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RSMEA Newsletter

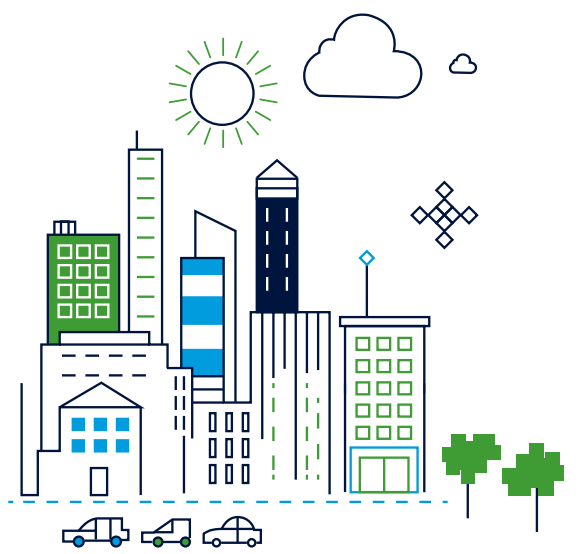
Overview of the Kenya Finance Act, 2026

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Caveat

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INTRODUCTION

The Finance Act, 2026, received presidential assent on 23rd June 2026 and reflects the Government's continued policy of enhancing revenue mobilisation primarily through expansion of the tax base, targeted anti-avoidance measures, clarification of existing tax provisions, and strengthening tax administration, rather than introducing broad-based increases in tax rates. The Act places particular emphasis on digital payments, international taxation, financial services, and compliance reforms. Most of the amendments take effect from 1st July 2026, aligning with the Government's fiscal year, while selected provisions will become effective on 1st September 2026 and 1st January 2027.

Most of the proposals contained in the Finance Bill, 2026, were retained in the enacted legislation, with only a limited number of additions and omissions. Accordingly, this newsletter analyses the amendments under three broad categories: (i) provisions that were proposed in the Finance Bill and retained in the Finance Act (highlighted in grey); (ii) new provisions introduced in the Finance Act that were not included in the Finance Bill (highlighted in blue); and (iii) proposals contained in the Finance Bill that were ultimately not enacted (highlighted in green).

Specifically, this newsletter provides an overview of the amendments across several tax laws, including amendments relating to:

- Introduction of a tax amnesty for liabilities relating to periods up to 31st December 2025, with the amnesty expiring on 31st December 2026
- Introduction of withholding tax on *interchange fees, merchant service fees and payment to card companies* following the recent ruling by the Supreme Court that such fees are not subject to withholding tax
- VAT – free threshold for accompanied baggage for returning passengers increased from USD 300 to USD 2,000
- Exclusion from VAT exemption on some financial services made over a software or a platform for a fee or commission
- Individuals required to file their returns by the end of the fourth month after the end of the year of income
- For money lending businesses and institutions licensed under the Banking Act, Microfinance Act and Central Bank of Kenya Act, bad debts allowable as a deduction for tax purposes shall include the principal, interest and any other amount relating to the loan
- Companies who had invested at least 10 billion Kenya Shillings before 1st July 2025 will be allowed to carry forward losses incurred before 1st July 2025 until such a time when these are extinguished
- Companies that invest more than 10 billion Kenya Shillings in petroleum or gas storage facilities qualify to claim one hundred percent of their investment in the first year of use of such facilities
- Commissioner granted power to issue auto populated returns with taxpayers required to confirm or amend the auto populated return within two months of its issuance
- Employee-related costs in labour outsourcing and employee placement services treated as disbursements and exempted from VAT
- Exemption from VAT on repossession of assets used as collaterals
- Excise Duty refund eligibility for excisable goods supplied to Defence Forces Welfare Services

Proposals in the Finance Bill that were not enacted

- ~~The definition of royalty will not include the distribution of software as was proposed in the Bill~~
- ~~The proposal as per the Finance Bill that the Commissioner could treat at least sixty percent of retained earnings as a deemed dividend not included. Commissioner's power to deem dividends is still retained~~
- ~~Computation of days for appeals and objections remains as working days and not calendar days~~
- ~~Excise duty payment for mobile phones remains at the time of importation or removal from factory and not at the time of device activation on a cellular or wireless network as proposed in the Bill~~
- ~~Charge of IDF and RDL levies on imported cellular and wireless network phones retained~~
- ~~Commissioner not granted power to issue agency notices even when the taxpayer has appealed to the courts~~



INCOME TAX ACT

DEFINITIONS (EFFECTIVE 1ST JULY 2026)

Item	Amended Definition
Immovable Property	<p>The Act has amended the definition of "immovable property" in Section 2 of the Income Tax Act by removing the conjunction "and" and replacing it with disjunction "or".</p> <p>Before the amendment, immovable property was defined as:</p> <ul style="list-style-type: none"> a) <i>land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and</i> b) <i>a mining right, an interest in a petroleum agreement, mining information or petroleum information;</i> <p>As previously worded, the use of "and" suggested that both items (a) and (b) must be satisfied for property to qualify as immovable property, which is not the intended interpretation. The amendment clarifies this by separating the two items, so that each category is treated independently and can qualify as immovable property on its own.</p> <p>In effect, the amendment confirms that land-based interests and extractive rights (such as mining and petroleum interests) each qualify as immovable property. It reinforces the taxation of income from the use of property under Section 6. It also clarifies that such income is treated as Kenyan-source income for non-residents under Section 9. In addition, it strengthens the application of capital gains tax on the disposal of such rights under the Eighth Schedule.</p>
Withdrawal and Winnings	<p>The Act has deleted the previous definition of "withdrawals," and replaced it with a broader definition: <i>"withdrawals" means any amount of money, cash equivalent, or money's worth paid or disbursed to the account of a player by a person licensed under the Gambling Control Act, 2025."</i></p> <p>This amendment significantly expands the scope of what constitutes a withdrawal and aligns reference to the Gambling Control Act, 2025, which replaced Betting, Lotteries and Gaming Act, 1966. Previously, the taxable event was limited to amounts physically withdrawn from a betting or gaming wallet. Under the new definition, the focus shifts to any payout or transfer of value to the player's account, regardless of whether it is formally withdrawn from a wallet.</p> <p>In addition, the concept of "winnings," which had been deleted by the Finance Act, 2025, in place of withdrawals is reintroduced through a revised definition. The Act has defined winnings to mean <i>"a payout from a lottery or prize competition by a person licensed under the Gambling Control Act, 2025."</i></p> <p>This amendment differs slightly from the one proposed in the Finance Bill, 2026, which had proposed to exclude amount staked or wagered from consideration as winnings.</p> <p>From this amendment, taxation is clearly shifting toward a gross winnings' framework, substantially expanding the taxable base to include both the stake and the winnings. This change increases the withholding tax applied on each payout, raises the overall effective tax burden on bettors and reduces net returns. Further for bettors, this means lower net amounts received after tax deductions.</p> <p>Although the Finance Act broadens the definition of withdrawals and reintroduces the concept of winnings, the practical application of these provisions, particularly the interaction between the two definitions and the withholding tax regime, may require further guidance from KRA.</p>

WITHHOLDING TAX (WHT) (EFFECTIVE 1ST JULY 2026)

Change	Details
<p>Introduction of WHT on Interchange fees and merchant service fees</p>	<p>The Act has expanded the definition of management or professional fees to include: <i>“interchange fees and merchant service fees arising from transactions that use a card as a means of payment.”</i> Consequently, withholding tax will be applicable on such fees.</p> <p>This appears to be a direct legislative response to the Supreme Court decision in <i>Petition No. 12 (E014) of 2022: Barclays Bank of Kenya Limited (now Absa Bank Kenya PLC) v Commissioner for Domestic Taxes (Large Taxpayers Office)</i></p> <p>In this case, the Supreme Court held that the interchange fees paid by an acquiring bank to an issuing bank are not professional or management fees within the meaning of Section 2 of the Income Tax Act, hence not liable to withholding tax under Section 35 of the Income Tax Act.</p> <p>The Court emphasized that taxation must be grounded in clear statutory language and cannot be inferred or imposed by administrative interpretation. It stressed that the KRA had failed to precisely identify the taxable service category, which is a constitutional requirement under Article 210 – that no tax may be imposed except as clearly provided by law.</p> <p>The Act cures this statutory deficiency identified by the Supreme Court by creating a clear legal basis for withholding tax going forward. It has brought card network, and interbank fee flows within the withholding tax net, particularly in the rapidly growing digital payments sector.</p> <p>Financial institutions, payment service providers and merchants will need to review existing payment processing arrangements to determine whether interchange fees and merchant service fees are now subject to withholding tax. Existing contracts may also require revision to address gross-up clauses and tax allocation provisions.</p>
<p>WHT on payment to card companies</p>	<p>The Act has deleted the previous definition of <i>‘royalty’</i> and replaced it with a substantially broader definition. However, the amended definition is majorly similar to the definition previously in the Income Tax Act except for the introduction of one additional item to be included as part of the definition of royalty listed below:</p> <p><i>“a proprietary digital payment card network or platform, including access, participation or usage rights in such system through a card, whether the consideration is periodic or transaction-based and whether or not the payment is described as a service fee, transaction fee, network fee, assessment fee, processing fee or similar charge.”</i></p> <p>The definition seems to be a direct reaction to the Supreme Court’s determination that payments to card companies were not royalties under Section 2 of the Income Tax Act since the previous definition did not cover such payments. The introduction thus remedies the perceived gap based on the Supreme Court’s ruling.</p> <p>Notwithstanding the expanded definition of royalty, the Finance Act specifically exempts payments made by a resident air transport operator designated by the Government as the national carrier to non-residents in respect of access to, participation in or use of a proprietary digital payment platform, payment network, payment-card scheme, payment processing system, switching system, clearing system or settlement system from withholding tax. Consequently, although such payments now fall within the domestic definition of royalty, the national carrier is expressly relieved from the obligation to withhold tax on these payments. This targeted exemption appears intended to support the national carrier’s international operations by ensuring that access to global payment infrastructure is not subject to additional withholding tax costs, while the expanded royalty definition continues to apply to similar payments made by other.</p>

Change	Details
	<p>The amendment broadens the domestic definition of royalty and is expected to affect payments made to international card schemes and digital payment networks such as Visa, Mastercard and similar proprietary payment platforms. However, taxpayers making payments to non-residents should continue to consider whether an applicable Double Tax Agreement provides a narrower definition of royalty or otherwise allocates taxing rights differently, as treaty provisions may prevail over the domestic law where they are more favourable.</p>
<p>Introduction of WHT on sale of scrap metals</p>	<p>The Act has introduced WHT on sale of scrap metals at the rate 1.5% for both residents and non-residents.</p> <p>This marks the third legislative change relating to the taxation of scrap metal transactions within the past three years. The provision was initially introduced through the Tax Laws (Amendment) Act, 2024, subsequently repealed by the Finance Act, 2025, and has now been reintroduced.</p> <p>While the change may enhance government visibility and oversight over parts of the informal sector, the frequent changes in tax treatment undermine predictability and create uncertainty for businesses operating in the industry.</p> <p>Businesses dealing in scrap metal should review their accounting systems to ensure withholding tax is correctly deducted, accounted for and supported by withholding tax certificates to facilitate credit claims.</p>
<p>Introduction of WHT on winnings (for both residents and non-residents)</p>	<p>The Act has reinstated withholding tax on winnings, which had previously been repealed by the Finance Act, 2025 along with the definition of winnings at the rate of 20% for both residents and non-residents.</p> <p>As with the amendments on taxation of scrap metal transactions, the repeated amendments to the tax treatment of winnings create uncertainty for taxpayers and businesses operating within the betting, gaming, and lottery sectors.</p>
<p>Removal of preferential withholding tax rate for dividends paid to EAC residents</p>	<p>The Act has removed the proviso under paragraph 3(d) of the Third Schedule to the Income Tax Act. The effect of deleting the proviso is that all dividends paid to non-residents will be subject to withholding tax at the rate of 15% of the gross amount payable.</p> <p>Previously, the Income Tax Act contained a proviso that provided for a reduced withholding tax rate of 5% on dividends paid to residents who are citizens of East African Community (EAC) Partner States. This preferential rate was introduced to encourage investment into Kenya from residents of the EAC. The amendment removes this preferential treatment.</p>
<p>Exemption from WHT of payments made to ship and aircraft owners</p>	<p>Section 9(1) of the Income Tax Act provides that where a non-resident person carries on the business of a ship owner, charterer, or air transport operator, and any ship or aircraft owned or chartered by that person calls at a port or airport in Kenya, the gross amount received in respect of the carriage is deemed to be income derived from business in Kenya and is therefore subject to tax.</p> <p>The Act has abolished the WHT requirement on payments made to such ship owners. Instead, non-resident ship owners will be required to remit the full tax charged on the income within five days of receiving payment or when the ship leaves the port of lading, whichever is earlier.</p> <p>This amendment, coupled with the Commissioner's enforcement powers under Section 104 of the ITA, will enhance the collection and remittance of the full tax due by non-resident ship owners.</p>

Change	Details
Exemption from WHT on commissions paid to non-resident agents to secure tickets for international transport services (new provision not in the Bill)	The Act has amended the Income Tax Act by replacing the word "travel" with "transport services" in the exemption provided from withholding tax on commissions payments made by residents to non-resident agents for international transport services. This amendment extends the exemptions to payments made to international agents to cover all types of transport services (passengers or goods) and not just travel which might be limited to individuals.

