



## Kenya Finance Bill 2026: A Comprehensive Analysis of the Proposed Amendments to the Income Tax Act.

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## The Digest

Driven by the Medium-Term Revenue Strategy (MTRS), the National Treasury is aggressively rewiring the compliance net to capture the digital economy and dismantle the shadow market, from offshore payment gateways to mitumba and scrap metal.

Simultaneously, the Bill serves as a tactical counter-offensive to the Kenya Revenue Authority's (KRA) recent litigation losses at the Tax Appeals Tribunal (TAT) and High Court. By surgically closing offshore indirect transfer loopholes and aligning strictly with the OECD's BEPS framework, the Exchequer is permanently shifting the burden of compliance.

**For corporate boards and foreign investors, surviving this tightening regulatory environment now requires a forensic understanding of the commercial exposure behind these legislative shifts.**

 <p><b>Digital Economy</b></p> <p>SaaS, Gateways &amp; Offshore CGT</p>	 <p><b>Shadow Markets</b></p> <p>Mitumba, Scrap Metal &amp; Betting WHT</p>	 <p><b>Real Estate</b></p> <p>10% Tax, Non-Res Nets &amp; REITs</p>	 <p><b>Anti-Avoidance</b></p> <p>Deemed Dividends, GAAR &amp; Thin-Cap</p>
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## SECTOR FOCUS 1: IMPACT ON THE DIGITAL ECONOMY AND CROSS-BORDER TRANSACTIONS

## Expansion of Withholding Tax (WHT) on Software, SaaS, and Digital Payments (Sec. 2)

### \* The Bill

Amends the definition of "management or professional fee" to explicitly include interchange fees and merchant service fees arising from card transactions. Furthermore, it completely overhauls the definition of "royalty" to capture payments for off-the-shelf software, Software as a Service (SaaS), proprietary digital platforms, payment networks, switching, and clearing/settlement systems.

### \* Current Position

Section 2 currently relies on a traditional, analog definition of royalties (copyrights, patents, industrial equipment). It does not explicitly capture modern digital infrastructure.

### \* The "Why"

This is a surgical strike to overturn years of judicial precedent. KRA has historically bled revenue at the TAT and High Court when trying to levy withholding tax (WHT) on international payment gateways (like Mastercard/Visa) and software providers. Courts ruled that interchange fees aren't "management fees" and off-the-shelf software is a "product," not a "royalty." By hardcoding these exact digital and payment channels into the ITA, Treasury is closing the door on future litigation and securing the digital tax base.

### High Risk Exposure

#### Massive margin erosion for fintechs, local banks, and digital businesses.

Any Kenyan entity paying a foreign payment processor (e.g., Visa, Mastercard, Stripe) or a global software provider (e.g., Microsoft, AWS) will now be forced to either withhold 20% tax, which foreign vendors typically refuse to absorb, or gross up the payment, effectively absorbing a 25% cost increase on their digital and payment infrastructure.

Scenario	Invoice	Cost to KE Firm
No WHT	\$100	<b>\$100</b>
Gross - Up (20% WHT)	\$100	<b>\$125 (+25%)</b>

## Capital Gains Tax (CGT) on Offshore Indirect Transfers in Kenya (Eighth Schedule)

## \* The Bill

Amends Paragraph 2 of the Eighth Schedule to subject non-residents to Capital Gains Tax (CGT) on gains derived from the alienation of shares where the shares derive their value from Kenya, or where the alienation results in a change of group membership of a resident company or ownership of property in Kenya.

## \* Current Position

Historically, CGT rules struggled to capture offshore indirect transfers, for example, an offshore holding company selling shares in another offshore entity that happens to own a highly valuable Kenyan subsidiary.

## \* The "Why"

Pure OECD BEPS Action Plan compliance. Multinationals frequently restructure or sell Kenyan assets by transferring shares at the holding-company level in tax havens to avoid Kenyan CGT. This amendment "pierces the corporate veil," ensuring that if the underlying asset is Kenyan, the Exchequer gets its CGT slice regardless of where the boardroom signatures took place

 **High Risk Exposure**
**Severe M&A and restructuring friction.**

Multinationals executing global or regional mergers, acquisitions, or internal reorganizations at the parent level will now automatically trigger a Kenyan CGT liability if a Kenyan subsidiary is part of the underlying asset pool. Deal valuations and escrow holdbacks must now heavily discount for Kenyan tax exposure, fundamentally altering global deal economics.

