes paid, employee numbers, and assets, across all jurisdictions where the MNE operates. Given the volume of data and the need to also submit a master file, local file, and notification, it may be necessary for KRA to consider extending the filing timeline to ensure accurate and timely compliance.

9. Introduction of Advance Pricing Agreements in Kenya's Transfer Pricing Framework

Effective 1st January 2026, the Bill proposes to introduce Advance Pricing Agreements (**APAs**) into the Income Tax Act, allowing the Commissioner to enter into voluntary agreements with taxpayers involved in related-party transactions. APAs will be valid for up to five (5) years and can be voided if based on misrepresented facts.

This move aims to reduce transfer pricing disputes by allowing prior agreement on the appropriate transfer pricing method, enhancing certainty and consistency. APAs are expected to ease the resolution of cross-border tax issues and reduce costly audits and litigation. The Cabinet Secretary is expected to issue regulations to guide APA implementation. Notably, this proposal was also included in the withdrawn Finance Bill 2024.

10. Change of Year End/ Accounting Period

Effective 1st July 2025, the Bill proposes that if a taxpayer makes an application to the Commissioner with regard to seeking approval of the Commissioner to allow the taxpayer to change the financial year end of a company, and the Commissioner fails to respond to the application within a period of six (6) months, then that application by the taxpayer shall be deemed as automatically allowed.

The implication of this proposal is that taxpayers have been afforded wide latitude to change their year ends/ accounting period, however, unless KRA streamlines iTax to enable this, then taxpayers will face difficulties in implementing the change.

11. Withdrawal of the requirement to furnish the Commissioner with information when a business changes its particulars

The Bill proposes to delete the requirement to furnish the Commissioner with information when a business changes its particulars in the ITA as it is already provided for in the Tax Procedures Act in Section 9 thereof.

12. Requirement of companies to submit an assessment of distributed dividends

Effective 1st July 2025, the Bill proposes that companies when submitting tax self-assessment for the respective year of income will also be required to include an assessment of the dividends the company distributed to its shareholders out of the company's untaxed profits with regards to that year of income.

The effect of this proposal is to enhance transparency and compliance by allowing KRA to identify and monitor distributions made from untaxed profits that should have been taxed.

13. Extension of tax exemption timeline for charitable institutions

The Bill proposes to extend the timeframe for issuing approval on tax exemption applications for charitable institutions from sixty (60) to ninety (90) days.

If enacted, this may delay the period within which such institutions can access tax-exempt status, potentially leading to temporary cash flow challenges due to delayed funding or donor commitments.

On the other hand, the extended timeline may allow KRA more time to conduct a thorough review of the application for exemption.

14. Contributions Into and out of the Social Health Insurance Fund

The Bill proposes to exempt contributions to and out of the Social Health Insurance Fund (**SHIF**). The amendment will align the law with the transition from the National Hospital Insurance Fund (**NHIF**) to SHIF.

The amendment introduces an ambiguity on whether payments made by SHIF out of the fund are to be exempted from tax. The ambiguity needs to be addressed to avoid misinterpretation.

15. Capital Gains Tax (CGT) only exempt on the transfer of property within a special economic zone by a licensed SEZ developer

The Bill proposes to remove the general exemption from CGT on the transfer of property within a special economic zone for enterprises, developers and operators. The exemption will now apply to transfers made by *licensed* SEZ developers.

This change aims to prevent the misuse of tax exemptions by unlicensed developers, who may hold or transfer property for speculative purposes, thereby ensuring that government revenue is protected.

16. Gains on transfer of shares of listed companies

The Bill proposes to exempt from taxation any gains on transfer of securities traded on any securities exchange licensed by the Capital Markets Authority, by excluding such gains from tax under section 3(2)(f).

This is a welcome proposal as investors would no longer be subject to capital gains tax on any gain from the transfer of shares listed on the NSE or any other exchange licensed by the CMA. Consequently, this will likely enhance trading activity and liquidity on these exchanges, attracting more investors and thereby stimulating overall investment in the Kenyan capital markets.

