



Key Highlights

FINANCE ACT 2025

Background

The Finance Act 2025, enacted on the 26th June 2025, comes after the contentious failed Finance Act 2024. Also, Finance Act 2025 (hereby referred to as the 'Act' in this review) comes only six months after the passing and implementation of the Tax Laws (Amendment) Act, 2024 (hereby referred to as the Tax Laws Amendment in this review), which in way substituted the failed Finance Act 2024.

Some of the provisions affected by the Tax Laws Amendment included amendments to the tax-free threshold, reliefs, and exemptions. More specifically, it introduced new allowable deductions to employment income for purposes of determining taxable employment income, including AHL contributions, SHIF contributions, and the PRMF contributions to the tune of Ksh.. 15,000 p.m. Furthermore, some of the tax-free thresholds were amended, including meal benefits up to Ksh. 60,000p.a , non-cash benefit previously not in the ITA (Income Tax Act) up to Ksh. 60,000p.a and deductible employee pension contributions raised to Ksh. 360,000p.a (30,000p.m).

The nature of these amendments demonstrated an effort by the legislature to heighten focus on tightening the already existing tax laws rather than writing new laws that could add new taxes and further overburden the taxpayer. The contents of the Finance Act 2025 showed the legislature doubling down on these efforts, to tighten existing tax laws rather than writing new ones. This drift responds to a necessary and much-needed change that could not have come soon enough. Some of the reasons why this direction is the right direction include:-

1. Tax burden and need for relief; By 2022–2023, the tax burden on individuals and businesses had reached historic levels, driven by a widened tax base, revised PAYE rates, and new payroll deductions (adjustments to NSSF, the introduction of AHL, and a 2.75% SHIF contributions) underscored the urgent need for relief.
2. Ambiguities; Several tax laws are clouded by ambiguities, leading to issues like double taxation and being administratively overly complex. This Act introduces targeted reforms to resolve these ambiguities.
3. Shift towards compliance; Historically, tax policy has emphasized revenue growth through base expansion. The new regime pivots toward improving compliance, with reforms that simplify reporting, clarify complaint procedures, and streamline administrative processes.

Bases on these considerations, the amendments introduced under this Act culminate the legislature's efforts to enhance tax compliance, grow revenue base while making deliberate attention not to strain the taxpayer.

INCOME TAX



Section 5 (Employee per diem 'reimbursement' increased to Ksh. 10,000)

Section 5 (2) clarifies, for purposes of taxation of employment income, the composition of gains or profits including payment for subsistence, travelling, entertainment and other allowances in respect of the period an employee spends outside of their workplace while on official duty. A part of such payment or allowance (when calculating gains/profits) is considered reimbursement. Amendment to subsection (2) by the Act has increased such amount considered reimbursement to Ksh.10,000 per days from the previous Ksh.2,000 per day.

This means that employees may expend an allowance of Ksh. 10,000 per day when carrying out official duty outside of their workplace, or when traveling at official capacity, and that allowances will not be considered a gain when calculating their taxable income.

This amendment benefits both the employer and the employee. First, it means that employees whose roles require that they have expenses like subsistence travel and entertainment can now receive an allowance adequate to cover their expenses amid a rising standard of living. On the other hand, the employer is now able to financially facilitate their employees when working outside the workplace without worrying about the additional tax burden or inflated statutory salary deductions resulting from providing employees with per diem allowances. Additionally, this will allow businesses (employer) to report more expenses and resultantly a tax reduction.

Section 8; Subsections 4,5,6,7,9, 9A repealed.

- Subsection (4) the first Ksh. 300,000 of total pension received by a resident exempt qualification now repealed.
- Subsection (5), the lesser of the first Ksh.600,000 of lumpsum or the first Ksh.60,000 per full year of pensionable service exempt qualification now repealed.
- Subsection (6), the first Ksh. 1.4M paid as income of estate or its direct beneficiaries exempt qualification now repealed.