PERSONAL INCOME TAX (EFFECTIVE 1ST JULY 2026)

EXPANDED SCOPE OF TAX-EXEMPT GRATUITY

Previously, the Income Tax Act only exempted from tax gratuity paid into a registered pension scheme for an amount not exceeding KShs. 360,000 and not covering any person who is eligible for tax deductions based on the allowable limit for pension contribution.

The Act has now extended the exemption to gratuity payments made elsewhere. For one to enjoy this exemption, the employee must have served for at least 3 years. However, the exemption is only limited to 31% of the emoluments and any amount in excess of this percentage shall be taxable.

INCOME OF A NON-RESIDENT EMPLOYED BY THE NATIONAL CARRIER

The income by a non-resident individual, employed or engaged on behalf of a resident air transport operator designated by the Government as a national carrier, shall not be deemed to accrue or have been derived in Kenya, where it relates to duties performed by the employee outside Kenya and to the international operation of the air transport operator.

This amendment will remove the tax burden and eliminate double taxation from non-resident employees engaged by the national carrier outside the country to assist in the day-to-day operations, making the national carrier a competitive employer globally.

This amendment is intended to relieve non-resident individuals engaged by the national carrier from Kenyan income tax on employment income relating to duties performed outside Kenya, thereby reducing the risk of double taxation and enhancing the national carrier's ability to recruit talent in foreign jurisdictions. In practice, the provision appears to be aimed primarily at non-resident personnel engaged to support the national carrier's operations outside Kenya, such as employees responsible for bookings, check-in, boarding and other ground handling or administrative functions at overseas airports, but who are employed and remunerated by the national carrier. However, the application of the exemption to flight crew and other employees whose duties are performed both within and outside Kenya remains unclear. Further guidance would therefore be useful, particularly on how employment income should be apportioned where duties are performed partly in Kenya and partly outside Kenya during international operations.

PENSION BENEFITS AS A RESULT OF DEATH

The Act has amended the provisions on taxation of pension income by extending the existing tax exemption to pension-related benefits paid to beneficiaries or dependants upon the death of a member of a registered pension fund, provident fund, individual retirement fund, public pension scheme, or the National Social Security Fund.

Previously, while certain retirement benefits were exempt from tax, the law did not expressly provide clarity on the tax treatment of death benefits paid to beneficiaries or dependants, which created uncertainty in practice. The amendment has addressed this gap by expressly exempting such payments from tax.



CAPITAL GAINS TAX (CGT) (EFFECTIVE 1ST JULY 2026)

CGT ON GAINS FROM ALIENATION OF SHARES

The Act has expanded the definition of gains from alienation of shares charged to CGT to include “*gains derived from alienation of shares by a non-resident person where the shares derive their value in Kenya or the alienation results in a change of the group membership of a company resident in Kenya or of ownership of title in, or interest in property located in Kenya.*”

Under the previous framework, Kenya imposed CGT on indirect transfers only where shares in a foreign entity derived more than 20% of their value from immovable property situated in Kenya, making the rule relatively targeted and threshold based.

In contrast, the amendment significantly broadens this position by extending CGT to gains derived by non-residents from the alienation of shares that derive their value more generally from Kenya (not limited to immovable property).

Notably, the new provision does not mention any threshold and further captures transactions that result in a change in group membership of a Kenyan resident company or changes in ownership of property or interests in property located in Kenya.

This amendment adds complexity to cross-border deals and internal reorganisations and may influence how foreign investors structure and exit investments involving Kenyan assets. The amendment also significantly broadens Kenya’s taxing rights over indirect transfers involving Kenyan assets. It aligns Kenya’s domestic legislation with international practice by bringing offshore transfers of shares deriving value from Kenyan property within the scope of capital gains tax.

EXEMPTION OF CGT ON TRANSFER OF PROPERTY TO REGISTERED REAL ESTATE INVESTMENT TRUSTS (REITs)

The Act has introduced a new exemption from tax on capital gains arising from the transfer of property to a Real Estate Investment Trust (REIT) that is registered by the Commissioner under the Collective Investment Schemes framework. Previously, transfers of property would trigger CGT where the transfer resulted in a gain to the transferor, unless a specific exemption applied which was not the case for REIT structures.

This amendment has removed the tax burden by exempting capital gains arising from the transfer of property to qualifying REITs. This is expected to encourage the establishment and growth of REITs by making it more tax-efficient for property owners and developers to inject assets into these structures.

CHANGE IN DUE DATE FOR FILING TAX RETURNS (EFFECTIVE 1ST JANUARY 2027)

The Act has amended 52B of the Income Tax Act by changing the statutory deadline for filing income tax returns from six (6) months to four (4) months after the end of the year of income for **individuals**. For companies, the filing deadline for corporate income tax returns remains 6 months following the end of the financial year.

Further, the Act has amended Section 52 to change the filing deadline applicable to returns filed in response to a notice issued by the Commissioner. Under the previous framework, once the Commissioner issued a written notice requiring a person to furnish a return of income, the taxpayer was afforded a minimum of thirty days from the date of service of that notice to comply – a deadline that was both flexible, in that it was anchored to when the notice is actually served.

The filing deadline for a partnership tax return is not expressly provided under the Finance Act 2026. However, based on the interpretation of the Act, a partnership itself is not chargeable to income tax, as tax is levied on the individual partners in respect of their share of partnership income.

Since the Act requires individuals to file their income tax returns by the end of the fourth month following the close of the year of income, it can be argued that a partnership return should ideally be filed within the same timeframe. Consequently, the fourth month filing deadline appears more appropriate than the six-month deadline applicable to other persons other than individuals.

The Act has replaced this with a fixed, calendar-based deadline that operates independently of when or even whether a notice is issued. Under the proposed amendment, the return must be submitted by the last day of the fourth month following the end of the taxpayer's year of income, effectively making the filing obligation automatic, predictable, and self-executing by operation of law rather than by administrative action of the Commissioner.

Below is a summary of the changes in filing dates:

Taxpayer	Old Deadline	New Deadline
Individuals	30-Jun	4 months after year end
Companies	6 months	No change

It is important to note that the revised filing deadline applies to all individuals chargeable to tax, irrespective of the nature or source of their income. Accordingly, individuals carrying on business as sole proprietors will now be required to prepare their financial statements, determine their taxable business income and file their individual income tax returns by the last day of the fourth month following the end of their year of income. The amendment is therefore not limited to individuals earning employment income or income that is subject to final tax. Rather, it applies to all sources of income chargeable to tax, including business income, rental income, professional income, investment income and any other taxable income required to be reported in an individual's self-assessment return. Consequently, sole proprietors should review their accounting, audit and tax compliance processes to ensure that their financial statements and tax computations are finalised within the shortened filing timeline.

CORPORATE INCOME TAX (EFFECTIVE 1ST JULY 2026)

ALLOWABILITY OF BAD DEBTS FOR FINANCIAL INSTITUTIONS (*new provision not previously in the Bill*)

The Act has clarified what would be deemed as an allowable bad debt for financial institutions licensed under the Banking Act, the Microfinance Act and the Central Bank of Kenya Act. The Act provides that where a debt has become bad in accordance with the guidelines provided by the Commissioner, the principal, interest and any other amount relating to the debt shall be an allowable deduction.

The amendment appears to be a legislative response to the decision of the Tax Appeals Tribunal in *Premier Credit Limited v Commissioner of Domestic Taxes*, where the Tribunal held that the principal loan amount was capital in nature and therefore not deductible for tax purposes. However, this decision departed from earlier jurisprudence, including *Faulu Kenya DTM Limited v Commissioner of Domestic Taxes* and *Real People Kenya Limited v Commissioner of Domestic Taxes*, where the courts recognised that, in the case of money-lending businesses, loans advanced constitute trading assets or circulating capital rather than capital expenditure. As a result, the deductibility of the principal amount written off had become an area of uncertainty due to the conflicting judicial positions.

The amendment therefore provides much-needed legislative clarity by expressly confirming that the principal loan amount, together with the related interest and any other amounts relating to the debt, is deductible once the debt qualifies as bad under the Commissioner's guidelines. This is a welcome development for the financial services sector as it aligns the Income Tax Act more closely with the commercial realities of lending businesses and the prudential provisioning framework applicable to regulated financial institutions. It is also expected to reduce disputes between taxpayers and the Commissioner regarding the tax treatment of bad debts by settling an issue that had been the subject of conflicting judicial decisions.

TAX LOSSES CARRIED FORWARD (*new provision not previously in the Bill*)

The Finance Act, 2021, amended section 15(4) to allow indefinite (infinite) carry-forward of tax losses. However, Finance Act, 2025, reversed this position and limited carry-forward of tax losses to five (5) years. Critically, no transitional provisions were introduced to clarify how losses incurred before this change would be treated, that is:

- a. It was not clear whether they would be deemed to have incurred in the 2025 year of income; or
- b. They would still be treated to have been incurred in the specific year of income in which they crystallized and thus expire after 5 years from such a time.

This created significant uncertainty, particularly for large, capital-intensive projects with long gestation periods, where losses are incurred over many years before profitability.

The Finance Act, 2026, has introduced a targeted remedial provision that creates a special loss carry-forward regime for companies that have invested at least 10 billion Kenya Shillings. The Act now provides that ascertained losses for such companies for any period before 1st July 2025 shall be deemed to have occurred in the 2025 year of income and can be applied by that person beyond the five-year period until it is extinguished. There will be no requirement for such companies to apply for extensions beyond the five years as is required for other companies.

This is a welcome amendment as it provides clarity on the treatment of tax losses. However, ambiguity still remains for persons who had invested less than KShs. 10 billion before 1st of July 2025. Additionally, companies that invest KShs. 10 billion or more after 1st July 2025 will still be limited to the five-year rule on carry forward of tax losses with an opportunity to apply for an extension.

The amendment is effectively a grandfathering provision intended to preserve accumulated tax losses for large strategic investors whose investments had already been committed before the introduction of the ten-year loss restriction. The provision therefore seeks to enhance investor confidence by protecting legitimate commercial expectations.

Notably, the amendment also provides useful context to the Kenya Revenue Authority's (KRA) current administrative position on the application of the five-year loss carry-forward limitation. KRA has taken the view that tax losses incurred in the 2020 year of income expire in the 2025 year of income unless the taxpayer successfully applies for an extension under the mechanism introduced by the Finance Act, 2025. Under this interpretation, taxpayers with unutilised losses that fall within the five-year limitation are expected to submit an application to the Commissioner seeking an extension of the carry-forward period. The Finance Act, 2026, effectively removes this requirement for qualifying taxpayers that had invested at least KShs. 10 billion before 1st July 2025 by allowing their pre-1st July 2025 losses to be carried forward indefinitely without the need to seek the Commissioner's approval. However, taxpayers that do not qualify for this grandfathering provision remain subject to the five-year limitation and must continue to rely on the statutory extension process where applicable.

