KEPSA MEMORANDUM ON THE TAX LAWS AND PROCEDURES (AMENDMENT) BILL, 2024

About KEPSA

The Kenya Private Sector Alliance (KEPSA) is the apex body for the private sector in Kenya. KEPSA brings together local and foreign business associations, federations, chambers of commerce, professional bodies that are sectoral umbrella bodies and individual sectoral business membership organizations, corporates, from multinationals to large and medium-sized companies, SMEs, and start-ups from all sectors of the economy, across all parts of the country. This gives KEPSA a reach of over 2 million businesses directly and indirectly. KEPSA also serves as the national focal point of the East Africa Business Council (EABC), the umbrella body of businesses in East Africa. It hosts the International Chamber of Commerce (ICC) Kenya Chapter, a member of the ICC with a reach of over 45 million businesses globally.

KEPSA coordinates businesses to speak with one voice and engage local and foreign governments, development partners, and other stakeholders on cross-cutting policies, laws, and regulations for private sector development. It allows sectoral business organizations to engage in sectoral issues.

Additionally, KEPSA runs projects for the private sector and the country's socioeconomic development, such as youth and jobs and climate change initiatives. It does this by being the focal point for all stakeholders to reach businesses in a coordinated manner. Through the projects, KEPSA supports business development with opportunities for training and capacity building, networking, financial linkages, mentorships and coaching, access to markets, value chain enhancement, and investment opportunities with partners worldwide.

Its social arm, KEPSA Foundation's, mandate is to strengthen socio-economic transformation by engaging private sector members in social projects, ensuring its expertise and resources are utilized for impactful interventions in the community and with stakeholders. The Foundation coordinates businesses' engagement with the government, development partners, and other stakeholders on social issues that address the environment and vulnerable communities as well as issues of governance under the five priority areas, namely: Fostering Governance and National Value System; Empowerment of Women, Youth, Persons with Disabilities & Childcare; Community Climate Action and Sustainability; Community Outreach and Partnerships; and Knowledge Institute and Think Tank.

Following the call for submissions, we as KEPSA submit as follows:

S/NO.	ISSUE OF CONCERN	PROPOSAL/RECOMMENDATION	JUSTIFICATION/RATIONALE
		INCOME TAX ACT	
1.	*Section 5 of the Tax Laws Amendment Bill repealing section 12E and replacing it with the new section 12E* *(1)* *Notwithstanding any other provision of this Act, a tax known as significant economic presence tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace*	• Define The term 'significant economic presence'.	• **Lack of Clarity in Scope and Application;** The absence of a precise definition for "significant economic presence" creates uncertainty regarding its interpretation. Tax authorities, businesses, and legal practitioners may have varying understandings of what constitutes a "significant economic presence," leading to inconsistent applications of the tax law. • **Risk of Subjectivity;** Without a clear definition, the determination of significant economic presence may depend heavily on subjective judgments by tax authorities. This subjectivity can result in arbitrary decisions, reducing the predictability and fairness of the tax system. and costly legal battles, imposing an additional burden on both the taxpayer and the judicial system.
2.	*Section 6 Tax Laws Amendment Bill* *The Income Tax Act is amended by inserting the following new section immediately after section 12F;* *Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be*	• Defer implementation on the proposed minimum top-up tax pending consultations with affected taxpayers to develop comprehensive regulations.	• Introduction of Pillar 2 measures is likely to impact foreign direct investment (FDI). • There is a need for a clear understanding of the various

	payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen percent.		refundable tax credit regimes (e.g., qualified versus nonqualified), their application to Pillar 2 legislation and their impact on local FDI objectives and policies. • The Government might wish to consider how the Pillar 2 legislation fits in with the local realities of attracting FDI and ability to introduce incentives the Government would deem effective to foster such FDI. • Availability of resources to deal with the complexity and administrative burden that will be introduced by the rules.
3.	*Section 14 (b) and (c) of the Tax Laws Amendment Bill* *The First Schedule to the Income Tax Act is amended-* *(b) by deleting paragraph 57 that reads as follows-* *57. The income or principal sum of a registered family trust.* *(c) by deleting paragraph 58 that reads-* *58. Any capital gains relating to the transfer of title of immovable property to a family trust.*	• We propose to delete these proposals.	• Family trusts are generally formed for estate planning. • Currently, trust income is taxed when distributed to beneficiaries. By introducing this amendment, the income will be subjected to double taxation as the income of the trust will be taxed and the same will be taxed upon distribution to the beneficiaries. • Changing tax statuses so frequently makes it difficult for the taxpayers to see the stability of our tax regime as proposed in the NTP and MTRS.

4.	*15 (b)(ii) of the Tax Laws Amendment Bill* *(iii) in paragraph 5-* *(A) in subparagraph (b), by inserting the following new item immediately after item (iii)-* *(iv) in respect of interest arising from a bond, note or other similar security that has a maturity of at least three years and used to raise funds for infrastructure and other social services, five per cent.*	• We propose to delete the proposal	• The proposal seeks to subject to tax interest income arising from any of the above investment securities that will be put in place after the proposed change comes into effect. This may make such securities unattractive as taxpayers were encouraged to invest in them on the basis that the return on investment from such securities would not be subject to tax. • This may significantly disadvantage the Government, when trying to raise finance, through the issuance of these forms of investments and obtaining borrowing locally. • Also it is not clear whether this interest income will be subject to further tax making this investment vehicle very unattractive.
		VALUE ADDED TAX	
5.	**New Proposal;** **Credit adjustment vouchers (CAVs)-Credit for input tax against output tax** Outstanding Refunds arising from zero rated supplies adjusted/ assessed using the formula before 17th June 2019 under Legal Notice No. 86 published in the Kenya Gazette Supplement No. 84 dated 17th June 2019.	• Introduce provisions to allow for refund of excess tax arising from zero rated supplies adjusted/ assessed using the formula before 17th June 2019 under Legal Notice No. 86 published in the Kenya Gazette Supplement No. 84 dated 17th June 2019. • The amendments should read as follows:	**A. To address outstanding Refunds Arising from the previous VAT Formula under Regulation 8 (2) of the Value Added Tax Regulations, 2017** • In 2019, the National Treasury changed the VAT Formula to address the concerns arising from the Formula that disadvantaged

		Amend Section 17 (5) to introduce new sub-section (e) and provision to read as follows: (f) such excess arose from the formula before 17th June 2019 under Regulation 8 (2) of the Value Added Tax Regulations, 2017 and. (g) such excess arose from the formula before 17th June 2019 under Regulation 8 (2) of the Value Added Tax Regulations, 2017 may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act, 2015; and • "Provided further that, notwithstanding Section 17(5)(f), a registered person who prior to the commencement of Section 17(5) (e) and (f), has a credit arising from the formula under Regulation 8 (2) of the Value Added Tax Regulations, 2017, may make an application for a refund of the excess tax from the commencement date of the Regulations.	exporters of taxable goods since they could not recover their input VAT and led to perpetual refund position by export manufacturers. • The change was made by replacing the Formula that determines the amount due as a refund to a registered person who makes taxable supplies at both the general rate and zero rate under Regulation 8 of the Value Added Tax Regulations, 2017. The new Formula has addressed the refund concerns. • However, the refunds arising from the old formula have not been addressed and have led to outstanding refunds. • After deducting VAT Refund, persons are still in refund position. When applying under the Itax System, capital expenditure, - Tax headings not there that is why they concentrate on export. This proposal seeks to: I. create a legal mechanism to facilitate payment of such outstanding refunds owed to manufacturers. II. Seek to have in place provisions recognizing refunds that can arise from the old Formula.

