THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA) RESPONSES TO THE SECOND DRAFT OF THE NATIONAL TAX POLICY SUBMITTED TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING ON OCTOBER 12TH, 2023

KEPSA thanks the Departmental Committee on Finance and National Planning and the National Treasury for incorporating most of the input presented in the first draft of the National Tax Policy. The information that has been conclusively contained includes;

1. Including Customs and Miscellaneous Fees and Levies Act guidance under subchapter 2.1 speaks to the legal and regulatory framework. Further, this chapter entrenches the Policy under Article 209 of the Constitution as the anchor law.

2. It is entrenching the roles of policy formulation solely under the National Treasury, with the revenue authority being an implementer of the taxation policy and laws under sub-chapter 2.2.1 that speaks to critical players in tax administration.

3. Provision of Establishment of a Special Tax Court- Judges with specialised training in tax law would preside over the special tax court. The specialisation is expected to give rise to quality judgments. This has been adopted under subchapter 4.10 (iv) on tax dispute resolution.

General proposals that need to be strengthened under the Policy;

1. The Policy articulates the importance of public participation under sub-chapter 1.3 vii, which speaks to the rationale of the Policy and specifically paragraph vii on accountability. However, the Policy should further recommend the three-tier public participation model. The first tier is the entrenchment of the economic affairs committee at the National Treasury, which would include critical private sector stakeholders and government stakeholders to ensure economic and money-related bills are crafted from the onset with input from the stakeholders. The second tier of participation would be the usual participation from Kenyans in the draft legislation. The third tier of participation would be after the draft bill has been discussed in parliament and additions inserted. This model will ensure that the public validates the last-minute changes to tax laws at every level.

2. The Policy identifies the stakeholders, including the legislator, and their roles in subchapter 2.2.1 under chapter 5 on implementation framework. The Auditor General should be expressly mentioned and part of the Monitoring and Evaluation framework by their critical role in public finance, as espoused in the Constitution of Kenya (COK) 2010.

3. Under Chapter 6, which speaks to monitoring and evaluation, the financial and non-financial indicators should be expressly outlined to guide the national treasury in preparing the implementation matrix. Further, this will enhance the sense of predictability and stability the Policy aims to address. A structured guide on developing a central system for monitoring and evaluating all the tax legislations and policies should be implemented.

4. The Policy does not reference nor provide any incentives towards promoting Environmental, Social, and Governance (ESG) measures that taxpayers may undertake. ESG refers to organisations' practices, activities, and investments that lead to sustainable, ethical, and responsible outcomes. They form the foundation of an organisation's responsibility towards society, the economy, and the environment. ESG reporting is essential for companies to report on and showcase their commitment to the organisation's core values. The Policy should include tax incentives for taxpayers who undertake activities that benefit society (such as net zero carbon emissions, carbon neutrality, and development/use of sustainable and environmentally friendly infrastructure).

SPECIFIC COMMENTS

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
Hard to tax policy guidelines				
1.	Chapter 4; Policy Guidelines Subchapter 4.1: Hard to tax sectors	It reads as follows; Paragraph i); *Explore ways of enhancing taxation of property transfers, including land and agricultural sectors.* Paragraph ii) *Explore ways of enhancing informal sector taxation, including increasing presence in big towns and cities.* Paragraph iii) *Exploring mechanisms for collecting tax from the informal*	To introduce an element of predictability, we recommended substituting the term 'exploring' with alternative methods to enhance tax collection in the hard-to-tax sectors like the use of; • Simplified tax system for less formal sectors • Data Analytics and Artificial Intelligence • Whistleblower Programs • Collaboration with Industry Experts: • Tax Amnesties and Voluntary Disclosure Programs	• Our Policy must embrace innovative methodologies and decisive wording to address the unique challenges associated with taxation in hard-to-tax sectors. The outlined methods offer a practical and moral foundation for pursuing enhanced tax.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
		sector, such as appointing tax collection agents.		
2.	Subchapter 4.1 – Paragraph (vi).	It reads as follows; Enhance collaborations and exchange of information on taxpayers between the national Government and county government.	Reword Subchapter 4.1 (vi) to read; 'Enhance *collaborations and exchange of information on taxpayers between the National Government and County Governments by, and within the limitations of, the Data Protection Act and related Data Protection Regulations.'*	• It is vital to follow the Data Protection Act, which requires the minimization of data collection.
INCOME TAX PROPOSALS				
3.	Chapter 4; Policy guidelines Subchapter 4.5: Personal Income Tax	Paragraph iii, subchapter 4.5 (Personal Income Tax) of the Policy proposes to review PAYE tax bands and design them to	We recommend that the tax bands be widened, and the marginal tax rate be reduced to safeguard individuals from	• Head B of the Third Schedule to the ITA subjects income individuals earn to PAYE at rates ranging from 10% to