MICROFINANCE INSTITUTIONS INCLUDED AS FINANCIAL INSTITUTIONS UNDER THE INCOME TAX ACT
(new provision not previously in the Bill)

The Income Tax Act has been amended to include institutions licensed under the Microfinance Act as financial institutions under the ambit of the Income Tax Act.

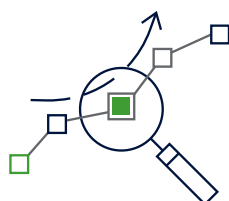
This means that microfinance institutions will now enjoy exemptions enjoyed by other financial institutions including exemption on deduction of withholding tax on interest paid to the microfinance institutions by its lenders.

Other exemptions such as the exemption on interest restriction had been previously provided for separately within the Income Tax Act. This amendment also harmonizes the definition of financial institutions across tax legislations since the Excise Duty Act also recognizes persons licensed under the Microfinance Act as financial institutions.

INVESTMENT ALLOWANCES ON PETROLEUM OR GAS STORAGE FACILITIES *(new provision not previously in the Bill)*

The Act has amended the Second schedule of the Income Tax Act providing that companies that invest more than 10 billion Kenya Shillings in petroleum or gas storage facilities qualify for one hundred percent deduction in the first year of use.

This amendment is aimed at attracting large scale investors within the petroleum sector which could also create employment opportunities in the industry. Similarly, there is an additional incentive in the Value Added Tax Act where goods used in the construction of liquefied petroleum gas storage tanks and related infrastructure have moved from 16% VAT to exempt.



CLARIFICATION OF EXEMPTIONS FROM INTEREST RESTRICTION RULES FOR LENDING AND LEASING BUSINESS

The Act has amended the current exemptions of Interest restriction rules by replacing the phrase *'lending and leasing business'* with *'lending or leasing business, or both'*

Previously, a non-deposit taking institution was required to be engaged in both lending and leasing simultaneously to enjoy the exemption. A strict interpretation of the previous wording means a company doing only lending or only leasing arguably would fall outside the exemption and would be subjected to the 30% EBITDA interest cap.

The amendments by the Finance Act 2026 means that a non-deposit taking institution qualifies for the exemption if it is engaged in:

- Lending only; or
- Leasing only; or
- Both lending and leasing.

The exemption is now significantly widened.

INTRODUCTION OF NON-RESIDENT RENTAL INCOME TAX (EFFECTIVE 1ST JULY 2026)

Previously, non-resident persons earning rental income from Kenya were subject to withholding tax at 30% on the gross rental income.

The Act has introduced a final tax, known as non-resident rental income tax, applicable to the gross income accruing in or derived from the use or occupation of property situated in Kenya by a non-resident person.

In addition, the Act has introduced compliance obligations for non-residents, including:

- Registration with the KRA under a simplified framework prescribed by the Commissioner; and
- Filing returns and paying the tax due by the **20th day of the month following receipt of rent.**

The Act has provided that non-resident persons will not be required to account for or file returns in respect of such income where the rental income is received by a resident person on their behalf and has already been subjected to withholding tax at the non-resident rate.

The non-resident rental income tax is not an additional tax but a more structured and enforceable framework to replace or complement the 30% WHT regime. While WHT relies on third parties to deduct and remit tax, the new regime brings non-residents directly into the tax net through registration, filing, and payment obligations, improving compliance and reducing leakage. At the same time, it avoids duplication by exempting non-residents from further compliance where tax has already been withheld at source.

Notably, while the Act has introduced an obligation for non-resident property owners to register and account for tax in Kenya, it has not repealed the existing withholding tax requirement on tenants. This suggests that both mechanisms may operate concurrently in practice. As a result, non-resident landlords may still be subject to withholding tax at source, while also being required to file returns under the new regime, with the ability to claim the withholding tax suffered as a credit against their final tax liability.

This amendment might lead to an expanded tax base as KRA will be in a position to collect taxes where the tenant fails to withhold on the non-resident person.

TAXATION OF TRUST INCOME (EFFECTIVE 1ST JULY 2026)

The Act has amended Section 11 by replacing the provision governing the taxation of trust income with a simplified framework. Under the new amendments, income received by a trustee, executor or administrator will continue to be treated as their income and taxed accordingly. However, the Act has provided clarity that once tax has been paid at the trustee level, beneficiaries will not be subject to further tax on distributions received from that income.

Further, withholding tax charged on qualifying dividends or qualifying interest earned by the trustee, executor or administrator will still be a final tax.

Previously, the law taxed income earned by a trustee in the hands of the trustee; however, where such income was distributed to beneficiaries, it was deemed as their income and subjected to tax through complex attribution and gross-up mechanisms. The amendment clarifies that tax paid by trustees satisfies the tax liability on trust income, thereby eliminating the risk of double taxation when distributions are subsequently made to beneficiaries.

TAXATION OF INSURANCE COMPANIES (EFFECTIVE 1ST JULY 2026)

The Act has deleted the words “*life insurance fund*” where it was previously used and replaced with the word “*statutory fund*”, under Section 19(5), 19(5A), 19(6), 19(6A), thereby broadening the tax base.

Previously, “*life insurance fund*” did not include the annuity fund (if any), nor such part of the life insurance fund as represents the liability of the company under any registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund.

However, the definition of Statutory Fund under Section 45 of the Insurance Act allows an insurer to establish and maintain a separate statutory fund, under an appropriate name, in respect of any class or classes of his long-term insurance business. Therefore, Section 45 of Insurance Act covers all long-term insurance classes and not just life insurance fund. By replacing “*life insurance fund*” with “*statutory fund*” which is broader, the Act has captured more classes of long-term insurance business.

TAXATION OF NON-RESIDENT MINING AND PETROLEUM OPERATIONS (EFFECTIVE 1ST JANUARY 2027)

INTRODUCTION OF 15% TAX ON REPATRIATED INCOME FOR THE MINING SECTOR

The Act has introduced a specific 15% tax on repatriated income earned by mining licensees operating in Kenya, pursuant to Section 7B of the Income Tax Act, which provides that a non-resident person carrying on business in Kenya through a permanent establishment (PE) is subject to tax on repatriated income.

While Section 7B provides a general (umbrella) rule applicable to all non-resident PEs, the amendment to the Ninth Schedule specifically targets mining licensees.

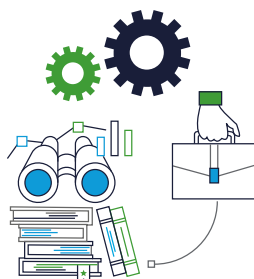
This clarifies and operationalizes the tax rate for the mining sector, ensuring profits are taxed when repatriated abroad.

TAXATION OF PETROLEUM CONTRACTORS

The Act has reduced the corporate tax rate for non-resident petroleum contractors from 37.5% to 30%. This aligns the rate with Kenya's standard corporate tax rate and considers the clarity on the taxation of repatriated income for petroleum contractors summarised below.

The Act has also introduced a 15% tax on repatriated income for non-resident petroleum contractors, again under Section 7B. This specifically applies to contractors operating through permanent establishments in Kenya.

Overall, these amendments align the taxation of non-resident petroleum contractors with the general tax regime applicable to non-resident companies operating in Kenya through branches or permanent establishments. Instead of being subject to a higher corporate tax rate, petroleum contractors will now be taxed at the standard corporate income tax rate of 30%, with a separate 15% tax applying when profits are repatriated outside Kenya. This creates a more consistent and harmonised tax framework for non-resident businesses operating in Kenya.



TRANSFER PRICING (EFFECTIVE 1ST JULY 2026)

AMENDMENT TO THE DEFINITION OF “COUNTRY-BY-COUNTRY REPORT”

The Act has amended the definition of a “Country-by-Country Report” by expanding its reference from “filed under Section 18D(1)” (which applied only to reports filed by the ultimate parent entity) to “filed under Section 18D(1) and (1A)” (covering reports filed by both the ultimate parent entity and constituent entities in Kenya).

This change ensures proper cross-referencing within the legislation and closes an existing gap by explicitly recognizing CbC reports filed by constituent entities, thereby strengthening the legal framework.

AMENDMENT TO THE DEFINITION OF “EXCLUDED MULTINATIONAL ENTERPRISE GROUP”

The Act has amended the definition of “*excluded multinational enterprise group*” by updating the reference from “Section 18D (1)” to “section 18D(1B)”. Previously, the definition focused only on groups where the ultimate parent entity had consolidated group revenue below EUR 750 million.

The revised provision broadens the scope by aligning the definition with the updated structure of Section 18D, ensuring that it appropriately captures both ultimate parent entities and relevant constituent entities. This has enhanced the clarity and consistency in determining which groups fall outside the CbCR requirements.

DEFINITION OF ULTIMATE PARENT ENTITY (UPE)

The Act has replaced the existing definition of an UPE with a more detailed formulation aligned with international standards, particularly under the OECD BEPS Action 13 framework.

Previously, a UPE was simply defined as *an entity that is not controlled by another entity and owns or controls other entities within the group*.

The revised definition is more comprehensive. A UPE is now defined as a constituent entity of an MNE group that:

- Holds sufficient ownership interest (directly or indirectly) in other group entities;
- Prepares, or is required to prepare, consolidated financial statements under applicable accounting standards (or would be required to do so if its equity were publicly traded); and
- Is not itself controlled (directly or indirectly) by another constituent entity within the group.

The updated definition enhances alignment with global standards and raises the threshold for qualification as a UPE for CbCR purposes.

CLEAN-UPS AND CLARIFICATIONS (EFFECTIVE 1ST JULY 2026)

Item	Clean-up
<i>Commissioner’s power in respect to tax avoidance schemes</i>	<p>The Act has deleted Section 23 of the Income Tax Act, which previously empowered the Commissioner to adjust a taxpayer’s liability where, based on the Commissioner’s opinion, the main purpose or one of the main purposes of a transaction was the avoidance or reduction of tax. The Act has moved this section to the Tax Procedures Act albeit with some amendments.</p> <p>This change has removed duplication, as similar anti-avoidance rules are already comprehensively provided for under the Tax Procedures Act. Notably, this aligns with the amendment to the TPA introducing a new Section 18A, which consolidates and expands the Commissioner’s powers to address tax avoidance schemes across all tax laws using a unified framework.</p>
<i>Industrial Building Allowance</i>	<p>The Act has amended the provisions relating to industrial building deductions by clarifying that the applicable 10% deduction for industrial building shall be claimed per year in equal instalments.</p>

Item	Clean-up
	<p>Previously, while the law provided for a 10% deduction on qualifying industrial buildings, it did not expressly specify the manner in which the deduction should be claimed. The amendment has expressly provided that the deduction will be spread evenly on an annual basis.</p>
<p><i>Deletion of historical rates of income tax</i></p>	<p>The Act has deleted Paragraph 2(1) of the Third Schedule to the Income Tax Act. The provision prescribed the rates of taxation applicable to resident companies for the period between 1974 and 1990. As this period is long past and the provision had no continuing application, its retention served no practical purpose. The deletion is therefore a clean-up measure aimed at removing obsolete provisions and improving the clarity and currency of the Act.</p>
<p><i>Deletion of Section 8(5A)</i></p>	<p>The Act has deleted Section 8(5A) of the ITA to remove an obsolete section</p> <p>Section 8(5A) was a transitional provision introduced to govern the taxation of accumulated pension funds following earlier reforms to the taxation of pension income. Specifically, it dealt with the treatment of amounts accumulated in a registered retirement benefits fund before the introduction of the current pension tax regime. Over time, the provision ceased to have practical application as the transition period had long passed and most, if not all, qualifying accumulated funds had already been dealt with under the transitional rules.</p> <p>The repeal is therefore a housekeeping amendment intended to remove redundant provisions from the Income Tax Act and improve the clarity of the legislation. The deletion is not expected to have any substantive tax implications for taxpayers, as it merely removes a transitional provision that had exhausted its intended purpose.</p>
<p><i>Exemption from Paying Instalment Tax</i></p>	<p>The Act has replaced paragraph (a) of Section 12 of the Income Tax Act which references Section 12D that was repealed by the Finance Act, 2025 with a provision exempting a person from paying instalment tax if:</p> <p><i>“to the best of his judgement and belief he will have no income chargeable to tax for that year of income other than emoluments”</i></p>
<p><i>Taxation of gains from alienation of shares</i></p>	<p>The Act has amended Paragraph 2 of the Eighth schedule of the ITA by deleting “subparagraph (a)” which appears immediately after the words “to which” and substituting therefore the expression “subparagraph (b)”.</p> <p>This change aligns the reference to the appropriate subparagraph dealing with the alienation of shares, rather than subparagraph (a), which relates more broadly to gains from the transfer of property. As such, the correction ensures that the provision accurately points to the intended category of transactions.</p> <p>It is important to clarify that this amendment is confined to the Eighth Schedule, which governs the taxation of gains from the transfer of property, including shares. The concept of alienation in this context relates specifically to capital gains tax under the Eighth Schedule and does not extend to the Ninth Schedule, which deals with other distinct tax matters. Therefore, the correction is technical in nature and is limited to ensuring internal consistency within the Eighth Schedule rather than expanding the scope of application across different schedules.</p>
<p><i>Clean-ups of Section 18D (CbC Reporting)</i></p>	<p>The changes to Section 18D are primarily “clean-up” amendments aimed at correcting cross-references within the Income Tax Act to ensure the provisions are logically aligned and internally consistent.</p> <ul style="list-style-type: none"> <p><i>Subsection (1) of Section 18D –Filing of Country-by-Country (CbC) report</i></p> <p>Previously, subsection (1) provided that an ultimate parent entity resident in Kenya shall file CbC report “in accordance with subsection (3)”.</p>

However, subsection (3) relates to the filing of the master file and local file, not the CbC report. The Act has corrected this by referencing subsection (2), which contains the filing timeline for CbC reports. This removes the error and ensures the provision correctly points to the relevant rule on CbC filing timelines.

