MEMORANDUM SUBMITTED BY THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA) ON THE FINANCE BILL, 2024 TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING ON MAY 28, 2024

The Section of the Finance Bill 2024	Wording of current clause	Proposed Amendment	Rationale and Justification
		INCOME TAX	
Section 9 Insertion of new sections 12G and 12H of CAP 470	The Income Tax Act is amended by inserting the following new sections immediately after section 12F – 12H - Motor vehicle tax	1. Exempt commercial and agricultural vehicles from the Motor Vehicle Tax. 2. Remove the tax from Income Tax Act and Introduce a levy under Miscellaneous Fees and Levies Act to be charged on petroleum at a rate of Ksh 1 per litre. 3. Reduce the percentage to 1% of the value of the Motor vehicle and have the ceiling capped at KSh. 20,000. 4. Or introduce motor vehicles license fee to be based on engine capacity and managed under NTSA.	1. Subjecting commercial and agricultural vehicles to the Motor Vehicle Tax will increase the operating costs of manufacturers and their suppliers who utilize vehicles for commercial (logistics) and agricultural (planting, harvesting, logistics) purposes and the cost of food items. These additional operational costs will make businesses less profitable and result in higher prices for consumers. 2. A minimal charge on petroleum prices will not be punitive and will be paid in small amounts over a whole year as opposed to paying together with insurance policy 3. The tax is not on income to be subject to income tax and may give fertile grounds for court disputes and argued as unconstitutional.

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			4. Some vehicles pay for third party policy and do not require valuation. The new law will force them to undertake vehicle valuation which is also an addition to the new tax. 5. The new tax will adversely affect insurance business as many vehicles and especially motorcycles will operate without insurance policies. 6. This cap is inequitable as a person whose car is valued at 150,000 will be required to pay a tax of Ksh 5,000 which is Ksh 1,250 more than the proposed rate of 2.5%. Conversely, a person whose car is valued at 20 million will only pay Ksh 100,000, which translates to 0.5% of the value of the motor vehicle much less than 2.5%
Section 18 Amendment of Section 31 of CAP 470	Section 31 of the Income Tax Act is amended by deleting paragraph (v) of the proviso to subsection (1) which reads as follows: *"a health policy whose term commences on or after the 1st January 2007 or a contribution made to the*	1. Section 31 of the Income Tax Act is amended by deleting the words "or a contribution made to the National Hospital Insurance Fund shall qualify for relief"	1. The proposed deletion will repeal relief for all health policies including private health policies. 2. Since the intention is to delete NHIF and introduce SHIF as an allowable deduction, we propose for deletion of the relief with respect to National Hospital

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	National Hospital Insurance Fund shall qualify for relief"		Insurance Fund and retain relief for *"a health policy whose term commences on or after the 1st January 2007."*
Section 20 Amendment of Section 35 of Cap 470	Section 35 of the Income Tax Act is amended a) In subsection (1), by inserting the following new paragraphs immediately after paragraph (q)— (r)supply of goods to a public entity; (s)making or facilitating payment on a digital marketplace; (b)in subsection (3), by inserting the following paragraphs immediately after paragraph (l)— (m)supply of goods to a public entity; (n)making or facilitating payment on a digital marketplace.	1. The Commissioner should include the clause for provision of regulations on the applicability of 20 (a)(s) and 20 (b)(n) in the adjacent caption.	1. There is a need to have regulations to guide on the taxation of the same.
Section 23 (C)	in paragraph 51, by inserting the following provision.	1. Deletion of the proposed provision.	1. This proposal will discourage long term investments. Further institutions which are exempt such

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	Provided that this exemption shall only apply to interest income accruing from bonds, notes or other similar securities used to raise funds for infrastructure and other social services, listed before the commencement of this provision.		as Pensions will continue to enjoy the exemptions while individual investors will suffer additional taxes. 2. The proposed provision seeks to amend Paragraph 51 of the First Schedule and effectively impose a 5% withholding tax on interest income accruing to residents investing in listed infrastructure bonds and listed bonds geared towards other social services. 3. It is noteworthy that this would lower the returns on listed infrastructure bonds and would thereby lower the attractiveness of the uptake or reliance of such bonds towards financing infrastructure projects. 4. In light of this, we would propose the deletion of the proposed proviso particularly given the higher demand for listed infrastructure bonds given their higher tax-free return.
Section 23 (e)	Section 23 (e)- By deleting paragraph 57 that reads as follows—	1. Delete this proposal and any tax on distribution of already	1. Registered Family Trusts hold funds and assets which generate