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
	Paragraph iii	provide for progressive taxation and a tax-free threshold/personal relief.	excessive taxation and erosion of their purchasing power. Reintroduce family relief.	35%. However, the bands are narrow when assessed against comparable countries. In addition, the marginal PAYE tax rate is high for our context. • For instance, the PAYE rate of 30% in Kenya applies to individuals earning over KES 32,333 per month, compared to the equivalent of KES 255,000* in Ghana, and approximately. • KES 237,000** in South Africa. This points to excessive taxation, eroding individuals' purchasing power and ability to save and invest to spur economic growth. It also reduces Kenya's attractiveness as a destination for top talent

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				who transfer skills to Kenyans, ultimately detrimental to our country. • In addition, the marginal rate of 35% is 5% higher than the corporate income tax rate of 30%. This means that individuals are taxed at rates higher than corporations and have a higher tax base, considering that individuals are taxed on their gross earnings. In contrast, corporations can claim deductions for the expenses incurred in producing their income. • We therefore recommend expansion of tax bands and capping of the marginal tax

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				rate for individuals so that it remains below the corporate income tax rate. • Reintroduce family relief to encourage the younger generation to have families. Currently, creating a family is perceived as admitting additional financial burden • Our recommendations above are in line with the Policy's Guiding Principles stipulated under Subchapter 1.5, particularly equity and fairness, as well as neutrality, which aims to ensure that everyone should pay a fair share of taxes and that the tax system shall minimise discrimination in

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				favour of, or against, any economic segment. This would further align the Policy with Article 201 of the Constitution of Kenya, 2010, which provides that the burden of taxation shall be shared fairly.
4.	Chapter Four on policy recommendations, Subchapter 4.5 (Personal Income Tax), Paragraph iv	Paragraph iv, Subchapter 4.5 (Personal Income Tax) of the Policy proposes to subject savings for retirement to the exempt-exempt-taxed (EET) method of taxation where deductible contributions are capped, investment income of the contributed funds are exempt, and withdrawals/annuities are fully aggregated with the	We recommend an increase in the deductible contributions to savings for retirement.	• Section 22A of the Income Tax Act provides that the deduction in respect of contributions of an employee in a year shall be limited to the lesser of the sum of contributions made by the employee to registered funds in the year, 30% of the employee's pensionable income in the year, or KES 240,000 per

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
		comprehensive income for tax at the progressive rate structure.		annum (or part thereof in case of a part year of service). • Whilst inflation has continued to erode the value of money year-on-year, deductible contributions to retirement savings have remained the same for over 15 years, with the current cap of KES 240,000 per annum having come into effect from 1 January 2006. This has not kept pace with inflation, the rising cost of living, the increasing tax burden, and other payroll-related levies that individuals, particularly those in formal employment, must bear.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				• We therefore recommend increasing the deductible contributions to savings for retirement by between 50% and 100% to offer some reprieve to employees. • Our recommendation above aligns with the Policy's Guiding Principles stipulated under Subchapter 1.5 (v) on flexibility, which aims to ensure that the tax system will be dynamic and responsive to changing economic circumstances.
5.	Chapter 4; Policy Guidelines Subchapter 4.6 – Corporate Income Tax shall be guided by the following;	It reads as; ii) In the computation of taxable income from a business, deduction shall be allowed for any expenditure	We recommend that this proposal be amended to provide for the deductibility of expenditure incurred by businesses in producing taxable	• The proposal under Paragraph ii, Subchapter 4.6 (Corporate Income Tax) of the Policy, which mirrors the language applied in Section

