MEMORANDUM SUBMITTED BY THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA) ON THE FINANCE BILL, 2026 TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL SUBMITTED ON MAY 25, 2026

About KEPSA

The Kenya Private Sector Alliance (KEPSA) is the apex body of the private sector in Kenya, bringing together businesses, business associations, and chambers of commerce to shape public policy, drive partnerships, and advance sustainable economic growth. Representing a reach of over 2 million businesses — from startups and SMEs to large local enterprises and multinational corporations with a base in Kenya. KEPSA serves as a unified voice of the private sector and a platform for creating economic value, social impact, and environmental sustainability through both its industry and foundation arms.

KEPSA is also the focal point for the East African Business Council (EABC) in Kenya and hosts the International Chamber of Commerce (ICC Kenya), strengthening Kenya's integration into regional and global business networks.

At KEPSA, we lead from the front. Our greatest impact comes when we push boundaries, move the envelope, and turn partnerships into action.

Core Areas of Focus

1. Building Strategic Partnerships

KEPSA works closely with the government to create a conducive business environment and collaborates with development partners, global business associations, and chambers of commerce to attract local and foreign investment, drive competitiveness, and unlock opportunities for businesses in Kenya and the region.

2. Women Empowerment

KEPSA creates platforms that empower women through capacity building, financial inclusion, mentorship initiatives such as Shadow a CEO, entrepreneurship development, leadership training, and sustainability initiatives, including waste management and the circular economy.

3. SME Development

KEPSA supports SMEs through partnerships that enhance access to finance, training, digitisation, innovation, and market opportunities, recognising SMEs as the backbone of Kenya's economy and job creation.

4. **Youth and Jobs**

Working with public and private sector partners, KEPSA drives programs focused on youth employment, skills development, entrepreneurship, job placements, and access to opportunities in the digital and green economy.

5. **Governance and Business Ethics**

KEPSA promotes ethical business practices and good governance through partnerships and platforms that support integrity, anti-corruption efforts, and national dialogue on key governance issues, including elections and accountability.

6. **Climate Change and Green Growth**

KEPSA works with partners on policy advocacy, training, and business support in areas such as green industrialisation, carbon markets, circular economy solutions, sustainable agriculture, climate resilience, and green jobs.

Today, KEPSA has evolved beyond a traditional business advocacy organisation into one of Kenya's largest private sector platforms, driving youth employment, entrepreneurship, governance, SME growth, digital transformation, women empowerment, and sustainable development.

1. INTRODUCTION

The Finance Bill 2026 arrives at a critical juncture for Kenya's fiscal architecture. As the nation pursues the Bottom-Up Economic Transformation Agenda (BETA), the legislative challenge lies in striking an intentional balance between aggressive domestic revenue mobilisation and the preservation of private sector competitiveness. While the National Exchequer aims to expand ordinary revenue collection projected at KShs 3.38 trillion for the 2025/2026 fiscal cycle, several proposed amendments threaten to create significant deadweight loss. Overly punitive taxation risks stifling local production, contracting formal payrolls, and triggering capital flight toward regional neighbours. A policy misalignment at this juncture could diminish Kenya's standing as a regional manufacturing powerhouse, turning the country into a net importer of goods and services it currently leads.

Data from the latest Kenya National Bureau of Statistics (KNBS) Economic Survey underscores this vulnerability: while Kenya's real GDP grew by 4.6% in 2025, structural labour weaknesses persist. High production costs and unaligned fiscal rules have suppressed the formal economy, leaving formal sector employment at a mere 16.2% of total jobs (3.5 million workers), while the informal sector handles an overwhelming 83.8% burden (18.1 million workers).

To ensure long-term economic stability and avoid fiscal leakage, the Finance Bill 2026 must anchor its tax adjustments across three core strategic pillars:

Enhancing Global and Regional Competitiveness: According to the World Bank, implementing pro-competitive structural reforms in key infrastructure and trade sectors can boost Kenya's annual GDP growth rate by 1.35 percentage points. Kenya must align its tax regime with the East African Community (EAC) Common External Tariff (CET) bands (0%, 10%, 25%, and 35%) to insulate local supply chains. This alignment is vital to maintaining our status as East Africa's primary logistics and industrial hub against nations like Ethiopia and Rwanda, which continue to offer highly supportive and predictable fiscal frameworks for foreign direct investment.

Creating and Protecting Jobs: Reversing structural weaknesses in the labour market requires a tax regime that encourages industrial capital investment rather than penalising operating cash flows. Fully optimising private sector productivity can unlock up to 400,000 decent, formal-sector jobs annually. The Finance Bill must protect our largest wage-employment contributors such as Manufacturing (which anchors over 366,000 formal private sector jobs) and Agriculture by removing unclaimable input tax burdens that force staff layoffs, automated downscaling, or complete corporate closures.