			III. Include retrospective provisions allowing for payments of prior claims from the date of the commencement of the application of the formula under the Value Added Tax Regulations, 2017 to the date of the new Formula which commenced in June 2019. IV. Provide for off set of refunds from the VAT Act and any other tax law. **B. To address refund for excess input credit after VAT refunds are paid under the VAT Formula** • There still exist outstanding refunds after Formula is utilized. • The refunds are attributable to capital expenditure such as machinery or spares. This is especially after VAT on machinery was introduced in April 2020 under the Tax Laws (Amendment) Act, 2020. • The ITAX system of KRA includes the requirement to upload capital expenditure items such as machinery and spare parts together with other manufacturing inputs. • **There are three (3) possible solutions to address this challenge:**

			i. **Introduce legal amendments** with provisions recognizing refunds arising after the VAT Formula is applied; or ii. **Separate the capital expenditure items captured on the KRA Itax system** which causes an increase in credit refunds; or **Exemption of VAT on Machinery to ensure it is not captured under the ITax system as capital expenditure input items**. The removal of VAT on machinery has benefits to the manufacturing sector such as promoting long term investments.
6.	Section 20 (a) (iii) of the Tax Laws Amendment Bill amending the First Schedule to the Value Added Tax Act in (a) Section A of Part I • (iii) by deleting paragraph 58; *Which provides for* Direction-finding compasses, instruments and appliances for aircraft.	• Delete the proposal on the Tax Laws Amendment Bill to let the status quo remain as is.	• Introduction of 16% VAT on Direction-finding compasses, instruments and appliances for aircraft will result in higher cost for aircraft maintenance, which has a safety implication as the costs will be extremely high. • This will have a negative impact to local aircraft maintenance organizations since it will be cheaper to outsource maintenance activities in other countries within the region thereby making Kenya uncompetitive. This will result in the loss of jobs.

7.	Section 20 (a) (vi) of the Tax Laws Amendment Bill amending the First Schedule to the Value Added Tax Act is (a) in Section A of Part I; (vi) By deleting paragraph 89 Which provides for any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.	• Delete the proposal on the Tax Laws Amendment Bill to let the status quo remain as is.	• The introduction of 16% VAT on importation of aircraft and spacecraft will result in Kenyan operators losing their competitiveness due to increased costs of purchase or financing of these equipment. This in turn will result in increased operational costs which will be cascaded down to the consumers and travelling public. • Increased costs will also discourage investors from registering aircraft in the Kenyan registry, which will impact revenue generated by the Kenya Airports Authority and Kenya Civil Aviation Authority in the form of fees and charges. • Introducing a 16% VAT on currently exempt aircraft spare parts would significantly increase maintenance costs for operators, leading to higher airfares and cargo charges as airlines pass on the burden to consumers. • This could reduce competitiveness, particularly against regional players with more favorable tax policies, and strain smaller operators. The aviation maintenance Sector will face reduced profitability, slower growth, and potential job losses.

8.	New Clause; Amendment of Part I, Section A to the First Schedule of the VAT Act 2013 (Cap 476) to provide VAT exemption on the supply of denatured ethanol of tariff number 2207.20.00.	• We propose to amend Part I, Section A to the First Schedule of the VAT Act 2013 by inserting: **"The supply of denatured ethanol of tariff number 2207.20.00"**	• The supply of bioethanol was VAT-exempt from the Finance Act 2021, which enabled fast uptake of the KOKO Fuel solution amongst Kenyan households to where 1.3 Million households cook with KOKO Fuel. • 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. This has been very detrimental to the growth of the Ethanol Cooking Fuel industry by rendering it unaffordable to households. This in turn makes the Government's objective of achieving universal access to clean cooking by 2028 unachievable. • Currently, there is a 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. KOKO has signed an offtake agreement with local ethanol producer(s) and is currently mopping