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
	paragraph (ii)	incurred wholly and exclusively to generate that income.	income, even where the payment is not taxed in the same year. Specifically, we recommend the replacement of the word ‘**that income**’ with ‘**taxable income**’. We also recommend outright recognition of necessary capital expenses currently allowable under the current section 15 of ITA.	15 (1) of the ITA, confirms that in the ascertainment of the total income of a person in a given fiscal year, only expenditure incurred in the production of that income shall be deductible. • The matching principle established by the phrase 'that income' presents practical difficulties concerning certain businesses that incur expenditure on income earned in subsequent fiscal periods. A practical example is evidenced in the agricultural sector, whereby expenses incurred in a specific year of income may not necessarily be matched

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				to income earned. This matter has been a subject of dispute in other jurisdictions. Specific reference is made to the determination of the Courts in Vallambrosa Rubber Company Ltd v Farmer [1910] 5TC529 (“the Vallambrosa case”). • In the Vallambrosa case, the Appellant incurred expenditure on weeding and pest destruction for rubber trees in their estate. Yet, the trees could only yield rubber (and therefore earn income) after 6 years. The Court held that the expenditure incurred on the trees during their unproductive years,

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				and commencing after their cultivation, was revenue expenditure and therefore allowable to the extent that it had a nexus to the business of the Company, being the cultivation of rubber trees and production of rubber for sale. • Certain capital expenditure necessary for the running of business should be allowed as a matter of policy. For instance, section 15(2)(l) provides for deductibility of capital expenditure on clearing and planting thereon permanent and semi-permanent crops.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				• In the interest of promoting equity, fairness and flexibility, and further, given our justifications discussed above, we strongly recommend that the Policy be amended to allow for the deductibility of expenses incurred for business.
6.	Subchapter 4.6 (Corporate Income Tax), Paragraph iii	Paragraph iii, Subchapter 4.6 (Corporate Income Tax) of the Policy proposes that capital deductions allowable for tax purposes shall not exceed 100% of the actual cost of the investment or asset.	We recommend that the proposal be amended to confirm that capital deductions may be enhanced more than 100% to the extent that measurable benefits accrue to the economy or the general public in line with the Government of Kenya's policy initiatives, for instance, among other things, the attraction of FDI in specific	• The Policy proposal to cap investment allowances at 100% of the actual cost of an investment or asset would unnecessarily limit the possibility of the Government to provide investment allowances at rates higher than 100% based on emergent needs to incentivise investment or

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
			sectors or the creation of employment opportunities in particular areas/localities.	spur growth and development in specific sectors or regions. An example would be the recent introduction of investment allowances at 150% by the Finance Act 2022, concerning investments exceeding certain thresholds made outside the Counties of Nairobi and Mombasa. Adopting the Policy proposal as currently drafted would preclude such incentives from being introduced.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
Value Added Tax				
7.	Chapter 4; Policy Guidelines Subchapter 4.6 Value Added Tax Paragraphs (i), (ii) and (v)	It reads as; Paragraph (i) The tax base for VAT shall be domestic consumption for all goods and taxable services. Paragraph (ii) Exemption, if any, from VAT, will be only on consideration of costs of compliance and administration costs. Paragraph (v) No exemption or lower-than-standard- rates shall be provided under VAT on distributional consideration.	Subchapter 4.6 (i) be reworded to; The tax base for VAT shall be on domestic consumption for all goods and taxable services. Paragraph (ii) to be reworded to include VAT exemptions below; a) Projects financed by development partners; b) Persons with privileges and immunities (in line with international agreements and conventions);	• The issue with this proposal is that it will effectively delete the First & Second Schedules to the VAT Act, as there will be no exempt or zero-rated supplies (apart from exports) • This move will significantly increase the costs of basic/essential commodities critical to the economy's growth and sustainability, such as education, healthcare and agriculture (among others). • Additionally, this will make Kenya unattractive for investments, especially for foreign manufacturers,