Enhancing Government Revenue Legitimately: True revenue mobilisation is a by-product of expanding the economic base, not increasing tax rates on a shrinking pool of formal taxpayers. High tax rates historically trigger tax evasion, drive businesses into the informal shadows, and lower collections. By keeping tax rates predictable, simplifying compliance procedures, and introducing clear valuation safe-harbours, the government can stimulate compliance, encourage informal enterprises to formalise, and sustainably grow ordinary tax revenues in line with the Treasury's targets.

Further, KEPSA is highly appreciative of the collaborative wins realised in the Finance Bill 2026. These positive inclusions are the direct result of sustained private-sector advocacy through structured engagement, policy dialogue, and evidence-based submissions to the National Treasury and the National Assembly. The following key statutory amendments reflect a mutual commitment to fostering a facilitative, growth-oriented business environment:

KEPSA notes with appreciation some of the presented proposals the private sector has made during various engaging with government agencies, The proposals in the Bill include:

A. TAX AMNESTY EXTENSION

- **The Win:** Reinstatement and extension of the tax amnesty on historical penalties, interest, and fines.

- 100% waiver applies if the principal tax was paid by December 31, 2025, or if outstanding principal balances are fully settled by December 31, 2026.
- **The Impact:** Relieves severe operational cash-flow pressures on distressed businesses, eliminates legacy regulatory hurdles, and encourages voluntary compliance to formalise the tax base with a clean slate.

B. REDUCTION OF EXCISE DUTY ON EXTRA NEUTRAL ALCOHOL

- **The Win:** Reduction of excise duty on undenatured extra neutral alcohol (ENA) from KShs 500 per litre down to KShs 80 per litre.
- **The Context:** Corrects a punitive tax structure on a foundational industrial input that was driving up manufacturing costs and fuelling illicit black markets.
- **The Impact:** Drastically slashes raw material costs for formal manufacturers, restores regional cost competitiveness, protects industrial jobs, and redirects consumer demand back to safe, tax-compliant retail products.

INPUT TO THE FINANCE BILL 2026

Income Tax Proposals

1. Income Tax Act: Deemed Dividend Distribution

- **Current Clause**: Clause 16 of the Finance Bill, 2026, proposes to amend Section 24 of the Income Tax Act (ITA) to grant the Commissioner discretion to deem at least 60% of a company's undistributed income as distributed dividends to shareholders, provided it does not compromise business requirements. The current law does not specify a fixed statutory percentage.
- **Proposal:** Amend the clause to lower the maximum cap on deemed distributed income to 30%, subject to the core condition that it does not compromise the operational and investment requirements of the business.
- **Ask:** Amend Clause 16 of the Finance Bill, 2026 by deleting the words "sixty per cent" and substituting therefor the words "a maximum of thirty per cent, which shall not apply where a company demonstrates that undistributed earnings are retained to meet verified business requirements or capital adequacy rules."

- **Justification:** A rigid 60% threshold is economically punitive and heavily restricts a company's ability to retain earnings to hedge against future low performance, economic uncertainty, or capital reinvestment needs. Industry data shows that only two banks in Kenya have distributed up to 60% of their income as dividends over the last three financial years, demonstrating that businesses inherently require capital preservation for long-term survival and growth.

Adopting a 30% cap aligns Kenya with Rwanda's regional best practice (Article 33 of Rwanda's Law No. 027/2022 on Direct Taxes). The Rwandan framework strategically caps deemed distributions at a lower percentage while strictly honouring safe-harbours for funds retained for operational expansion, debt servicing, and statutory capital reserves. Implementing this balanced model will protect company liquidity, stimulate private sector reinvestment, and shield the state from the long-term revenue contractions that follow corporate insolvency.

2. Income Tax Act: Extension of Carried-Forward Tax Losses

- **Current Clause / Provision:** Section 15(4) of the ITA (as amended by the Finance Act, 2025) limits the allowable deduction of tax deficits/losses to the year of income and the succeeding five years. Section 15(5) allows the Cabinet Secretary, on the recommendation of the Commissioner, to extend this five-year period if a person provides evidence of their inability to extinguish the deficit.
- **Proposal:** KEPSA recommends amending Section 15(4) to extend the loss utilisation period to **ten years** and explicitly state that any accumulated deficit incurred as of 1st July 2026 shall be deemed to have been incurred in that year of income. Concurrently, Section 15(5) should be adjusted to allow extensions *beyond* ten years.
- **Justification:** A five-year limit is too short for capital-intensive sectors like manufacturing and extractive industries (such as mining and exploration), which often incur massive losses over timelines exceeding 10 years before seeing gainful returns. The current five-year rule (effective July 1, 2025) lacks transitional clauses, leading the KRA to rule that pre-2020 losses are prematurely extinguished. This retrospective application erodes vested rights and deters long-term Foreign Direct Investment (FDI). Extending this aligns Kenya with regional peers; for instance, Uganda allows seven years with a subsequent 50% claimability rule, while Tanzania uses a structured percentage approach and excludes key sectors like agriculture from limits entirely.

