



Mr. Samuel Njoroge
Clerk of National Assembly,
P. O. Box 41482-00100
Nairobi
20th May 2023

Dear Sir,

RE: OKOA UCHUMI SUBMISSIONS ON FINANCE BILL 2023

The Okoa Uchumi Campaign is a civil society platform working with stakeholders to redress Kenya's public debt crisis. The coalition seeks to push for political accountability, and bolster constitutional safeguards in public debt management, for debt sustainability through a balanced and equitable budget.

Based on the subject, Okoa Uchumi convened members of non-state organizations listed at the end of this submission, deliberated and prepared this joint proposal for The National Assembly on the Campaign's recommendations to be considered in the Finance Bill 2023. The submission highlights the proposed amendment to the law, supported by a statement on the issues to be addressed and a justification for the proposed amendments.

Okoa Uchumi is available to highlight our submissions to the Finance and National Planning Departmental Committee. We look forward to hearing from you and engaging in this important national exercise that will shape the fiscal landscape of Kenya.

Yours sincerely,

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CC

Mr Benjamin Magut
Clerk National Assembly Departmental Committee on Finance and National Planning



INTRODUCTION

The Okoa Uchumi Campaign¹ is a civil society platform committed to working with stakeholders to redress Kenya's public debt crisis. The coalition seeks to push for political accountability and bolster constitutional safeguards in public debt management for debt sustainability through a balanced and equitable budget.

The Finance Bill 2023 is the first bill for the Kenya Kwanza government and is set to herald the plan to finance the development priorities of a government that campaigned on the basis of a bottom-up economic and political model.

The Finance Bill 2023, as published, exacerbates the extractive taxation regime at a time when the country is reeling in debt and high inflation rates. The Bill seeks to increase taxation across all sectors but particularly targets the employed population that has consistently supported revenue for the country even as service delivery continues to dwindle.

The punitive and violative taxation regime is introduced at a time when accountability measures for the use of public resources are on the decline on several fronts:

1. In the face of economic recession, the most prudent way of managing the situation for governments is targeted budget cuts that prioritize social expenditure, reduce capital expenditures, and minimize high-level political appointments. The Finance Bill does not follow these prudent steps. Instead, it funds an expanded executive leadership with a full cabinet loaded with 3 advisors, 52 Chief Administrative Secretaries, and parastatal boards operating at optimal membership.

¹ **Coalition Members:** Oxfam in Kenya, The Institute for Social Accountability, Institute for Public Finance, International Budget Partnership Kenya, Interreligious Council Kenya, Kenya Human Rights Commission, National Taxpayers Association Kenya, Okoa Mombasa, Transparency International Kenya, National Democratic Institute, Mzalendo, Crown Trust Kenya, Diakonia Sweden, Diocese of Lodwar, PAWA 254, Fight Inequality Kenya, Social Justice Centers, Kenya Tuitakayo Movement, ICJ – Kenya, Christian Aid Kenya, Katiba Institute, Tax Justice Network Africa, Access Coalition, Inuka Kenya, Amnesty International, Center for Fiscal Affairs, Center for Economic Governance, EACHRights, Econews Africa, East Africa Tax and Governance Network, Muslims for Human Rights, Kenya Tobacco Control Alliance, Twaweza Kenya, African Forum and Network on Debt and Development, Uraia Trust.

2. Corruption and economic cases, including for widely reported mega corruption cases, have been withdrawn en masse on account of political interference. Several people previously implicated in the corruption cases have since been appointed by the president to plum State office positions with the approval of parliament.
3. In relation to (2) above, there has been limited freezing and recovery of funds and assets lost through corruption and other forms of illicit financial flows. Recovery of such funds and assets should be prioritized to boost funding streams in this regard.
4. In 2023, Kenya has double the amount due in debt repayments than in previous years. Unfortunately, most of that debt, including the Eurobond payment, has not been accompanied by the required transparency and accountability despite several media reports, an auditor general's averse report, and a report by the governor of the Central Bank of Kenya. The revenue mobilized in the form of tax and debt has been plundered by the political elites, which is now introducing heavy taxation on the people, resulting in a double tragedy for the Kenyan people. There is, therefore, an urgent need to firmly and decisively address fraud, waste and abuse in the public sector as alternatives to some of the tax increase proposals.
5. The housing levy introduced in the Finance Bill is not accompanied by other statutory deductions with the requisite legislative framework. For instance, the National Health Insurance Fund (NHIF) is anchored in the NHIF Act, while the National Social Security Fund (NSSF) is anchored in the NSSF Act. The housing levy is, thus, introduced in an ad-hoc way and with a less rigorous regulatory and reporting framework to safeguard the contributions made.