17. Removal of capital investment deductions allowance of investments situated outside Nairobi, Mombasa and in Special Economic Zones

Effective 1st July 2025, the Bill proposes to eliminate the 100% investment deductions allowance of investments situated outside Nairobi and Mombasa Counties, where the total value of investment is more than KES 1 billion in the three prior years of investment.

Additionally, the Bill also proposes to scrap off investment deductions on investment in a Special Economic Zone (**SEZ**).

The implication of this proposal is that in the long run, it will discourage capital investments, particularly in regions outside the two major cities, due to increased costs. As a result, investment activity could decline, slowing regional economic development.

18. Tax Incentives for Companies Certified by the Nairobi International Financial Centre (NIFC)

The Bill proposes to exempt dividends paid by a company certified by the Nairobi International Financial Centre (**NIFC**) Authority where the company reinvests at least two hundred and fifty million shillings (KES 250,000,000) in that year of income.

The Bill further proposes a tiered reduction in the standard corporation income tax rate for NIFC-certified companies meeting stringent investment and operational benchmarks. A preferential rate of fifteen percent (15%) will be applicable for the initial ten (10) years of operation and for the subsequent ten (10) years following the initial preferential period, a corporation income tax rate of twenty percent (20%) will apply. However, the company will have to meet the following criteria:

- A minimum capital investment of Kenya Shillings three billion (KES 3,000,000,000) within the first three (3) years of commencing operations in Kenya.
- The company operates as a holding company, with a minimum of seventy-five percent (75%) of its senior management personnel being Kenyan citizens.

- The company establishes its regional headquarters within Kenya with at least sixty percent (60%) of its employees in senior management positions being Kenyan citizens.

Additionally, the Bill introduces a concessional tax structure for startup enterprises, proposing a reduced corporate income tax rate of 15% for the first three (3) years and 20% for the following four (4) years.

The proposals are welcome as the amendments are intended to boost the growth and appeal of the Nairobi International Financial Centre as a regional hub by offering targeted tax incentives for substantial investments and local job creation within certified entities. They also incentivize capital reinvestment in the NIFC and support Kenya's emerging startup ecosystem.

19. Increased Fringe Benefit Tax Rate

Effective 1st July 2025, the Bill proposes to increase the tax rate on fringe benefits from the current graduated scale to the resident corporate rate of tax for that year of income.

20. Definition of Company in relation to clubs and trade associations

The Bill proposes to amend the definition of company to include member clubs and trade associations that carry on business as provided for in section 21 of the ITA.

This proposal if passed will ensure that clubs and trade organizations will be within the scope of CGT thus clarifying their obligation to remit.

B. VALUE ADDED TAX ACT

1. Definition of "Tax Invoice"

The Bill proposes to define *"tax invoice*" in the Value Added Tax ("**VAT**") Act to include electronic invoices issued in accordance with section 23A of the Tax Procedures Act ("**TPA**").

This change seeks to enhance the integration of VAT administration with the digital invoicing system established under the TPA, which requires the issuance of electronic tax invoices for all transactions except those specifically exempt from the Electronic Tax Invoice Management System (**eTIMS**) requirements and maintenance of stock records.

This is a welcome change as the detailed structure of an e-invoice, as provided under the TPA will ensure transparency, standardisation and real-time compliance monitoring.

2. Equal Tax Treatment for Traditional and Digital Broadcasting Services for the purpose of VAT

Effective 1st July 2025, the Bill proposes to amend Section 8 of the VAT Act by deleting the provision on radio and TV broadcasts and instead consolidating all media and digital content under electronic services. This will ensure that all broadcasting services consumed in Kenya, whether via traditional or internet platforms like Netflix, YouTube, or Spotify, are subject to VAT thus requiring registration to ensure compliance.

The amendment removes the distinction between traditional and internet-based broadcasting, ensuring all broadcasting services consumed in Kenya are subject to VAT, regardless of delivery method or provider location. It aims to close loopholes that excluded digital platforms like Netflix, YouTube, and Spotify aligning with global tax principles but potentially raising concerns about taxing foreign digital firms without local presence.