3. Income Tax Act: Acceleration of Tax Return Filing Deadlines

- **Current Clause / Provision:** Sections 18 and 19 of the Finance Bill, 2026 propose to amend Sections 52 and 52B of the ITA. The amendments accelerate the deadline for submitting standard income tax returns from the last day of the sixth month to the last day of the fourth month following the person's year of income. Additionally, they mandate that any person submitting a nil tax return must file it within one month following the end of the year of income.
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** While fixed deadlines offer certainty, a four-month window is insufficient for many taxpayers. Preparing tax returns depends heavily on finalizing audited financial statements, which requires completing audits, resolving queries, and obtaining board approvals. Regulated sectors face even more statutory filings and validations. Forcing an accelerated timeline would compel businesses to file based on unaudited or estimated data, leading to frequent amendments and undermining the accuracy of tax reporting. The one-month deadline for nil returns is similarly impractical.

4. Income Tax Act: Revision of PAYE Tax Bands

- **Current Clause / Provision:** The current Individual Rates of Tax for PAYE feature five bands, topping out at 32.5% for income over KES 5,612,000 annually (or KES 300,000 monthly) and a maximum marginal rate of 35% on all annual income exceeding KES 9,600,000 (or KES 800,000 monthly).
- **Proposal:** KEPSA proposes amending the Third Schedule of the ITA to compress and expand the bands so that the maximum PAYE rate is capped at **30%**. The proposed monthly bands are:
    - On the first KES 30,000 at 10%
    - On the next KES 8,333 at 20%
    - On the next KES 461,667 at 25%
    - On the next KES 300,000 at 27.5%
    - On amounts over KES 800,000 at 30%.

They also propose increasing the monthly personal relief to KES 3,000, setting a tax-free threshold at KES 30,000.

- **Justification:** Salaried Kenyans have faced a severe erosion of purchasing power, highlighted by a 10.7% to 12% decline in real wages due to inflation and cumulative tax additions like the Affordable Housing Levy (1.5%) and SHIF (2.75%). The current 35% top rate is higher than the 30% corporate tax rate, meaning individuals face heavier tax rates on gross earnings than corporations do on net profits, sparking public backlash over unfairness. Kenya also taxes low-income earners excessively compared to peers; its 30% rate kicks in at just KES 32,333 monthly, compared to equivalents of KES 255,000 in Ghana and KES 237,000 in South Africa.

Capping the rate at 30% aligns with the Medium-Term Revenue Strategy to harmonize individual top rates with corporate rates. This 5% relief would inject KES 28.1 billion back to workers, boosting household spending, increasing indirect tax collection, reducing non-performing loans (NPLs), and driving a GDP output boost of ~KES 210 billion in the first year. This ultimately generates KES 27.1–31.5 billion in tax revenue, offsetting the initial government shortfall while creating thousands of jobs.

5. Income Tax Act: Capital Gains on Indirect Disposals

- **Current Clause / Provision:** Section 23 of the Finance Bill, 2026 proposes to add a new subparagraph (d) to Paragraph 2 of the Eighth Schedule to the ITA. This expands Capital Gains Tax to cover gains derived from the alienation of shares by a non-resident person where the shares derive their value from Kenya, or where the alienation changes the group membership of a Kenyan resident company or the ownership of property located in Kenya.
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** The amendment introduces substantial ambiguity regarding the operation and scope of indirect disposal provisions. It fails to articulate how it interacts with preceding provisions, risking overlapping or inconsistent interpretive outcomes. Crucially, the draft fails to define essential elements such as the applicable valuation threshold, the methodology to determine if the threshold is met, or the exact circumstances that trigger a taxable indirect disposal. These gaps would trigger enforcement difficulties and high dispute risks.

6. Income Tax Act: Card Payments and Digital Platforms

- **Current Clause / Provision:** Clause 2 of the Finance Bill, 2026 proposes to expand the definition of "management or professional fee" to include interchange and merchant service fees within the Merchant Discount Rate (MDR). It also expands the definition of "royalty" to expressly include proprietary digital platforms, payment networks, card schemes, processing, switching, clearing, or settlement systems. This subjects these fees paid to card network operators (like Visa or Mastercard) and digital platform providers to Withholding Tax (WHT).

- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** The amendment attempts to legislatively reverse the Supreme Court of Kenya's decision in *Barclays Bank of Kenya Limited (now ABSA) v Commissioner of Domestic Taxes*, which ruled that these payments are operational settlement flows and do not constitute management fees or royalties. Overturning judicial decisions creates legal uncertainty, erodes public confidence in the rule of law, and risks discouraging investment in payment infrastructure.

Practically, identifying a single "payer" is structurally difficult because MDR flows are distributed among issuing banks, acquiring banks, processors, and networks. Settlements rely on daily net accounts, making the tax point hard to determine, while the resulting WHT credits would inequitably accrue to only one party's PIN. This introduces an unreasonable compliance burden on local banks. Furthermore, local banks under gross-up arrangements would absorb these costs and pass them to consumers, which spikes the cost of financial services and contradicts the government's financial inclusion goals.

The proposal also departs from OECD and UN Model Tax Conventions, which limit royalties to intellectual property rights rather than commercial infrastructure access. When combined with the proposed VAT in Clause 31(b), the total tax cost on a 100 KES MDR would jump from 15 KES to 53.4 KES, threatening the fiscal viability of digital payment systems.

VALUE ADDED TAX PROPOSALS

7. Value Added Tax Act: VAT on Digital Financial Services

- **Current Clause / Provision:** Clause 31 of the Finance Bill, 2026 amends the VAT Act by removing the broad exemption on money dealings and financial services. It explicitly excludes money transfers, payment processing, settlement, merchant acquiring, gateway, or aggregation services supplied over software or a platform for a fee/commission by a Payment Service Provider (PSP) from the exemption, making them subject to 16% VAT.

- **Proposal:** KEPSA proposes replacing this with an updated exemption list that explicitly covers digital financial services—including payment processing, settlement, gateways, aggregation, switching, integration, and merchant acquiring offered through technology platforms.
- **Justification:** VAT should track the function performed, not the legal form or technology platform of the provider. These digital operations are integrated links in the payment chain, not final consumption; taxing them amounts to taxing intermediate inputs, creating a cascading tax effect that increases transaction costs and the cost of doing business.

Imposing VAT on fintech firms and PSPs while exempting traditional institutions doing the same tasks creates an unlevel playing field that could drive PSPs out of business. It also directly contradicts the National Payment Strategy 2022-2025 and the Bottom-Up Economic Transformation Agenda (BETA), which rely on low-cost digital transactions to deepen financial inclusion and move economic activity into formal, traceable digital channels. This proposal aligns with European Union models (e.g., Belgium) that treat the entire fund-transfer chain as a single exempt economic function.

8. Value Added Tax Act: Extension of Bad Debt Refund Window

- **Current Clause / Provision:** Section 28 of the Finance Bill, 2026 seeks to amend Section 31(1)(a) of the VAT Act by changing the timeline for a registered person to claim a VAT refund on bad debts from **two years** to **three years** from the date of supply.
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** When a customer defaults, a business has already remitted output VAT to the KRA, meaning it is effectively financing a tax obligation on uncollected revenue. Extending the waiting period to three years compounds this financial stress by delaying their right to recover these funds. The current two-year window is perfectly adequate to exhaust debt recovery options and prove irrecoverability, and the revenue authority has no operational justification for a longer delay.

9. Value Added Tax Act: Mandatory Reversal of Input VAT

- **Current Clause / Provision:** The Finance Bill proposes a new Section 17A into the VAT Act. This requires businesses to reverse or account for input VAT previously claimed on supplies if those goods or services are subsequently legislatively reclassified from taxable (standard/zero-rated) to exempt.

- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** Retrospective clawbacks violate the principle of legitimate expectation and legal certainty, as businesses structured their past pricing and procurement under the laws of the time . It creates an immediate, unbudgeted cash flow liability over past lawful actions, violating Article 47 of the Constitution (Right to Fair Administrative Action) . This provision works in tandem with the reclassification of solar and lithium-ion batteries from zero-rated to exempt, dealing a compounding "double blow" by blocking future input claims while clawing back historical ones.

10. Value Added Tax Act: Restoration of the 90% Rule for Input VAT

- **Current Clause / Provision:** Section 17(6) and (6C) of the VAT Act enforce a proportional formula (AxB/C) to restrict input tax deductions attributable to both taxable and exempt supplies. This follows the Tax Laws Amendment Act, 2024, which repealed Section 17(7).
- **Proposal:** KEPSA proposes inserting a provision to allow full deduction of input VAT for all purchases used to generate income, provided that at least **90% of the sales are standard-rated**.
- **Justification:** The outright restriction of input VAT on exempt allocations hurts manufacturers selling finished products to exempt public entities like the Kenya Defense Forces or the Police. Businesses must absorb this unrecoverable VAT, driving down profit margins and making sales to government bodies uncompetitive. Furthermore, segregating these costs requires massive amounts of manual computation and administrative work each month. Restoring the 90% threshold will slash this administrative friction and cultivate a fairer business environment.