As members of the Okoa Uchumi Coalition, we are heavily opposed to most of the provisions in the Finance Bill because they will lower the quality of life of Kenyans, reduce considerably the disposable income available to Kenyan households, provide no guarantee of improved access to government services or even enhanced transparency, and were not developed through meaningful participation and, thus, are not accountable to the public's voice and not respectful of people's opinions..

We provide feedback on specific clauses as follows:

ANNEX 1

	CLAUSE (as it is in the Bill)	Proposed Amendment	Justification
	Income Tax Act (ITA)		
1	<p>Clause 2 (a)</p> <p>Section 2 of the Income Tax Act is amended—</p> <p>(a) by deleting the definition of “winnings” and substituting therefor the following new definition— “winnings” means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered;</p>	Accept in its entirety	<p>Currently, tax is imposed on the amount earned from betting. The amendment proposes to tax the amount wagered or staked by a person on a bet as well as the amount earned from betting.</p> <p>This is good from a moralist perspective and should reduce participation in this social ill while raising revenue</p>

<p>Clause 2(b)</p> <p>2. Section 2 of the Income Tax Act is amended—</p> <p>(a) by inserting the following new definitions in proper alphabetical sequence—</p> <p>“immovable property” includes— (a) land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and (b) a mining right, an interest in a petroleum agreement, mining information or petroleum information;</p>	<p>Accept in its entirety</p>	<p>Currently there is a very narrow definition of the term immoveable property. The proposed amendment expands the definition and comprehensively covers the different types of immovable property including land and interests in land.</p>
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2	<p>Clause 4(a)</p> <p>Section 4A of the Income Tax Act is amended—</p> <p>(a) by deleting paragraph (ii) of the provision to subsection (1) and substituting therefor the following new paragraph—</p> <p>(ii) the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a nonresident person exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any year of income;</p>	Accept in its entirety	<p>In 2022, the ITA was amended to defer foreign exchange losses where there was an interest restriction, however, the period over which these losses could be deferred was not indicated. The proposed amendment in this Bill which delimits the deferral period to three years is welcome as it provides clarity in the law.</p>
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3	<p>Clause 5 (b)</p> <p>Section 5 of the Income Tax Act is amended—</p> <p>(b) in subsection (4) by inserting the following new paragraph immediately after paragraph (f)</p> <p>(fa) any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased;</p>	Delete in its entirety	To the extent that public officers will be able to be reimbursed for assets purchased for the purposes of performing official duties, irrespective of who owns and controls said assets, we believe that this provision will be open to abuse and should be deleted in its entirety.
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<p>4</p>	<p>Clause 6</p> <p>The Income Tax Act is amended by inserting the following new section immediately after section 7A—</p> <p>7B. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income.</p> <p>(2) The repatriated income under subsection (1) shall be computed using the following formula— $R=A1 + (P - T) - A2$ Where— R is the repatriated profit; A1 is the net assets at the beginning of the year; P is the net profit for the year of income calculated in accordance with generally accepted accounting principles;</p> <p>T is the tax payable on the chargeable income; and A2 is the net assets at the end of the year.</p> <p>(3) The tax imposed under this section shall be in addition to tax chargeable on the income of the permanent establishment under section 4. (4) For the purposes of this section, “net assets” means the total book value of assets less</p>	<p>Section 7B (1) should be amended as follows:</p> <p>7B. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income <i>at the rate of 10%</i>.</p> <p>Insert section 7B(5):</p> <p><i>For the purpose of determining tax payable by on the income of the permanent establishment, interest, royalties and management and professional fees shall be deductible</i></p>	<p>While this provision aims to harmonize the tax treatment of non-residents operating through a branch and resident companies, it fails to allow for deductibility of interest, royalties and management fees. It also fails to provide the rate of tax for repatriated profits. While the change is overall welcome, these two aspects need to be considered in the Bill for completeness and to achieve the purpose of the amendment.</p>
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total liabilities for the year of income and shall not include revaluation of assets.

5	<p>Clause 12(b)(ii)</p> <p>12. Section 16 of the Income Tax Act is amended—</p> <p>(b) in subsection (2)—</p> <p>(ii) in paragraph (j), by deleting the words “related persons and third parties” appearing in the opening words and substituting therefor the words “a non-resident”</p>	Delete in its entirety	<p>The Bill proposes to remove local companies from the ambit of the Thin Capitalization rules. Although this may aim to cushion domestic companies which may be struggling to finance themselves during the pandemic, this is not in keeping with international best practices. The existing exemption for micro and small enterprises in the ITA at present sufficiently cushions small businesses.</p>
6	<p>Clause 12(b)(iii)</p> <p>12. Section 16 of the Income Tax Act is amended—</p> <p>(b) in subsection (2)—</p> <p>(iii) in paragraph (ii) of the proviso to paragraph (j)— (A) by deleting item G; (B) by deleting item H;</p>	Adopt in its entirety	<p>This amendment proposes to remove the exemption of companies in manufacturing whose cumulative investment in the preceding five years is at least five billion shillings and companies in manufacturing whose cumulative investment is at least five billion shillings and is outside Nairobi and Mombasa. The removal of interest restriction for the two segments of the manufacturing sector is welcome as it will free resources for DRM and aligns with issues touching on tax justice.</p>