Section 10 (Withdrawals and facilitation of payment over digital market place now subject to WHT)

Section 10 establishes what constitutes income from management/professional fees, royalties and interest. Amendment to section 10 has now included the following as such;

- Withdrawals (as relates to gaming or betting wallet)
- Supply of goods to a public entity

- Making or facilitating payments over a digital marketplace.

Section 12 D (Repealed)

Section 12 (D) provided for Minimum Tax. Now repealed; in constitutional Petition Nos. E005 of 2021, it was found unconstitutional.

Section 12 (E) (SEPT threshold previously at Ksh. 5,000,000 now repealed)

SEPT (Significant Economic Presence Tax) was introduced under the Tax Amendment Act (2024) and is payable by a non-resident persons whose income is from the provision of services carried out over the internet or an electronic network. The threshold for SEPT was Ksh. 5,000,000. Subsection 3 (d) providing for this threshold which has now been deleted under the Act. This means that any non-resident qualifying for SEPT under Section 12E(1) will be liable regardless of size.

The Act also amended subsection (6) requiring the Cabinet Secretary to issue regulations for the implementation of SEPT provisions within 6 months (meaning after December 2025).

Section 15 (Loss may only be carried forward for more than 5 years)

Section 15 of the ITA contains provisions for deductions allowed as pertains to ascertaining the total taxable income. Section 4 pertains to the deductibility of a loss for the year of income. Section 5 continues to provide to the extension of the limit of time a loss may be carried forward as may be authorized by the Cabinet Secretary.

Previously, a loss made in any year of income was allowed for deduction into succeeding years until such loss was utilized. Under the Finance Act 2025, the period such loss may be allowed has been effectively reduced to only 5 years. This implies that even in cases where such loss may not have been utilized after 5 years, it will not be allowed in ascertaining total income after 5 years.

This amendment obviously will have profound implications of corporations reporting on their total income. Curtailing the time period within which this loss may be brought forward to the limit of 5 years means that if a corporation has not yet utilized a loss in 5 years, such a corporation may not bring the loss against its earnings in ascertaining total income beyond that set period.

However, the Act has retained subsection (5) allowing a taxpayer to apply for extension of the period to carryforward unutilized loss beyond 5 years as the Commissioner may recommend. This is particularly a relief especially for start-ups that are capital intensive and many have a net operating loss in succeeding years, spanning for a few years before the business takes roots. Also, in general every business has certainly been in a rough patch when profits dry up ; remember the Covid-19 pandemic, even several years later today, some industries have not yet recovered. So in instances like this, businesses can seek relief to continue utilizing a loss against its earnings.

Section 18G (New, Advance Pricing Agreements APAs introduced)

The Act had introduced a proviso for Advance Pricing Agreement on (APA) on transactions relating to section 18(3) or section 18A.

Section 18 of the ITA contains provisions for the ascertainment of gains/profits of business in relation to certain resident persons. In particular, subsection 3 covers gains/profits “where a non-resident person carries on business with a related resident person or through a permanent establishment but no profit/gain accrue as a result of such relationship other than what have

otherwise been expected had such business been conducted by an independent person dealing at arm's length ", section 18A provides for when the related person is operating in a preferential tax regime.

APAs will enable a tax payer to enter into a formal agreement with a tax authority (KRA) to determine the appropriate criteria for determining the arm's length price within the scope of transfer pricing.

Section 27 (Application to change accounting period deemed allowed after 3 months)

Section 27 has provisions concerning accounting periods that do not coincide with year of income. The year of income is 12 months ending 31st December. However, incorporated businesses may, subject to approval by the commissioner alter the date which the accounts are made provided that (according to section 27B) such application is made within a timeframe. This timeframe is six months and the Commissioner is required to issue communication regarding such application within three months (previously before this amendment, this timeframe was six months). Further amendment to Section 27 has introduced a new subsection (1D) clarifying that where the Commissioner does not issue communication within three months, such application shall be deemed allowed.

Section 35(tax exemption on certain fees to non-residents)

The Act introduced a new paragraph (iii) which exempts from taxation, fees to a non-resident, where such fees is for;

Specialized technical, maintenance, compliance, training or digital systems support services by the national carrier (eg Kenya Airways)

where;

such services are not available in Kenya or certification and accreditation of the service provider is by an International Regulatory licensing body.