11. Value Added Tax Act: Inter-Zone Special Economic Zone (SEZ) Transfers

- **Current Clause / Provision:** Section 13 of the VAT Act, 2013 governs taxable value but lacks an explicit automatic exemption clause tailored specifically to transaction flows entirely within or between Special Economic Zones.
- **Proposal:** KEPSA proposes inserting a clear provision stating: "*Taxable goods or services transferred from one SEZ licensed enterprise to another SEZ licensed enterprise shall be exempt from VAT or deemed as non-taxable transactions.*"

- **Justification:** This modification fosters supply chain integration inside industrial hubs. It enables specialized internal entities such as a component manufacturer and a final assembler to trade seamlessly without triggering complex tax liabilities or tedious input tax refund claims, optimizing the efficiency of the SEZ ecosystem.

TAX PROCEDURES ACT PROPOSALS

12. Tax Procedures Act: Elimination of Protections Against Agency Notices

- **Current Clause / Provision:** Section 45 of the Finance Bill, 2026 proposes to delete Section 42(14)(e) of the Tax Procedures Act (TPA). Currently, this subsection explicitly bars the Commissioner from issuing agency notices (such as freezing bank accounts or demanding direct payment from a taxpayer's debtors or banks) while a tax decision is actively under appeal before the High Court or other superior courts.
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** Deleting this protection renders the statutory and constitutional right of appeal completely illusory. An agency notice forcefully drains liquidity from a business before a court can rule on the case's merits. If the taxpayer wins later, clawing back funds from the KRA is a notoriously slow and uncertain process. Under such extreme financial duress, businesses are often forced to abandon valid appeals and settle unfair assessments.

This deletion also runs afoul of Article 47 (Right to Fair Administrative Action) and Article 50 (Right to a Fair Hearing) of the Constitution. Stripping this defensive shield mid-litigation with zero transitional clauses exposes active litigants to sudden enforcement actions they could not anticipate when starting their appeals.

13. Tax Procedures Act: Relief for Withholding Agents

- **Current Clause / Provision:** Section 44 of the Finance Bill, 2026 proposes to delete Section 39A(2) of the TPA. Section 39A(2) currently insulates a withholding agent from paying principal tax if the payee (the recipient of the income) has already declared, accounted for, and paid that exact tax to the KRA.
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.

- **Justification:** Withholding tax is simply an advance collection mechanism rather than an independent standalone liability. If an agent fails to withhold from a resident entity, the state suffers no ultimate loss of revenue because the shortfall is automatically captured via the balance of tax mechanism paid directly by the recipient. Deleting this clause allows the KRA to penalize the agent for principal tax already resting in its vaults, creating a material risk of double taxation and duplicative collections on a single stream of income. This completely violates basic tax equity.

14. Tax Procedures Act: Broadening Overpaid Tax Offsets on iTax

- **Current Clause / Provision:** Section 47 of the Finance Bill, 2026 proposes to delete the words "*and value added tax payable on imports*" from Section 47(1)(a) of the TPA, which removes import VAT from the categories of taxes that can be offset using overpaid tax credits. Separately, while Section 47 of the TPA technically allows overpayments to offset outstanding debts, the practical iTax platform setup is restrictive.

- **Proposal:** KEPSA proposes a proactive expansion of Section 47(1)(a) to ensure that overpaid tax can be systematically offset against a wider list of liabilities, specifically adding: **final balance of tax, withholding taxes, Pay As You Earn (PAYE), VAT, and withholding VAT (WHVAT)**. They ask that the iTax system be technologically reconfigured to support these offsets seamlessly without requiring special manual approvals from the Commissioner.

- **Justification:** Restricting import VAT offsets reverses a progressive change introduced in the Finance Act, 2025, and heavily damages the day-to-day cash flow of active importers who hold massive domestic overpayment credits. Additionally, despite broad legislative provisions allowing cross-tax offsets, the KRA's iTax software currently does not technically support automated offsets against PAYE, VAT, WHT, WHVAT, or final balance of tax. Aligning iTax functionality with the actual letter of the law preserves business liquidity by putting their valid tax credits to work immediately.