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	57. The income or principal sum of a registered family trust.	taxed funds by a Registered Family Trust to its beneficiaries under the First Schedule to the Income Tax Act.	income for the benefit of the beneficiaries. 2. The income they generate from investments have already been subjected to income tax. Other funds retained therein are also already taxed. Taxing distributions to the beneficiaries is double taxation. It also discourages the use of Registered Family Trusts as vehicles for estate and succession planning. 3. Wills (or lack thereof) are less effective models for transferring wealth and they lead to disputes and erosion of wealth before it reaches the third generation. 4. In light of this, we propose that the proposed amendment be deleted to allow for the continued use of registered family trusts.
Section 23 (g)	Section 23 (g)- by deleting paragraph 58 that reads— 58. Any capital gains relating to the transfer of title of immovable property to a family trust.	1. Deletion of this proposal.	1. Deletion of the income tax exemptions for Family Trusts will lead to persons setting up Trusts outside Kenya. 2. Currently, the income distributed to beneficiaries of a Registered

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			Family Trust is taxed at the point of distribution. Taxing the income of the Family Trust and the level of the Trust and on subsequent distribution will be punitive. 3. Consider providing an exemption at the point of distributing the income of the Trust to the beneficiaries.
Section 23 (j)	In paragraph 60, by deleting the provision and substituting therefore the following new proviso— Provided that— (a) the bond, note or security shall have a maturity of at least three years; and (b) this exemption shall only apply to interest income accruing from a bond, note or other similar security used to raise funds for infrastructure and any other social service, project and asset defined under Green Bonds Standards and Guidelines, and any other social service listed before the commencement of this proviso.	Deletion of this proposed proviso to Paragraph 60.	1. In 2019, Kenya saw the issue of its first green bond which raised 4.3 billion shillings ($41.45 million) to build eco-friendly student accommodation. This was geared towards enabling the country to transition towards a market guided by climate adaptation and resilience. 2. However, the proposed amendment would deter investment in eco-friendly infrastructure projects given the anticipated reduced returns on such investments.
Section 24	The Second Schedule of the ITA provides for the nature and rates of	1. We propose for the reinstatement of a	1. The intention of the reinstatement of this provision is to reduce the

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	investment allowances in the computation of taxable income.	provision which would allow companies to use the tax written down value as the value of assets for transfer within a group. Our proposal is premised on the previous Paragraph 13 of the Second Schedule to the ITA. 2. We propose the inclusion of an amendment which reads: "*<u>Where machinery is sold by buyer who is a body of persons over whom the seller has control, or by a seller who is a body of persons over whom the buyer has control or where the sale is between bodies of persons where both the seller and the buyer are bodies of persons and some other person has control over both of them, and the sale of machinery would give rise to a balancing charge, then the parties to</u>*	significant tax liability on investors resulting from the use of market value as the transfer value of assets between companies within a group. 2. The use of tax written down value, as opposed to the market value, in the transfer of assets within a group will enhance equity.

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		the sale may elect to sell the machinery at a price other than the market price."	
Section 25 (iii)(B)	(A) in subparagraph (d)— (Aa) by deleting item (i);	1. Deletion of this proposal or a clear amendment to reflect the intention to increase the period of saving to twenty years.	1. Error in the proposal. The deletion of item (i) in subparagraph (d) is incompatible with the subsequent proposal (Ab). 2. Additionally, the proposal to delete this item would require a proposal to replace item (i) so as to provide for the taxation of pension.
Section 25 (iii)(B)	(Ab) by deleting the words "fifteen years" and substituting therefore the words "twenty years" appearing in item (i);	1. Deletion of this proposal or amendment to reflect the intended twenty years.	1. This proposal is inconsistent with subparagraph d(ii) which refers to fifteen years.
Section 25 (iii)(C)	(C) in subparagraph (f)(i), by deleting the expression "the aggregate value of which is twenty-four thousand shillings in a month or more";	1. Deletion of proposal	1. This proposal intends for all payments for management, professional, or training fees to resident persons to be subject to a 5% withholding tax, regardless of the amounts paid.2. 2. This will bring about an added administrative and compliance burden to withhold tax on small payments.
Section 26 (c)	Paragraph 6(2)(h)(v) is proposed to be amended by inserting the words	1. Amendment to paragraph 6(2)(h), by	1. The proposal as currently worded would lead to ambiguity and