7	<p>Clause 20(a)</p> <p>Section 35 of the Income Tax Act is amended—</p> <p>(a) in subsection (3), by inserting the following paragraphs immediately after paragraph (j)—</p> <p>(k) sales promotion, marketing and advertising services;</p>	Adopt in its entirety	The proposal to introduce withholding tax on payments made to persons in respect of sales promotions, marketing and advertising services is welcome as there is scope for broadening the tax base.
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Clause 20(a)
20. Section 35 of the Income Tax Act is amended—

(a) in subsection (3), by inserting the following paragraphs immediately after paragraph (j)—

(l) digital content monetisation.

Add the following proviso to the proposed section 35 (3)(j):

Provided that those earning over Kshs 500,000 per annum to pay at 15%; those earning between Kshs 500,000 and Kshs 250,000 per annum to pay tax at 10%; those earning between Kshs 250,000 and Kshs 24,000 per annum to pay tax at 5% ; and those earning below Kshs 24,000 per annum to be exempt from tax.

Given that online content creation has emerged as a lucrative business we welcome the expansion of the tax base to cover these incomes. However, given that it is still a young industry that provides the youth with an avenue of making a living, we propose a graduated approach to its taxation.

9

Clause 20(b)

Section 35 of the Income Tax Act is amended—

(b) by inserting the following new subsections immediately after subsection (3A)—

(3AA) A person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom: Provided that only a person appointed by the Commissioner in writing for that purpose may deduct tax under this section.

(3AB) A person who deducts rental income tax under this section shall, within twenty-four hours after the deduction was made remit the amount so deducted to the Commissioner together with a return in writing of the tax deducted and such other information as the Commissioner may require.

(3AC) The Commissioner shall, upon receipt of the amount remitted under subsection

(3AB), furnish the person from whom the rental income tax was withheld with a

Section 35 (3AB) should be amended as follows:

(3AB) A person who deducts rental income tax under this section shall, *on the 20th day of the month* after the deduction was made remit the amount so deducted to the Commissioner together with a return in writing of the tax deducted and such other information as the Commissioner may require

While we support the proposal that a person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom, the requirement to remit taxes within 24 hours may result in significant compliance costs. We therefore recommend the remittance time of the 20th day of the month following the date when such tax was withheld

certificate stating the amount of the rent
and tax deducted therefrom.

10	<p>Clause 20(c)</p> <p>Section 35 of the Income Tax Act is amended—</p> <p>in subsection (5), by deleting the words “on or before the twentieth day of the month following the month in which” and substituting therefore the words “within twenty-four hours after”.</p>	Delete this section in its entirety	<p>The Bill proposes to require the remission of withholding tax to within 24 hours of payment rather than on the 20th day following the month it is withheld. This will result in unnecessarily increased compliance costs for taxpayers. It is thus proposed for the payment date to be retained as the 20th date of the month following the payment date.</p>
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11	<p>Clause 24 (b) (i)</p> <p>24. The Third Schedule to the Income Tax Act is amended—</p> <p>(b) in Head B—</p> <p>(i) by deleting paragraph 1 and substituting therefor the following new paragraph—</p> <p>1. The individual rates of tax shall be— Rate in each shilling</p> <p>On all income over Ksh. 6,000,000 - 35%</p>	<p>This section should be amended as follows:</p> <p>24. The Third Schedule to the Income Tax Act is amended—</p> <p>(b) in Head B—</p> <p>(i) by deleting paragraph 1 and substituting therefor the following new paragraph—</p> <p>1. The individual rates of tax shall be— Rate in each shilling</p> <p>On all income over <i>Ksh. 12,000,000</i> - 35%</p>	<p>The Bill proposes the introduction of 35% P.A.Y.E for those earning monthly income of Ksh. 500,000 and above per month. We reject the proposal on the basis that the new rate of 35% should apply to those earning more than Ksh. 1,000,000 per month. This will ensure that the majority of the people still have significant disposable income to support the economy and their families through ‘social tax’.</p>
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12	<p>Clause 24(b)(v)</p> <p>The Third Schedule to the Income Tax Act is amended—</p> <p>(b) in Head B—</p> <p>(v) by inserting the following new subparagraph immediately after subparagraph 2(o)— (p) in respect of a company undertaking the manufacture of human vaccines, ten per cent.</p>	Delete this section in its entirety	<p>The Bill aims to revoke the exemption from tax of companies involved in the manufacture of human vaccines and introduce a 10% tax. Although this may have been proposed as a response to the end of the pandemic, it will discourage the production of vaccines and is contrary to the goal of providing universal health care.</p>
13	<p>Clause 24(b)(x)</p> <p>The Third Schedule to the Income Tax Act is amended—</p>	Delete in its entirety	<p>We note that the bill proposes to reduce the turnover tax threshold and increase the turnover tax rate. We however are of the opinion that this will discourage the informal sector from complying with the Turnover Tax and goes against the government’s aim of supporting “hustlers”</p>