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
			c) Supplies to armed security forces; d) Raw farm produce that has not undergone any processing or value addition; e) Live animals, fish and poultry; f) Medicaments; g) Financial services, educational services and social services supplied by Government or NGOs h) Goods imported by persons living with disability; i) Projects targeting low-income earners and vulnerable groups in society	which often set up production units in countries in Asia and Africa.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
8.	Subchapter 4.6 (Value Added Tax), Paragraph iv	The Policy proposes that there shall be a single general rate for VAT.	We recommend the amendment of this proposal to provide that: *There shall be a single standard rate of VAT. Where a preferential rate is granted, it shall be at least 50 per cent of the standard rate.* *Even with the above, allowance can be made for multiple VAT rates, at most three, for specific products in sectors of national importance, like agriculture.*	• With the general rate of VAT currently at 16%, the proposal to have only one prevailing VAT rate would mean that even for sensitive products, such as petroleum products, any opportunity to alter the rate as a way to cushion the economy against shocks occasioned by global trends and the adverse effects of price increases of these products would be blocked. • We recommend that the proposal be amended to allow for preferential rates with the limitation that such rates shall be at least 50 per cent of the general rate.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				• Further, considering the economic significance of specific sectors, such as agriculture, it may be necessary to have multiple VAT rates for products from these sectors. Such a move would not be peculiar or against international best practices, with several countries across the globe having various VAT rates for different goods and services. • Paraguay, with a standard VAT rate of 10%, imposes a lower rate of 5% on the transfer of agricultural, horticultural and fruit products in their natural state and live animals. Similarly, Uruguay, which

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				has a standard rate of 22%, subjects products like essential food items to a rate of 10%. • While noting that certain products, such as cereals, live animals and raw farm produce, are currently VAT-exempt, we aver that with agriculture contributing to approximately 30% of Kenya's GDP, having a policy statement to provide for similar multiple VAT rates for select agricultural products would ensure that the same is entrenched in tax legislation, and would have positive impacts on the economy.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
9.	Subchapter 4.6 (Value Added Tax), Paragraph ix	The paragraph reads; The criterion for determining whether a business firm or other entity is liable to VAT will be the VAT registration threshold, which will be determined based on the cost-benefit of collecting VAT from small firms or entities.	The paragraph should be reworded to; The criterion for determining whether a business firm or other entity is liable to VAT will be the VAT registration threshold, **which will be aligned to the Turnover Tax threshold,** which will be determined based on the cost-benefit of collecting VAT from small firms or entities.	• The alignment of TOT and VAT registration thresholds represents a progressive step towards creating an environment where businesses can thrive while ensuring robust tax compliance and revenue growth.
EXCISE DUTY				
10.	Chapter 4; Policy Guidelines Subchapter 4.7; Excise Duty;	Paragraph (iii) reads; *In addition to the above general principle of charging excise duty, excise duty shall be*	We recommend that the Policy provides criteria for determining excisable goods and services. The requirements should be	• In addition to setting out the categories of excisable goods, it would be prudent to spell out the criteria governing the scope of

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
	The following guidelines shall guide excise duty;	*charged on luxury goods, communication services and other goods to raise revenue to facilitate the government funds for the budgeted priorities programs; the Government may, from time to time, review the goods and services subject to excise duty;*	based on international best practices. For instance, the Policy can provide as follows: Excisable products shall meet the following criteria: • Harmful goods and services whose excessive consumption harms the health of consumers, the environment, • Luxurious products, and • Goods and services whose demand is largely inelastic.	excisable goods and services. This will ensure that excise duty is only imposed on the intended limited range of products in line with international best practices. • The restriction of inclusion of products outside these categories will promote certainty amongst the taxpayers and ensure fairness and simplicity in the administration of the excise duty law. • Communication services are not suitable for excise duty. If they are to be taxed, they should be taxed through regular taxation purposes, not excise duties that focus

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
			Goods and services shall only be subjected to excise if it is demonstrated through objective and quantifiable evidence that the preceding criteria have been met. The evidence shall be tabled in parliament with the bill proposing introducing the excise duty.	on reducing usage and generating revenues to compensate for harm. Communication services have minimal negative impacts on society and almost entirely positive effects, facilitating trade, education, healthcare, government services, etc. They should be encouraged, not discouraged. • Additionally, communication services are now essential instead of a luxury service available to a select few in the current environment.
11.	Subchapter 4.7 (Excise duty), Paragraph viii	The Policy proposes to exempt excise duty on specific categories of supplies or	We recommend that the Policy be amended to include categories of other essential	• The Second Schedule of the Excise Duty Act exempts