			up all domestically available technical alcohol to our specifications. • The VAT exemption would directly result in lower consumer prices, which would enable significant demand growth and accelerated expansion into more urban areas and eventually into rural areas. • The growth of the local Ethanol industry will support the projected fuel demand which is projected to grow to 192 million litres per year by 2028, reducing the the current reliance on imports and improving income earnings for sugarcane farmers and the Sugarcane industry.
	EXCISE DUTY		
9.	*Section 22 (a) of the Tax Laws Amendment Bill amending Section 5 of the Excise Duty Act —* *(a) in subsection (1), by inserting the following new Paragraph immediately after paragraph(c)—* *(d) excisable services offered in Kenya by a non-resident through a digital platform;*	• Delete the proposal on the Tax Laws Amendment Bill to let the status quo remain as is.	• The proposed taxes on digital services aim to capture revenue from online activities by persons who earn income through digital platforms in Kenya. Apart from the proposed excise duty, there are proposals to introduce withholding tax on income from digital marketplaces, and a new significant economic presence (SEP) tax The proposed change if passed into law will increase operational costs for digital service providers and this additional

			cost will most likely be passed onto consumers. • As a result, the cost of certain critical digital services such as e-learning, remote jobs for Kenyans and other online businesses in the growing digital economy will be negatively impacted.
10.	*Section 23 of the Tax Laws Amendment Bill amending Section 7 of the Excise Duty Act — amended in subsection 2), by inserting the expression "spirit" immediately after the word "beer".*	• Ensure the regulations to implement this provision are developed by the Cabinet Secretary to ensure the incentive is not abused, occasioning high illicit alcohol incidence and loss of government revenue.	• This will increase the level of local raw material sourcing which will benefit agricultural value addition, not to mention positively impact socioeconomic status of farmers and value chain players in Kenya. • Taxes on locally manufactured spirits products accounts for 52% of the retail selling prices. The tax burden has created opportunity for illicit alcohol to thrive. The excise tax remission will help level the playing field in the fight against illicit spirits alcohol trade. • Spirits products are easily counterfeited, involves accessible blending processes, hence the need for strict regulations to support the administration of excise remission on spirits. • Regulations should include (but not limited to) strict rules relating to rate

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<td>of excise duty remission, place of sale, mandatory packaging requirements, raw material and value chain control measures/mechanisms, sanctions for non-compliance among other statutory measures to prevent negative exploitation of the tax remission.</td>
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<td>11.</td>
<td>Section 25 of Tax Laws amendment Bill 2024 amending the First Schedule to the Excise Duty Act is
(a) in Part I

(C) Cigarettes:

Increase in the excise of cigarettes

<table>
<tr><th>Cigarettes</th><th>Current Rates (per mille)</th><th>Proposed Rates (per mille)</th></tr>
<tr><td>With filters (hinge lid and soft cap)</td><td>KSh. 4,067.03</td><td>KSh.4,100</td></tr>
<tr><td>Without filters (plain cigarettes)</td><td>KSh. 2,926.41</td><td>KSh.4,100</td></tr>
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Retain the current excise rates as per the Finance Act, 2023 i.e.

Cigarette with filters (hinge lid and soft cap) – KSh. 4,067.03 per mille
Cigarettes without filters (plain cigarettes) – KSh. 2,926.41 per mille

Enhance predictability in tax increment and changes through adoption of a five year excise duty schedule/ calendar for cigarettes. We propose excise increases of 1.5%, 3%, 3%, 3%, 3% for Financial Years 2025/2026 to 2029/2030.
Urgently address the exponential growth of illicit trade currently (2024) at 37% (third party research) through targeted tax policy measures to seal tax revenue leakages in excise loss of KSh.7.5 Billion annually (at 37% illicit incidence) and a cumulative loss of KSh. 29 Billion in the last five years (FY2019/20 to FY2023/24).