**Offshore Parent Co. Sale**

**Kenya Sub triggers value**

**Immediate KRA CGT Liability**

## SECTOR FOCUS 2: NEW TAXES ON THE INFORMAL SECTOR AND HARD-TO-TAX MARKETS

### The 5% Deemed Profit Tax on Mitumba Imports (Sec. 12H)

## \* The Bill

Introduces a final tax on income derived from the importation of worn clothing, footwear, and articles (tariff heading 6309). The taxable profit is deemed to be 5% of the customs value of the imported goods, payable upon importation prior to release.

## \* Current Position

Mitumba traders are subject to standard income tax or turnover tax regimes based on self-declaration after the goods are sold domestically.

## \* The "Why"

The informal retail sector is a logistical nightmare for KRA to police. By establishing a "deemed profit" margin and collecting the income tax right at the port (via Customs), KRA secures the revenue upfront. It completely eliminates the administrative friction of chasing traders through Gikomba or Eastleigh for compliance.

 **High Risk Exposure****Immediate cash flow depletion for importers.**

Traders must now finance their income tax at the point of entry before generating a single shilling in sales. This will compress margins and likely force industry consolidation, squeezing out smaller, undercapitalized players who cannot fund the upfront tax burden alongside existing customs duties.

**🌐 Introduction of Withholding Tax on Scrap Metal Sales (Sec. 10 & 35, Third Sch.)**

## \* The Bill

Explicitly lists the "sale of scrap metal" as income chargeable to tax and imposes a 1.5% withholding tax on the gross amount.

## \* Current Position

Scrap metal dealing is taxed as standard business income

 **Operational Exposure**

**Heavy compliance and system overhaul risks for scrap metal buyers and smelters.**

without a specific WHT mechanism at source.

#### \* The "Why"

The scrap metal industry is cash-heavy and deeply informal. Introducing a 1.5% advance WHT forces the creation of a data trail (via iTax withholding certificates). KRA is using the large smelters and exporters at the top of the food chain as unpaid tax collectors to map the entire downstream supply network.

They face massive penalties if they fail to withhold and remit. For sellers, it represents a 1.5% top-line haircut on gross sales, severely impacting liquidity in a high-volume, low-margin commodity business.

Gross Sales

→ **1.5% WHT Deducted at Source**

→ Net Cash to Informal Seller

### 20% Withholding Tax on Betting and Gaming Winnings (Sec. 2, 10, 35, Third Sch.)

#### \* The Bill

Introduces strict definitions for "withdrawals" and "winnings" tied directly to the Gambling Control Act, 2025. It imposes a 20% WHT specifically on winnings.

The taxation of the betting sector has bounced erratically between taxing the staked amount (Excise) and taxing the payout, leading to endless litigation regarding what constitutes a "win" versus a return of stake.

#### \* The "Why"

Statutory alignment and revenue assurance. By anchoring the 20% WHT strictly to the definitions in the newly enacted Gambling Control Act, Treasury isolates the exact taxable event. The betting firms must now withhold the tax before the punter ever sees the cash, effectively shutting down the legal ping-pong.

#### Operational Exposure

**Gaming companies face a severe administrative and technological burden.**

They must overhaul their payout algorithms to distinguish and withhold accurately on net winnings versus staked returns. Failure to integrate this flawlessly exposes the operators to bearing the 20% tax themselves as principal debtors to KRA.

## SECTOR FOCUS 3: CHANGES TO KENYAN PROPERTY AND REAL ESTATE TAXATION

## The New Non-Resident Rental Income Tax Framework (Sec. 6B)

### \* The Bill

Introduces a final tax on non-residents earning rental income from property in Kenya. Requires non-residents to register via a "simplified framework" and pay the tax by the 20th of the following month. Exempts them if a resident agent is already withholding tax.

### \* Current Position

If a non-resident uses a local estate agent, the agent withholds 30% tax. If the non-resident collects rent directly (e.g., foreign bank accounts for Airbnb rentals), it falls into a jurisdictional blind spot.

### \* The "Why"

Capturing the diaspora and digital platform leaks. The "simplified registration framework" is a direct message to offshore landlords that KRA knows they own property here and can no longer hide behind the lack of a local agent.

