

FINANCE ACT 2025

AMENDMENTS TO THE TAX PROCEDURES ACT.



The Finance Act, 2025 was assented to by the President on 26th June 2025 and is now in force. The Act introduces a wide array of tax measures through amendments to several key pieces of legislation, including the Income Tax Act (Cap. 470), Value Added Tax Act, 2013, Excise Duty Act, 2015, Tax Procedures Act, 2015, and the Miscellaneous Fees and Levies Act (Cap. 469C).

These changes are part of the Government's broader strategy to align Kenya's tax framework with current economic realities and evolving policy priorities. While most of the provisions take effect from 1st July 2025, a few notable measures are scheduled to come into operation on 1st January 2026.

This newsletter provides a breakdown of the key provisions of the Act and what they mean for you and your business.

Digital Lender

The Finance Act 2025 has formally defined the term 'certificate of origin'.

This document, issued by a competent authority in the exporting country, confirms the location where the goods were manufactured.

Its inclusion supports the enforcement of excise duty exemptions and preferential trade agreements, ensuring only qualifying imports benefit from reduced or zero duty rates.

Electronic Tax Invoicing

Section 23A(4) has been amended to update the scope of transactions excluded from mandatory electronic tax invoicing. These are:

- Payments of emoluments (such as salaries and wages).
- Payments for imports
- Payment of interest
- Transactions for accounting for investment allowances (which are capital expenditure-related entries)
- Airline passenger ticketing
- Payments subject to withholding tax that is a final tax.

Amended Assessments

Section 32 has been amended to insert subsection (8A), which requires that whenever the Commissioner makes an amended assessment, the notification issued to the taxpayer must include reasons for the amendment.

Penalty for failure to deduct or withhold tax.

A new subsection has been inserted to Section 39A, which provides that where a taxpayer fails to deduct, withhold, or remit tax, they will not be liable for the principal tax if the recipient of the payment has already paid and accounted for that tax.

As a result:

- The withholding agent may still be liable for penalties and interest related to non-compliance with procedural obligations.
- However, they will not be required to pay the principal tax amount again, provided it has already been remitted by the recipient.

This aims to prevent double taxation and aligns tax administration with economic substance over form.

Security on Property for Unpaid Tax

Section 40 has been amended to introduce 2 main changes.

Sub-section (2) has been expanded to include the term 'stamp duty'. Kenya Revenue Authority (KRA) can now register a security over property for unpaid stamp duty without requiring the Registrar to charge any fee.

Sub-section 5 has also been amended and now provides that if a taxpayer and KRA agree to a payment plan for tax arrears, the security will not be lifted until the full liability is settled as per the plan. This ensures compliance and enhances the efficiency of tax recovery.

Collecting Tax from a person owing money to a Taxpayer

Section 42 empowers the Commissioner to collect tax due from a person owing money from a taxpayer.

This section has been amended to expand the scope of Section 42 by:

- **Extended Collection Powers:**
 - The Kenya Revenue Authority (KRA) will now be empowered to issue third-party agency notices not only against resident taxpayers but also non-resident persons who are liable to tax in Kenya.
- **Clarity in Enforcement:**
 - The blanket repetition of "non-resident person who is subject to tax in Kenya" across all applicable subsections ensures clarity and avoids interpretative ambiguity.
- **Agent Responsibility:**
 - Agents who hold or owe funds to non-resident persons will now be responsible for withholding and remitting tax under KRA notices.
- **Reinforces Non-Resident Compliance Framework:**
 - Builds consistency with other tax laws, especially the Income Tax Act and VAT Act, where non-residents with a Kenyan-sourced income are required to comply.

Value Added Tax Withholding Agents

Section 42A has been amended to repeal subsection (4D) which imposed a penalty of 10% of the amount due from a taxpayer who:

- fails to withhold VAT as required under subsection (4C)(a), or
- fails to remit withheld VAT within five working days under subsection (4C)(b).

With the deletion of subsection (4D), the automatic 10% penalty on failure to withhold or remit VAT is removed from the legislation.

However, this does not eliminate liability—defaulting persons may still be penalised under general penalty provisions of the Tax Procedures Act (such as Sections 83 and 85).

Appointment of Digital Service Tax Agent

The entire Section 42B is repealed. This section previously allowed the Commissioner to appoint and revoke agents for the collection and remittance of Digital Service Tax (DST).

While DST itself has not been repealed under this provision,

this change suggests a shift in how the Kenya Revenue Authority may manage compliance, possibly through direct registration of digital service providers or a broader reform of the DST framework.

Certificate of Origin

Further to the provisions of section 2, Section 44A has been amended to introduce a mandatory requirement for a valid Certificate of Origin (CoO) for all imports into Kenya.

The CoO must be issued by a competent authority in the source country and contain specific information such as the exporter/importer details, description, quantity, and origin.

Failure to comply may result in seizure or forfeiture of goods. Importers should review their supply chains and ensure proper documentation is in place to avoid costly disruptions.

Offset or Refund of Overpaid Tax

The Commissioner will now have 120 days (up from 90) to determine overpayment claims, and 180 days if an audit is required.

The changes also clarify that VAT refunds apply specifically to VAT payable on imports.

While these timelines may delay access to refunds, safeguards such as deemed approval and interest/penalty waivers on offsets remain intact.

Taxpayers are advised to ensure accurate documentation and proactively follow up on pending claims.

Objection to Tax Decision

This section has been amended to clarify that the 60-day period for the Commissioner to make an objection decision begins to run from the actual date of lodging the valid objection, not from the date the application for extension is allowed.

Private Rulings from KRA

The amendment deletes paragraph (a) (iii) of subsection (1).

This amendment effectively removes of the grounds upon which the Commissioner may refuse an application for a private ruling.

Previously, if the matter was addressed in a published ruling under section 69, the Commissioner could decline to issue a private ruling. This ground will no longer apply.

Taxpayers may now seek a private ruling even where a published ruling exists under section 69, as long as the question hasn't already been addressed in an assessment or public ruling.

Penalty for Late Filing

Section 83 has been amended to insert the words “fails to submit a tax return or” immediately after the words “person who” in subsection (1).

This expands the scope of late submission penalties to include complete failure to submit a return, not just late submission.

- This means penalties will now expressly apply both when:
- A return is filed late, or
- A return is not filed at all.

All taxpayers are therefore urged to ensure that every required return is filed by the due date, whether or not they anticipate making a payment.

Remission of Penalty Interest

A new subsection (5A) has been inserted immediately after subsection (5) to allow for specific waivers of penalties or interest.

This amendment grants the Cabinet Secretary for the National Treasury, on recommendation by the Commissioner, the power to waive penalties or interest in cases where:

- The liability arose from errors generated by an electronic tax system (e.g., iTax).
- There were delays in updating the electronic tax system.
- There was duplication of penalties or interest due to system malfunction.
- The taxpayer was incorrectly registered for certain tax obligations by the system.

Late Penalty Interest

An amendment to section 83 has clarified that late filing penalties will now also apply when a tax return is not filed at all.

This amendment ensures that both late filers and non-filers face consequences. Taxpayers are advised to file all returns on time, even when no tax is payable, to avoid unnecessary penalties

Whether you're unsure how the new Tax Procedures Act amendments affect your reporting obligations, need clarity on timelines, penalties, or refunds, or require help navigating changes in enforcement and compliance procedures, contact us. We're here to help you respond proactively and remain fully compliant.

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