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The Industry recommendation will ensure:
a) Predictability in the tax system;
b) Stability in government revenues;
c) Curb the rising illicit trade;
d) Safeguard the competitiveness of the Nairobi hub manufacturing facility; and
e) Aligned to the National Tax Policy developed in 2023 that entrenches predictability in tax legislations.
The impact of the proposed excise increase in the Bill will:
a) render tobacco manufacturing operations in Kenya uncompetitive;
b) jeopardize employment opportunities for 437 direct employees, 50 interns and more than 15,000 indirect jobs;
c) threaten the livelihood of approximately 1700 farmers; and
d) put at risk the $100 million annual foreign currency

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			generated by the industry for the country. • The proposed excise increase in the Bill will result **in a 40% excise duty increase for cigarettes without filter**. • We have observed that when there was **no excise rate increase** in the financial year 2023/24, the **excise revenue collection by Government grew by 7%** in the same period. However, when the **excise rate was raised by 19%** in the financial year 2019/20, the excise revenue collection **dropped by 3%**. Therefore, an increase in excise does not necessarily translate to increase in revenue collection. • **Harmonizing the two tiers** - while we recognize that that the Government is trying to enhance simplicity in taxation by harmonizing the two tiers and providing for one single rate for cigarettes, we note that this proposals comes at a time when there is exponential growth in illicit trade. **Illicit trade in tax-evaded cigarettes:** a) Has grown **from 27% in June 2023 to 37% in June 2024** (third party research) with an estimated 1 in every 3 cigarettes smoked in Kenya being illicit and tax evaded;

			b) Resulting in a shrinkage of the legitimate cigarette market in Kenya; c) Further annual loss of excise revenue by Government of **KSh.7.5 Billion** (at 37% illicit incidence) and a cumulative loss of **KSh.29 Billion** in the last five years (FY2019/2020 to FY2023/2024); and d) Are primarily smuggled from Uganda where excise duty rates are almost half that of Kenya. • The sustainability of the legitimate industry is in a dire situation as a result of the impact of historical aggressive increases in excise duty coupled with enforcement efforts not resulting in significant change. • We believe that the Government needs to urgently address **combatting illicit trade in tax-evaded cigarettes through decisive and novel interventions policies through a combination of targeted enforcement** and **tax policy measures** to seal tax revenue leakages and ensure sustainable Government revenues.
12.	Section 25 of Tax Laws amendment Bill 2024 amending the First Schedule to the Excise Duty Act is (a) in Part I **(E)**	• Enhance predictability in tax increment and changes through adoption of a five-year excise duty schedule/ calendar for products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application.	• The industry recommendation will: a) promote certainty and predictability of tax rates in line with the National Tax Policy; b) further allowing cigarette consumers to switch to better alternatives;

- Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences from KSh. 1,595.00 per kg to KSh. 2000 per kg. (Also known as 'oral nicotine pouches').

- We propose excise increases of 1.5%, 3%, 3%, 3%, 3% for Financial Years 2025/2026 to 2029/2030 for products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application.

Oral nicotine pouches: Current Rates (per kg) 2024	**Proposed Rates per kg**			
	FY 2025 - 2026 @1.5%	**FY 2026 -2027 @3%**	**FY 2027 -2028 @3%**	**FY 2028 -2029 @3%**
KSh. 1595	KSh. 1618	KSh. 1667	KSh. 1717	KSh. 1769

c) encourage investment in nicotine products, which will result in a net positive public health outcome, and generate government revenue; and
d) aids in the fight against illicit trade where there is proliferation of tax evaded oral nicotine pouches.

- The proposed change in excise increase in the Bill will result in **a 25% excise duty increase** in oral nicotine pouches.

- The tobacco harm reduction value of such nicotine products such as oral nicotine pouches and vapour products/electronic cigarettes, results from two widely acknowledged factors:
  a) based on the weight of evidence, products that contain nicotine are less risky than cigarettes; and
  b) are associated with reductions in smoking prevalence.