### Compliance Exposure

**Offshore landlords and diaspora investors face direct KRA visibility and new compliance costs.**

Non-compliance risks property liens or agency notices placed on local bank accounts. Net profitability on short-term rentals (Airbnb) will drop as operators are forced into the formal tax net.

## Increase in Residential Rental Income Tax to 10% (Third Schedule)

### \* The Bill

Deletes the words "seven point five percent" and replaces them with "ten percent" in paragraph 10 of the Third Schedule.

### \* Current Position

The simplified Residential Rental Income Tax (for Landlords earning between KSh 288,000 and KSh 15 million) sits at 7.5%.

### High Risk Exposure

**A direct 33.3% increase in the tax burden for the middle-tier real estate market.**

✧ The "Why"

A calculated revenue grab. The rate was originally 10%, dropped to 7.5% to bait informal landlords into the tax net, and is now being pushed back up. Treasury has calculated that the compliance net, bolstered by third-party data matching from utility companies and land registries, is now tight enough that they can raise the rate without triggering capital flight to the underground economy.

Current:	7.5%
Proposed:	10.0%

Landlords will be forced to either absorb the margin compression or pass the cost onto tenants through rent hikes, potentially stalling occupancy rates in a highly price-sensitive housing market.

 **Capital Gains Tax Exemptions for Real Estate Investment Trusts (REITs) (First Schedule)**

✧ The Bill

Exempts capital gains relating to the transfer of property to a Real Estate Investment Trust (REIT) registered by the Commissioner.

✧ Current Position

Transferring high-value property into a REIT structure previously triggered immediate CGT, making the restructuring prohibitively expensive.

The "Why"

The Kenyan REIT market has been exceptionally sluggish. By removing the CGT friction cost of transferring

**Strategic Opportunity**

**A massive strategic unlock for large property developers and family offices.**

It removes the prohibitive tax friction of bundling illiquid real estate into liquid, tradeable REIT structures, allowing for tax-efficient

properties into a REIT the government is incentivizing developers to formalize large-scale real estate holdings and stimulate the capital markets.

capital raising and  
portfolio restructuring.

## SECTOR FOCUS 4: CORPORATE TAX COMPLIANCE AND ANTI-AVOIDANCE MEASURES

### Deemed Dividend Distributions for Private Companies (Sec. 24)

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#### \* The Bill

Amends Section 24 to state that if KRA directs a company to distribute dividends (because it is hoarding cash to avoid tax), it will deem "at least sixty per cent of that part of the income" as distributed.

#### \* Current Position

KRA has the power to deem dividends distributed if a private company retains earnings without a valid business reason. However, the law lacked a strict statutory percentage.

#### \* The "Why"

KRA repeatedly lost cases at the TAT because companies would subjectively argue that 100% of their retained earnings were necessary for future operations. By hardcoding a 60% floor into the law, Treasury removes the subjectivity. If you are caught hoarding cash to avoid dividend WHT, 60% is automatically hit with the tax.

#### High Risk Exposure

**Catastrophic cash flow risk for highly capitalized private companies.**

KRA now has a statutory bludgeon to force a 60% deemed distribution, triggering an immediate 15% dividend WHT liability on retained earnings and completely disrupting internal capital expenditure plans.

<b>60% MANDATORY DISTRIBUTION</b>  (Taxed at 15%)	<b>40% RETAINED</b>  (Safe Harbour)
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## Tightening Thin Capitalization Rules for Lending and Leasing (Sec. 16)

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### \* The Bill

Amends Section 16(2)(j)(iii)(E) by changing "lending and leasing business" to "lending or leasing business, or both".

### \* Current Position

Under the thin capitalization rules (restricting interest deductions), exemptions apply to certain financial institutions. The previous wording ("and") created a loophole.

### \* The "Why"

Classic legislative hygiene. Clever tax planners were using the conjunctive "and" to argue applicability or non-applicability based on whether a firm did only lending, only leasing, or both. Changing it to "or... or both" seals the semantic leak.

### Operational Exposure

Non-deposit-taking microfinance, credit-only, and pure leasing firms that relied on this loophole to deduct excessive interest expenses will now face strict thin-capitalization disallowances, heavily inflating their effective corporate tax rate.

## Country-by-Country (CbC) Reporting and OECD BEPS Alignment (Sec. 18D & 18F)

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### \* The Bill

Redefines the "ultimate parent entity" and refines the cross-referencing in the Country-by-Country (CbC) reporting timelines.