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	"an individual" immediately after the word "where".	deleting item (v) and substituting therefor the following— (v) to a company where individual spouses, spouses or a spouse and immediate family hold 100% shareholding.	confusion on the intendment of the provision. 2. Our proposal seeks to clarify the provision to do away with room for intendment.
		VALUE ADDED TAX	
Section 35	Standard rate of VAT for locally manufactured/assembled phones removed under the zero-rated category.	***<u>Reinstate the zero- rated status</u>***	We propose reinstatement for the following reasons. **1.**Since there has yet to be additional suppliers entering the market other than EADAK (East Africa Device Assembly Kenya), the zero-rated status should be maintained to encourage investment and affordability of the devices. **2**. It is estimated under the Kenya Vision 2030 Blueprint, that the ICT sector will contribute up to 10% to the GDP of the Country and an imposition of VAT will not only drive up the cost of doing business but also affect affordability of locally assembled phones and hence hinder market penetration.
First Schedule Amendment to Cap. 476	Removal of: Gluten Bread and Leavened Bread from VAT exempt	1. Retain these products in the exempt category.	1. Bread is a daily household commodity, household income is depleted by the existing tax

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			burden, the price of bread will already be affected by; The motor vehicle Tax due to transport, the Eco-levy on plastic package since bread is packed in plastic bags. 2. An additional of VAT on bread will affect the price by Ksh. 10-Ksh 12.5.
Section 35	• The provision of financial services on behalf of another on a commission basis now subject to VAT.	***<u>Reinstate this to exempt status</u>***	We propose reinstatement based on the following. 1. The imposition of VAT on these commissions will affect affordability of the consumers of these services as they shall shoulder the increased costs. The effectively limits financial inclusion. 2. The increase equally drives up the cost of doing business and the same commissions are charged excise duty which equates to double taxation which is unfair.
Section 34 (a) (i) (A) (N)	Deletion of paragraph 107 from the first schedule of the VAT ACT. Exempting Plant, machinery and equipment used in the construction of a plastics recycling plant	1. Maintain Paragraph 107 of the First Schedule to Cap. 476 to allow for tax incentives for recyclers of plastics.	1. The waste management sector currently supports over 150,000 jobs, both directly and indirectly, with the potential to expand to 500,000 jobs by 2032. Over 90% of these workers are from the lower socio-economic strata, meaning these funds significantly contribute to improving their livelihoods. 2. Rescinding tax incentives for the creation of recycling establishments

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			would impede the sector's development. It is imperative that these incentives are preserved to support the expansion of plastics recycling, in alignment with the nation's policy objectives.
Section 34 (a) (i) (A) (U) (151)	Micronutrients foliar feeds and bio-stimulants of Chapter 38.	1. Micronutrients foliar feeds and Bio-stimulants be inserted into the second schedule making them zero rated as other fertilizer products	1. In the spirit of making crop and soil nutrition products more affordable 2. In the spirit of the just concluded Nairobi Declaration towards promoting integrated soil fertility management, soil health, productivity and sustainability towards food security.
Section 35 (b)	The Second Schedule to the Value Added Tax Act is amended in Part A— b) by deletion of paragraph 16 and moving it to Exempt	1. Retention of paragraph 16 in the second scheduled of VAT act 2013 (zero-rated status which was deleted and inserted into Exempt VAT All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture'	1. Local manufacturers of Pest Control products are already using the provision to grow the manufacturing industry in Kenya and generating employment to the local and producing pest control products which are affordable to the farmer.

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Section 46 (a) (ii)	By inserting the following new paragraph immediately after paragraph (xxx)— (xxxi) Inputs and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health	1. Zero-rate all Pest Control Products for use in public health (for Mosquito control, bedbugs, rodents).	1. As a component of affordable healthcare, the following justifications applies: • To support affordable healthcare through preventive quality services will ensure the cases of transmission of diseases from animal to human by such vectors (mosquitoes, zika, dengue) are controlled. Nuisance pests such as bedbugs and fleas are making staying at home unbearable. • Products registered for public health and agricultural pest products share the same molecules however the formulations are not the same. There is reported tendency of misuse whereby products for crops are reportedly used due to variations in prices for public health, thus compromising safety and efficacy. Such misuse also leads to development of resistance by pests to the molecule. • All Insecticides whether for agricultural pest control or public health pest control are under the same tariffs and importers of zero-rated

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			agricultural pest control has to get exemption code from KRA which leads to delay in clearance at the port of entry. • Mosquito coil as one of the public health pest control products is an important component of prevention of malaria. • Local manufacturers of Pest Control products are already using the provision to grow the manufacturing industry in Kenya and generating employment to the local and producing pest control products which are affordable to the farmer.