- The combination of these two factors means that, if properly regulated and taxed, these nicotine products have the potential to significantly reduce the projected impacts of smoking related illness.

- Given Kenya's progressive approach and position as a leader in the region, our Government has a real chance to lead in reducing tobacco-related harm, by enacting and implementing balanced and

			evidence based fiscal policies that consider the relative risk profile of less risky products*[1] in the country. • Further, the current tax structure that recognises the relative risk profile of nicotine products such as oral nicotine pouches should be retained due to the potential net public health benefit of those wishing to switch to less risk products.
13.	*New Clause* *Section 14 of the Excise Duty Act*	• Amend the clause 14.(1) Where excise duty has been paid in respect of excisable goods imported into or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials (including packaging materials) in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.	• The proposal to include packaging materials in Section 14 to offset excise duty on raw materials aligned with both economic principles and international best practices, ensuring a more equitable tax regime. Key justifications for this proposal include: • Without this provision, excise duty is effectively charged multiple times during the production process—once on the packaging materials and again on the finished goods. This double taxation inflates production costs, ultimately increasing the final price to consumers and compounding the tax burden. • Globally, excise duty is regarded as a consumption tax intended to be borne

[1] *Based on the weight of evidence and assuming a complete switch from cigarette smoking. These products are not risk free and are addictive.

			by the final consumer. Allowing an offset for packaging materials ensures alignment with international best practices by preventing intermediate producers from bearing undue tax burdens. • The ability to offset excise duty on packaging materials will lower manufacturing costs, enabling producers to price their goods more competitively, particularly in domestic and international markets. • Allowing the offset enables manufacturers to claim input excise tax, alleviating cash flow constraints and thereby strengthening their financial stability and operational efficiency.
14.	*New Clause* *Amend First Schedule of the Excise Duty Act under part I by deleting the paragraph (together with the corresponding rate) that reads: -* *Imported Glass Bottles (excluding imported glass bottles for packaging of pharmaceutical products) provided that it shall not apply to glass bottles imported from any of the countries within the East African Community- Rate of excise duty 35%.*	• Amend Paragraph I of Part I of the First Schedule to the Excise Duty Act, 2015 to delete the following item — Description Rate Imported Glass 35% 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.	• Imposing excise tax on glass is in violation of COMESA Treaty provisions on most favoured 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

			• 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. • Finished goods coming in glass packaging is more affordable that those manufactured in Kenya due to this tax, making locally produced goods uncompetitive. • 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 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 local glass manufacturers is importing glass bottles from Egypt to supplement local capacity and is affected by the increased taxation. • 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. • Glass packaging is now more highly taxed than the least environmentally friendly plastic packaging (at 10% excise). If Kenya can 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.
15.	*New Clause* *No spirits processing and transit losses allowance in law. Section 12 (1) of the Excise Duty Act provides as follows: This section shall apply where the First Schedule specifies a rate of excise duty payable by reference to a quantity measured by volume or weight.* *Under Regulation 36(1) "The volume of spirits contained in any container may be ascertained for any purpose by weight, measure or gauge as the Commissioner may direct."* *Under Regulation 36(2)- "Where the Commissioner under paragraph directs ascertainment by weighing, the volume shall be calculated : -*	• Amend Excise Duty Act 2015 and Regulations 2020 to provide for an allowance for spirits processing and transit losses • Delete Section 36 (2) and replaces it with: - 2) Where the Commissioner under paragraph (1) directs ascertainment by the volume shall be calculated— by use of a mass flow meter at twenty degrees centigrade With an accuracy of +/-3% of the measured volume in litres	• 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 and Measures for custody transfer application. • 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 standardisation normally results in significant losses. • 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. • Regulations in other jurisdictions such as South Africa, , US and UK provide for allowances for spirits processing losses.
MISCELLANEOUS FEES AND LEVIES ACT			
16.	Section 26 of the Tax Laws Amendment Bill amending Section 8 of the Miscellaneous Fees and Levies Act in subsection (2), by deleting the words "one point five" and substituting therefor the words "two point five".	• Delete the proposal on the Tax Laws Amendment Bill to let the status quo remain as is.	• The proposed 2.5% was detrimental to the manufacturing sector when it was initially launched and afterwards, Manufacturers were put at 1.5%. • Impact for the Group (incl EI) Kes 90M -100 M. The cost increase impacts both local and Exports • Increasing the Railway Development levy from 1.5% to 2.5% means an added cost for raw materials, which would be passed to the final consumer. • The Bill needs to support the manufacturers to be competitive