	(x) in paragraph 9, by deleting the word “one” and substituting therefor the word “three”		
14	<p>Clause 24 (b) (xi)</p> <p>The Third Schedule to the Income Tax Act is amended</p> <p>(b) in Head B—</p> <p>(xi) in paragraph 10, by deleting the word “ten” and substituting therefor the word “seven point five”</p>	Delete this section in its entirety	<p>Although the Bill seeks to encourage the declaration and payment of rental income by reducing the withholding tax rate from 10% to 7.5%, this will directly reduce taxes paid by property owners who are inadvertently wealthy. This goes against the principle of ability to pay, according to which those with higher incomes should be taxed at a higher rate.</p>

15	<p>Clause 26 (a)</p> <p>The Eighth Schedule to the Income Tax Act is amended—</p> <p>(a) by deleting paragraph 2 and substituting therefor the following new paragraph—</p> <p>2. Taxation of gains Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is— (a) the whole of the gains which accrued to a company, an individual or partnership on or after the 1st January, 2015, on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015, or (b) gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the three hundred and sixty-five days preceding the alienation, the shares or comparable interests derived more than twenty per cent of their value directly or indirectly from immovable property situated in Kenya, or (c) gains, other than those to which subparagraph (a) applies,</p>	Adopt in its entirety	We support the proposal as it will effectively tax the capital gains on the alienation of shares in property rich companies, partnerships and trusts.
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derived from the alienation of shares of a company resident in Kenya if the alienator, at any time during the three hundred and sixty-five days preceding such alienation, held directly or indirectly at least twenty per cent of the capital of that company: Provided that for the purposes of this paragraph, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least twenty per cent in the underlying ownership of the property.

16	<p>Clause 26(c)</p> <p>(c) by deleting paragraph 11A and substituting therefore the following new paragraph— 11A. The due date for tax payable in respect of property transferred under this Part shall be the earlier of— (a) receipt of the full purchase price by the vendor; or (b) registration of the transfer.</p>	Adopt in its entirety	We support this proposal on the basis that delays in registration have been a cause for disputes with KRA, this clarity will solve this problem.
Value Added Tax			
17	<p>Clause 28</p> <p>Section 5 of the Value Added Tax Act, 2013, is amended in subsection (2)—</p> <p>(a) by deleting paragraph (aa);</p> <p>(b) by deleting paragraph (ab).</p>	This clause should be deleted in its entirety to maintain the rate of VAT at 8% on other petroleum products such as fuel (petrol, kerosene, and spirits)	While it is laudable that the government aims to reduce the use of pollutants and encourage the use of clean energy, the change in the VAT rate on other petroleum products from the reduced rate of 8% to the standard rate of 16% will see a further increase in the pump prices. This will significantly increase transport costs and increase inflationary pressure.

18	<p>Clause 29</p> <p>Section 8 of the Value Added Tax Act, 2013, is amended in subsection (2), by deleting the words “not a registered person and” and substituting therefor the words “a registered or unregistered person”.</p>	Adopt in its entirety	We agree with this proposal to the extent that it will harmonize the place of supply rules where the recipient of the supply is a registered or unregistered person.
19	<p>Clause 30 (a)</p> <p>Section 17 of the Value Added Tax Act, 2013, is amended—</p> <p>(a) in subsection (2), by deleting the word “or” appearing in paragraph (a) and substituting therefor the word “and”</p>	Adopt the proposal in its entirety	We agree with the proposal as it seals a loophole created by unsupported claims related to input VAT

<p>20</p>	<p>Clause 33(a)iv)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended—</p> <p>(a) in Section A of Part I—</p> <p>(iv) by deleting the tariff number “3002.11.00” appearing in the table immediately after paragraph 39 and substituting therefor the tariff number “3822.11.00”;</p>	<p>Delete in its entirety</p>	<p>The proposal will increase the cost of diagnostic malaria kits, tariff no. 3002.11.00. Malaria is still one of the leading causes of death in Kenya.</p>
<p>21</p>	<p>Clause 33 (a)(iii)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended—</p> <p>(a) in Section A of Part I—</p> <p>(iii) by deleting the tariff numbers; “0402.29.10”, “3002.19.00” and “3003.90.90” and their corresponding tariff description, appearing in the table immediately after paragraph 39</p>	<p>This clause should be amended by deleting the tariff number “0402.29.10”</p>	<p>This clause seeks to change the rate of milk, specially prepared for infants from exempt to standard rated. This will increase the cost of these products and will increase their cost further increasing the cost of living. It is suggested that these products either remain exempt or be made zero rated.</p>

