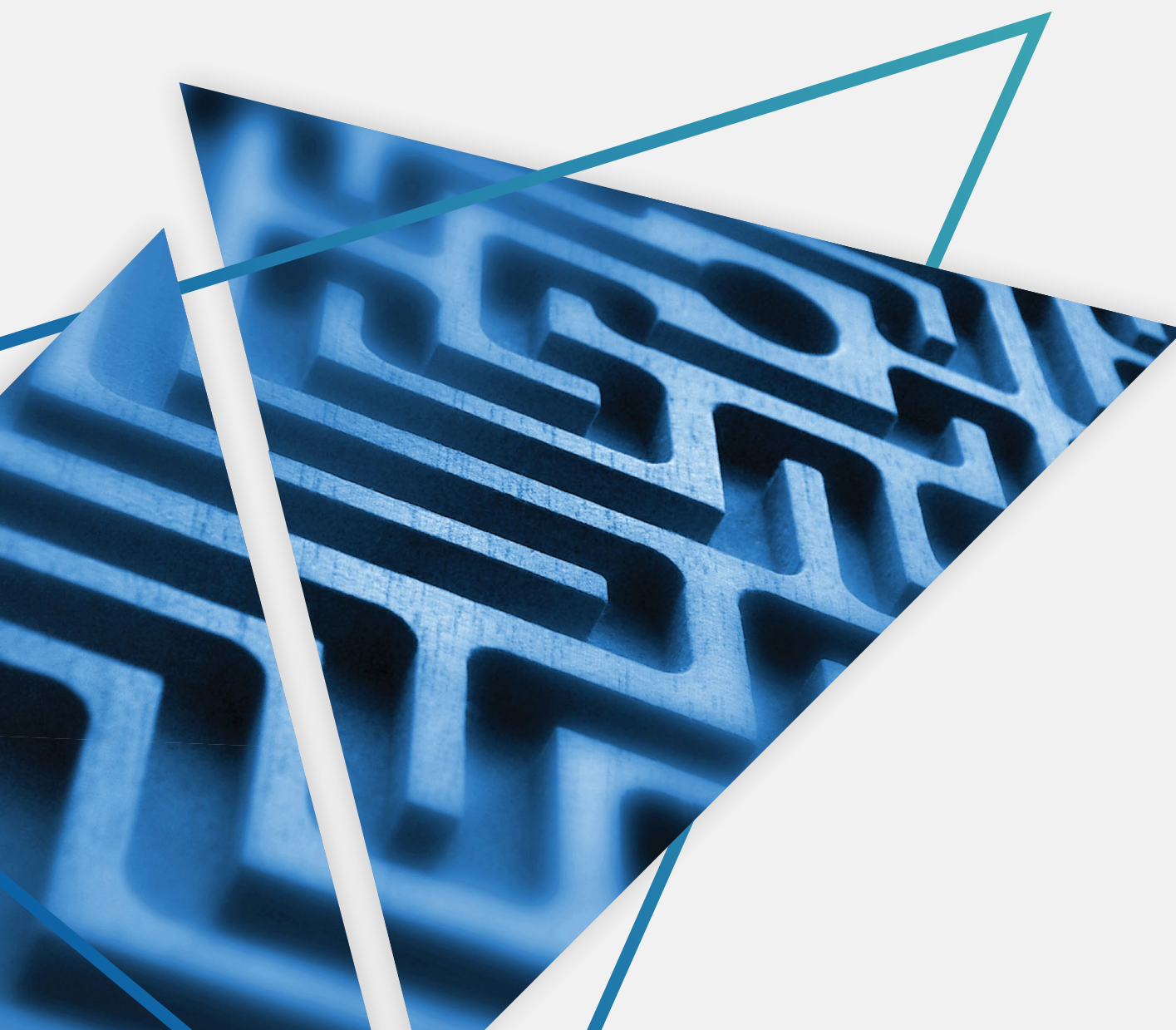


Tax & Exchange Control

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Tax highlights from the Business Laws (Amendment) Bill, 2025

