



CM ADVOCATES LLP



## FINANCE BILL, 2026 ANALYSIS

### INTRODUCTION

The Finance Bill, 2026 introduces a wide-ranging set of tax policy and administrative reforms aimed at strengthening revenue mobilisation, formalising emerging sectors of the economy, and enhancing the efficiency of tax administration in line with the Medium-Term Revenue Strategy (MTRS). The proposals span income tax, value added tax, tax procedures, excise, and stamp duty, with a clear policy direction towards broadening the tax base, deepening digital tax enforcement, and tightening anti-avoidance provisions. At the same time, the Bill reflects a continued reliance on legislative responses to recent judicial decisions, particularly in areas relating to enforcement powers and the taxation of digital and cross-border transactions.

Notably, while earlier policy communications had indicated potential relief measures, including a possible reduction in Pay As You Earn (PAYE), these proposals have not been incorporated into the final Bill. Similarly, anticipated broad-based VAT measures affecting all businesses irrespective of turnover have also not been introduced, which may be viewed as a stabilising outcome for taxpayers operating in the informal and small business sectors.

### A. INCOME TAX ACT AMENDMENTS

#### i. Proposed Expansion of the Definition of Management or Professional Fees to Include Card-Based Transaction Fees

The Bill proposes to amend the definition of “management or professional fee” by expanding its scope to include interchange fees and merchant service fees arising from transactions that use a card as a means of payment.

#### Implication

This amendment is a direct legislative response to the Supreme Court’s decision in *Barclays Bank of Kenya Limited v Commissioner Domestic Taxes*, which rejected the characterization of interchange and related card payment fees as royalties subject to withholding tax. By expanding the definition of management and professional fees, the Bill effectively cures the statutory gap identified by the Court and introduces a new legal basis for subjecting these payments to withholding tax prospectively. This reflects a broader pattern observed in prior Finance Acts, where adverse judicial decisions have been followed by targeted legislative amendments to secure the intended tax treatment.



## **ii. Introduction of a Non-Resident Rental Income Tax Regime.**

The Bill introduces a new Section 6B to the Income Tax Act establishing a non-resident rental income tax applicable to income accrued in or derived from the use or occupation of immovable property situated in Kenya. The tax is imposed at a rate specified in the Third Schedule and is deemed to be a final tax. Non-resident persons are required to register under a simplified framework, file monthly returns, and remit the tax by the 20th day of the following month, except where the income is received through a resident agent subject to withholding tax under Section 35(3)(j).

### **Implication**

The proposed regime represents a structural shift in the taxation of non-resident landlords, moving from a purely withholding-based system to a hybrid compliance model that places primary responsibility on the non-resident taxpayer. Historically, Kenya has relied on withholding tax at 30% on gross rental income under Section 35 as the principal mechanism for taxing non-resident property income. This amendment does not introduce a new tax per se, but rather formalises and strengthens enforcement by requiring non-residents to directly register, file returns, and account for tax. This approach is consistent with trends in recent Finance Acts, which have increasingly sought to enhance administrative control and reduce revenue leakage by bringing non-residents within the formal tax compliance framework.

## **iii. Simplification of the Taxation of Trust Income**

The Bill proposes to repeal and replace Section 11 of the Income Tax Act with a simplified regime under which income received by a trustee, executor or administrator is deemed to be their income and taxed accordingly. It further provides that dividend or interest income included at the trustee level will not be subject to further tax, and that beneficiaries will not be liable to tax on income where tax has already been paid by the trustee.

### **Implication**

The proposed amendment represents a fundamental shift towards a single-point taxation model for trust income, with tax being imposed at the level of the trustee, executor or administrator, and distributions to beneficiaries treated as tax-exempt.

This simplifies the current framework, which, while already taxing income in the hands of the trustee, contains complex attribution rules that may result in beneficiaries being taxed upon distribution, particularly in relation to dividends and interest

through qualification mechanisms. The repeal and replacement of Section 11 therefore removes a layer of interpretational ambiguity and administrative complexity that has historically created uncertainty for trusts and the beneficiaries.