22	<p>Clause 33(a)(xvii)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended—</p> <p>(a) in Section A of Part I—</p> <p>(xvii) by deleting paragraph 66A;</p>	Delete in its entirety	<p>Removing the VAT exemption on Inputs or raw materials locally purchased or imported by manufacturers of clean cookstoves would increase the cost of producing a climate-friendly stove. In the context of the devastating effects of climate change, this proposal is unconscionable.</p>
23	<p>Clause 33 (a)(xxx)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>153. Liquefied petroleum gas.</p>	LPG should be zero rated by including LPG in clause 34 of the Finance Bill.	<p>Although we support the move of LPG from VATable at the rate of 8% to exempt, given that this will reduce the cost of LPG and encourage the use of clean energy, we suggest that this should be zero rated so that input VAT would be allowable. This will make the cost of LPG even cheaper.</p>

<p>24</p>	<p>Clause 33 (a)(xxx)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>148. All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture.</p>	<p>This clause should be deleted in its entirety</p>	<p>The proposed clause seeks to change the manufacture of inputs and raw materials from zero rated to exempt. This will however restrict the ability to claim input VAT on these products, which costs will be passed on to the consumer. It is thus suggested that these goods remain zero rated which would be in line with the aim to encourage growth in the agricultural sector.</p>
<p>25</p>	<p>Clause 33 (a)(xxx)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>149. Agricultural pest control products.</p>	<p>This clause should be deleted in its entirety</p>	<p>The proposed clause seeks to change agricultural pest control products from zero rated to exempt. This will however restrict the ability to claim input VAT on these products, which costs will be passed on to the consumer. It is thus suggested that these goods remain zero rated which would be in line with the aim to encourage growth in the agricultural sector.</p>

<p>26</p>	<p>Clause 33 (a)(xxx)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>150. Transportation of sugarcane from farms to milling factories</p>	<p>This clause should be deleted in its entirety</p>	<p>The proposed clause seeks to change transportation of sugarcane from farms to milling factories from zero rated to exempt. This will however restrict the ability to claim input VAT on these products, which costs will be passed on to the consumer. It is thus suggested that these goods remain zero rated which would be in line with the aim to encourage growth in the agricultural sector.</p>
<p>27</p>	<p>Clause 33 (a)(xxx)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>Fertilizers of Chapter 31.</p>	<p>This clause should be deleted in its entirety</p>	<p>The proposed clause seeks to change fertilizers of Chapter 31 from zero rated to exempt. This will however restrict the ability to claim input VAT on these products, which costs will be passed on to the consumer. It is thus suggested that these goods remain zero rated which would be in line with the aim to encourage growth in the agricultural sector.</p>

<p>28</p>	<p>Clause 33 (a)(xxx)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>152. Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved by the Cabinet Secretary responsible for matters relating to agriculture.</p>	<p>This clause should be deleted in its entirety</p>	<p>The proposed clause seeks to change inputs or raw materials locally purchased or imported by manufacturers of fertilizer from zero rated to exempt. This will however restrict the ability to claim input VAT on these products, which costs will be passed on to the consumer. It is thus suggested that these goods remain zero rated which would be in line with the aim to encourage growth in the agricultural sector.</p>
<p>29</p>	<p>Clause 33 (a)(xix)</p> <p>The First Schedule to the Value Added Tax Act, 2013, is amended— by inserting the following new paragraphs immediately after paragraph 146—</p> <p>by deleting paragraph 107</p>	<p>This clause should be deleted in its entirety</p>	<p>This clause proposes to change the VAT rate of plant, machinery and equipment used in the construction of a plastics recycling plant from exempt to standard rated. This will increase the costs of construction of recycling plants which are necessary for reducing pollution.</p>

	Tax Appeals Tribunal Act		
30	<p>Clause 36</p> <p>Section 32 of the Tax Appeals Tribunal Act, 2013, is amended—</p> <p>(a) by inserting the following proviso to subsection (1)— Provided that where a party is not the Commissioner, that party shall deposit with the Commissioner an amount equivalent to twenty per cent of the disputed tax or security equivalent to twenty per cent of the disputed tax before filing the appeal.</p>	This clause should be deleted in its entirety	This clause aims to introduce the requirement to deposit 20% of the disputed tax or security equivalent to 20% of the disputed tax before filing an appeal from a decision of the Tax Appeals Tribunal. This will restrict taxpayers' rights to access to justice by discouraging appeals to the High Court.
	Excise Duty Act		