15. Tax Procedures Act: Relief from Electronic Tax System Penalties

- **Current Clause / Provision:** Clause 50 of the Finance Bill, 2026 (amending Section 86 of the TPA) prescribes highly punitive penalties for failing to issue electronic invoices (eTIMS), file electronic returns, or pay electronically. The penalty is set at the higher of two times the tax due or KSh 100,000 (and KSh 10,000 for individuals) unless a reasonable cause is accepted.

- **Proposal:** KEPSA proposes introducing a dedicated MSME transition window, rolling out simplified eTIMS guidance tailored for MSMEs offering dedicated training/helpdesks, and instituting an automatic waiver of penalties whenever non-compliance stems from documented system downtime or technical bugs.
- **Justification:** While tax compliance is necessary, these rigid, heavy penalties can easily destabilize MSMEs that serve as the backbone of the economy Penalizing them heavily for technical failures threatens their operational survival, and these compliance compliance costs will inevitably be passed onto vulnerable consumers

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16. Tax Procedures Act: Computation of Timelines in Working Days

- **Current Clause / Provision:** Section 51 of the Finance Bill, 2026 proposes to amend Section 77 of the TPA by deleting subsection (2). This deletion would effectively pivot the statutory calculation of timelines for tax procedures away from "working days" to standard "calendar days."
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** Utilizing a working-days framework provides taxpayers with a reasonable, practical window to dissect complex tax assessments, track down background documentation, consult experts, and put together robust objections or appeals. Shifting to calendar days compresses this timeline unfairly, denying proper procedural fairness and prejudicing taxpayers who face highly complex technical audits.

17. Tax Procedures Act: Timeline for Withholding VAT (WHVAT) Remittance - (New proposals for inclusion)

- **Current Clause / Provision:** Section 42A(4B) of the TPA (introduced via the Finance Act, 2023) mandates that any value-added tax withheld by an agent must be remitted to the Commissioner within **five working days** from the date the deduction was made.
- **Proposal:** KEPSA proposes amending Section 42A to extend this remittance deadline to the **20th of the following month**.
- **Justification:** The ultra-short five-day window severely strains corporate cash flows, forcing entities to lean on expensive bank overdrafts to bridge operational capital gaps, creating an artificial business cost. For smaller entities, this cash flow strain can trigger business closure.

Administratively, the timeline is highly inefficient for large companies. Frequent invoice corrections, vendor disputes, and data entry adjustments force businesses to initiate voluminous WHT certificate cancellations every single week. This burns valuable hours for both corporate accountants and KRA officials who must manually review and approve every cancellation. Extending the deadline to the 5th of the following month restores working capital and frees up revenue authority staff to focus on actual collection initiatives.

18. Tax Procedures Act: Fast-Tracking Overpayment Determinations and Audits (New proposals for inclusion)

- **Current Clause / Provision:** Section 47(2) of the TPA mandates a timeline for processing overpayment applications, which currently stands stretched out to **120 days**. Furthermore, Section 47(4A) gives the Commissioner a long window of **180 days** to complete an audit on an overpayment application before it is deemed automatically approved.
- **Proposal:** KEPSA proposes amending Section 47(2) to reinstate a strict **90-day** determination window. Concurrently, they propose reducing the maximum audit window in Section 47(4A) from 180 days to **120 days**.
- **Justification:** The current 120-day and 180-day waiting periods lock up crucial corporate cash flow, starving businesses of valid refunds or timely cross-tax offsets. Compressing these statutory timelines will promote sharper administrative efficiency within the KRA, align Kenya with global best practices regarding the quick resolution of claims, and safeguard taxpayer rights by preventing the state from sitting on private funds for extended periods.

19. Special Economic Zones Act: On-Site Designation (New proposals for inclusion)

- **Current Clause / Provision:** Section 4 of the Special Economic Zones Act, 2015 dictates the designation of Special Economic Zones, historically heavily favoring raw, undeveloped greenfield sites.
- **Proposal:** KEPSA proposes amending the provision to explicitly allow for on-site brownfield designations, stating: "*Existing enterprises or Brownfield sites shall be eligible for SEZ status within their current physical locations provided they demonstrate export-oriented growth or high-value manufacturing.*"

- **Justification:** This acts as a powerful investment retention tool. It completely removes the astronomical and often prohibitive cost of dismantling, moving, and re-installing heavy industrial machinery to brand-new greenfield zones. It allows successful, established local factories to transition cleanly into the modern SEZ fiscal framework without experiencing devastating operational disruptions.