The Business Laws (Amendment) Bill, 2025 (Bill) proposes sweeping amendments to multiple statutes, with the overarching objective of enhancing the ease of doing business, promoting investment and aligning Kenya's legal and regulatory framework with international standards. The Bill touches on key pieces of legislation, namely Special Economic Zones Act, Cap. 517A (SEZ Act), Export Processing Zones Act, Cap. 517 (EPZ Act), Stamp Duty Act, Cap. 480 (SDA), Income Tax Act, Cap. 470 (ITA), Excise Duty Act, Cap. 472, Miscellaneous Fees and Levies Act, Cap. 469C, and Value Added Tax Act, Cap. 476 (VAT Act).

If enacted, the Bill will reshape Kenya's business environment, affecting investors, financiers, special economic zone (SEZ) and export processing zone (EPZ) operators, exporters and entities engaged in cross-border or digital commerce. Below, we outline the key proposals, contrast them with the prevailing position, and assess their commercial and policy implications.

Special Economic Zones Act

Expansion of SEZ categories and inclusion of new sectors

The Bill amends section 4(6) of the SEZ Act to expand the categories of SEZs to include educational zones and business process outsourcing and services-focused SEZs, particularly targeting digital financial services and fintech. It also empowers the Cabinet Secretary, on the recommendation of the SEZ Authority, to prescribe additional SEZs categories, enhancing responsiveness to emerging industries.

Entities operating within these newly designated zones will enjoy tax benefits, including preferential corporate income tax rates, zero-rated VAT on supplies to SEZ enterprises, capital gains tax exemptions on intra-SEZ property transfers, and full withholding tax exemptions on dividends paid to both residents and non-residents. In addition, for the first 10 years, payments to non-residents for royalties, interest, management fees, professional fees, training fees, consultancy fees, agency fees and contractual fees are exempt from withholding tax. SEZ entities will also benefit from stamp duty exemptions on instruments relating to SEZ activities, exemptions from import duty, excise duty, VAT and import declaration fees on imported goods; a 100% investment allowance on capital expenditure; and exemptions from select county government fees.

The current SEZ framework focuses mainly on manufacturing and export sectors and does not empower the Cabinet Secretary to introduce new SEZ categories.

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This aligns Kenya's SEZ framework with global and East Africa Community (EAC) trends by recognising service and knowledge-based sectors. However, the requirements for at least 200 full-time employees and full export orientation may exclude hybrid models, while the Cabinet Secretary's broad discretion underscores the need for clear, transparent designation criteria.

Licence tenure and streamlined licensing procedure

The Bill amends section 27(5)(d) of the SEZ Act to introduce a fixed 10-year validity period for SEZ licences, replacing the previous discretionary tenure. This aligns with the recent amendments under the Business Laws (Amendment) Act, 2024, which similarly capped SEZ tax benefits at 10 years, signalling a broader policy shift toward standardising incentive duration and enhancing predictability in the SEZ regime.

However, removing the SEZ Authority's discretion eliminates flexibility to tailor licence duration to capital intensity or project timelines. For heavy manufacturing or infrastructure investments requiring longer recovery periods, a 10-year cap may be limiting.

Further, the Bill proposes an amendment to section 27(2) of the SEZ Act by shifting the licensing recommendation role from the Commissioner of Customs to the operator. Currently, the SEZ Authority may issue or renew a licence only upon the commissioner's recommendation. The amendment instead requires the SEZ Authority to act on the recommendation of the operator, the corporate entity responsible for managing a special economic zone, and merely inform the Commissioner of Customs once a licence has been issued or renewed. Replacing the Customs Commissioner's recommendation with that of the operator

simplifies the process but raises procedural questions for new developers who may not yet have an operator in place. Regulatory clarification will be needed to bridge this gap.