## **iv. Introduction of a Presumptive Tax Regime on Importation of Worn Clothing (Mitumba)**

The Bill proposes to introduce a new Section 12H to the Income Tax Act, imposing a tax on the importation of worn clothing, worn footwear, and other worn articles under tariff heading 6309. The taxable profit is deemed to be 5% of the customs value of the imported goods, with the tax payable at importation prior to release of the goods, and treated as a final tax on that income.

### **Implication**

The proposed measure introduces a presumptive taxation regime targeted at the mitumba sector, which has historically been difficult to tax due to its largely informal and fragmented nature. By anchoring taxation at the point of importation and applying a deemed profit margin, the regime simplifies tax collection and assists with the capture of revenue from hard-to-tax sectors. This approach is also consistent with the Medium-Term Revenue Strategy (MTRS), which emphasises broadening the tax base and enhancing compliance through simplified tax mechanisms.

## **v. Avoidance of tax liability by non-distribution of dividends**

The Bill proposes to amend Section 24(1) of the Income Tax Act by requiring that, where the Commissioner exercises discretion to deem income as distributed, at least 60% of that part of the income must be treated as dividends, replacing the current position which does not prescribe a minimum threshold.

### **Implication**

The amendment materially curtails the Commissioner's discretion by introducing a statutory floor for deemed dividend assessments. Under the current framework, the Commissioner may determine what portion of undistributed income should be treated as dividends on a case-by-case basis, allowing flexibility depending on the facts and commercial context. The proposed change shifts this to a more prescriptive regime, effectively mandating that a minimum of 60% of such income be deemed distributed once the provision is invoked.

In practical terms, the change heightens the importance a commercial justifiable reason for retained profits.



#### **vi. Acceleration of Income Tax Return Filing Deadlines**

The Bill proposes to amend the filing deadlines for income tax returns by requiring submission by the last day of the fourth month following the end of the year of income. In addition, where a return reflects a nil tax payable, the taxpayer will be required to file the return within one month after the end of the relevant year of income.

##### **Implication**

The proposed amendment introduces a significantly tighter compliance timeline, effectively aligning the filing deadline more closely with the tax payment deadline. Historically, the separation between the payment date (typically by the fourth month) and the filing deadline (end of the sixth month) provided taxpayers with additional time to finalise computations and supporting documentation. The revised framework eliminates this buffer, suggesting a deliberate policy shift towards synchronising payment and reporting obligations to reduce the lag in revenue reconciliation.

#### **vii. Exemption of Benefits Arising from Death from Income Tax**

The Bill proposes to amend the First Schedule to the Income Tax Act by introducing a provision to exempt from income tax any benefits arising from death.

##### **Implication**

The proposed amendment introduces a clear and broad exemption for death-related benefits, addressing an area that has historically been subject to interpretational uncertainty depending on the nature and source of the payment.

#### **viii. Exemption of Capital Gains on Transfer of Property to Real Estate Investment Trusts (REITs)**

The Bill proposes to exempt from capital gains tax any gains arising from the transfer of property to a qualifying Real Estate Investment Trust (REIT).

##### **Implication**

The proposed exemption removes a key tax friction that has historically limited the uptake and scalability of REIT structures in Kenya. Under the current regime, transfers of property into REITs may trigger capital gains tax, thereby increasing the cost of asset injection and discouraging investors and developers from utilising REITs as investment and financing vehicles. By eliminating this upfront tax cost, the amendment facilitates tax-neutral restructuring of real estate assets into REITs, aligning with the original policy intent of promoting collective investment schemes in the property sector.

#### **ix. Increase of Monthly Rental Income (MRI) Tax Rate from 7.5% to 10%**

The Bill proposes to amend the Monthly Rental Income (MRI) tax regime by increasing the applicable tax rate from 7.5% to 10% of gross rental income for eligible landlords.

##### **Implication**

The proposed reinstatement of the 10% MRI rate represents a clear upward adjustment in the tax burden for residential landlords within the simplified rental tax regime. Given that MRI is applied on gross rental receipts without allowance for deductible expenses, the increase directly reduces net rental yields and may have a more pronounced impact on landlords with high maintenance costs or financing obligations. In practical terms, this change effectively restores and in real terms may increase the pre-2023 tax cost of operating within the simplified regime, particularly when considered alongside Affordable Housing Levy, inflationary pressures and rising property maintenance costs.