Section 52(B) (Return of any dividend distributed out of untaxed gains/profits)

Under the Act, subsection 4 has been replaced with

"Every company liable to tax under the ITA shall also include with the self-assessment and return of income, an assessment and return of any dividend distributed out of untaxed gains/profits due with respect to such tax year, and the tax so calculated shall be payable at the due date for self-assessment".

VALUE ADDED TAX



Section 17 (VAT refunds claim now to be lodged with 12 months)

Paragraph (d) of subsection 5 provides for how to lodge a claim for a refund. Under the Act, paragraph (d) has been amended reducing the time period for lodging a claim from twenty-four months to twelve months.

Tax Laws Amendment (2024) added a new paragraph (ea) concerning taxable supply that acquired zero-rated or exempt status as a result of changes in tax rates after 1st July 2022. This paragraph has now been amended under this Act to reflect taxable supply that are now zero-rated or exempt as from 1st July 2023.

The amendment also provides that, to receive relief from excessive credit from the aforementioned supply, registered persons must apply for a refund within six months from the 1st July 2025.

Section 31; Refund of tax on bad debt application now to be lodge in 2 years.

Subsection (1), which provides for the application for refund as a result of bad debt has been amended so that the time limit within which such application may be made is now two years from the previous time limit of three years.

Also, new proviso, paragraph (Ca) allows a tax refund from bad debt to be used to offset other VAT liability.

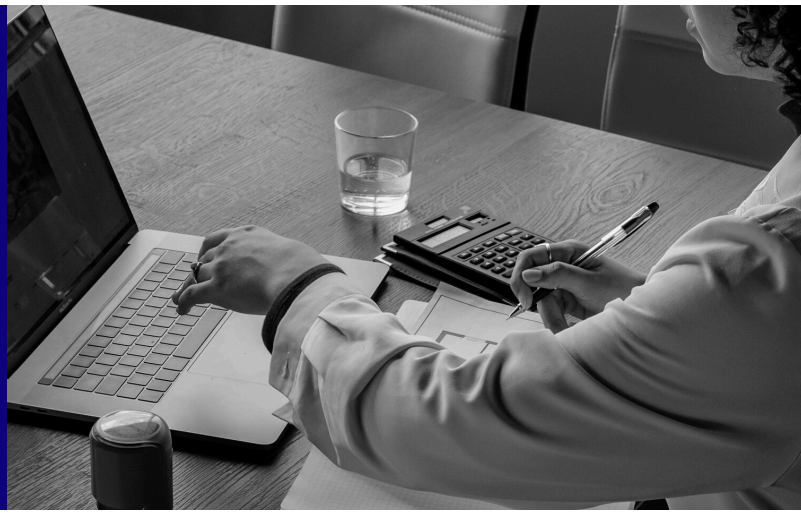
Section 42; Tax invoice to be issued on all supply, taxable or not

Previously, under subsection 1, a registered person has been required to issue a tax invoice on taxable supplies only. Amendments to this subsection deleting 'taxable' therefore imply that all registered person must issue a tax invoice on all supply.

Section 66; instances where zero rated/exempt will attract tax

Section 66 was amended by adding subsection 66A which reads "where a person imports/purchases goods/ services which are exempt/zero rated and the person uses the good/services in a manner inconsistent with the purpose for which they are zero rated/exempted, then such a person will be liable to pay tax for the exempted/zero rated goods/services.

EXCISE DUTY



Section 2; Definition of digital lender, digital market place

The definition of Digital lender amended, now means “a person extending credit through an electronic medium but does not include a bank licensed under the Banking Act, Sacco registered under the co-operative Societies Act or a Microfinance”.

Digital marketplace “an online/electronic platform that enables users to sell or provide services/goods to other users.

Section 5; (Subsection 1 amended)

‘Digital platform’ substituted with excisable services offered through the internet, electronic network or through digital market place”.