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None	None	1. We propose to amend Part A to the Second Schedule of the VAT Act 2013 to provide for VAT zero-rating on the supply of denatured ethanol of tariff number 2207.20.00.	1. The amendments to the VAT Act 2013 through the Statute Law (Miscellaneous Amendments) Act, 2024 subjected the supply of denatured ethanol of tariff number 2207.20.00 to 16% VAT effective 25th April 2024, which is detrimental to the growth of the Ethanol Cooking Fuel industry. 2. In Kenya, denatured bioethanol is currently produced from molasses feedstock, a by-product of sugar production. Currently, there is limited supply of bioethanol due to low investment in ethanol production, mechanization, low adoption of high-yield cane varieties, and insufficient areas under cane to support an increase in production. 3. The opportunity exists to unlock KSh 25 billion in new investment into agriculture and bioethanol cooking fuel production, to supply this growing market. 4. Zero rating VAT for Denatured Ethyl Alcohol Cooking Fuel will enable the accelerated investment and growth of the local production industry by allowing producers to claim input VAT. 5. The growth of the local Ethanol industry will support the projected

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			fuel demand which is projected to grow to 192 million litres per year by 2028, reducing the current reliance on imports and improving income earnings for sugarcane farmers and the Sugarcane industry
EXCISE DUTY			
Section 39	The Excise Duty Act is amended by repealing of section 14.	1. Removal of Section 39 from the bill and the retention of section 14 of the Excise Act. 2. In addition, amendment of the provision to include packaging materials.	1. By deleting the section that allows manufacturers to offset the excise duty incurred on raw materials against the excise duty levied on final goods or services delivered to consumers, an escalation in consumer goods and services pricing is anticipated, inevitably fuelling inflation. 2. This adjustment is expected to adversely affect the liquidity and financial robustness of manufacturers, by intensifying cash flow challenges. 3. Additionally, the escalated production costs will render Kenyan goods less competitive on the international

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			market, further detracting from the nation's export potential. 4. The proposal is in contravention of international best practice and the draft National Tax Policy where Excise is a consumption tax to be borne by the final consumer. 5. The removal of section 14 of the Excise Act will subject manufacturers to double taxation. The input excise will be included as part of the cost of the final product which will then be subject again to excise and VAT (inclusive of excise).
Section 42 (a) (i) (G)	in the description of "Articles of plastic of tariff heading 3923.30.00 and 3923.90.90", by deleting the word "imported";	1. Deletion of the proposal	1. Currently Excise Duty is applied only to imported articles of plastic under the tariff heading 3923.30.00 and 3923.90.90. There is a large and vibrant plastics manufacturing industry in Kenya that makes products for use by consumers and for use by other manufacturers to package their products. 2. By imposing excise duty on domestically produced plastics the cost of production and thus increase the costs of goods, such food and beverages that require the use of plastic packaging. 3. Coupled with other proposed levies on plastic packaging this will result in

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			multiple taxation on the same product further increasing the costs to businesses and consumers. 4. The continued imposition of 35% excise tax on imported glass bottles, makes alternatives to plastics un-economical.
Section 42 (b) (i)	The First Schedule to the Excise Duty Act is amended— (b)in Part II— (i) in paragraph 1, by deleting the words “fifteen percent” and substituting therefor the words “twenty percent”;	1. Amend the section 42 (b) (i) to read as follows: - Telephone and internet data services shall be charged excise duty at a rate of (15%) **fifteen percent** of their excisable value.	1. Excise duty on Voice, SMS and data was introduced at 10% sometimes in 2009, increased to 15% in 2018 and further increased to 20% in 2021, then revised to 15% by the Finance Act 2023. The Finance Bill, 2024 proposes to increase the excise duty on telephone, internet, and data services back to 20%. According to the GSMA report on 2020[1]: - 1. Kenya has the highest tax contribution at 37% of total market revenue compared to the Sub-Saharan Africa (SSA) average of 26%. Kenya’s mobile-specific taxes, which are equivalent to 15% of total. 2. Further Kenya’s mobile-specific taxes equivalent to 15% of total mobile sector revenue, are also above the SSA average (10%) and any other region in a sample, including Europe (4%) and Latin America (4%).