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
		individuals, including collections of goods and services to persons with privileges and immunities by international agreements and conventions.	items currently listed in the Second Schedule of the Excise Duty Act, e.g., persons with disabilities, aid-funded projects, etc. The Policy should also state the criteria for exempting excise duty.	excise duty on many products. • The excluded exemptions are critical from a social and economic perspective and should be included in the tax policy.
Proposals not in the Policy				
12.	Chapter 4 Subchapter 4.7; Excise Duty; The following guidelines shall guide excise duty; Paragraphs iii In addition to the above general principle of charging excise duty,	The Policy needs to provide the basis for determining excise duty rates on excisable goods and services.	We recommend that the Policy introduces the following paragraphs as the basis for determining excise duty rates: • Excise duty rates imposed on products	• The current excise duty law needs to provide a basis for determining excise duty rates, leaving it open for lawmakers to impose excise duty seemingly haphazardly. • This practice poses a risk of negatively impacting revenue collection

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
	excise duty shall be charged on luxury goods, communication services and other goods to raise revenue to facilitate the government funds for the budgeted priorities programs; the Government may, **from time to time,** review the goods and services subject to excise duty;		shall not exceed the optimal excise duty rate. • The optimal rate shall be based on studies conducted by the Kenya National Bureau of Statistics. • The optimal excise duty rates undergo public participation and approval by the National Assembly. • The optimal tax rate shall be reviewed every three years.	growth/survival of the affected industries, which may adversely affect employment and economic development. • Introducing a basis for determining excise duty rates will ensure certainty amongst the taxpayers and promote revenue growth.
13.	Chapter 4; Policy recommendations Introduce a new paragraph ix under Subchapter 4.9 on Tax	The Policy lacks a statement speaking to the applicable framework concerning the tax audit process.	We recommend the inclusion of Paragraph ix of Subchapter 4.9 (Tax administration) of the Policy compelling the KRA to formulate and publish a tax audit process framework purposed at ensuring	• Under its mandate under Section 5 of the KRA Act and as empowered by Section 59 of the TPA, the KRA regularly conducts compliance, verification and investigation

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
	Administration to cater for the predictability of tax audits.		the conduct of tax audits by the KRA is efficient, effective, and predictable with clearly stipulated timelines, and further is guided by conventional audit standards, methods and processes, including sampling. Such a framework should stipulate that taxpayers may not simultaneously be subjected to multiple audits. Audits should be carried out after 3 years or once every 5 years. Periods that have already been audited should be retained. There should be legislation governing the process and justification for re-audits, which the KRA must strictly adhere to.	exercises indicating the commencement of the tax audit process. Through this process, KRA, among other things, monitors compliance, identifies instances of non-compliance, verifies refund claims, and ultimately assesses and collects unpaid revenue. • This notwithstanding, past and current experiences indicate that the tax audit process lacks a transparent, efficient, effective and predictable framework that taxpayers can rely on with certainty throughout the tax audit process. This translates to: • Inordinate delays in the conclusion of tax audits;

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
			The taxpayer must be issued an audit closure letter where the KRA has not found anything. . Audit teams should remain the same during the pendency of the audit due to internal staff reshuffling at the KRA. Once a team commences an audit, it must conclude the same, even if they have been stationed elsewhere.	• Duplication of efforts across multiple KRA officers; • Ineffective information/document management processes; • For example, methods without acceptable auditing practices use sampling instead of insisting on 100% of the documents. • Unreasonable requests for information and documentation lead to unjustified assessments where the information is not provided in good time; • Poor communication channels exist between the respective KRA audit team(s) and taxpayers.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				• As an integral component of tax administration and enforcement and given its potential time and financial cost to businesses if ineffectively managed, we are persuaded that the proposed inclusions are justified as they will: • Increase certainty and predictability amongst taxpayers concerning the tax audit process, enabling efficient collaboration between taxpayers and the KRA. • Aid in attaining administrative efficiency, a core Guiding Principle of the Policy, through time and cost savings by both the KRA and taxpayers.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
				• In addition, incorporating and applying conventional audit standards and principles will maintain simplicity, certainty, and clarity concerning the tax audit process. Adopting sampling as an audit methodology and implementing intelligent information and document management practices, for instance, will reduce back and forth between taxpayers and the KRA audit team, particularly in the information provision stage, which tends to delay the conclusion of audit processes.