- ***Subsection (2) of Section 18D – Entities Required to File CbC Reports***

The Act has amended subsection (2) to refer to “subsections (1) and (1A)” instead of only subsection (1). The 12-month CbCR filing deadline appeared to apply only to ultimate parent entities. The amendment now makes it clear that the deadline applies to both ultimate parent entities and Constituent entities required to file under subsection (1A)

- ***Subsection (5) – Contents of a CbC Report***

Subsection (5), which sets out the content requirements of a CbC report, previously referred only to reports filed under subsection (1) (by ultimate parent entities). The amendment expands this to include subsections (1) and (1A). This confirms that CbC reports filed by constituent entities must meet the same full reporting requirements as those filed by ultimate parent entities.



INDIRECT TAX – VALUE ADDED TAX ACT, 2013 (EFFECTIVE 1ST JULY 2026)

GENERAL PROVISIONS

ADJUSTMENT OF INPUT TAX ON SUPPLIES BECOMING EXEMPT

Prior to this amendment, the Value Added Tax (VAT) Act provided for the deduction of input tax incurred by registered persons in making taxable supplies. However, it does not expressly address the treatment of input tax where such supplies subsequently transition from taxable to exempt status while remaining unsold.

In practice, this had created uncertainty regarding whether previously claimed input tax should be reversed once the supplies are no longer taxable, particularly in cases involving changes in tax policy or reclassification of goods and services.

The Act has now addressed this gap by introducing a new Section 17A to the VAT Act. The new amendment requires that where a registered person has already deducted input tax on supplies that later become exempt and remain unsold, the person must account for an amount equivalent to the input tax attributable to those unsold supplies in the tax period in which the supplies become exempt.

Notably, the adjustment will be computed using the same method that was originally applied in claiming the input tax. This means that where input tax had been apportioned, the same apportionment criteria will apply, and only the portion of input tax previously claimed will be subject to adjustment.

This amendment will enhance clarity and ensure consistency in the treatment of input tax, while safeguarding revenue by preventing the retention of input tax credits on supplies that no longer qualify as taxable. Businesses transitioning from taxable to exempt supplies should assess whether previously claimed input VAT must now be adjusted. This amendment is likely to have significant cash-flow implications, particularly for financial institutions and businesses affected by newly exempt supplies.

VAT REFUNDS ON BAD DEBTS

Prior to the Finance Act, 2026, Section 31(1)(a) of the VAT Act allowed a registered person to apply for a refund of VAT attributable to a bad debt where the debt had remained unpaid for a continuous period of at least two years from the date of supply, provided that the refund claim was submitted within ten years from the date the tax became due and payable.

This position was introduced by the Finance Act, 2025, which reduced the minimum waiting period from three years to two years. The amendment was intended to provide earlier VAT relief to taxpayers by enabling them to recover VAT remitted to the Kenya Revenue Authority on supplies for which consideration had not been received within a shorter period.

The Finance Act, 2026, has now amended Section 31(1)(a) of the VAT Act by increasing the qualifying period from two years back to three years. As a result, taxpayers will only be eligible to claim a refund of VAT on bad debts where the debt has remained unpaid for a continuous period of at least three years from the date of supply.

This amendment effectively reverses the relief introduced by the Finance Act, 2025, and reinstates the position that existed prior to that amendment. Consequently, businesses will be required to wait for a longer period before becoming eligible to recover VAT accounted for on supplies that ultimately remain unpaid.

From a practical perspective, the amendment is likely to adversely affect cash flow, particularly for businesses operating in sectors characterized by extended credit terms or elevated levels of customer default. Taxpayers will continue to bear the VAT cost associated with unpaid invoices for an additional year before qualifying for a refund, potentially increasing working capital pressures and financing costs.

The amendment also highlights the evolving nature of Kenya's VAT policy framework. The reversal of a measure introduced only a year earlier may create uncertainty for taxpayers and may complicate cash flow forecasting, tax provisioning and long-term financial planning. Frequent legislative changes of this nature can undermine predictability within the tax system and increase the compliance burden on businesses that must continually adapt their processes and tax positions to reflect changing statutory requirements.

Notably, while the amendment extends the waiting period for claiming VAT refunds on bad debts, it does not affect the ten-year limitation period within which a taxpayer must lodge a refund claim once the conditions for relief have been satisfied.

AMENDMENTS TO TAX INVOICE REQUIREMENTS

Section 42 of the Value Added Tax (VAT) Act previously required a registered person making a supply to issue a tax invoice to the purchaser at the time of supply. It further restricted the issuance of invoices showing VAT to taxable supplies and prohibited unregistered persons from issuing such invoices that purported to charge VAT.

The Finance Bill, 2026, had proposed to amend this provision by broadening the scope of persons required to issue invoices, replacing the term "registered person" with "person." This change would have introduced ambiguity as to whether non-registered persons who make taxable supplies—such as those below the VAT registration threshold—would be required or permitted to indicate a tax amount on their invoices.

We, however, note that this proposal was not enacted. Accordingly, the obligation to issue tax invoices remains limited to registered persons, preserving the existing VAT invoicing framework and avoiding the uncertainty that may have arisen from extending the requirement to unregistered persons.

Notably, the Tax Procedures Act already requires a tax invoice to be eTIMS compliant with specific exemptions to this requirement such as; emoluments, imports, investment allowances, interest, airline passenger ticketing, payment of withholding tax and similar payments.

The Finance Act, 2026, has, however, amended Section 42(2) to provide that an invoice showing an amount that purports to be VAT may only be issued in respect of a taxable supply. This amendment reinforces the principle that VAT may only be charged and reflected on invoices where a taxable supply has occurred and helps prevent the improper issuance of invoices showing VAT in relation to non-taxable or exempt transactions.

The amendment aligns the VAT invoicing framework with the broader invoicing and compliance requirements under the TPA and provides greater clarity on the circumstances under which VAT may be reflected on an invoice.

AMENDMENTS TO EXEMPT FINANCIAL SERVICES (*new provision not previously in the Bill*)

The Value Added Tax (VAT) Act previously exempted certain financial services, including the issue, transfer, receipt, or other dealings with money, as well as money transfer services and over-the-counter payment of household bills. However, it excludes specific services such as the carriage of cash, restocking of cash machines, and the sorting or counting of money from this exemption.

The Finance Bill, 2026, had proposed to significantly narrow the scope of the exemption by excluding money transfer services, payment processing, settlement, merchant acquiring, gateway and aggregation services supplied over a software or platform for a fee or commission by a payment service provider. Had the proposal been enacted in its original form, fees charged for money transfer services would have become subject to VAT.

However, Parliament did not adopt the proposal to exclude money transfer services from the exemption. Consequently, money transfer services will continue to qualify as VAT-exempt financial services under the Finance Act, 2026. This includes money transfer services that are operated by telecommunication companies.

The Act has nevertheless amended the provision by excluding payment processing, merchant acquiring and payment aggregation services supplied over a software or platform for a fee or commission by a payment service provider from the exemption. [The Act further introduces a definition of a payment service provider to include a person, company or organization that owns, possesses, operates, manages or controls a public switched network used to provide payment services, as well as any person, company or organization that processes or stores data on behalf of such payment service providers or users of the payment services.](#)

This seems to be a reaction to the judgment in the *Pesa Pal vs Commissioner of Domestic Taxes* where the High Court overturned a decision of the Tax Appeals Tribunal, ruling that commissions earned by Payment Service Providers constitute VAT-exempt financial services.

This amendment narrows the scope of VAT-exempt financial services by bringing certain technology-enabled payment services into the taxable bracket while preserving the exemption for traditional money transfer services. Taxpayers likely to be affected include payment gateways, merchant acquirers, card payment processors, fintech companies, digital payment aggregators and other businesses that facilitate electronic payment transactions through software-based platforms.

As a result, providers of these services may now be required to charge VAT on the associated fees and commissions, potentially increasing the cost of digital payment services, particularly for customers operating in exempt sectors that are unable to fully recover input VAT. The amendment reflects a policy shift towards taxing modern, technology-driven payment services while maintaining the VAT exemption for traditional money transfer services.

CREDIT FOR INPUT TAX AGAINST OUTPUT TAX *(new provision not previously in the Bill)*

The Finance Act, 2026, expands the circumstances under which a registered person may recover input VAT by introducing a specific exception for supplies made to designated national security agencies. The amendment permits taxpayers to claim input VAT directly attributable to supplies made to the Kenya Defence Forces (KDF), the Defence Forces Welfare Services (DFWS), the National Intelligence Service (NIS) and the National Police Service (NPS), where such supplies are exempt under paragraphs 57 and 101 of the First Schedule to the Value Added Tax Act.

This amendment represents a targeted departure from the previous long-standing VAT principle that input VAT incurred in making exempt supplies is generally non-deductible. By allowing recovery of input VAT attributable to supplies made to the specified national security agencies, the legislation effectively places such suppliers in a position similar to suppliers making taxable supplies, thereby reducing the irrecoverable VAT burden associated with these transactions.

With this amendment, the Act now allows suppliers of these institutions to deduct input VAT incurred in making these exempt supplies, provided that the deduction is supported by documentation prescribed by the Commissioner and is limited to input VAT that is directly attributable to the qualifying supplies. In addition, the amendment expressly provides that input VAT wholly attributable to supplies made to the specified agencies will not be subject to the general VAT input tax apportionment rules.

From a practical perspective, the amendment is expected to improve cash flow and reduce embedded VAT costs for businesses supplying goods and services to the affected agencies. Prior to the amendment, suppliers were required to absorb input VAT incurred in making exempt supplies, often increasing the overall cost of doing business and, in some cases, resulting in higher pricing for government contracts. The ability to recover such input VAT should enhance pricing efficiency, improve competitiveness in procurement processes and reduce the cascading effect of VAT within the supply chain.

The amendment may also lead to increased participation by private sector suppliers in government procurement involving defence and security agencies, as the VAT cost associated with such supplies will no longer be a significant commercial constraint. This is particularly relevant for suppliers involved in large-scale procurement contracts, infrastructure projects, technology solutions, security equipment, logistics services and other specialized supplies to the designated agencies.

Notwithstanding the relief introduced by the amendment, taxpayers will need to ensure robust compliance procedures are in place. In particular, businesses will be required to maintain sufficient documentation to demonstrate that the input VAT claimed is directly or wholly attributable to qualifying supplies. Where costs relate partly to qualifying supplies and partly to other taxable or exempt activities, taxpayers may still be required to apply the ordinary apportionment rules. As such, clear cost allocation methodologies, detailed supporting records and appropriate contract documentation will be critical in supporting any input VAT claims during a tax audit or review.