#### **x. Expansion of Capital Gains Tax (CGT) Scope to Non-Resident Share Transfers**

The Bill proposes to expand the scope of capital gains tax to include gains derived by non-resident persons from the alienation of shares where such shares derive their value from Kenya, or where the transaction results in a change in group membership of a company resident in Kenya, or a change in ownership of, title to, or interest in property located in Kenya.

##### **Implication**

The proposed amendment represents a significant broadening of Kenya's capital gains tax nexus rules for non-resident investors. Under the current regime, the taxation of indirect transfers is relatively narrowly framed, primarily targeting offshore share disposals where more than 20% of the underlying value is attributable to immovable property situated in Kenya. The removal of the threshold and the expansion to include properties that "derive their value from Kenya" materially widens the tax base and introduces a more subjective and potentially expansive nexus test.

## **B. TAX PROCEDURE ACT AMENDMENTS**

### **i. Tax Avoidance.**

The Bill proposes to expand the Tax Procedures Act framework on tax avoidance by broadening the definition of a "scheme" to include any course of action, agreement, arrangement, promise, plan, proposal or undertaking, whether express or implied and whether legally enforceable or not. It further expands the definition of "tax benefit" to include a wide range of outcomes such as reduction or postponement of tax



liability, acceleration of input tax deductions, and any arrangement that results in supplies or imports not being subject to tax. The Commissioner is also empowered to issue assessments relating to such arrangements within five years from the end of the relevant tax period.

### **Implication**

The proposed amendments significantly strengthen Kenya's anti-avoidance and tax transparency framework by broadening both the definitional scope of tax avoidance and the Commissioner's enforcement toolkit. The expanded definitions of "scheme" and "tax benefit" materially lower the threshold for what may be challenged as tax avoidance, effectively codifying a substance-over-form approach. This aligns with global anti-avoidance trends, including OECD BEPS principles, which emphasise capturing arrangements that achieve unintended tax outcomes regardless of legal form.

### **ii. Introduction of Reporting Obligations for Virtual Asset Service Providers**

The Bill introduces mandatory annual information reporting requirements for virtual asset service providers. Such providers must file returns with the Commissioner in respect of all virtual asset users with whom they maintain a relationship, where such users are identified as reportable users or have controlling persons that are reportable persons. The obligation applies to providers facilitating exchange transactions, operating trading platforms, acting as counterparties, or intermediaries. The Bill also introduces offences and penalties for non-compliance, including fines of KES 100,000 per false statement or omission, or imprisonment for up to three years.

### **Implications**

The proposed provisions represent a significant step towards formalising the taxation and regulatory oversight of the virtual asset ecosystem in Kenya. By imposing entity-level reporting obligations on virtual asset service providers, the Bill effectively shifts the compliance burden from individual users, who are often difficult to trace or verify, to centralised platforms that facilitate exchange and trading activity. This approach mirrors emerging international standards, particularly the OECD's Crypto-Asset Reporting Framework, and signals Kenya's intention to align with global efforts to enhance transparency in digital asset transactions and curb tax evasion in decentralised financial systems.

### **iii. Re-registration of Taxpayers Following Deregistration**

The Bill provides that where a person who had previously been deregistered applies for registration,

and the Commissioner is satisfied that the person is liable for tax under any tax law, the Commissioner shall register the person and re-issue the same Personal Identification Number (PIN) that had been issued prior to deregistration.

### **Implication**

The provision effectively prevents taxpayers from using deregistration as a mechanism to reset their compliance history or create a new tax identity. This enhances traceability across the taxpayer database and supports more effective monitoring of historical tax obligations, particularly in cases where deregistration may have been used to avoid outstanding liabilities.

### **iv. Exemption from PIN Requirement for Non-Resident Investors Opening Investment Bank Accounts**

The Bill introduces a provision exempting non-resident persons from the requirement to obtain a Personal Identification Number (PIN) when opening an account with an investment bank in Kenya.