31	<p>Clause 43 (a) (iv)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>(iv) by deleting the word “imported” appearing in the description “Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared”</p>	This clause should be deleted in its entirety	While this clause aims to make local pasta subject to excise duty and increase excise duty revenue, it will increase the cost of food while we are experiencing a cost-of-living crisis. In addition, it will expose domestic production of pasta to competition from imported pasta. This clause should therefore be deleted in its entirety.
32	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>(vi) by inserting the following new items at the end of the second table appearing in paragraph 1—</p>	Delete this clause in its entirety	This clause aims to introduce excise duty on imported fish which was previously not excisable. While the aim may be to increase excise revenue and cushion the local fish market by making imports more expensive, where the domestic production will not be able to meet local demand, this will result in an increased cost on this vital food product. It is therefore suggested that this clause be deleted in its entirety.

	Imported fish Shs. 100,000 per metric tonne or 20%, whichever is higher		
33	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>(vi) by inserting the following new items at the end of the second table appearing in paragraph 1—</p> <p>Powdered juice Shs. 25 per kg</p>	Delete this clause in its entirety	<p>This clause aims to introduce excise duty on powdered juice. While the aim is to increase excise duty revenue, it will make this product more expensive. This cost will be particularly more burdensome for the poor who may not necessarily be able to afford fresh juice. In addition, this is likely to affect our local fruit industry as powdered juice is a refined juice product, thus reducing wastage as it has a longer shelf life. It is therefore recommended that this clause be abandoned in its entirety.</p>

34	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>(vi) by inserting the following new items at the end of the second table appearing in paragraph 1—</p> <p>Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer Shs. 5 per kg</p>	Delete this clause in its entirety	<p>This clause aims to introduce excise duty on sugar. This will make the product more expensive which will increase the cost of this vital product. Given the cost of food is already high, it is suggested that this clause be deleted in its entirety.</p>
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35	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>(vi) by inserting the following new items at the end of the second table appearing in paragraph 1—</p> <p>Human hair and other products of heading 6703; 5%</p> <p>Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704; 5%</p> <p>Artificial nails of tariff no. 3926.90.90 5%</p>	<p>We propose the following amendment</p> <p>vi) by inserting the following new items at the end of the second table appearing in paragraph 1—</p> <p>Human hair and other products of heading 6703; 2%</p> <p>Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704; 2%</p> <p>Artificial nails of tariff no. 3926.90.90 2%</p>	<p>While we agree that this industry has grown and it can be a good source of revenue, we propose reducing the excise duty to at 2%.</p>
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36	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>Imported cement 10% of the value or shs. 1.50 per kg, whichever is higher</p>	Adopt in its entirety	We support this proposed amendment as it protects our local cement industry
37	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin - 30%</p>	Adopt in its entirety	We support this proposed amendment as it protects our local furniture industry

38	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210 - 15%</p>	Adopt in its entirety	We support this proposed amendment as it protects our local industry
39	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>Imported fluting medium of heading 4805.19.00 - 25%</p>	Adopt in its entirety	We support this proposed amendment as it protects our local industry

40	<p>Clause 43 (a) (vi)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended— (a) in Part I—</p> <p>Imported Test liner of heading 4805.24.00 -25%</p>	Adopt in its entirety	We support this proposed amendment as it protects our local industry
41	<p>Clause 43(b)(i)</p> <p>43. The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(b) in Part II—</p> <p>(i) by deleting the words “twenty percent” appearing in paragraph 1 and substituting therefor the words “fifteen percent”;</p>	Adopt in its entirety	We agree with this proposal as it lowers the cost of internet services hence increases the volume of usage thus promoting digitization.

42	<p>Clause 43(b)(ii)</p> <p>43. The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(b) in Part II—</p> <p>(ii) by deleting the words “twenty percent” appearing in paragraph 2 and substituting therefor the words “fifteen percent”</p>	Adopt in its entirety	We agree with this proposal as it will increase transaction volume and thus increase government revenue.
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43	<p>Clause 43(b)(iii)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(a) in Part II—</p> <p>(iii) by deleting the words “shall be twelve percent” appearing in paragraph 3 and substituting therefor the words “or payment service provides licensed under the National Payment System Act, 2011, shall be fifteen percent”</p>	Delete this clause in its entirety	<p>The increase in excise duty on fees charged for money transfer services will lead to an increased cost for the taxpayer and may result in a decrease in the number of transactions. While the aim may be to increase excise duty revenue, this may be counterproductive where such transactions decrease overall. In addition, it will result in an increase in the already high cost of living and reverse gains made on financial inclusion</p>
44	<p>Clause 43(b)(iv)</p> <p>43. The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(b) in Part II—</p> <p>(iv) by deleting the words “seven-point five per cent” appearing in paragraph 4A</p>	Adopt in its entirety	<p>We support the proposal as it increases revenues for the government while deterring betting.</p>

	and substituting therefor the words “twenty per cent”		
45	<p>Clause 43(b)(viii)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(b) in Part II—</p> <p>(viii) in paragraph 6 by deleting the word “fees” and substituting therefor the words “any amount charged in respect of lending”</p>	Delete the clause in its entirety.	If adopted excise duty will be chargeable on all fees charged by digital lenders at the rate of 20%. Although this clarifies the law, it will disproportionately burden the poor by making the cost of borrowing from digital lenders even more expensive.