20. Miscellaneous Fees and Levies Act: Broadening Import/Export Duties

- **Current Clause / Provision:** Section 54 of the Finance Bill proposes to amend Section 9 of the Miscellaneous Fees and Levies Act. It replaces the narrow baseline terms "*import declaration fee, railway development levy and export levy*" with a much broader bucket of fees chargeable under Part III of the Act. This automatically ropes in additional distinct duties: the **Export and investment promotion levy, the Anti-adulteration levy, and Processing fees on duty-free motor vehicles**.
- **Proposal:** KEPSA proposes the deletion of this proposed amendment in its entirety.
- **Justification:** Broadening this scope layers extra duties onto traders, which will artificially inflate consumer prices, squeeze businesses, and chill foreign investment. Concentrating these new levies so heavily on import/export channels imposes an unequal fiscal weight on trade-based businesses relative to other domestic sectors. This directly violates Article 201 of the Constitution of Kenya, which explicitly mandates the fair and equitable sharing of the national tax burden.

SECTOR SPECIFIC PROPOSALS

1. Manufacturing & Industrial Growth: Eliminating the "Tax on Production"

Manufacturing serves as Kenya's primary engine for job creation. However, taxing industrial inputs rather than final consumption risks "exporting" our industry. Current proposals effectively penalize localization, making Kenyan-made goods more expensive than those of regional competitors.

Addressing Clause 36: Kraft Paper, Coal, and Agricultural Inputs

The introduction of excise duty on Kraft paper, where no local manufacturer exists, and coal directly penalizes the export-heavy agriculture and smelting sectors.

HS Code	Description	Proposed Rate	Recommendation	Impact Analysis
4804.11 – 4804.51	Unbleached Kraft Paper	25% or KES 50/KG	**0% (EAC CET Band 1)**	A 25% duty increases packaging costs for agriculture by **42%**, rendering fresh vegetable exports uncompetitive.
2701.11.00	Coal (Industrial Input)	5% Excise Duty	**Exempt / Drawback**	Coal is an essential fuel in lead smelting and refining. Taxing it creates a cascading cost for lead-acid battery manufacturing.
3808	Pest Control Products	VAT Exempt	**Zero-Rated**	Moving from Zero-Rated to Exempt leaves producers with 16% unclaimable input VAT, driving up food prices and encouraging counterfeit agrochemicals.

Solving the VAT Refund Bottleneck

We propose an amendment to **Section 7 of the VAT Act** to introduce an **8% VAT rate for licensed exporters**. This strategic "middle-ground" rate prevents the accumulation of massive VAT credits, solving the liquidity trap that currently hinders exporters' operational cash flow.

Preventing Cost Cascading (Section 14 of the Excise Act)

Currently, Section 14 only allows the offset of excise duty on "raw materials." This narrow definition excludes packaging, leading to taxation on taxes.

- **Strategic Requirement:** Revise the text to allow an **offset of excise tax on all "inputs," including packaging materials.**
- **Economic ROI:** Aligning with international VAT principles ensures excise is realized only at the final point of consumption, accelerating investment in both manufacturing and recycling.

2. Transport & Aviation: Securing Kenya's Regional Hub Status

Kenya's aviation sector handles **12.83 million passengers** and **372,993 tonnes of cargo** annually, contributing **KES 425 billion to the GDP**. Our fiscal policy determines whether we remain a logistics gateway or lose this status to Ethiopia and Rwanda.

The "Triple Threat" of Clause 31 of the Finance Bill

The removal of VAT exemptions on aircraft and parts under **Chapter 88** (including aircraft of tariff headings 8802.30.00 and 8802.40.00) subjects the industry to a cumulative burden:

1. **16% VAT** on aircraft, helicopters, and parts.
2. **Import Declaration Fee (IDF)** re-application.
3. **Railway Development Levy (RDL)** re-application.

Subjecting specialized equipment to these levies will drive fleet technical services and cargo consolidation out of Kenyan borders. We must maintain these exemptions to preserve our regional hub status.

The Valuation Crisis in Engine Repairs

When an aircraft engine is exported for repair and re-imported, the current framework applies 16% VAT on the **full invoice value** (parts and labor).

- **Proposal:** Amend the VAT framework to exempt re-imported engines or, at minimum, restrict taxation to the labor component.
- **Strategic Rationale:** Taxing the full value of a repaired engine; which was already tax-exempt upon initial purchase, prolongs "Aircraft-on-Ground" times and forces operators to use international MRO facilities elsewhere, leading to a flight of high-skill jobs.

3. The Green Economy: Safeguarding Sustainability & Circularity

Tax policy must align with Kenya's climate mitigation goals. Misaligned measures, particularly in transport infrastructure and e-mobility, will dismantle years of progress in the circular economy.

Critical Issue: Withholding Tax (WHT) on Scrap Metal

Clause 17(a)(v) & 22(b)(q) introduce a 1.5% WHT on the sale of scrap metal.