Expansion of SEZ developers' and enterprises' rights to residential housing

The Bill proposes amending sections 33(1) and 34(h) to expressly permit SEZ developers and enterprises to develop non-tradable residential premises within SEZ customs areas exclusively for workers accommodation, and tradable housing outside SEZ areas, including affordable housing subject to national housing and land laws.

Currently, the SEZ Act is silent on whether developers or enterprises may construct residential premises, creating uncertainty regarding the scope of permissible development activities and allowable tax incentives within SEZs.

This reform codifies a practical need by allowing workers accommodation within SEZs and supporting mixed-use development outside customs zones. Nonetheless, there should be guidance on whether developers who have built residential houses within SEZs will continue to enjoy the tax incentives under the SEZ regime.



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Export Processing Zones Act

Enhanced incentives and fee exemptions

The Bill amends section 29(2) of the EPZ Act to introduce wide-ranging exemptions for licensed EPZ developers and operators. These include exemptions from government levies and fees, the standards levy for imported production inputs, the railway development levy (RDL) for imports of inputs, raw materials, machinery and equipment, and work permit fees for registered directors of licensed EPZ developers and operators.

Under the existing regime, EPZ developers and operators enjoy certain tax incentives but remain subject to some levies and regulatory fees. This has been a long-standing complaint from investors, who cite inconsistent application and high compliance costs.

The proposed exemptions substantially improve Kenya's competitive positioning for export-oriented manufacturing and processing. They reduce administrative and operational costs while streamlining interactions with regulatory bodies. However, these generous reliefs must be harmonised with broader fiscal policy objectives to avoid perceptions of uneven treatment or loss of public revenue. Implementation clarity, particularly around the scope of exempt agencies and qualifying goods, will be crucial to prevent disputes or abuse.

Structured and time-bound licensing process

The Bill introduces new subsections setting out a structured process for the approval and declaration of EPZ areas. Prospective developers must submit prescribed documentation to the EPZ Authority, which may issue a conditional approval specifying terms to be fulfilled before licensing. The EPZ Authority then forwards the recommendation to the Cabinet Secretary, who must declare an EPZ area within 30 days of receiving the recommendation.

Currently, the licensing process lacks specific timelines and clear procedural steps, leading to bureaucratic delays and inconsistent decision-making.

The codified approval process introduces transparency, accountability, and predictability. The 30-day declaration timeline reduces uncertainty for investors and curbs administrative discretion. Nonetheless, procedural efficiency will depend on institutional capacity and co-ordination between the EPZ Authority and the Ministry of Investment, Trade, and Industry. Investors should monitor whether conditional approvals introduce new compliance layers that could offset expected efficiencies.

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Enhanced EPZ licence suspension and cancellation framework

The Bill introduces a formalised regime under sections 19A and 19B, empowering the Board of Directors for the EPZ Authority (EPZ Board) to suspend or cancel licences of developers or operators for specified grounds, including cessation of licensed activities, breach of licence conditions, contravention of the EPZ Act, criminal charges or conviction, fraud or misrepresentation, or voluntary withdrawal. For suspension, the EPZ Board must issue at least 28 days' written notice, stating the reasons and the effective date. The affected party may apply for review within 14 days, submitting a corrective report, and the EPZ Board is required to decide within seven days of receipt. For cancellation, 14 days' notice is required, with the right to review within seven days, supported by written justification. These provisions introduce procedural safeguards, notice, defined timelines and review rights, enhancing regulatory fairness, predictability and investor protection. However, terms such as "*public interest*" and "*public safety*" should be clearly defined to prevent overreach and ensure balanced enforcement.

Stamp Duty Act

Stamp duty exemptions for REITs property transfers

The Bill proposes amending section 96A of the SDA to exempt from stamp duty any transfer of property into or within a real estate investment trust (REIT). The amendment expands the scope to include:

- transfers of property between trustees or to additional trustees;
- transfers from trustees to the REIT itself; and
- transfers from property owners to a REIT in exchange for units issued by that REIT;

notably, the amendment deletes the prior 31 December 2022 time limit, making the exemption a standing feature of the law.