3. Removal of offset option for withheld VAT and excess Input VAT

The Bill proposes the removal of the ability to offset VAT liabilities against excess VAT input and tax withheld by appointed VAT withholding agents.

When enacted into law, the only option for excess VAT input will be to seek a refund unlike in the current regime where one can be allowed to offset such input against other VAT liabilities.

4. Shortened timelines for VAT Refund Claims

The Bill proposes to reduce the VAT refund claim period from twenty-four (24) months to twelve (12) months. It is also proposed to delete refunds on excess VAT held by a withholding agent.

These changes seek to streamline the refund framework and are administrative to attain consistency. The amendment aligns the timeline provided in the Tax Procedures Act which provides for a period of 12 months to such applications.

5. Refund of Tax on Bad Debt

The Bill proposes to amend the time within which a taxpayer can apply for a refund on VAT on bad debts from three (3) years to two (2) years where the taxpayer has made a supply and the person liable to pay tax has not made payment. It is also proposed that any VAT refunded taxes may be utilized to offset any VAT upon approval by the Commissioner.

Reducing the VAT bad debt refund waiting period from three to two years is a welcome move for businesses, offering faster relief and improved cash flow. The new offset option also adds flexibility by allowing refunds to be applied against existing VAT liabilities.

The proposed deletion removing the obligation to repay VAT upon debt recovery within sixty (60) days aligns with the conflicting timeline of thirty (30) days provided for under Section 17(2) of the VAT Act. Additionally, the offset mechanism’s effectiveness may be limited by its dependency on the Commissioner’s approval, which could cause delays without clear guidelines.

6. Broadening VAT Reporting

Currently, the law requires VAT-registered persons to issue tax invoices only for taxable supplies. The Bill proposes that a tax invoice will be issued to all supplies including zero-rated and exempt supplies.

This change aims to enhance transparency, administrative oversight and easy enforceability of VAT collections.

7. Liability on Misuse or Disposal of Zero-Rated and Exempt Goods

The Bill proposes to introduce a new Section 66A to the VAT Act, requiring persons who import or acquire exempt or zero-rated goods/services to pay VAT if those goods or services are later disposed of or used inconsistently with their exempt purpose. This aims to curb the abuse of VAT exemptions and align usage with policy intent.

While the amendment strengthens compliance and complements anti-avoidance provisions under Section 66, it raises concerns about ambiguous terms like *"inconsistent use."*

This could lead to potential overregulation and increased administrative burden, especially for SMEs. Without clear definitions or transitional guidelines, businesses risk penalties for legitimate changes in use. The creation of supporting regulations that define key terms, set clear application standards, and include dispute resolution safeguards, would be necessary to cure the present ambiguity.

8. Other Notable Changes in the VAT Treatment of Goods and Services

With effect from 1st July 1025, the Bill proposes the following changes to VAT:

Goods and Services	Current VAT Treatment	Proposed VAT Treatment
Food supplements of tariff Number 2106.90.91	Exempt	16%

Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale. (***Tariff Number 3003.41.00, 3003.42.00, 3003.43.00, and 3003.49.00***)	Exempt	16%
All goods and parts thereof of chapter 88	Exempt	16%
Fuels, lubricants and tyres for vehicles 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	Exempt	16%
Direction-finding compasses, instruments, and appliances for aircraft.	Exempt	16%
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.	Exempt	16%
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.	Exempt	16%
Aircraft parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation. (Note: The Bill proposes to delete the words *“other aircraft spare”* from the exemption provision).	Exempt	Exempt

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, provided the vehicles are at all times registered and operated by a company that is licenced under the Tourism Vehicle Regime; used exclusively for the transportation of tourists; have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and meet any other condition the Commissioner may impose:	Exempt	16%
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.	Exempt	16%
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 (Cap. 314), production sharing contracts in accordance with the Petroleum Act (Cap. 308) or a mining license in accordance with the Mining Act (Cap. 306) 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.	Exempt	16%
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.	Exempt	16%