VAT ON EMPLOYEE RELATED COSTS THAT ARE OUTSOURCED *(new provision not previously in the Bill)*

The Finance Act, 2026, has amended Section 13 of the Value Added Tax Act by introducing a specific VAT treatment for labour outsourcing, employee placement and similar staffing arrangements. The amendment provides that where a supplier provides labour outsourcing or employee placement services and incurs employee-related costs in the course of providing those services, such costs shall be deemed to be disbursements made by the supplier on behalf of the client.

The Act further clarifies that employee-related costs include salaries, wages, statutory deductions and other related employment costs incurred by the supplier in respect of personnel deployed to the client.

The amendment seeks to distinguish employee-related costs incurred on behalf of clients from the supplier's own consideration for services rendered. By treating these costs as disbursements, the amendment provides a statutory basis for excluding qualifying employee-related costs from the taxable value of the supply, provided the requirements for disbursements under the Value Added Tax Act are satisfied.

The amendment is expected to provide relief to businesses operating in the labour outsourcing, staffing and business process outsourcing sectors by reducing uncertainty regarding the VAT treatment of salary and employment-related reimbursements. It may also reduce the overall VAT cost borne by clients where employee-related costs are separately identified and recovered as disbursements rather than forming part of the taxable consideration for the outsourced service.

However, taxpayers will need to carefully structure and document their outsourcing arrangements to demonstrate that the employee-related costs qualify as disbursements incurred on behalf of clients. This may require clear contractual provisions, separate invoicing and adequate supporting documentation showing that the costs relate directly to personnel deployed for the client's benefit. Failure to satisfy the requirements applicable to disbursements may result in the costs being treated as part of the taxable value of the supply and therefore subject to VAT.

This amendment is a direct response to the decisions in *Commissioner v TechSavana* and *Commissioner of Domestic Taxes v Stratostaff E.A. Limited*, in which the High Court held that VAT was chargeable on the full amount invoiced to clients, including the portion attributable to employment costs. The amendment has excluded such employment costs from the VAT base by recognizing them as disbursements rather than consideration for a taxable supply. It acknowledges that no value is added by the supplier in relation to these employment costs and, therefore, they should not be subject to VAT.

The amendment is particularly relevant to businesses operating employee outsourcing, payroll management, secondment and labour supply arrangements. Such businesses should review contractual arrangements to determine whether employee-related costs qualify as disbursements and whether VAT should continue to be charged on those amounts.

CLARIFICATION ON EXEMPT TOUR OPERATOR SERVICES

Prior to this amendment, the Value Added Tax (VAT) Act exempted from VAT services of tour operators, excluding in-house supplies. However, the absence of clear definitions for key terms has created uncertainty in determining the exact scope of the exemption.

The Act now addresses this by introducing clarity around who qualifies as a tour operator and what constitutes in-house supplies. In this regard, a tour operator will be understood to mean an entity formally licensed by the relevant Tourism Regulatory Authority, thereby limiting the exemption to recognized and regulated industry players.

Further, the concept of in-house supplies is clarified to cover services that are either directly provided using the operator's own resources or significantly transformed after being sourced from third parties. Such supplies will continue to fall outside the exemption.

These amendments bring greater certainty by clearly distinguishing between exempt and taxable services within the tourism sector, thereby improving consistency in VAT treatment and reducing interpretational disputes.

CLEAN-UPS – REMOVAL OF REDUNDANT DEFINITIONS AND PROVISIONS

The Finance Act, 2026, has amended Section 2(1) of the Value Added Tax Act by deleting the definitions of "assessment," "information technology," and "tax computerized system."

The removal of the definition of "assessment" eliminates duplication, as the term is already defined under the Tax Procedures Act, which provides a uniform interpretation across tax laws.

The deletion of the definitions of "information technology" and "tax computerized system" reflects a shift in terminology within the VAT framework. These terms are no longer referenced in the Act, which has instead adopted more current concepts such as digital marketplaces and electronic services.

In addition, the Act has repealed Section 66 of the Value Added Tax Act, which currently grants the Commissioner powers to counteract tax avoidance schemes by disregarding arrangements entered into for the sole or dominant purpose of obtaining a tax benefit.

By repealing this provision, it removes duplication as similar anti-avoidance rules are already comprehensively provided for under the Tax Procedures Act. Notably, this aligns with the amendment to the Tax Procedures Act introducing a new Section 18A, which consolidates and expands the Commissioner’s powers to address tax avoidance schemes across all tax laws using a unified framework.

The Finance Act, 2026, has clarified the determination of consideration for VAT purposes by providing that, where goods are supplied by a person licensed to carry on hire purchase business under a hire purchase agreement registered in accordance with the Hire Purchase Act, any financial charge payable in relation to the credit extended under the agreement shall be excluded from the taxable value of the supply.

This amendment provides certainty on the VAT treatment of hire purchase transactions by distinguishing the value of the goods supplied from the financing element of the arrangement. Consequently, only the value attributable to the supply of goods will be subject to VAT, while the financial charge relating to the provision of credit will remain outside the VAT base. The change eliminates ambiguity, aligns the VAT treatment of hire purchase transactions with their economic substance, and enhance clarity.

VAT ON GOODS ACCOMPANYING RETURNING PASSENGERS

INCREASE IN VAT-FREE THRESHOLD FOR ACCOMPANIED BAGGAGE

The current provisions under the Value Added Tax Act allow returning passengers a VAT-free allowance on goods imported in their accompanied baggage or carried on their person, up to a value of three hundred United States Dollars (approximately 40,000 Kenya Shillings), provided the traveller has been outside Kenya for more than twenty-four hours and declares the goods to a customs officer.

This threshold has remained unchanged for a considerable period despite evolving economic conditions, inflationary pressures, and increased travel-related spending patterns.

The Act now amends this provision by increasing the duty-free threshold from three hundred United States Dollars (approximately 40,000 Kenya Shillings) to two thousand United States Dollars (approximately 250,000 Kenya Shillings). Under this change, returning travellers will be eligible to import goods within this higher value limit free of duty, subject to the same conditions on declaration and minimum period spent outside the country.

This adjustment is expected to ease the tax burden on returning passengers and align the exemption with current economic realities, although it may also have implications for revenue collection and customs enforcement.

CHANGES IN RATES

The Act has amended the following:

Key:

~~i. Amendments in descriptions and rates by the Act~~

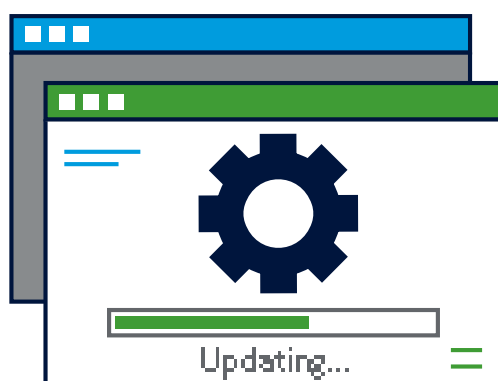
~~ii. Proposals by the Bill that were not enacted~~

Supplies	New Rate	Previous Rate
HEALTH SECTOR		
Dialyzers of tariff number 8421.29.00	Exempt	16%
Inputs or raw materials locally purchased or imported for the manufacture of pharmaceutical products upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to health	Exempt	0%
MANUFACTURING SECTOR		
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 matters relating to agriculture	0% Exempt	0%

Supplies	New Rate	Previous Rate
Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than 2 billion shillings. the exemption was granted before 27th December 2024, and the exemption shall only continue to apply until 27th December, 2025	Exempt	Exempt
Impact: The amendment effectively preserves the availability of the exemption beyond 27 th December 2025 and allows the Cabinet Secretary to continue granting the incentive to qualifying manufacturing investments. This is expected to support continued capital investment in the manufacturing sector and provides greater certainty for investors undertaking large-scale manufacturing projects in Kenya		
The supply of imported or locally purchased telephones for cellular networks and other wireless networks	0% Exempt	0%
TOURISM SECTOR		
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. For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills	16%	Exempt
Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks	16%	Exempt
AVIATION SECTOR		
All goods and parts thereof of chapter 88 (aircrafts, space crafts and parts)	16%	Exempt
Any other aircraft spare 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	Exempt	Exempt
Direction-finding compasses, instruments and appliances for aircraft	16%	Exempt
TRANSPORT SECTOR		
The supply of motorcycles of tariff heading 8711.60.00	0% Exempt	0%
The supply of electric bicycles of tariff heading 8712.00.00	0% Exempt	0%
The supply of electric buses of tariff heading 87.02	0% Exempt	0%
AGRICULTURAL SECTOR		
Transportation of sugarcane from farms to milling factories	0% Exempt	0%
MINING AND ENERGY SECTOR		
The supply of solar and lithium-ion batteries of tariff heading 8507.60.00	0% Exempt	0%

Supplies	New Rate	Previous Rate
Taxable goods used in the construction of liquefied petroleum gas storage tanks and related infrastructure: Provided that the investment in the construction of liquefied petroleum gas storage tanks and related infrastructure in Kenya amounts to at least 5 billion shillings and upon recommendation of the Cabinet Secretary responsible for matters relating to energy	Exempt	16%
Taxable services used in the construction of liquefied petroleum gas storage tanks and related infrastructure: Provided that the investment in the construction of liquefied petroleum gas storage tanks and related infrastructure in Kenya amounts to at least 5 billion shillings and has been recommended by the Cabinet Secretary responsible for matters relating to energy.	Exempt	16%
Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)	Exempt	0%
CONSTRUCTION SECTOR		
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	16%	Exempt
FINANCIAL SECTOR		
The making of any advances or the granting of credit, including the sale, disposal or realization of collateral, repossessed assets or secured property arising from the enforcement of security for loans, credit or other exempt financial services Following the decision in KCB Bank Kenya Limited v Commissioner of Domestic Taxes , where the Tax Appeals Tribunal held that VAT is chargeable on the disposal of repossessed assets, this amendment clarifies the VAT treatment of auction sales of repossessed motor vehicles, providing certainty to financial institutions and other entities undertaking debt recovery through the auction of repossessed motor vehicles following borrowers' default	Exempt	16%
OTHER SECTORS		
The supply of denatured ethanol of tariff number 2207.20.00	Exempt 16%	Exempt
Taxable goods imported or purchased for direct and exclusive use in the implementation of official aid funded projects excluding fuels, lubricants spare parts and tyres for vehicles upon approval by the Cabinet Secretary responsible for the National Treasury Provided that any exemption granted for spare parts before the 30th June, 2026, shall apply until the conclusion of the project Impact: Previously spare parts were subject to 16% VAT	Exempt	Exempt
Scrap metal	Exempt	16%
Worn clothing and other worn articles of tariff heading 6309, other than upon importation	16% Exempt	16%

Supplies	New Rate	Previous Rate
The supply of goods for direct and exclusive use in the implementation of infrastructure projects undertaken under a public private partnership framework, upon approval by the Cabinet Secretary on the recommendation of the Cabinet Secretary for the Ministry responsible for the implementation of the project	Exempt	16%
The supply of services for direct and exclusive use in the implementation of infrastructure projects undertaken under a public private partnership framework, upon approval by the Cabinet Secretary on the recommendation of the Cabinet Secretary for the Ministry responsible for the implementation of the project	Exempt	16%
The supply of goods for direct and exclusive use in the implementation of infrastructure projects undertaken and funded by the National Infrastructure Fund as approved by the Cabinet Secretary responsible for the National Treasury	Exempt	16%
Plant, machinery, equipment and spare parts imported or purchased locally for use in a project whose total investment value is not less than 3 billion shillings as approved by the Cabinet Secretary responsible for the National Treasury upon recommendation by the Cabinet Secretary responsible for Trade and Investment Promotion	Exempt	16%



INDIRECT TAX – EXCISE DUTY ACT, 2015 (EFFECTIVE 1ST JULY 2026)

DEFINITIONS

The Act has amended Section 2 of the Excise Duty Act by introducing a new definition for antique, vintage, or classic vehicles.