			locally and in exports and supply at affordable prices. • The recommendation is to increase the RDL for non-manufacturers or only to Finished imported products • Kenya shall be uncompetitive regionally and in Africa at large since other countries do not have a similar levy.
TAX PROCEDURES ACT			
17.	Clause 7 of the Tax Procedures Amendment Bill 2024 which amends Section 59a of the Tax Procedures Act; 1(A) the Commissioner may by notice in writing, require a person to integrate the electronic tax system authorised under section 75 to the system referred to in subsection (1) for the purposes of submission of electronic documents including detailed transactional data in the prescribed form. (1B) A notice under subsection (1A) shall be for a reasonable period but not exceeding one year s and depending on the nature of the business of that person (1C) The provisions of subsection (1A) shall only apply to a business whose turnover exceeds 5 million shillings.	• Delete clause 7 of the Tax Procedures Amendment Bill 2024	• Regulatory overreach- There is no justification, through a regulatory impact assessment, why iTax should be integrated with core business systems such as SAP. Existing models of sharing data and information with KRA adequately support revenue collection and administration. Additional measures should be subjected to a regulatory impact assessment before implementation. • Data security risks- Integrating iTax and private sector core business systems increases the scope for data breaches, making sensitive financial and personal data vulnerable to cyber-attacks. Furthermore, where the core system is administered outside Kenya and contains

			centralized data from other branches of a multinational company, KRA will have excessive power to access data outside companies of interest in Kenya. This is illegal and against local and international laws. • Implementation cost- Initial setup, software customization, and ongoing maintenance can be expensive and resource-intensive, impacting budget allocations. This was the case when Excisable Goods Management System (EGMS) was being set up in our factories. • Operational disruptions- Migration of data and system integration will disrupt ongoing business operations, potentially leading to downtime or loss of productivity. • Complexity of integration- Merging distinct systems may introduce technical complexities, requiring specialized skills and knowledge to resolve integration issues. • Dependency on 3rd party vendors- Relying on external systems or vendors for integration may create vulnerabilities if those vendors experience issues or change their services unexpectedly.

			• Incompatibility Issues - Legacy systems in the private sector may not be compatible with modern revenue authority systems, resulting in inefficient workflows. • Data quality concerns- Integrating disparate data sources may lead to inconsistencies or inaccuracies, affecting financial reporting and decision-making. • Loss of control over data- With shared access to systems, businesses may have less control over how their data is managed and used by revenue authorities. • Limited Flexibility- Once systems are integrated, making changes or updates can become more complicated and less flexible, hindering adaptability to market changes. • Training Requirements - Employees may require extensive training to navigate the new integrated systems, which can strain resources and reduce productivity initially. • Uncertain ROI - The potential return on investment from integration may not be guaranteed, leading to doubts

			about the financial wisdom of such a move. KRA already has remote monitoring systems of alcohol beverage production through EGMS, which transmits records of all our production to KRA servers. In addition, whenever we are called upon to provide data and information during audits, we always provide such information. Therefore, it is difficult to understand the ROI of integrating iTax and core business systems. • System downtime risks- Technical failures during integration can lead to system downtime, impacting service delivery and customer relations. This has been the case with the SICPA system where systems downtime has introduced inefficiencies and increased cost of the alcohol beverage production process.