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.	Exempt	16%
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.	Exempt	16%
Inputs and raw materials used in the manufacture of passenger motor vehicles.	Exempt	16%
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.	Exempt	16%
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.	Zero-rated	Exempt
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.	Zero-rated	Exempt

Transportation of sugarcane from farms to milling factories.	Zero-rated	Exempt
The supply of locally assembled and manufactured mobile phones.	Zero-rated	Exempt
The supply of motorcycles of tariff heading 8711.60.00.	Zero-rated	Exempt
The supply of electric bicycles.	Zero-rated	Exempt
The supply of solar and lithium-ion batteries.	Zero-rated	Exempt
The supply of electric buses of tariff heading 87.02.	Zero-rated	Exempt
Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).	Zero-rated	Exempt
Packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture.	16%	Exempt

C. EXCISE DUTY ACT

The Finance Bill, 2025 proposes to amend the Excise Duty Act, Chapter 472 of the Laws of Kenya (“**EDA**”) as follows:

1. Amendment of the definition of digital lenders

Effective 1st July 2025, the Bill proposes to delete and amend the definition of a '*digital lender'* as set out currently under Section 2(1) of the EDA and replace the same with an expanded definition that excludes banks, Sacco's and microfinance institutions.

The amended definition will cover those digital lenders who are not licensed by the Central Bank of Kenya and will broaden the scope of digital lenders liable to excise duty to include persons who offer loans through electronic mediums.

2. Classification of Goods under the EDA

Similar to the proposal in the Finance Bill, 2024, the Bill proposes the classification of goods under the Act using the tariff codes listed in Annex 1 of the Protocol on the Establishment of the East African Community Customs Union and the general rules of interpretation outlined within the Annex will be followed.

This is a welcome amendment that harmonizes the classification of goods for excise purposes to the classification used for customs and import duty under the East African Community Customs Management Act, 2004 ("**EACCMA**").

3. Excise duty on services offered by non-residents

The Bill proposes to amend the definition of digital marketplace as an online platform that enables users to sell goods or provide services to other users. This amendment will widen the tax base of the excise duty on excisable services offered by non-resident persons as introduced by the Tax Laws (Amendment) Bill 2024 to include services offered over the internet, electronic networks and through a digital marketplace.

This amendment is aimed at broadening the scope and providing clarity on the types of digital platforms contemplated under Section 5 of EDA.

4. Clarity on the definition of a non-resident person

The Bill proposes the insertion of the definition of a non-resident person to mean a person outside Kenya. This is a welcome amendment aimed at providing clarity as to whom the excise duty is to be charged.

5. Place of supply of excisable services for suppliers outside Kenya

The Bill proposes the addition of a new subsection which provides that the supply of excisable services shall be deemed to have been made in Kenya by a supplier whose business is outside Kenya if the services are consumed by a person in Kenya through the internet, an electronic network or a digital marketplace.

This amendment aims to enhance revenue collection from the growing digital economy and narrow down any loopholes previously exploited by suppliers outside Kenya. This amendment will also align the EDA with the VAT Act in that digital services are those provided through the internet, an electronic network or a digital marketplace.

6. Application for License

The Bill proposes that with effect from 1st July 2025, the Commissioner will have 14 days after the receipt of all the required documents, to consider an application for license under the EDA.

This provision aims to expedite the licensing process and provide clarity for businesses engaged in excisable activities that currently face significant delays in the approval of license applications.

7. Rates of excise duty

The Bill proposes the following changes to the rates of excise duty:

s/no.	Item	Current Rate	Proposed Rate
1.	Coal	2.5% of the custom value	2.5% of the excisable value
2.	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	None	35% of excisable value or KSh.200 per kg, whichever is higher
3.	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 sh.75 per Kilogramme, Whichever is higher.	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher
4.	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, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% or sh. 75 per Kilogramme, whichever is higher	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher
5.	Imported printed polymers of vinyl chloride containing by weight not less than 6% 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 3920.43.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin.	25% or sh. 75 per Kilogramme, whichever is higher	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher

6.	Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, noncellular 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	25% or sh. 75 per Kilogramme, whichever is higher	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher
7.	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 Panner States that meet the East African Community Rules of Origin.	25% or sh. 75 per Kilogramme, whichever is higher	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher
8.	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% or KSh. 150 per kilogramme, whichever is higher	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher
9.	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% or KSh. 150 per kilogramme, whichever is higher	25% of excisable value or Kshs.200 per Kilogramme, Whichever is higher
10.	Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages.	None	Kshs. 500 per litre

D. TAX ADMINISTRATION

The Bill proposes to amend the **Tax Procedures Act**, Chapter 469B of the Laws of Kenya ("**TPA**") as follows:

1. Transactions Excluded from Implementation of Electronic Tax Invoice.

The Bill proposes to amend the law by making an enhanced list of transactions that may be excluded from the implementation of e-TIMS. Currently, the list is not conclusive as it is subjected to the interpretation of the phrase “similar payments” to the payments enumerated in section 23A (4) of the TPA. Apart from proposing a conclusive list, the Bill also proposes that payments subject to Withholding Tax (WHT) that are final tax are also excluded from the implementation of e-TIMS. The other categories to be excluded are payments on:

- Emoluments
- Imports
- Interest
- Transactions for accounting for investment allowances

This proposal if enacted into law will create clarity on the implementation of the issuance of electronic tax invoices.

2. The Need to Provide Reasons for The Amendment of Assessments

The Bill proposes to impose a legal obligation on KRA to provide reasons for any amendment of an assessment. The law currently outlines information that must be included in a notice of amended assessment. That list does not have the requirement to provide the reasons for amending an assessment.

If enacted into law, the proposal will be a welcome provision as it will promote the constitutional principles of fair administrative action and the duty to give reasons. This will change the content of the amended assessment and will enable taxpayers to challenge amended assessments issued without justification or plausible explanation. The proposal will also enhance the principles of good governance such as transparency in administration and collection of tax.

3. Removal of Duplicity of Recovery Efforts of WHT

Currently, the law provides liability to a withholding agent who has failed to deduct and remit taxes due. The Bill now proposes to relieve from liability, the withholding agent who does not deduct, withhold, or remit tax where the principal tax in question has been paid and accounted for in full by the recipient of the payment.

This proposal is welcomed as it addresses chances of double taxation where tax is recovered from both the withholding agent and taxpayer due to procedural lapses. The withholding agent will no longer be required to pay taxes that have been already paid by the recipient of the taxable services.

4. Exemption from Stamp Duty

The Bill proposes an exemption from the payment of stamp duty during the registration of a restraint on property held as security for unpaid taxes and during the transfer of such property. This position is currently provided in section 131 of the Income Tax Act which the Bill has also proposed to be deleted.

The effect of the proposal if enacted into law will be that there will be no stamp duty payable when the Commissioner is registering restraint over the held security or when the Commissioner is transferring the security for purposes of settling the taxes due. The deleting of such provision from the Income Tax Act and introduction of the same to TPA merely reflects a shift of procedural provisions from the substantive tax statute to the appropriate procedural framework.

5. Agency Notices

The Bill proposes to delete the prohibition on issuing agency notices when a taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.

If enacted into law, the Commissioner will be able to issue agency notices to the taxpayers once the case is determined by the tribunal. The Commissioner will not be required to wait for the taxpayer to appeal the Tribunal's decision or High Court decision, and this might lead to rendering the appeal nugatory unless stay of execution is sought. Such an amendment is unwelcome.

It further amends the provision of the law to allow the Commissioner to issue agency notices with respect to a taxpayer or a non-resident person who is subject to tax in Kenya.

Also, if enacted into law, the Commissioner will catch up with the non-residents liable to taxes such as Digital Asset Tax or VAT on supplies made over digital platforms. This proposal thus enhances the collection of revenue beyond resident taxpayers by including the non-resident taxpayers subject to tax in Kenya.

6. Repeal of Penal Provision Relating to Value Added Tax Withholding Agent

The Bill proposes to delete the provision that imposes an additional penalty on failure to withhold and remit VAT. Currently, such omission is punishable by conviction to a penalty of 10% of the amount involved and also is liable to a penalty of 10% of the amount not withheld or not remitted.