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Section 42 (b) (ii)	The First Schedule to the Excise Duty Act is amended— (b)in Part II— (ii)in paragraph 2, by deleting the words “fifteen percent” and substituting therefor the words “twenty percent”;	1. Amend Part II as follows: - Removal of money transfer services by cellular phone service providers, or payment service providers licensed under the National Payment System Act, 2011, from excisable services.	10% excise duty was introduced on mobile money (MM) transaction and further increased to 12% in 2018. Finance Act, 2023 harmonized the rate for cellular Phone service providers and payment service providers to 15%, with a further increase to 20% proposed in the Finance Bill, 2024. 1. Tanzania scrapped MM transfer levy from 1st Oct 2022, Rwanda (0% excise duty) on MM, 10% on Telecom services, Uganda 12% on Data bundles. Other members of the East African Community “EAC” (Uganda, Tanzania, Rwanda, Burundi) have recognized that a business requires both tangible and intangible assets to operate and have therefore granted capital allowances on both. 2. We have also noted the bill has split cellular phone service provider and other payment service providers yet excise duty is on type of service and not on the provider providing the service. These should be merged into one.
None	None	Amend Part I of the Excise Duty Act to remove of SIM Cards from the list of excisable goods.	1. 10% excise duty on importation of cellular phones, and Ksh 50 on Imported ready to use SIM cards were also introduced in 2022 Availability of affordable SIM cards

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			will foster the Government's digital transformation agenda and accelerate economic recovery and resilience by empowering Kenyans through Mobile Communication services and enabling them to access the digitised Government services. 2. The cost of a ready to use imported SIM card with Excise Duty included ranges between Ksh. 80 to Ksh. 100 per SIM card excluding VAT. The landed cost of the ready to use imported SIM card without the Excise Duty ranges from between Ksh. 30 to Ksh. 50 per SIM card. Therefore, the Ksh. 50 Excise Duty is equivalent to between 100% to 167% of the landed cost when applied ad valorem meaning the tax largely exceeds the cost of the SIM Card
Section 39	Proposes to delete section 14 of the Excise Duty Act (EDA)	1. Delete clause 39 of the Finance Bill 2024 i.e. retain section 14 of the Excise Duty Act 2. Alternatively, remove excise tax on raw materials and packaging materials	1. The proposal will lead to loss of manufacturers ability to offset input excise tax will increase the cost of locally manufactured goods by 252% and the final price of local spirits by 166%. This decline considers the impact of an excise tax increase proposed for both raw materials

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			(caused by the deletion of Section 14 of the EDA) and final spirits excise tax. 2. The deletion discourages local manufacturing and encourages importation of finished products that will be more than 35% cheaper than the price of locally manufactured spirits. 3. This will lead to a massive 80% decline in local Spirits production, loss in local raw material sourcing, and render local production of spirits untenable. 4. Deletion of section 14 will constitute double taxation on consumption tax where excise tax is payable both on raw materials and finished goods as a final consumption tax. 5. The cost of Ethanol is KES 168/litre and the proposed tax will be KES 1600/litre which is significantly high compared to the cost to Ethanol (10 times higher). This severely impacts industry's cashflow to invest, discourages local raw material sourcing, increases administrative complexities associated with the volatility of Ethanol, creates incentives for tax evasion due to high tax rates in Kenya compared to Tanzania and Uganda where there is no tax on Ethanol as a raw material.

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			6. It will lead to increase in illicit trade which is already at 59% of the total alcohol consumed in Kenya. Increased cost of production to excise tax on raw material being considered as a final tax will make export goods uncompetitive
Section 42 (K)	Excise rate on Spirit changed to KES 16/centilitre of pure alcohol	1.Change the excise rate to KES11/ centilitre of pure alcohol. 1. Retain the Excise Rates for Ethanol (raw material) at the specific rate of KES 356.42/litre or remove it all together.	1. KES 11/ centilitre of pure alcohol translates to 24% increase in excise tax from the current rate 2. KES16/ centilitre of pure alcohol is a 70% increase which is most definitely going to distort the market and increase levels of illicit 3. While revenue collection for beer grew in 2023 due to the repeal of the annual inflation adjustment provision by the Finance Act 2023 according to the Economic Survey report 2024, Spirits revenue collection declined by 160.45Mn (0.84%) in 2023. This was due to a 35% excise tax increase in 2022, excise tax on raw material like Ethanol (unlike in other EAC countries), both of which have led to increased level of illicit spirits in Kenya. 4. 70% of the spirits consumption happens at 40% ABV @250ml at average consumer price of KES 300/=. The new average consumer prices will increase to KES 770 per litre for local

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			spirits which will prompt shifts to cheaper and most likely harmful alternative, hence growth of illicit alcohol beyond the current levels of 59% (loss of KES 67bn in tax revenue annually[2]). 5. The cost of Ethanol is KES 168/litre and the proposed tax will be KES 1600/litre which is significantly high in proportion to the cost (10 times higher). 6. Benefits of retaining excise tax on Ethanol (raw material) at KES 356.42 /litre (as opposed to KES 1,600/litre) includes: - boost industry's cashflow to invest, encourage local raw material sourcing, resolves administrative complexities associated with the volatility of Ethanol, mitigate tax evasion due to high tax rates in Kenya compared to Tanzania and Uganda where there is no tax on Ethanol as a raw material. 7. The highest rate of excise tax on locally manufactured Spirits in Uganda and Tanzania is UGX 2500 and Tshs 4,386.06 per litre (equivalent to KES 99.70 and KES 260) respectively compared to the rate in Kenya which is now proposed at KES 640 per litre for