The Act introduces a definition for antique, vintage, or classic vehicles, establishing objective criteria based on age and value. This provides clarity for classification purposes and supports consistent tax treatment of such vehicles under the Act

Previously, imported cars attracted excise duty ranging from 20% to 35%, depending on the make and year of manufacture. However, the new amendment subjects vintage and classic cars to a higher rate of 50%.

EXCISE DUTY REFUNDS ON SUPPLIES MADE TO KDF AND KDF WELFARE SERVICES (*new provision not previously in the Bill*)

The Finance Act, 2026 expands the circumstances under which a person may apply for a refund of excise duty by allowing licensed or registered manufacturers to claim a refund of excise duty paid on inputs used in the manufacture of excisable goods that are subsequently imported or purchased locally by the Defence Forces Welfare Services (DFWS), provided that the inputs are directly attributable to the manufactured goods.

The amendment is intended to ensure that excise duty does not become an embedded cost in the supply of excisable goods to the Defence Forces Welfare Services, thereby aligning the excise duty treatment with the Government's policy of reducing the tax burden on supplies made to specified national security institutions. Manufacturers supplying DFWS are therefore likely to benefit from lower production costs, improved cash flow and enhanced competitiveness when participating in government procurement. However, taxpayers seeking to benefit from the refund should ensure that they maintain adequate documentation demonstrating that the inputs are directly attributable to the qualifying supplies, as this will be critical in supporting any refund claim.

CHANGES AFFECTING THE BETTING SECTOR AND TAXATION OF VIRTUAL ASSETS

The Act has made significant amendments to the excise duty framework applicable to the betting and gaming sector by revising the basis upon which excise duty is computed. Previously, excise duty was charged at 5% on the amount deposited into a customer's betting or gaming wallet. The amendments now replace this concept with a broader definition of "amount deposited," shifting the focus from funds held in a specific wallet to any funds made available for betting or gambling purposes. This includes money paid, transferred, credited, or otherwise provided, whether in cash or cash equivalents, and regardless of whether such amounts are held in a wallet, converted into tokens, or otherwise structured.

In addition, the removal of references to "customer betting wallets" and the deletion of the proviso excluding horse racing indicate a move towards a more expansive and uniform tax base across betting and gaming activities. The effect of these changes is to widen the scope of transactions subject to excise duty, potentially capturing a broader range of funding mechanisms and reducing opportunities for tax arbitrage through alternative payment structures. This may lead to increased tax exposure for operators and, indirectly, higher costs for players.

With respect to virtual assets, the amendment introduces a clarification by specifying that excise duty applies to fees charged on virtual asset transactions by "virtual asset service providers." This aligns the provision with emerging regulatory frameworks and ensures that the tax applies specifically to licensed or recognized service providers operating in the virtual asset ecosystem.

Overall, these amendments signal a policy shift towards broadening the excise duty base within the digital and betting economy. While this enhances revenue collection and closes potential loopholes, it may also increase compliance burdens for operators and impact pricing structures within both the betting and virtual asset markets.

EXEMPTION OF EXCISABLE GOODS

The Act previously exempted all goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces, the Defence Forces Welfare Services and the National Police Service from excise duty.

The Act now seeks to expand the exemption to include all goods including materials supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service (NIS).

This amendment will align the tax treatment of the NIS with that of the other national security agencies and is expected to reduce the cost of procuring operational and capital assets required for intelligence and security functions.

CHANGES TO EXCISE DUTY RATES AND DESCRIPTIONS (EFFECTIVE 1 JULY 2026)

CHANGES IN RATES AND DESCRIPTIONS

The Act has amended the following:

Key

~~iii. Amendments in descriptions and rates by the Act~~

~~iv. Proposals by the Bill that were not enacted~~

Goods	Rate
Imported cellular phones; Telephones for cellular networks and other wireless networks of tariff heading 8517.	10% 25% of the excisable value
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices.	KShs. 6.41 per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KShs. 22.50 per centilitre of pure alcohol; Provided that, Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufactured by licensed small independent brewers shall be subject to the rate of "KShs. 10 per centilitre of pure alcohol";
Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages.	KShs. 500 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	KShs. 16,260.29 per kg "KShs. 18,000 per kg"
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	KShs. 11,382.48 per kg KShs. 12,550 per kg
Imported sugar confectionary of tariff heading 17.04	KShs. 85.82 per kg
Imported Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of tariff heading 6910	5% of custom value or KShs. 50 per kg 5% of the excisable value or KShs. 50 per kilogram, whichever is higher
Imported gas cylinders of tariff code 7311.00.10	35%

Goods	Rate
Imported sugar excluding sugar imported by a registered pharmaceutical manufacturer and raw sugar imported for processing by a licensed sugar refinery	KShs.7.50 per kg KShs.40.00 per kg
Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) Provided that it shall not apply to glass bottles imported from any of the countries within the East African Community	35% or KShs.40 per kg whichever is higher
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 imported by a registered processor upon the recommendation by the Cabinet Secretary responsible for matter relating to industry and those originating from East African Community Partner States that meet the East African Community Rules of Origin	35% of excisable value or KShs. 500 per square meter 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 KShs. 80 per litre
Imported ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics of tariff 6907	5% or KShs. 300 per square metre, whichever is higher 5% of the excisable value or KShs. 50 per kilogram, whichever is higher

The Act removes excise duty on the following goods:

Goods	Rate
Fruit juices (including grape must), and vegetable juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	KShs. 14.14 per litre
Imported Articles of plastic of tariff heading 3923.30.00	10%

The Act introduces excise duty on the following items:

Goods	Rate
Coal	5% of the excisable value
Antique, vintage and classic vehicles	50% of the excisable value
Imported MDF of tariff number 4411.12.00, 4411.13.00,4411.14.00, 4411.92.00, 4411.93.00, 4411.94.00	30% of the excisable value
Imported particle boards of tariff number 4410.11.00,4410.19.00, 4410.90.00	30% of the excisable value
Imported Block board of tariff number 4412.51.00,4412.52.00, 4412.59.00, 4412.91.00, 4412.92.00, 4412.99.00	30% of the excisable value
Imported Plywood of tariff number 4412.10.00, 4412.31.00, 4412.33.00, 4412.34.00, 4412.39.00	30% of the excisable value
Imported timber of tariff number 4407.19.00	30% of the excisable value
Imported unprinted banner sheeting, flex banner and unprinted PVC sheeting of tariff 3921.12.10 and 3921.90.10	KShs. 200per kilogram or 35% of the excisable value

Goods	Rate
Imported shower heads (whether or not fitted with heating elements) including fully assembled units designed for domestic or commercial use of tariff heading 8516.10	35% of the excisable value
Imported heating elements used exclusively in the manufacture of shower heads of tariff heading 8516.10	35% of the excisable value
Oral smokeless tobacco products (Swedish-style snus) being processed tobacco intended for placement in the mouth and not intended for smoking, combustion or heating	KShs. 2000 per kilogram.
Unprinted plastic sheets of tariff number 3920.43.10	10% of the excisable value
Pre-personal chip modules of tariff number 8542.31.00	10% of the excisable value
Fruit juices (including grape must) and vegetable juice, unfermented and not containing added spirit.	KShs. 14.14 per litre
Fruit juices (including grape must) and vegetable juice, unfermented, containing added sugar or other sweetening matter and not containing added spirit	KShs. 20 per litre

Below are the changes on excisable services ;

Services
Excise duty on betting shall be five percent on the amount deposited into a customer's betting wallet. Provided that this paragraph shall not apply to horse racing. for betting purposes
Excise duty on gaming shall be five per cent on the amount deposited into a customer's betting wallet for gambling purposes
Excise duty on fees charged on virtual assets transactions by virtual asset service providers shall be ten percent of the excisable value

CHANGES ON INCENTIVES ACCORDED TO EXCISABLE GOODS ORIGINATING FROM THE EAST AFRICAN COMMUNITY

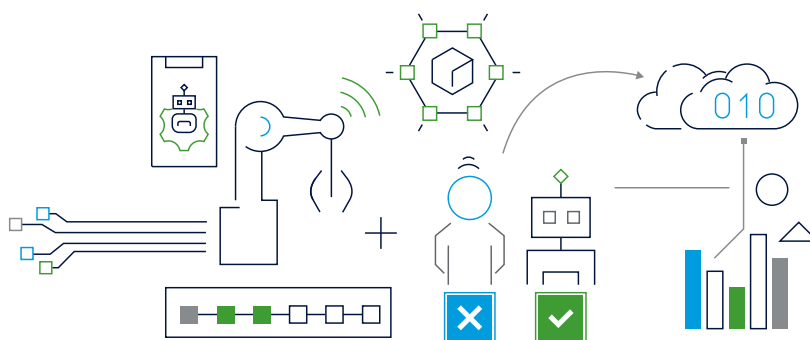
The Bill sought to remove various incentives from goods originating from the East African community and those aligned with the EAC rules of origin. Below is the summary of goods that would have been affected would the proposed changes have been enacted.

Goods	Proposed Change	Impact
<p>Plastics and related products:</p> <ul style="list-style-type: none"> • Imported plates of plastic (tariff headings 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, 3921.19.90) • Other self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics (tariff 3919.90.90) • Imported printed polymers of ethylene (tariff 3920.10.90) • Imported printed polymers of vinyl chloride (tariff 3920.43.90) • Imported printed poly (ethylene terephthalate), polycarbonates and other polyesters (tariff 3920.62.90) • Imported printed cellular plastics (tariff 3921.19.90) 	<p>Removal of the exclusion for goods originating from East African Community (EAC) Partner States by deleting references to the EAC Rules of Origin exemption</p>	<p>The removal of the exemption for goods originating from East African Community (EAC) Partner States would have meant that a wide range of products—including plastics, paper, and packaging materials—would have been subject to excise duty regardless of origin. This would have eliminated the previous tax advantage enjoyed by EAC imports, increasing the cost of sourcing such goods from the region.</p> <p>As a result, businesses that rely on regional supply chains for packaging and manufacturing inputs would have faced higher input costs, which could have translated into increased prices</p>

Goods	Proposed Change	Impact
<p><u>Paper and paperboard products:</u></p> <ul style="list-style-type: none"> ▪ Imported printed paper or paperboard (tariff 4811.41.90, 4811.49.00) ▪ Printed self-adhesive paper (tariff 4811.41.90) ▪ Gummed paper and paperboard (tariff 4811.49.00) ▪ Imported paper or paperboard labels (tariff 4821.10.00, 4821.90.00) ▪ Uncoated kraft paper and paperboard; kraftliner (tariff 4804.11.00) ▪ Other kraft paper or paperboard $\leq 150\text{g}/\text{m}^2$ (tariff 4804.31.00) ▪ Other kraft paper or paperboard $> 150\text{g}/\text{m}^2$ but $< 225\text{g}/\text{m}^2$ (tariff 4804.41.00) ▪ Other kraft paper or paperboard $\geq 225\text{g}/\text{m}^2$ (tariff 4804.51.00) <p><u>Glass products:</u></p> <ul style="list-style-type: none"> ▪ Worked glass (bent, engraved, drilled, etc.) (tariff 7003, 7004, 7005, 7006) ▪ Safety glass (tariff 7007.19.00, 7007.29.00) ▪ Multiple-walled insulating glass units (tariff 7008) ▪ 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 <p><u>Other goods:</u></p> <ul style="list-style-type: none"> ▪ Printing inks (tariff 3215.11.00, 3215.19.00) ▪ Imported furniture (tariff 9403) 		<p>for finished goods and disruptions in established sourcing strategies.</p> <p>More broadly, the application of excise duty across all imports would have likely raised costs in key sectors such as construction, manufacturing, printing, and retail. Building materials such as glass and related products would have become more expensive, potentially impacting infrastructure development and real estate pricing. Similarly, businesses in printing, publishing, and furniture retail would have faced higher acquisition costs, which would have reduced their competitiveness and lead to higher end-user prices. While the amendment would have promoted uniformity in tax treatment, it would have significantly broadened the excise duty base and would have had wider implications for regional trade dynamics, cost structures, and overall industrial competitiveness.</p>

Whilst the Finance Bill 2026 had proposed the removal of exemption from Excise Duty on plastics and related products, paper and paperboard products, glass products, printing inks and imported furniture, these were not enacted into law through the Finance Act 2026. However, imported Float glass originating from the EAC partner states that meets the EAC rules of Origin which was part of the proposal are now subject to excise duty at 35% of excisable value or KShs. 500 per square meter whichever is higher.