If enacted into law, this proposal will remove this instance of double jeopardy, and moving forward, failure to withhold or remit VAT will only be punishable by a penalty of 10% of the amount not withheld or remitted.

7. Repeal of Provision Relating to Digital Service Tax Agent

The Bill proposes to repeal the provision that allowed the tax authority to appoint agents to collect and remit Digital Service Tax ("**DST**") on behalf of non-resident digital service providers.

The amendment streamlines the administration and collection of revenue following the repeal of the DST regime under the Tax Laws (Amendment) Act, 2024, which took effect on 27th December 2024.

8. Timelines For Review of Refund Applications and Removal of Input VAT From Offset Provisions

The Bill proposes to remove the possibility of using overpaid tax to offset input VAT. The Bill also proposes to lengthen the time within which the Commissioner has to ascertain and determine refund and offset application from 90 days to 120 days. Additionally, where the application for offset or refund of overpaid taxes has been subjected to an audit, the Bill proposes to extend the Commissioner's period for consideration of such application from 120 days to 180 days.

The proposed amendments lengthening the time for reviewing refund applications will have the implication of delaying the tax recovery process and solving tax disputes. While the extended timeframe may allow the Commissioner more time to ascertain refund claims, it would negatively impact taxpayers' cash flow by prolonging the wait for refunds. In addition, removing the possibility of offsetting input VAT with overpaid taxes will also hinder the effective utilisation of overpaid tax. Currently, offsetting has been an effective tool in helping taxpayers reduce their tax liability including input VAT. Under the proposed changes, taxpayers will be required to settle input VAT liabilities even in cases where they have overpaid tax.

9. Clarity of Timelines Where an application for Late Objection Has Been Allowed

The Bill introduces a provision to clarify that where the KRA accepts a taxpayer's request to file an objection out of time, the statutory period for issuing an objection will begin from the date the valid notice of objection was lodged.

Previously, there was uncertainty regarding how to compute this timeframe, particularly in cases where the application to file out of time and the objection itself were submitted simultaneously. The proposes amendment now confirms that, if the application for late filing is accepted, the 60 days period the Commissioner has to determine such objection begins from the date the objection was lodged.

10. Repeal of Data Protection Safeguard in Tax Integration Requirements

The Bill proposes to delete the existing restriction that bars the Commissioner from demanding integration or data sharing involving trade secrets or private and personal data held by taxpayers on behalf of customers or collected in the course of business.

This amendment removes a statutory safeguard that previously limited KRA's access to sensitive customer information, even though this is a worrisome situation, it seems to align with the Court’s decision which allows the Commissioner to obtain sensitive information for the purposes of tax enforcement. As such, taxpayers, especially those handling large volumes of personal data, may face heightened compliance obligations, increased legal risk, and the need to reassess how they manage and disclose such information to Commissioner. The proposed amendment also will enhance compliance audit by the Commissioner.

11. Regularisation of grounds for refusing and application for a private ruling

The Bill proposes to delete the provision that allows the Commissioner to refuse an application for a private ruling on the basis that the issue raised has been addressed in a prior ruling published under the repealed Section 69 of the TPA.

This amendment deletes a reference to a repealed provision, thereby aligning the statutory framework with the current legislative architecture.

12. Revision of Time Computation for Tax Objections and Appeals

With effect from 1st July 2025, the Bill proposes to amend the computation of time in relation to lodging tax objections and filing appeals under tax law to include Saturdays, Sundays, and public holidays. This was the position in law before the amendment of the law on 27th December 2024.

This amendment takes us back to the usual position in tax procedure, in which counting of days included weekends and public holidays. The aim is thus to reduce the delay in solving tax disputes.

13. Clarification on the Scope of Late Submission Penalties

The Bill proposes to make the penalty for late submission of tax returns to also apply to the failure to file returns entirely.

This amendment clarifies that the penalty for late submission of a return extends to instances where a person fails to submit the return entirely. This provision resolves ambiguity in the current language by confirming that both late filings and complete non-submission attract the prescribed penalty under the statute.