Under the current framework, only limited REIT related transfers qualified for exemption, and that exemption expired in December 2022. Since then, REIT sponsors and investors have been exposed to full stamp duty at 4%, significantly increasing transaction costs and dampening the development of Kenya's REIT market.

The amendment eliminates a major barrier to REIT development by removing stamp duty on property transfers, aligning Kenya with global best practice where such neutrality promotes efficient real estate investment. This reform is expected to boost liquidity, attract institutional investors and advance the affordable housing and capital markets agenda.

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However, the exemption's implementation will still hinge on administrative approvals as applications must be submitted to the Collector of Stamp Duties and supported by a statutory declaration identifying the applicable provision. Regulators should now issue clear guidance to ensure consistency and avoid interpretive bottlenecks.

Stamp duty exemptions for internal corporate reorganisations and limited liability partnership transfers

The Bill amends section 117 of the SDA to extend exemption to instruments relating to:

- Transfers of property by a company or limited liability partnership (LLP) to its shareholders or partners as part of an internal reorganisation, provided transfers are proportionate to existing ownership.
- Transfers of property by a company or LLP to a REIT as part of an approved restructuring or asset transfer arrangement under an authorised REIT scheme.

At present, intra-group exemptions are narrowly drafted and apply only to corporate entities, not LLPs transferring property to partners in proportion to partners' capital contributions.

The amendment rationalises Kenya's stamp duty framework by recognising modern corporate and partnership structures. Extending relief to LLPs removes a long-standing inequity between corporate and partnership reorganisations and enabling REIT related transfers facilitates efficient asset consolidation. This should encourage group simplifications, corporate migrations and capital restructuring without punitive duty costs.

Income Tax Act

Refinement of capital gains tax exemptions for SEZs and REITs

The Bill amends paragraph 72 of the First Schedule to the ITA to clarify that capital gains arising from the transfer of property or shares within a SEZ by a licensed SEZ developer, operator, or enterprise are exempt from capital gains tax (CGT). It also extends CGT exemptions to transfers of property involving REITs and their investee entities where such transfers are undertaken as part of an approved restructuring or acquisition arrangement.

Under the existing provisions, the exemption applies broadly to transfers of property within a SEZ, leading to ambiguity over whether shares were covered and creating uncertainty for investors. Similarly, REIT related property transfers have previously attracted CGT, resulting in additional transaction costs and regulatory uncertainty.

The amendment clarifies that CGT exemptions apply only to licensed SEZ developers, operators and enterprises for transfers within SEZs, explicitly including shares, and extends similar relief to REIT restructurings and asset transfers. This enhances certainty, curbs misuse, aligns with global tax norms and promotes investor confidence through targeted, integrity-based incentives.

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Excise Duty Act

Removal of excise duty on kraft paper and paperboard

The Bill deletes kraft paper and paperboard products from Part I of the First Schedule to the Excise Duty Act, effectively removing excise duty on these imported items.

Currently, imported kraft paper and paperboard except those originating from EAC partner states attract excise duty at 25% of the excisable value or KES 50 per kilogram, whichever is higher. This has inflated input costs for local packaging and manufacturing industries, especially those reliant on imported kraft paper due to limited domestic production.

Miscellaneous Fees and Levies Act

Proposed definitions for finished goods, intermediate products and raw materials

The Bill introduces formal definitions for finished goods, intermediate products and raw materials under Section 2 of the Miscellaneous Fees and Levies Act. These definitions include:

- Finished goods are defined as goods that have completed the manufacturing process and constitute the final result of production, assembly or processing, where all stages of production have been completed and the goods are ready for sale to the end consumer or for direct use without further transformation.
- Intermediate products refer to goods that are used as inputs in the production of other goods or services and form part of the manufacturing process but are not the final product.
- Raw materials are goods that have not undergone processing and which constitute the foundational inputs into the production of other goods.