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
14.	Protection of taxpayers’ rights in tax administration and enforcement	The Policy does not contain a statement that protects taxpayers' constitutionally guaranteed rights in tax administration and enforcement.	We propose that the Policy be amended to introduce a preamble to Subchapter 4.9 (Tax administration) of the Policy to provide for the fair and reasonable exercise of the KRA’s tax administration and enforcement mandate. Specifically, we propose that the preamble to Subchapter 4.9 (Tax administration) of the Policy read as follows: "The administration and enforcement of tax legislation shall observe the Guiding Principles of this Policy subject to Chapter 4 of the Constitution of Kenya, 2010, and in particular the rights and fundamental	• Article 20 of the Constitution of Kenya, 2010 confirms that the Bill of Rights applies to all laws and binds all State organs and all persons. This includes the KRA, the regulatory body mandated with collecting, administering, and enforcing tax legislation by Section 5 of the Kenya Revenue Authority Act, 1995 ("the KRA Act"). • Incorporating the rights and fundamental freedoms guaranteed under Chapter 4 of the Constitution of Kenya, 2010, in the Policy will aid in codifying the same within Kenya's taxation framework. This will bring to the forefront and support the

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
			freedoms so guaranteed. To avoid doubt, enforcing tax legislation shall ensure reasonable notice be issued and take cognisance of dispute resolution mechanisms available to taxpayers.”	protection and guarantee of taxpayers' rights in tax revenue administration and enforcement, bringing critical stakeholders in revenue administration.
15.	Chapter 4; Policy Recommendations Sub-chapter 4.11: International Taxation and Tax Treaties Paragraph iv	Paragraph iv reads; Negotiate bilateral, multilateral, regional and international tax agreements about double taxation, customs tariffs and fiscal evasion guided by the following principles; a) Analysis of the benefits vis-a-vis costs to achieve beneficial outcome to Kenya.	Add to sub-chapter 4.11 paragraph iv a sub-paragraph I that reads; Negotiate bilateral, multilateral, regional and international tax agreements based of a model tax treaty developed by The National Treasury in consultation with key stake holders including LSK. ICPAK, KEPSA KAM and subjected to a rigorous public participation process. The	• Kenya’s tax treaty network is shallow and inconsistent. • Currently, there are no more than 20 DTA’s in force • The bulk of the Old crop of DTA’s give up a lot of taxing rights. For instance, all DTA’s fashioned along the OECD model allocate taxing rights to the country of residence which cannot be Kenya. DTA’s fashioned along the UN Model provides for

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
		b) Existence of significant trade between the two countries c) The prevention of tax evasion and discrimination d) Certainty and simplicity in addressing cross border activities e) Partnerships in conducting joint tax audits with other jurisdictions where such agreements are in place f) The impact of domestic legislation in the implementation of treaties (Limitation of Benefit Clauses) g) Opportunities for mutual and technical	process should be guided by the following principles; a) Analysis of the benefits vis-a-vis costs to achieve beneficial outcome to Kenya. b) Old DTAs, should be renegotiated to keep pace with the current business realities. c) Existence of significant trade between the two countries d) The prevention of tax evasion and discrimination e) Certainty and simplicity in addressing cross border activities f) Partnerships in conducting joint tax	shared rights and an elaborate methodology of elimination of double taxation while sharing the taxation rights. • Kenya being a service and technology receiving country requires strong ang clear provisions on withholding tax. A lot of payments are made in for of Management and Professional fee. • The model tax treaty must as a matter of policy contain articles of Professional and management fee, and Other Income article fashioned along the UN Model tax convention • The above recommendations ensures that DTA's are negotiated in

No	Chapter Subchapter/ Paragraph	Proposal under the Draft National Tax Policy	Our Recommendation	Justification
		assistance in capacity building h) Exchange of information and the collection of taxes	audits with other jurisdictions where such agreements are in place g) The impact of domestic legislation in the implementation of treaties (Limitation of Benefit Clauses) h) Opportunities for mutual and technical assistance in capacity building i) Exchange of information and the collection of taxes	a coordinated manner, providing similar rates across the partner states and avoiding negotiating clauses like '' the most favored Nation status''