14. Introduction of Statutory Powers to Waive Penalties and Interest Arising from Systemic Errors

With effect from 1st January 2026, the Bill proposes to empower the Cabinet Secretary responsible for matters relating to finance, upon recommendation by the Commissioner, to waive penalties and interests where non-compliance arises from the following systemic errors:

i. Errors generated by an electronic tax system.

ii. Delays in updating an electronic tax system.

iii. Duplication of a penalty or interest due to a malfunction of an electronic tax system.

iv. The incorrect registration of the tax obligation of a taxpayer.

This amendment creates a statutory basis for administrative relief in instances of non-compliance attributable to system failures beyond the taxpayer's control. While the provision promotes procedural fairness and upholds the principle of proportionality in enforcement, the reliance on the Cabinet Secretary's approval may introduce administrative delays and raise concerns about the consistency and objectivity of decision-making, particularly in the absence of clear criteria or timelines.

E. MISCELLANEOUS FEES AND LEVIES ACT

1. Refunds and Enforcement Under the Miscellaneous Fees and Levies Act

The Bill proposes that all refund claims as well as the assessment and enforcement under Miscellaneous Fees and Levies Act will now be governed by Tax Procedures Act.

If enacted into law, all the refunds and levies paid erroneously or in excess shall be governed by Section 47 of the TPA. The proposal will also align the Miscellaneous Fees and Levies Act to the Tax Procedures Act.

2. Import Declaration Fee (IDF) and Railway Development Levy (RDL) Exemptions

The Bill proposes to introduce general exemptions for all goods and parts thereof of Chapter 88. It further proposes to limit such exemption to only the parts of aircraft, spacecraft and parts thereof and goods falling under tariff heading 8802.30.00 and 8802.40.00. Further, there will be no need to get a recommendation from the Kenya Civil Authority for such an exemption to apply.

If enacted into law, goods falling outside these specific headings, including aircraft of lower weight or unrelated aerospace equipment, will be subject to IDF and RDL, potentially increasing importation costs.

3. The Third Schedule to the Miscellaneous Fees and Levies Act is amended—

Tariff Description	Current Export and investment promotion levy rate	Proposed Export and investment promotion levy rate
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 (Tariff No. 7207.11.00).	17.5%	10%

Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14 mm in diameter of cross section measuring less than 8 mm (Tariff No. 7213.91.10).	17.5%	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; other (Tariff No. 7213.91.90).	17.5%	10%

The implication of the above proposal will reduce the cost of importing semifinished steel products thus a boost to the steel manufacturing industry.

F. MISCELLANEOUS

STAMP DUTY ACT

The Bill proposes an exemption for property transfers made by a company to its shareholders as part of an internal reorganization. This exemption will apply only if the property is distributed in proportion to each shareholder's ownership in the company. Furthermore, if the property being transferred consists of shares, those shares must be in a subsidiary of the transferring company. This amendment will in effect reduce the cost of internal restructuring of companies by eliminating additional tax obligations.

DISCLAIMER

This alert is for informational purposes only and should not be taken or be construed as a legal opinion. If you have any queries or need any clarifications as to how any aspect of the judgment might affect you, please do not hesitate to contact Lilian Renee Omondi, Partner (renee@oraro.co.ke), James Chepkwony, Associate (jchepkwony@oraro.co.ke), William Ochieng, Associate (william@oraro.co.ke), and Melanie Mwenda, Associate (melanie@oraro.co.ke) or your usual contact at our firm.

Renee Omondi
Partner
renee@oraro.co.ke

James Chepkwony
Associate
jchepkwony@oraro.co.ke

William Ochieng
Associate
william@oraro.co.ke

Melanie Mwenda
Associate
melanie@oraro.co.ke

ORARO & COMPANY
ADVOCATES
An Affiliate Member of AB & DAVID AFRICA

ACK Garden Annex, 6th Floor, 1st Ngong Avenue

P. O. Box 51236-00200, Nairobi, Kenya.

T: +254 709 250 000

E: legal@oraro.co.ke

Oraro & Company Advocates