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			the most common ABV brands. This creates market distortion that will encouraging an increase in contraband spirits coming from Uganda and Tanzania. 8. There are administrative complexities associated with ABV based excise tax regime e.g. deviation tolerate between the ABV declared on the label and the test ABV in the liquid has not been prescribed, process of maintaining detailed ABV reporting per batch has not been prescribed, action by unscrupulous producers to reduce tax liability by declaring a different ABV on the label that is different from ABV in the liquid, consumers having higher ABV than declared etc 9. Increased investment in distilleries in Uganda due to the superior investment perks continue to undermine distilleries performance in Kenya while creating a shortage in molasses, a raw material for local Spirits distilleries. This has occasioned shutdown of distilleries plants due to lack of feedstock despite an AFA ban on exportation of molasses 10. Further market distortion is brought about by the fact that Uganda and Tanzania both have preferential excise

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			rates for alcohol manufactured from using locally sourced raw materials. Production of spirits below 35% ABV is limited by the lack of KEBS Standards for Spirits. KEBS should develop enabling standards to support product development.
None	New proposal for addition to the Finance Bill 2024	1. Amend Paragraph 1 of Part I of the First Schedule to the Excise Duty Act, 2015 to delete the following item — Description Rate Imported Glass 25% bottles (excluding imported glass bottles for packaging of pharmaceutical products) To safeguard local glass manufacturers, define a quota uptake of locally manufactured glass bottles before importation.	1. The excise tax on glass is in violation of COMESA Treaty provisions on most favored nation treatment and provisions that prohibits Member States from enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Member States 2. Kenya has only two glass manufacturers with a total installed production capacity of 90,425 tonnes/annum against a higher demand by glass users in Kenya, necessitating the need to import. 3. Finished goods coming in glass packaging is more affordable that those manufactured in Kenya due to this tax, making locally produced goods uncompetitive. 4. Local glass industry is currently uncompetitive compared to other glass manufacturers in Africa mainly due to factors outside the industry control such as high cost of power. The

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			challenge is compounded by the lack of adequate local capacity to provide high quality affordable glass bottles efficiently and reliably. In fact, one of the of the local glass manufacturers is importing glass bottles from Egypt to supplement local capacity and is affected by the increased taxation. 5. The tax was introduced to resolve the challenge of undervaluation of imported glass leading to loss in government revenue. However, it has increased the cost of raw materials for compliant importers without guaranteeing that the right taxes are paid on imported glass. 6. Glass packaging is now more highly taxed than the least environmentally friendly plastic packaging (at 10% excise). If Kenya is able to reduce excise duty on imported glass it will be able to promote sustainable and environmentally friendly forms of packaging, prevent import substitution effect and switching to plastic packaging.
None	New proposal for addition to the Finance Bill 2024	1. Amend Excise Duty Act 2015 and Regulations 2020 to provide for an allowance for spirits processing and transit losses Delete	1. The process of measuring volume of Spirits sold by distillers or received by manufacturers of spirits has changed due to the introduction of mass flow meter which are approved by Weights

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		Section 36 (2) and replaces it with: - Where the Commissioner under paragraph (1) directs ascertainment by weighing, the volume shall be calculated— (a) by use of a mass flow meter at twenty degrees centigrade with an accuracy of +/-3% of the measured volume in litres	and Measures for custody transfer application. 2. Temperature has an effect on ethanol volume readings. When the readings are taken at warmer temperatures, the ethanol quantity is usually higher as opposed to a colder temperature. This lack of standardization normally results in significant losses. 3. Prior to 2015, the Customs and Excise tax law in Kenya used to provide for a 1% spirits process and transit loss allowance on excisable raw materials. 4. Regulations in other jurisdictions such as South Africa, Europe, US and UK provide for allowances for spirits processing losses[3].
TAX PROCEDURES			
Section 53 c	Section 42 of the Tax Procedures Act is amended- (c) in subsection (14), by deleting paragraph (e).	1. We propose to delete this provision	1. Empowering the Commissioner to issue an agency notice for assessed taxes despite an ongoing dispute regarding the assessment would prejudice taxpayer's rights to justice, right to appeal and fair administrative action, as enshrined under the Constitution.