The existing act does not define these terms despite their repeated use in connection with import levies, particularly in relation to the import declaration fee and RDL exemptions. This has created interpretive inconsistency across tax, customs and investment regimes, resulting in frequent disputes between importers and the KRA over what qualifies as a raw input versus a semi-processed good.

The proposed amendment introduces long-needed clarity that will harmonise tax, customs and investment classifications, promote regulatory consistency and reduce compliance disputes. By embedding these definitions in statute, the Bill enhances predictability for manufacturers and importers. However, successful implementation will depend on alignment with Harmonised System codes and inter-agency co-ordination to ensure uniform interpretation across the KRA, Kenya Bureau of Standards and other regulators.

Removal of kraft paper and paperboard items from the Third Schedule

In addition to the changes relating to kraft paper and paperboard items in the Excise Duty Act, the Bill proposes deleting kraft paper and paperboard tariff lines from the Third Schedule to the Miscellaneous Fees and Levies Act, thereby removing the 10% export and investment promotion levy (EIPL) currently applicable to these products.

As it stands, various kraft paper and paperboard imports attract a 10% EIPL, significantly increasing production costs for the packaging and manufacturing industries. These items are crucial inputs in sectors such as food processing, fast-moving consumer goods, and export packaging.



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Eliminating the levy is a strategic move that lowers input costs, boosts manufacturing competitiveness, and aligns with Kenya's industrialisation and localisation goals under the bottom-up economic transformation agenda. While the reform benefits downstream manufacturers, it may expose local paper producers to competition from cheaper imports, requiring careful policy balance and strict customs oversight to prevent abuse. Overall, it promotes cost efficiency, supports value addition and strengthens Kenya's position as a regional manufacturing and export hub.

Value Added Tax Act

Extension of period for input VAT deduction

The Bill proposes amending section 17(2) of the VAT Act to extend the period for claiming input tax from six months to nine months after the end of the tax period in which the supply or importation occurred.

The current six-month limit has been restrictive, particularly where suppliers delay issuing eTIMS-compliant invoices or where reconciliation challenges arise due to system mismatches and verification delays by the KRA. The proposed extension provides taxpayers with much-needed flexibility and reduces the risk of losing legitimate input claims.

Overall, the reform supports better cash flow management and a more facilitative VAT regime. However, its effectiveness will depend on parallel administrative reforms at the KRA, including improved eTIMS integration and audit consistency to ensure businesses can fully benefit from the extended timeframe.

Extension of zero-rated treatment to SEZ developers and operators

The Bill amends Paragraph 12 of the Second Schedule to the VAT Act to expand zero-rated VAT treatment to include supplies of goods and taxable services made to SEZ developers and operators, alongside SEZ enterprises.

Currently, only supplies to SEZ enterprises qualified for zero rating, leaving developers and operators exposed to VAT on infrastructure and management costs. This created inconsistencies and added financial strain during the setup phase of SEZ projects.

By aligning VAT treatment across all SEZ participants, the amendment enhances Kenya's competitiveness and supports the full investment cycle within SEZs. However, its effectiveness will depend on efficient VAT refund administration, delays in processing could undermine the intended liquidity benefits for developers and operators.

Conclusion

The Bill represents a significant advancement in Kenya's investment and tax framework, particularly through clarifications on SEZ incentives, CGT exemptions, and EPZ licence enforcement. By formalising procedures for licence suspension and cancellation and extending CGT relief to transfers of property and shares within SEZs, the Bill enhances regulatory certainty, investor protection and compliance integrity. We encourage investors, developers and industry stakeholders to engage actively in the public participation process to provide input on these tax and incentive provisions.

Alex Kanyi and Charity Muindi

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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