- **Strategic Requirement: Exclude Used Lead Acid Batteries (ULABs)** from the definition of "scrap metal" when surrendered under an approved **Extended Producer Responsibility (EPR)** scheme.
- ULAB trade-ins are non-cash environmental transactions. Treating them as taxable "scrap" income dismantles the EPR framework, discouraging safe battery recycling and creating an unworkable compliance burden for green manufacturers.

Preserving E-Mobility Incentives

Clauses 31(a)(ix) and 32(f) seek to remove VAT exemptions for electric motorcycles (8711.60.00), bicycles, and lithium-ion batteries.

- **Recommendation:** Delete these proposals. Maintaining VAT exemptions is a prerequisite for making e-mobility options cost-accessible and attracting ESG-focused international investment.

4. ICT & Digital Economy: Preventing the Reversal of Digitization

Kenya's digital economy is driven by MSMEs. Over-regulation through aggressive Withholding Tax (WHT) risks driving vendors back to informal, untrackable channels.

The "Property" Definition Risk (Section 10(4) of the ITA)

The current draft uses a broad definition of "property" that potentially includes physical goods sold on digital platforms.

- **Proposed Safeguard:** Amend Section 10(4) to include the proviso: **"Provided that 'property' shall not include goods and movable property."**
- **Rationale:** Including goods in the 5% WHT for digital marketplaces pushes vendors toward **informal social media channels** where sales are harder to track. This shrinks the tax base and creates unequal competition with physical retailers who are only subject to the 1.5% Turnover Tax (TOT).

5. Social Infrastructure: Education & Health as Economic Drivers

Education Reform: Tuition Concessions & Charitable Status

- **Valuation of Concessions:** We must amend **Section 5(4)** to classify internal tuition concessions as non-taxable, or amend **Section 5(3)(b)** to cap the value at the **"Marginal Cost"** to the institution. Taxing these at commercial rates creates a "double loss" where staff withdraw children and the state gains zero revenue.
- **Charitable Rule 12(2)(e):** The proposed **10% scholarship threshold** for charitable status is overly rigid. It ignores the holistic impact of organizations like the **Visa Oshwal Community** and **Shree Cutchi Leva Patel Samaj**, whose public benefit extends to healthcare and food relief. Levying taxes on these entities shifts the social safety net burden back to the state exchequer.

Health Reform: Supporting the Social Health Authority (SHA)

The current Bill lists many Health Products and Technologies (HPTs) as "Exempt."

- **Strategic Shift:** Reclassify HPTs, essential medicines (KEML), and pharmaceutical manufacturing equipment (APIs, excipients) as **Zero-Rated.**
- **Key Benefits:** This eliminates "embedded taxes," allowing manufacturers to recover input VAT. This directly lowers the price of medicine, supporting UHC and reducing the financial burden on the Social Health Insurance Fund (SHIF).

6. Cross-Sectoral Operational Efficiency: Housing, Tourism, and Finance

To provide the **statutory safe harbors** required for long-term investment, the Bill must include:

1. **Housing:** Reduce the preferential 15% tax threshold from 100 units to **50 units** (Third Schedule, Head B) to democratize development for medium-scale builders.
2. **Tourism:** Amend **Section 12 of the VAT Act** to align "Time of Supply" with **cash realization** (guest checkout or final payment). This prevents hotels from using operational capital to remit VAT on invoices that corporate or government clients have not yet settled.

3. **Financial Services:** Insert paragraph 171 to the First Schedule to exempt the sale of **repossessed collateral** from VAT. Taxing these recoveries reduces the recovery value and penalizes the lender for a borrower's default, violating the principle of neutrality.

Tax Procedures Act: Mandating Administrative Standards

The insertion of **Section 84A** is required to end the "liquidity trap":

- Mandate a **30-day turnaround** for tax exemption determinations.
- Require a **mandatory pre-assessment reconciliation** before the issuance of any default tax assessment to prevent arbitrary litigation.

Conclusion: The Path to Competitive Growth

By shifting away from the taxation of production and protecting industrial inputs, Kenya can prevent capital flight and expand the tax base through **increased volumes** in manufacturing, aviation, and e-commerce.

Parliament must ensure that the Finance Bill 2026 acts as a catalyst for industrialization rather than a barrier to entry. By refining these clauses, we move from a regime of "taxing for survival" to "taxing for growth," securing Kenya's position as the competitive heart of the East African Community.

Annex:

1. Detailed Memorandum Submitted by The Kenya Private Sector Alliance (KEPSA) On The Finance Bill, 2026 to The National Assembly Departmental Committee On Finance And National Submitted On May 25, 2026

2. List of KEPSA Members