### **Implication**

The proposed exemption is primarily facilitative and is intended to ease market access for non-resident investors engaging with Kenya's capital markets through investment banks. Under the current framework, the requirement to obtain a PIN has often been cited as an administrative hurdle for non-resident investors, particularly those undertaking short-term portfolio investments or accessing Kenyan securities through intermediated structures. By removing this requirement, the amendment streamlines account opening processes and reduces friction in onboarding foreign investors.

### **v. A non-resident person shall be exempt from the requirement of a PIN when opening an account with an investment bank.**

The Bill introduces a provision stating that a non-resident person shall be exempt from the requirement of a Personal Identification Number (PIN) when opening an account with an investment bank.

### **Implication**

The proposed exemption is primarily facilitative and is intended to ease market access for non-resident investors engaging with Kenya's capital markets through investment banks. Under the current framework, the requirement to obtain a PIN has often been cited as an administrative hurdle for non-resident investors, particularly those undertaking short-term portfolio investments or accessing Kenyan securities through intermediated structures. By removing this



requirement, the amendment streamlines account opening processes and reduces friction in onboarding foreign investors.

#### **vi. Tax Amnesty**

The Bill introduces a tax amnesty covering tax liabilities relating to periods up to 31 December 2025, with the amnesty window remaining open until 31 December 2026.

#### **Implication**

The introduction of the tax amnesty represents a strategic policy intervention aimed at accelerating voluntary compliance and clearing accumulated historical tax debts within the tax system. By providing a time-bound window within which taxpayers can regularise outstanding liabilities, the measure is intended to enhance revenue mobilisation in the short term while improving the integrity and cleanliness of the taxpayer register going forward. In practice, such amnesties typically encourage disclosure of previously undeclared or underpaid taxes, particularly where enforcement risk has increased due to enhanced data analytics and third-party reporting mechanisms.

#### **vii. Agency Notice to be issued even where the taxpayer has appealed**

The Bill proposes to delete Section 42(14)(e) of the Tax Procedures Act, which currently restricts the Kenya Revenue Authority (KRA) from issuing an agency notice where a taxpayer has lodged an appeal against an assessment.

#### **Implication**

The proposed deletion materially strengthens the enforcement powers of the KRA by allowing the issuance of agency notices notwithstanding the existence of a pending objection or appeal. This represents a clear departure from the current taxpayer-protective safeguard, which was designed to preserve the integrity of the dispute resolution process by preventing coercive recovery measures while a tax liability is still under challenge. In effect, the amendment tilts the balance decisively in favour of revenue collection, even where the underlying tax liability has not been conclusively determined.

#### **viii. Pre-populated Tax Returns**

The Bill proposes to amend Section 75 of the Tax Procedures Act to expressly empower the Commissioner to utilise information technology systems to generate pre-populated tax returns on behalf of taxpayers required to file returns. Taxpayers may then rely on such pre-populated returns for purposes of submission or lodgement of their tax returns.

#### **Implication**

The proposed amendment represents a significant shift towards a data-driven and automation-led tax administration framework, leveraging the e-TIMS infrastructure to pre-fill taxpayer returns using information already available to the KRA.

#### **ix. Failure to comply with electronic tax system.**

The Bill introduces a structured enforcement mechanism for non-compliance with electronic tax obligations under Section 75 of the Tax Procedures Act.

Where a taxpayer fails to issue electronic tax invoices, submit returns electronically, or make electronic tax payments as required, the Commissioner shall issue a written notice requiring reasons for non-compliance. The Commissioner will then assess whether the failure arose from circumstances beyond the taxpayer's control, whether it was due to wilful neglect or default, and whether reasonable steps were taken to comply.

Where the explanation is not satisfactory, the taxpayer will be liable to a penalty being the higher of two times the tax due, KES 100,000, or KES 10,000 in the case of an individual.

#### **Implication**

The proposed provisions significantly strengthen the enforcement architecture around Kenya's electronic tax administration framework, particularly the e-TIMS ecosystem. The introduction of a formalised "show-cause" process prior to penalty imposition reflects an attempt to balance procedural fairness with stricter compliance enforcement. However, the substantive effect of the amendment is to materially increase the cost of non-compliance with electronic invoicing, filing, and payment obligations, thereby reinforcing the mandatory nature of digital tax systems as opposed to traditional or manual alternatives.