Therefore, the supply of the above goods to the EAC partner states will remain exempt from excise duty.



TAX PROCEDURES ACT, 2015 (EFFECTIVE 1ST JULY 2026)

VIRTUAL ASSETS

DEFINITIONS

The Act has adopted the definitions of the terms "Virtual Asset" and "Virtual Asset Service Provider" from the Virtual Asset Service Providers Act (VASPA).

- i. A virtual asset is defined under the VASPA as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment. However, digital representations of fiat currencies, securities and other financial assets are excluded from this definition.
- ii. The Act has also taken a similar approach by defining a Virtual Asset Provider as a company licensed to offer virtual asset services.
- iii. The Act defines Information return as a report setting out the prescribed information which a reporting VASP is required to file with the Commissioner.

We note that VASPA became law in October 2025 to regulate the activities of virtual asset service providers in Kenya. Thus far, neither the Act nor any taxing Act has expressly provided for taxation of virtual assets. Having passed into law, the TPA becomes the first Act to bring virtual assets within Kenya's tax framework.

FILING OF INFORMATION RETURNS

The Act requires VASPs to file an information return with the Commissioner in respect of all virtual-asset users with which it maintains a relationship in every calendar year and that are identified as reportable users or have controlling persons that are reportable persons.

The information return shall be required if the VASP provides a service that effectuates exchange transactions or making available trading platform on behalf of a customer and includes acting as a counterparty, or as an intermediary, to the exchange transactions.

Though not initially in the Bill, the Act under Section 6C (2) limits the information return only to information that is necessary, relevant and proportionate to ensure compliance with the information return requirements and that any disclosures be within the confines of the Data Protection Act. The implication of this addition is to ensure that the Commissioner does not act ultra vires to its power to require information returns from taxpayers, particularly by seeking to obtain irrelevant or unreasonable information demands.

False on the information return would attract a fine of KShs. 100,000 for each false statement or imprisonment not exceeding three years or both. Omission of any information required will attract a penalty of KShs. 100,000 for each omission. A VASP who fails to file an information return or a "nil" information return will be liable to a penalty of KShs. 1,000,000 for each failure.

AGREEMENTS FOR AUTOMATIC EXCHANGE OF INFORMATION

The Act empowers the Government of Kenya to enter into an agreement with another country for the automatic exchange of information relating to transactions involving Virtual Assets. The agreement shall provide information relating to:

- Information return filed;
- Due diligence reporting and record keeping obligations;
- The virtual asset users with which a virtual VASP maintains a relationship in every calendar year and that are identified as reportable users or as having controlling persons that are reportable persons;
- Nil return filing by VASP who do not maintain a relationship with virtual asset service providers who do not maintain a relationship with reportable virtual asset users; and
- Arrangements or practices by VASP, the main purpose of which can reasonably be considered to avoid taxes.

Though not initially in the Bill, the Act introduces the following requirements:

- i. The Commissioner can only exchange such information within the limits of the Data Protection Act and to the extent that the exchange is limited only to information that is necessary, relevant and proportionate to meet the objectives of the information exchange;
- ii. The receiving jurisdiction must have adequate legal, technical and organizational personal information security safeguards; and
- iii. The Commissioner must maintain a record of all disclosures made under the information exchange programme.

To ensure better operationalization of this programme, the Act empowers the Cabinet Secretary to make the necessary regulations.

TAX AMNESTY

The Act has re-introduced a tax amnesty covering all tax obligations for periods up to 31st December 2025. This follows the lapse of the previous tax amnesty on 30th June 2025, which had applied to tax liabilities accrued up to 31st December 2024.

With the enactment of this provision, taxpayers who have fully settled all principal taxes accrued on or before 31st December 2025 will qualify for a full waiver of any related penalties and interest. In such cases, the waiver is expected to be automatic, meaning that taxpayers will not be required to submit a formal application to benefit from the relief.

For taxpayers with outstanding principal taxes as at 31st December 2025, the Act now allows for a waiver of penalties and interest on condition that they apply to the Commissioner and enter a structured payment plan. The payment plan must ensure that all outstanding principal taxes are fully settled by 31st December 2026.

Overall, the reintroduction of the tax amnesty provides an opportunity for taxpayers to clean up historical tax exposures at a reduced cost, while also enabling the Kenya Revenue Authority to enhance revenue collection and broaden compliance within the tax system.

MORE STRINGENT PENALTIES FOR FAILURE TO BE ETIMS COMPLIANT

Previously, the TPA prescribed a penalty of double the value of tax due if a taxpayer who was otherwise required to issue an eTIMS compliant invoice did not. The Commissioner could only penalize the taxpayer if the reasons the taxpayer gave were not satisfactory to the Commissioner.

The Act requires that a taxpayer found to have failed to issue an eTIMS compliant invoice pays the higher of:

- ~~o two times the value of the tax due;~~
- o 5% of the value of the tax due;
- o a fine of KShs 10,000 for individuals; or
- o a penalty of KShs 100,000 for companies.

The above penalties are meant to ensure that taxpayers remain eTIMS compliant and do not fail to issue eTIMS compliant invoices in their transactions. This is seen as part of the Commissioner's efforts to ensure that all transactions in Kenya can have an electronic trace, increasing transparency in the amounts of taxes due and payable for each transaction.

COMMISSIONER TO RECOVER UNPAID FEES AND LEVIES *(New provision not previously in the Bill)*

The Act introduces Section 39B to the TPA empowering the Commissioner to recover Fees and Levies due under any tax law in the same manner it recovers any unpaid taxes. Further, the Section allows the Commissioner to summarily recover any unpaid Fees and Levies which are below KShs. 100,000.

The implication of this addition reinforces the Commissioner's power to recover all taxes, fees and levies under Kenyan tax laws. Such fees where Commissioner has been appointed as a collecting agent may include Affordable Housing Levy (AHL), NITA Levy, Standards Levy and all fees and levies under Part III of the Miscellaneous Fees and Levies Act.

The amendments empower the KRA to directly recover fees and levies below KShs. 100,000 through summary collection procedures. This also offers an expanded oversight role for KRA in relation to the administration and verification of such fees and levies, a position that was previously less apparent under the law. For amounts exceeding KShs. 100,000, taxpayers may enter into payment arrangement plans to settle the outstanding liabilities.

OBLIGATION REINSTATEMENT

The Finance Act, 2026, introduces a requirement for persons whose tax registrations have been deregistered, but who subsequently become liable for registration, to apply to the Commissioner for reinstatement of their registration. Where the Commissioner is satisfied that the applicant is liable for tax, the Commissioner shall reinstate the registration and issue the taxpayer with the same Personal Identification Number (PIN) that had been assigned prior to deregistration.

Although this requirement was not included in the Finance Bill, the Finance Act further introduces a ninety (90)-day timeline within which the Commissioner is required to determine and reinstate the taxpayer's registration, where the statutory requirements have been met. The introduction of a prescribed timeline is a welcome development as it enhances certainty and predictability in tax administration, enabling taxpayers to better plan their compliance obligations and reducing the risk of prolonged administrative delays.

However, the amendment does not provide a remedy where the Commissioner fails to determine the application within the prescribed ninety-day period or declines the application without sufficient justification. The absence of a statutory consequence for non-compliance with the timeline may undermine the effectiveness of the provision and leave taxpayers exposed to prolonged uncertainty. To strengthen taxpayer protection, the legislation could have provided for a deemed approval where the Commissioner fails to act within the prescribed period or established an express right of appeal or review against the Commissioner's failure to determine the application within the statutory timeframe.

NON-RESIDENT PIN APPLICATION

The Act exempts non-resident persons from the requirements of a Personal Identification Number when opening an account with an investment Bank and financial institutions.

TAX AVOIDANCE SCHEMES

The Act empowers the Commissioner to assess tax where it is satisfied that a taxpayer benefitted from a tax avoidance scheme, as if the tax avoidance scheme had not been entered into. The Commissioner will rely on the following information in their assessment:

- ✓ information submitted on withholding taxes deductions;
- ✓ the accounting of tax deducted from employee emoluments;
- ✓ any information submitted to the Commissioner that would lead to the identification or recovery of unassessed taxes or duties as per the KRA Act;
- ✓ information submitted to the Commissioner via eTIMS;
- ✓ information provided from third party returns;
- ✓ information obtained from the inspection of goods and records conducted by the Commissioner or authorized officer;
- ✓ information obtained from the auditing of the records produced by the person to the Commissioner;
- ✓ information submitted to the data management and reporting system established; and
- ✓ information submitted to the Commissioner under any other written law.

The Act requires that if at all, the Commissioner issues a tax assessment based on findings from the above exercise within 5 years from the last day of the tax period which the tax liability relates.

While the amendment permits the Commissioner to provide the reasons for an assessment within thirty (30) days after issuing the assessment, it does not address the corresponding timeline available to a taxpayer to lodge an objection once those reasons have been furnished. Consequently, the statutory thirty-day objection period continues to run from the date the assessment is issued, notwithstanding that the taxpayer may only receive the Commissioner's reasons several days later.

This creates a potential procedural imbalance, as taxpayers may have considerably less time to analyze the reasons for the assessment, gather supporting documentation and prepare a comprehensive objection. In practice, where the Commissioner utilizes the full thirty-day period to provide the reasons, the taxpayer's right to challenge the assessment may be substantially curtailed. To safeguard taxpayers' rights and ensure procedural fairness, the legislation should expressly provide that the objection period commences upon the taxpayer's receipt of the Commissioner's reasons, or alternatively extend the objection period by the number of days taken by the Commissioner to provide those reasons.

For clarity, the Act defines the term 'Scheme' as a course of action, agreement, promise, plan, proposal or undertaking whether or not it is express or implied, and whether or not legally enforceable. Further, the Act defines a 'Tax benefit to mean;

- reduction in tax liability of a person
- increase and/or acceleration in a person's entitlement to Input tax deductions
- entitlement to a refund
- a postponement of a liability for the payment of tax
- any other advantage arising because of a delay in payment of tax or an acceleration of the entitlement to an input tax deduction
- anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import
- anything that gives rise to an input tax deduction for an acquisition or import that is used or intended to be used other than in making taxable supplies.

This law aims at curbing aggressive tax planning initiatives and mechanisms that would easily be interpreted as tax avoidance.

INFORMATION ON ISSUING DEFAULT ASSESSTMENTS

The Act allows the Commissioner to issue an assessment on the income of a person as he may deem necessary, using information obtained from a wide range of legally recognized sources.

The Act lists the data sources that may support the Commissioners assessment to include:

- Withholding tax returns filed by customers, banks or employers;
- PAYE records submitted by employers;
- Third-party data obtained under the Kenya Revenue Authority Act which includes information leading to the identification or recovery of unassessed taxes or duties;
- Electronic tax systems such as iTax;
- Electronic Tax Invoice Management System (e-TIMS) data;
- Information from inspections and audits;
- Sector-based and data-reporting systems; and
- Any information submitted under written law.

This legitimizes data matching and system generated assessments. It further means that the Commissioner may issue assessments based on third-party and electronic data which means that taxpayers can now be assessed even if they do not file returns. Henceforth, the Commissioner can rely on information from employers, banks, e-invoicing platforms to estimate income and tax payable. As a result, non-filing no longer delays taxation and may instead lead to estimated assessments, penalties and interest.

We note that this amendment seeks to list the specific sources of information that the Commissioner may rely upon when issuing an assessment. However, it is not clear if this provision will apply to default assessments issued under Section 29 of the TPA or additional assessments issued under Section 31 of the TPA.

Taxpayers will need to ensure that their tax returns and records are accurate and consistent, as the burden of disputing a data-based assessment falls on the taxpayer after the assessment has been issued.