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			2. The Commissioner is generally slow at refunding taxes with some refund disbursements taking four years. This negatively impacts on taxpayer cash flows. 3. Therefore, if this amendment is passed, it may negatively impact every taxpayer who receives an unfavourable objection decision or loses an appeal but seeks to lodge an appeal to a higher court.
Section 54 (a)	Section 42A of the Tax Procedures Act is amended- (a) in subsection (1), by deleting the provision;	1. We propose to delete this provision	1. The proviso exempts the supplies of manufacturers who have made an investment of at least KES 3 billion in the preceding 3 years from 1st July 2022 from WHVAT. The Bill proposes to delete this exemption. 2. We propose to retain the exemption, as it honours incentives given to investors in the manufacturing sector and will automatically lapse in July 2025. 3. Furthermore, removing the exemption would negatively affect the liquidity and working capital requirements of qualifying taxpayers, who have already

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			made significant investments in the country.
Section 56 (a)	Section 51 of the Tax Procedures Act amended- (a) in subsection (4A). By deleting the words "the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged" and substituting therefor the new words… "the objection shall be deemed disallowed"	1. We propose to delete this amendment	1. If passed, this proposal may prejudice objections that have multiple grounds of objection due to one faulty ground. This would be unfair to taxpayers. 2. If the Commissioner is granted additional time to decide on an objection, taxpayers should also be granted additional time to object to an assessment (45 days instead of the current 30 days) 3. Should this proposal be retained, the time to comply with the notice of invalidation should be increased from 7 days to 30 days to enable taxpayers retrieve documents that are either archived (due to limited onsite storage or general volume of five years' worth of documents) or in the possession of another party.
Section 57	Section 59A of the Tax Procedures Act is amended-	1. We propose to amend the penalties as follows: (5) A person who fails to comply with the notice referred to in subsection	1. The Bill has proposed an exponentially high penalty of KES 2,000,000 per month, where a person fails to comply with a notice from the Commissioner to integrate their tax systems with the

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	(b) by inserting the following new subsections immediately after subsection (4)- *(5)* A person who fails to comply with the notice referred to in subsection (1A) commits an offence and shall be liable, on conviction, to a penalty not exceeding two million shillings for every month or part thereof that the failure continues. (6) A person who fails to comply with the notice referred to in subsection (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding two million shillings for every month or part thereof that the failure continues.	(1A) commits an offence and shall be liable, on conviction, to a penalty not exceeding ~~two million~~ ten per cent of the value of the sales not transmitted through the system. (6) A person who fails to comply with the notice referred to in subsection (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding ~~two million~~ one hundred thousand shillings for every month or part thereof that the failure continues.	Commissioner's data management and reporting system. The proposed penalty by the Bill: 1. May exceed the taxpayer's profits or revenues; and 2. goes against established principles of criminal justice, which require that a punishment ought not to be overly excessive, cruel and unusual. 3. We therefore propose to lower the penalty to KES 10% of the value of sales not transmitted through the DMRS. 4. Should the taxpayer fail to submit information, the Commissioner may use its powers to issue an additional or default assessment which also bears penalties and interest.
Section 58	The Tax Procedures Act is amended by repealing section 77 and replacing it with the following new section immediately section 77- 77. In computing the period for-	77. In computing the period for- (a) submitting or lodging a tax return, application, notice, or other document;	1. Tax returns have strict timelines that need to be observed, in order to ensure that the Commissioner has a clear overview of an entity's transactions for tax purposes, and for the Government

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	(a) submitting or lodging a tax return, application, notice, or other document;		to collect the correct amount of taxes in a timely manner. 2. Including lodging of tax returns in the computation of time provision would increase the administrative and compliance burden on a taxpayer, and increase the risk of late filing penalties while hampering efficient collection of taxes.
Section 57 (a) (1A)	(1) 1A) The Commissioner may, by notice in writing, require a person to integrate the electronic tax system authorized under section 75 to the system referred in subsection (1) for the purposes of submission of electronic documents including detailed transactional data in a prescribed manner. (b) by inserting the following new subsections immediately after subsection (4)— (5)A person who fails to comply with the notice referred to in subsection (1A) commits an offence and shall be liable, on conviction, to a penalty not exceeding two million shillings for every month or part thereof that the failure continues.	1. Deletion of the proposals	Our proposal is based on the following reasons. 1. Lack of limitation as to purpose as not all transactions on Safaricom's M-PESA platform create tax obligations for customers. There must be a demarcation on the specific transactions that would be of interest to the KRA versus those that are not as this cannot be monitored where there is unfettered access to all transactions. 2. There is a lack of assurance as to the standards of organizational and technical (cyber security) safeguards to be applied in maintaining the integrity and privacy of data if it was accessible on real-time basis, outside Safaricom's environment. This is especially so on access management, storage, and disclosure to unauthorized parties.