### **C. STAMP DUTY ACT**

#### **i. Stamp Duty Exemption for Transfers into Real Estate Investment Trusts (REITS)**

The Bill proposes to amend Section 96A(1) of the Stamp Duty Act to include a provision exempting from stamp duty any instrument whose effect is to convey or transfer a beneficial interest in property from a person or persons to a Real Estate Investment Trust (REIT).

#### **Implication**

The proposed amendment removes a key transactional cost barrier in the transfer of property into REIT structures by exempting such transfers from stamp duty. Under the current framework, transfers of



immovable property or beneficial interests therein would ordinarily attract stamp duty, thereby increasing the upfront cost of asset injection into REIT vehicles. By exempting these transfers, the amendment materially improves the tax efficiency of REIT structuring and reduces friction in the consolidation of property portfolios into collective investment vehicles.

**D. VALUE ADDED TAX ACT AMENDMENTS**

**Clawback on claimed input VAT**

The proposed amendment to Sec17 of the VAT Act is significant introducing a new Sec17A. This new section proposes that "where, on the date taxable supplies by a registered person become exempt and the person has deducted input tax on such supplies but the supplies remain unsold, the person shall account for an amount equal to the input tax relating to the supplies which

remain unsold in the tax return of the period when the taxable supply became exempt.

**Implication**

This amendment must be viewed in the broader context of the proposed restructuring of the Second Schedule to the VAT Act, which includes the migration of several items from the zero-rated category to exempt status. The practical effect of this shift is that businesses holding inventory acquired under a taxable or zero-rated regime may find themselves required to claw back previously claimed input VAT once the underlying supplies transition into exemption status. This introduces a retrospective tax adjustment mechanism that effectively neutralises input tax deductions where the output tax treatment changes before the goods are sold.

Description	Current Status	Proposal	Implication
Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses	Standard rated	Exempt	This is a welcome move
Direction-finding compasses, instruments and appliances for aircraft.	Exempt	Standard rated	This will effectively increase the cost of these instruments and appliances
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.	Exempt	Standard rated	Exemptions are given to investors in sector to either establish or upgrade their facilities and services in order to achieve quality services and destination competitiveness.
Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.	Exempt	Standard rated	This effectively hurts The Affordable Housing Program (AHP) is a central pillar of Kenya's Bottom-Up Economic Transformation Agenda (BETA), aimed at bridging a 2-million-unit housing deficit.



The supply of denatured ethanol of tariff number 2207.20.00.	Exempt	Standard rated	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
Inputs or raw materials locally purchased or imported for the manufacture of pharmaceutical products upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to health.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
Transportation of sugarcane from farms to milling factories.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
The supply of imported or locally purchased telephones for cellular networks and other wireless networks.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply



			chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
The supply of motorcycles of tariff heading 8711.60.00.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
The supply of electric bicycles.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
The supply of solar and lithium-ion batteries.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
The supply of electric buses of tariff heading 87.02.	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full



			burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
Bioethanol vapour (BEV) Stoves (cooking appliances and plate warmers for liquid fuel).	Zero-rated	Exempt	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.
Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.	Exempt	Standard Rate	While exempt goods are not subject to VAT suppliers cannot claim back input VAT. This makes the supply chain more expensive, as manufacturers and service providers bear the full burden of VAT on inputs without reimbursement, often resulting in higher consumer prices.

**CONCLUSION**

Overall, the Finance Bill, 2026 presents a predominantly revenue-enhancing and enforcement-driven tax reform agenda, with limited direct tax relief measures for individuals or businesses. While the omission of the proposed PAYE reductions may be disappointing in light of prior public policy signals, the exclusion of a blanket VAT expansion is a positive outcome for small and medium-sized enterprises and the wider consumer economy. The Bill therefore reflects a cautious balancing of fiscal consolidation

objectives with economic stability considerations.

Stakeholders are encouraged to actively participate in the legislative process through the submission of written memoranda to the National Assembly Finance Committee. We are available to assist in the preparation and submission of detailed representations to ensure that sector-specific concerns are appropriately captured and considered during the legislative review process. Please contact us at [taxadvisory@cmadvocates.com](mailto:taxadvisory@cmadvocates.com)

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