46	<p>Clause 43(b)(x)</p> <p>43. The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(b) in Part II—</p> <p>(x) by inserting the following new paragraph immediately after paragraph 7—</p> <p>8. Excise duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of fifteen per cent.</p>	Adopt in its entirety	We support this proposal as it will raise revenue for the government.
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47	<p>Clause 43(c)(ii)</p> <p>The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(c) in Part III—</p> <p>(ii) by deleting the words “relating to their licensed activities” appearing in the definition of “other fees”.</p>	Delete the clause in its entirety	<p>This clause if adopted will mean that excise duty on all other fees will be liable to tax at the rate of 20%. This will increase the cost of borrowing by making all fees subject to excise duty.</p> <p>This clause should thus be deleted in its entirety.</p>
	Tax Procedures Act		

48	<p>Clause 50.</p> <p>The Tax Procedures Act, 2015, is amended repealing section 37.</p>	Delete the clause in its entirety	<p>The TPA provided for the Commissioner with the approval of the Cabinet Secretary to refrain from collecting taxes where:</p> <p>a) it may be impossible to recover an unpaid tax; b) there is undue difficulty or expense in the recovery of an unpaid tax; c) there is hardship or inequity in relation to the recovery of an unpaid tax; or d) there is any other reason occasioning inability to recover the unpaid tax.</p> <p>Following the repeal of this provision, taxpayers will be exposed to even more aggressive enforcement measures even where it may not be cost-effective to pursue the collection of such taxes. This is likely to cost the KRA more than it benefits them by misusing meager tax administration resources.</p>
49	<p>Clause 54 (b)</p> <p>(b) by deleting subsection (4B) and substituting therefore the following new subsection— (4B) The tax withheld under</p>	Delete clause in its entirety	<p>This clause seeks to shorten the date on which withheld VAT is remitted from 20 days following the month it is withheld to 3 days after deduction. Although the goal may be to improve cash flows for the government this will make compliance more expensive for</p>

	<p>this section shall be remitted to the Commissioner within three days after the deduction was made.</p>		<p>taxpayers. This proposal should therefore be abandoned.</p>
50	<p>Clause 59</p> <p>Section 56 of the Tax Procedures Act, 2015, is amended in subsection (3), by deleting the words “unless the Tribunal or Court allows the person to add new grounds”.</p>	<p>Delete the clause in its entirety</p>	<p>The bill proposes to limit the discretion of the TAT and the High Court to allow new grounds to be introduced outside those that were stated in the objection notices. This will impact taxpayers’ rights to access to justice by restricting them to only relying on grounds included in their objections. This clause should therefore be abandoned in its entirety.</p>
	<p>Miscellaneous Fees and Levies Act</p>		

51	<p>Clause 67.</p> <p>Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended—</p> <p>(b) by deleting subsection (2A)</p>	Delete the clause in its entirety	<p>The bill proposes to change the IDF fee on raw materials and intermediate products imported by approved manufacturers and inputs used in the construction of houses under an approved affordable housing scheme from 1.5% to 2.5%.</p> <p>Although this may raise revenues in the short term, it is contrary to the affordable housing agenda which aims to make affordable housing available to the public. This proposal should be abandoned.</p>
52	<p>Clause 67</p> <p>Clause 67</p> <p>Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended—</p> <p>(c) in subsection (3), by deleting paragraph (b)</p>	Delete the clause in its entirety	<p>The bill proposes to change the rate of IDF on goods imported under the EAC Duty Remission Scheme from 1.5% to 2.5%. This will increase the cost of goods while we are facing a cost-of-living crisis. This clause should be abandoned in its entirety.</p>