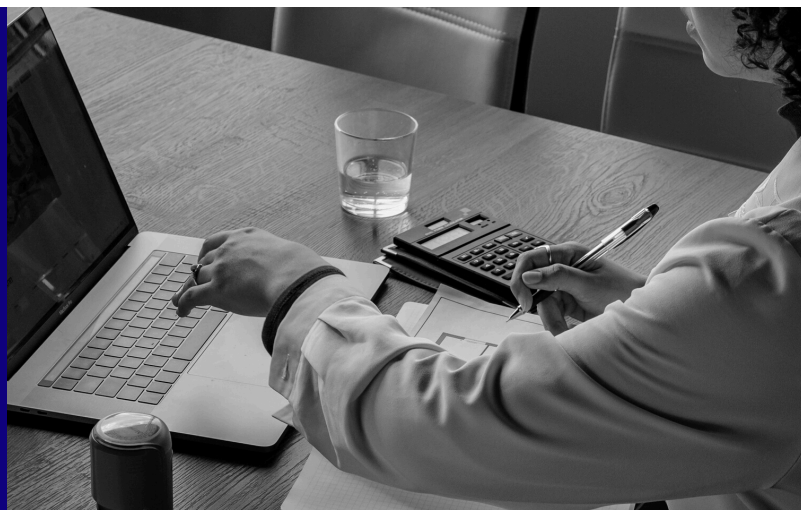
Section 13; Internet and electronic network included as a place of supply of excisable service

A new proviso added, Subsection (2) providing that a supply of services shall be deemed to be made in Kenya if a person in Kenya consumes the services through the internet, electronic network or a digital marketplace.

Section 17; time limit to issue a license to undertake activities outlined in Section 15 including manufacturing excisable good amended to 14 days

Subsection (1) amended to specify time limit within which the commissioner considers an application for a license to undertake activities outlined in Section 15, this time limit set to be fourteen days. However, it is still unclear what an applicant should do if response is not provided within this timeline.

TAX PROCEDURES



Section 39 (A); Penalty for failure to deduct or withhold tax

New proviso, Subsection (2) added which gives relief to the person making a payment that is subject to withholding tax. Where payment has been made in full without deducting withholding tax, or where the person receiving the payment has already remitted withholding tax on a payment, the person making the payment will not be liable or charged with a penalty for not deducting and withholding the tax.

Section 42 (4D) Repealed

Therefore deleting the provision imposing a 10% penalty for failure to withhold VAT.

Section 44(A) ; Introduced requiring a certificate of origin for all goods imported into Kenya

This is a new section that provides for the requirements of a Certificate of Origin for all goods imported into Kenya. Also, the contents of a Certificate of origin have been explicitly outlined.

Section 47; Refund of input VAT timeline

Subsection (2) amended changing the time limit within which an application for input VAT refund may be made to 120 days from 90 days.

Subsection (3) amended to provide that if within 120 days (previously 90) the Commissioner fails to ascertain and determine a refund application, such application will be deemed approved.

Subsection (4) where such application is subject to audit, the time limit has been amended to 180 days from the previous 120 days.

Section 89; No penalties and interest to taxpayers when there is system failure

A new subsection (5A) added reading; "the Cabinet Secretary may on the recommendation of the Commissioner waive the whole or part of any penalty or interest imposed under TPA where the liability to pay the penalty or interest was due to;

- an error generated by an electronic tax system,
- a delay into the updating of a electronic tax system,
- a duplication of a penalty or interest due to a malfunction of an electronic tax system,
- the incorrect registration of the tax obligations of a taxpayer."

Miscellaneous

Stamp Duty Act

Section 117

A new paragraph r providing for the exemption from stamp duty the transfer of property by a company to its shareholders provided that such transfer is in proportion to their shareholding immediately before the transfer, or in the case of shares such shares should be in a subsidiary of the company undertaking the transfer.

Contact Us

CPA Nahashon Gitau/Partner
nahashon@gknahashon.co.ke

James Mwangi/Tax Associate
james@gknahashon.co.ke

Scan to subscribe to our newsletter



info@gknahashon.co.ke

0715 008008/0700 058630

www.gknahashon.co.ke