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	(6)A person who fails to comply with the notice referred to in subsection (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding two million shillings for every month or part thereof that the failure continues.		3. Reduced customer trust that will have a large impact on financial services for payment service providers, risking a return to a cash economy, and defeating the goal of a digital economy. 4. A reversal of the gains in data minimization, where only the necessary elements of a customer's identity form part of statements issued to external parties, to prevent abuse, irregular disclosure, and fraud.
None	None	1. Proposal to amend Section 23(A) of the Tax Procedures Act, 2015; to exempt this industry specific category of partners; or introduce a clause to exempt annual turnover less than Ksh 5mn from issuance of Electronic Tax Invoice.	1.Pursuant to section 23(A) of the Tax procedures Act, 2015 and the Tax Procedures (Electronic Tax Invoice) Regulations, 2024; Airtel will be forced to disassociate with the thousands of channel partners who may be limited by either financial challenges or education, to issue ETIMS compliant invoices. This will lead to job losses. 2.By exempting the partners from the issuance of electronic tax invoices, Airtel will claim the expenses paid to this category of partners (expenses incurred wholly and exclusively in the production of its income) and thus will continue partnering with a larger number of channel partners, resulting to growth in its business as well as create jobs for the Kenyan youth.

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MISCELLANEOUS FEES AND LEVIES ACT (MFLA)			
Section 44	*Clause 44(a) increase of the Import Declaration fee from 2.5% to 3%*	• Retention of the Import Declaration Fee at the current 2.5%	1. Manufactures will incur additional costs when importing raw and intermediate goods used for value-addition. These additional costs will be passed on to consumers of the final product, contributing to inflationary pressure in the economy. 2. This will result in lowering the competitiveness of local industries in domestic and export markets due to a rise in the cost of imported inputs, raw materials, and machinery and hence favorable to imported finished goods
Section 45	*Clause 45 Introduction of the Eco Levy*	Removal of Clause 45	The adoption of the proposed Eco-levy will amplify inflationary pressures, diminish disposable income, and deter both foreign and domestic investment activities within Kenya. The proposed levy should be removed for the following reasons: 1. There is lack of empirical evidence substantiating the claim that the specified products subject to the Eco Levy are significant contributors to environmental degradation or waste management challenges in Kenya. This indiscriminate application of the levy across a broad spectrum of products lacks a coherent justification and

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			threatens to disrupt several key sectors of the economy. 2. The rates of the Eco-Levy are arbitrary and significant, and will contribute significantly to manufacturers operating costs, which will likely be passed on to consumers, increasing inflationary pressure. 3. The Eco-Levy does not consider the Sustainable Waste Management Act 2022, and the Sustainable Waste Management Policy 2021, which are premised upon the polluter pays principle and put the responsibility for waste management on producers/importers of products and guide counties (waste management is a devolved function) on how to manage and reduce waste and expand the recycling industry. 4. The imposition of the levy will impede the proper implementation of the Sustainable Waste Management Act and may invalidate the National Environmental Management Authority's implementation of the Extended Producer Responsibility under Section 13 of the Sustainable Waste Management Act. 5. Further Kenya is a leading global advocate for a global Extended Producer Responsibility (EPR)

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			framework under the Global Plastics Treaty framework negotiations, the Eco-levy would undermine this position. 6. Manufacturers are already paying Producer Responsibility Organization fees under existing EPR regulations, that ensure that post-consumer waste is collected, recycled, reused, or disposed of safely. 7. The proposed Eco Levy must be subjected to a thorough Regulatory Impact assessment prior to its introduction. The assessment must consider its implications on the economy, investment climate, and environmental sustainability objectives to ensure that is supports Kenya's goal of balanced economic development and environmental stewardship. 8. The eco levy 'costs' is more than the levy; it can lead to double or triple costs outcome. For example, Kenya Association of Manufacturer indicates that, bar soap used by Mwananchi for washing clothing, utensils and bathing will increase from Kes. 170 to approximately Kes. 270. 9. The introduction of an ECO levy fee on plastic material means the cost packaging of agricultural inputs like fertilizers, pesticides, seeds etc will go

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			up by 50%. This cost will then be passed on to the consumer making agricultural inputs more expensive. 10. Already, input providers have to pay on extended producer responsibility. The additional costs of these levies mean increased in input costs, and may kill existing industries, make produce from Kenya more expensive and less competitive, with produce from our neighbors like TZ and Ug being more competitive.