<p>53</p>	<p>Clause 68</p> <p>The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new section immediately after section 7—</p> <p>7A. (1) There shall be paid a levy to be known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use.</p> <p>(2) The levy shall be at the rates specified in the Third Schedule and shall be paid by the importer of such goods at the time of entering the goods into the country for home use.</p> <p>Clause 72</p> <p>The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the</p>	<p>In clause 72, delete “4804.11.00 Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached 10% of the customs value</p> <p>4804.21.00 Sack kraft paper; Unbleached 10% of the customs value</p> <p>4804.31.00 Other kraft paper and paperboard weighing 150 g/m² or less: Unbleached 10% of the customs value</p> <p>4819.30.00 Sacks and bags, having a base of a width of 40 cm or more 10% of the customs value</p> <p>4819.40.00 Other sacks and bags, including cones 10% of the customs value”</p>	<p>The bill proposes to introduce a new export levy at the rate of 10% on imported goods in the proposed Third Schedule. The purpose of the levy is to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange, and promote investments.</p> <p>This will however see the cost of goods in the proposed Third Schedule increase.</p> <p>The cost of kraft paper which is now used to package goods will particularly increase where local supply cannot meet local demand. This cost will unfortunately be passed on to consumers. It is therefore suggested that kraft paper and its products be deleted from the proposed Third Schedule.</p>
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following new schedule immediately after the Second Schedule—

2523.10.00 Cement Clinkers 10% of the customs value

4804.11.00 Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached 10% of the customs value

4804.21.00 Sack kraft paper; Unbleached 10% of the customs value

4804.31.00 Other kraft paper and paperboard weighing 150 g/m² or less: Unbleached 10% of the customs value

4819.30.00 Sacks and bags, having a base of a width of 40 cm or more 10% of the customs value

4819.40.00 Other sacks and bags, including cones 10% of the customs value

54	<p>Clause 70</p> <p>The table appearing in Part I of the First Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended by</p>	Delete clause 70 in its entirety	<p>The Bill proposes to reduce export levy on leather and[MO1] leather products from 80% or USD 0.52 to 50% or USD 0.32 whichever is higher.</p> <p>Given that export taxes have the effect of reducing the volume of exports and encouraging the use of raw materials for domestic manufacture, in order to improve the value chain of those goods, it is suggested that the export levy remain at the current higher rate.</p>
	Employment Act		

55	<p>Clause 76</p> <p>The Employment Act, 2007, is amended by inserting the following new section immediately after section 31A—</p> <p>31B. (1) An employer shall pay to the National Housing Development Fund established under section 7 of the Housing Act, in respect of each employee— (a) the employer’s contribution at three per centum of the employee’s monthly basic salary; and (b) the employee’s contribution at three per centum of the employee’s monthly basic salary: Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month.</p>	Delete clause in its entirety	<p>The Bill proposes to introduce contributions by both the employer and employee to the National Housing Development Fund at the rate of 3% of the employees’ basic salary provided that the sum of the employer and employee contributions do not exceed five thousand shillings a month.</p> <p>While this may aim to positively contribute to the affordable housing agenda, it will result in an added cost for taxpayers during the current difficult economic environment.</p> <p>It is suggested that this clause be deleted in its entirety.</p>
	Retirement Benefits (Deputy President and State Officers) Act		

56	<p>Clause 81</p> <p>The Retirement Benefits (Deputy President and State Officers) Act, 2016 is amended by inserting the following new sections immediately after section 4-</p> <p>4A. (1) A person who— (a) holds an appointive or elective office in the Government; and (b) previously held a position to which pension and other benefits accrue under this Act, shall, upon retirement or ceasing to hold that office entitled under this Act, be paid- (i) a monthly pension equal to eight per cent of the monthly salary of the entitled person's last monthly salary while in office; and (ii) a lump sum payment on retirement as calculated as a sum equal to one year's salary paid for each term served in office.</p> <p>(2) In order to avoid duplication of other benefits, an entitled person who holds an appointive or elective position in or under Government shall not be entitled to other benefits under this Act, until they retire or</p>	Delete in its entirety	The bill proposes to increase benefits to retired state officers at the expense of the taxpayers. Given that they already enjoy benefits under the Retirement Benefits (Deputy President and State Officers) Act, 2016 it is proposed that this clause be deleted in its entirety
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cease to hold that appointive or elective office.

(3) For the purpose of subsection (2), other benefits means the benefits under paragraphs (c), (d) (e), (f) and (g) of sections 5, 5A, 5B, 6 and 7.

4B. A person, who holds an appointive or elective position for which benefits under this Act apply and is entitled to pension under the Parliamentary Pensions Act, shall in addition to the benefits and pension payable under this Act, be paid pension under section 8 of the Parliamentary Pensions Act.

57	<p>Clause 82</p> <p>Section 5 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is amended–</p> <p>(a) in subsection (1) by deleting the words “and the entitled person’s spouse” and substituting therefor the words “,the entitled person’s spouse and the entitled person’s child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full-time education, and in the case of a female child is not married or is not cohabiting with any person;”</p>	Delete in its entirety	<p>The proposed clause aims to increase the number of persons entitled to medical cover for retired speakers of both the National Assembly and Senate. Given the fact that this will be funded by the public who are already overburdened by the Public Wage Bill, this clause should be deleted in its entirety.</p>
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