SUBMISSION OF AUTOPOPULATED RETURNS

The Act empowers the Commissioner to amend a taxpayer's returns based on the information obtained from auto-populated tax returns. This will enable the Commissioner to rely on the available information to generate tax returns, which may be to the detriment of the affected taxpayer, especially where the information relied upon is not sufficient.

Although these clarifications were not included in the Finance Bill 2026, the Finance Act has introduced additional procedural requirements governing the issuance and management of pre-populated tax returns. Specifically, the Act provides that:

- i. The Commissioner shall notify the taxpayer upon issuance of a pre-populated return;
- ii. The pre-populated return shall be issued on or before 31st January of each year; and
- iii. The taxpayer shall confirm or amend the pre-populated return within two months of its issuance.

While these amendments provide greater procedural certainty, they also raise a number of practical concerns.

First, by prescribing 31st January as the deadline for issuing pre-populated returns, the Act appears to assume that all taxpayers have a 31st December year end. This does not reflect the Kenyan tax system, which permits taxpayers to adopt different accounting periods with the approval of the Commissioner. Consequently, the provision is likely to create uncertainty for taxpayers with non-December year ends. A more practical approach would have been to prescribe the timeline by reference to a specified period after the end of a taxpayer's year of income, rather than by reference to a fixed calendar date.

Secondly, the requirement for taxpayers to review and either confirm or amend pre-populated returns within two months is likely to increase the compliance burden, particularly for taxpayers with complex tax affairs. Taxpayers will now be required to undertake a comprehensive review of the information populated by the Commissioner before the filing deadline to ensure that the return accurately reflects their tax position.

Finally, while the amendments establish a framework for the issuance and validation of pre-populated returns, they do not address the recurring concerns regarding the accuracy and completeness of the data used to generate such returns. Since the information is drawn from third-party submissions and KRA's internal systems, discrepancies may still arise, requiring taxpayers to independently verify the pre-populated information. Accordingly, taxpayers should not rely on pre-populated returns as conclusive but should continue to undertake their own reconciliation to ensure the correctness of the information submitted to the Commissioner.

COMMISSIONER'S POWER TO WAIVE PENALTIES & INTEREST

Finance Act, 2026, amends Section 89 (5A) of the Tax Procedures Act to clarify the circumstances under which penalties and interest may be waived. It does so by acknowledging that duplication of penalties and interest can arise out of other causes other than from malfunction of an electronic tax system. This improves clarity and precision in the application of the waiver provisions.

Further, the Act empowers the Commissioner to waive penalties or interest below KShs. 2 million only where the liability arose from an error generated by an electronic tax system. The Commissioner can now waive electronic tax system-related penalties involving relatively smaller amounts without the need for a recommendation and approval by the Cabinet Secretary.

Notably, waivers exceeding the KShs. 2 million arising from electronic tax system failures and other causes remain subject to the Cabinet Secretary's approval under section 89(5A).



EXPORT DECLARATION REQUIREMENT FOR IMPORTED GOODS (EFFECTIVE 1ST SEPTEMBER 2026) *(new provision not previously in the Bill)*

Effective 1st September 2026, the Finance Act, 2026 introduces a new documentary requirement for imported goods by requiring importers to produce an **Export Declaration** issued by the competent authority in the country of export. Importers will also be required to retain the Export Declaration for a period of **five years** from the date of importation.

The Act further prescribes the minimum information that the Export Declaration must contain, including:

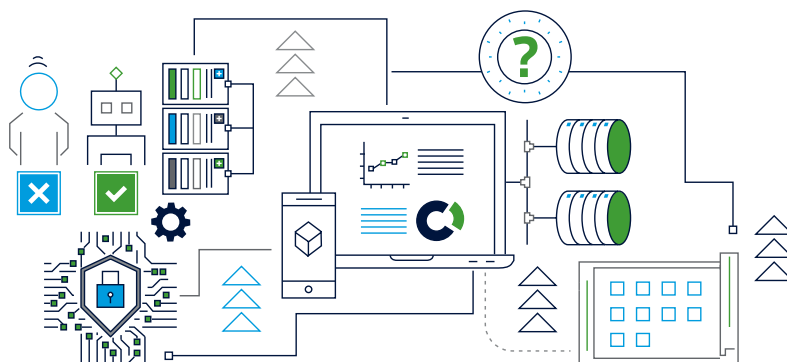
- i. the name and address of the exporter;
- ii. the name and address of the importer;
- iii. a description of the imported goods;
- iv. the quantity of the goods;
- v. the country and date of export; and
- vi. the country of import.

Failure to produce the Export Declaration, or any other satisfactory proof of importation, empowers the Commissioner to:

- a. reject any claim relating to importation;
- b. determine the customs value, tax liability or entitlement to any customs relief based on information available to the Commissioner; or
- c. impose the applicable penalties under the tax laws.

Recognizing that some jurisdictions do not issue Export Declarations, the Act allows the Commissioner to waive this requirement depending on the category of goods imported and the country of export. In addition, the Cabinet Secretary is required to issue regulations prescribing, among other matters, the form, manner and procedure for the production of Export Declarations.

This amendment is intended to strengthen customs controls, enhance the verification of import transactions and curb the use of falsified or undervalued import documentation. However, it is likely to increase the compliance burden on importers, who will need to work closely with overseas suppliers to ensure that the prescribed documentation is obtained before goods are imported into Kenya. Businesses should therefore review their procurement and importation processes well in advance of the commencement date to minimize the risk of customs disputes, delays in cargo clearance and disallowance of customs claims. The effectiveness of this measure will, however, depend on the timely issuance of implementing regulations, particularly in relation to the waiver process and the treatment of imports from jurisdictions that do not issue Export Declarations.



MISCELLANEOUS FEES AND LEVIES ACT

RESTRICTION OF IDF AND RDL EXEMPTIONS ON AIRCRAFT IMPORTS (EFFECTIVE 1ST JULY 2026)

The Act restricts the exemption available to aircraft-related imports from Import Declaration Fee (IDF) and Railway Development Levy (RDL). Previously, all aircraft, spacecraft, and their parts falling under tariff heading 88 were exempt from both IDF and RDL.

The amendment means that all parts of Chapter 88 of the CETs shall continue to enjoy the exemption from IDF and RDL, while only the importation of the below spacecrafts shall be exempt from the IDF & RDL:

- 8802.30.00 – Aeroplanes and other aircraft of an unladen weight exceeding 2,000 kg but not exceeding 15,000 kg; and
- 8802.40.00 – Aeroplanes and other aircraft of an unladen weight exceeding 15,000 kg.

This amendment is likely to raise operational costs for airlines, aviation service providers, and related businesses, which may ultimately be passed on to consumers through higher airfares and cargo charges. While the change may generate additional revenue for the government through IDF and RDL collections, it could also discourage investment in the aviation sector by making the acquisition of aircraft more expensive.

EXEMPTION OF GOODS USED IN LPG STORAGE FACILITY (EFFECTIVE 1ST JULY 2026) (new provision not previously in the Bill)

Although this proposal was not included in the Finance Bill, 2026, the Finance Act exempts goods imported for use in the construction of liquefied petroleum gas (LPG) storage tanks and related infrastructure from Import Declaration Fee (IDF) and Railway Development Levy (RDL). To qualify for the exemption, the investment must:

- i. Be valued at not less than **KShs. 5 billion**; and
- ii. Be recommended for exemption by the Cabinet Secretary responsible for Energy.

The exemption is intended to encourage investment in LPG storage infrastructure by reducing the cost of importing key construction materials and equipment. This is expected to support the Government's efforts to expand LPG storage capacity, enhance energy security and improve the reliability of LPG supply across the country. In the long term, the resulting reduction in infrastructure development costs may contribute to lower LPG prices for consumers and promote the transition to cleaner household cooking fuels. However, given the high investment threshold of KShs. 5 billion, the incentive is likely to benefit only large-scale infrastructure projects.

SCOPE OF IMPOSITION OF LEVIES AND FEES (EFFECTIVE 1ST JULY 2026)

The Act expands the scope of imposition of levies and fees to cover anti-adulteration levy, processing fees on duty free motor vehicles and export & investment promotion levy which are not covered in the current provisions. This aims at enhancing clarity on the covered levies and fees.



AFFORDABLE HOUSING ACT

INCREASE OF COMMISSION LIMITS FROM THE AFFORDABLE HOUSING FUND (new provision not previously in the Bill)

The Finance Act, 2026, has increased the maximum commission payable to the Kenya Revenue Authority (KRA) for the collection of the Affordable Housing Levy. Previously, KRA was entitled to a commission of up to 0.5% of the amounts collected. The Act has increased this cap to 2%, subject to a recommendation by the Cabinet Secretary responsible for Affordable Housing and the approval of the Cabinet Secretary for the National Treasury.

The amendment provides greater flexibility for the Government to compensate KRA for the administration and enforcement of the Affordable Housing Levy. While the increased commission may enhance KRA's capacity to effectively collect and administer the levy, it also means that a larger proportion of the amounts collected may be applied towards administrative costs before being available to finance affordable housing projects. Nevertheless, the increase does not affect the levy payable by employers or employees, as it only relates to the allocation of the amounts collected between the Affordable Housing Fund and the collecting agency.

STAMP DUTY ACT

EXPANSION OF STAMP DUTY EXEMPTION FOR REIT TRANSFERS (EFFECTIVE 1ST JULY 2026)

The Finance Act, 2026, amends Section 96A of the Stamp Duty Act by expanding the scope of the stamp duty exemption on transfers relating to real estate investment trusts (REITs) to include transactions that convey or transfer a beneficial interest in property to a REITs.

This is likely to reduce transaction costs for investors and property owners transferring assets into REIT structures, thereby enhancing the tax efficiency and attractiveness of REITs and potentially encouraging greater participation in the REITs market in Kenya.

ROAD MAINTENANCE LEVY FUND ACT

IMPOSITION OF ROAD MAINTENANCE LEVY (EFFECTIVE 1ST JULY 2026)

The Act reduces the Road Maintenance levy portion that is paid into the Road Annuity Fund from KShs. 3 to KShs. 1.50.

The Fund provides the necessary finances to meet the national government's annuity payment obligations for road development and maintenance under the Annuity Programme.

For taxpayers and consumers, there is no direct reduction in fuel costs; however, the change may have long-term implications for infrastructure funding and delivery, which in turn affects economic activity and logistics efficiency.

Caveat

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NAIROBI

1st Floor, Pacis Centre,
Slip Road, off Waiyaki Way, Westlands
P.O. Box 349, 00606
Nairobi, Kenya

Tel: +254 20 3614000 / 4451747 / 8 / 9
Mobile: +254 706 347950 / 772 786111
Email: info@ke.rsm-ea.com
Website: www.rsm.global/kenya
Contact: Elvis Ogeto (Managing Partner)

MOMBASA

Acacia Center, Mezzanine 1,
Nyerere Avenue
P.O. Box 87227, 80100
Mombasa, Kenya

Tel: +254 412311778 / 2312640 / 2224116
Mobile: +254 707 613329
Email: infomsa@ke.rsm-ea.com
Website: www.rsm.global/kenya
Contact: Ashif Kassam (Managing Partner)

KAMPALA

6th Floor, DTB Centre,
Plot 17/19, Kampala Road
P.O. Box 31704,
Kampala, Uganda

Tel: +256 414 342780
Email: info@ug.rsm-ea.com
Website: www.rsm.global/uganda
Contact: John Walabyeki (Managing Partner)

DAR ES SALAAM – ASSOCIATE OFFICE

1st Floor, Plot No. 1040,
Haile Selassie Road, Masaki
P.O. Box 79586
Dar es Salaam, Tanzania

Tel: +255 22 2602714 / 2602774
Email: info@rsmtz.co.tz
Website: www.rsm.global/tanzania
Contact: Lina Ratansi (Managing Partner)

ARUSHA – ASSOCIATE OFFICE

2nd Floor, West Wing
Goliondoi Road, Ngorongoro Tourism Centre
P.O. Box 14512
Arusha, Tanzania

Tel: +255 22 2602714 / 2602774
Email: info@rsmtz.co.tz
Website: www.rsm.global/tanzania
Contact: Lina Ratansi (Managing Partner)

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 RSM Eastern Africa  @RSMEasternAfrica  RSM Eastern Africa  RSM Eastern Africa

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