### \* Current Position

CbC reporting was recently introduced to target Multinational Enterprises (MNEs), but initial drafting left definitional ambiguities.

### \* The "Why"

Total alignment with OECD BEPS Action 13. MNEs were exploiting the local definitions to argue their Kenyan subsidiaries didn't meet the precise threshold to file global revenue reports. This shuts that down.

### ⚠️ Compliance Exposure

Multinational subsidiaries in Kenya can no longer hide behind localized technicalities. They face intense global transfer pricing scrutiny and heavy compliance costs. Failure to accurately report risks massive, crippling administrative penalties.

## 🌐 The Relocation of the General Anti-Avoidance Rule (GAAR) (Sec. 23/23A)

### \* The Bill

The marginal note reads "Repeal of section 23A of Cap. 470." However, the operative text states: "The Income Tax Act is amended by repealing section 23."

### \* Current Position

Section 23 is the General Anti-Avoidance Rule (GAAR). The Treasury is moving the GAAR to the Tax Procedures Act (as Section 18A) to apply to all taxes, not just income tax.

### \* The "Why"

This is a drafting error by the Attorney General's office.

### 🚨 High Risk Exposure

While the drafting error creates a temporary, highly technical litigation window for aggressive tax defense, the ultimate exposure is immense: the GAAR now applies to VAT, Excise, and Customs. Transactions structured purely to avoid any tax will be struck down, exponentially increasing

They intended to repeal the ITA GAAR because it's being elevated to the TPA. However, the mismatch between the marginal note and the operative clause creates a statutory ambiguity. While courts typically favor operative clauses, any Tier One litigator worth their salt will exploit this ambiguity to stall KRA enforcement actions during the transition period.

enterprise-wide tax risk.

## Mandatory Straight-Line Depreciation for Wear and Tear Allowances (Second Schedule)

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### \* The Bill

Adds the words "per year, in equal installments" to the 10% wear and tear allowance in the Second Schedule.

### \* Current Position

The schedule dictates wear and tear allowances, but the wording left room for interpretation on the method of depreciation.

### \* The "Why"

KRA is legally mandating the straight-line depreciation method. This prevents corporations from using aggressive declining-balance or front-loaded depreciation models to artificially depress their taxable income in the early years of an asset's life.

### Operational Exposure

Corporations lose the ability to accelerate depreciation in the early years of an asset's life. This delays tax shields, resulting in higher taxable profits and greater cash tax outflows in the immediate years following major Capex cycles.

## SECTOR FOCUS 5: TAX AMENDMENTS IMPACTING THE EXTRACTIVES AND INSURANCE SECTORS

### 15% Repatriation Tax and Branch Rate Reduction for the Extractives Sector (Ninth Schedule)

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### \* The Bill

Amends the Ninth Schedule (Extractives) to drop the corporate tax rate for non-resident companies from 37.5% to 30%, while simultaneously imposing a 15% non-resident tax rate on repatriated income.

### \* Current Position

Standard foreign branches recently moved to a 30% rate plus a 15% repatriated profit tax. However, the extractive sector (oil, gas, mining) remained ring-fenced under the old, punitive 37.5% rate without a repatriation tax.

### \* The "Why"

Sector parity. As Kenya's extractive sector matures, the Treasury is harmonizing the rules. Lowering the branch rate to 30% gives foreign contractors operational cash flow relief, but the 15% repatriation tax ensures that when massive capital yields are finally shipped offshore, the Exchequer takes its exit toll.

### △Treasury Exposure

While upstream operators get immediate P&L relief with a lower headline rate, the ultimate cash return to foreign shareholders is heavily penalized. Complex treasury management will be required to time repatriations and avoid triggering the 15% hit prematurely.

## 👤 Simplification of Trust Taxation in Kenya (Sec. 11)

### \* The Bill

Repeals and replaces Section 11. Income received by a trustee is deemed the income of the trustee. If the trustee pays the tax on the chargeable income, the beneficiary shall not be liable for further tax.

### \* Current Position

Trust taxation has been incredibly complex, requiring meticulous tracking of whether income was distributed

### △Liquidity Exposure

Shifts the compliance and liquidity burden entirely onto the Trustees. Trust managers must now liquidate sufficient trust assets to cover the primary tax liability before

(taxed on the beneficiary) or retained (taxed on the trust), leading to double-taxation disputes.

#### \* The "Why"

Administrative streamlining. By shifting the absolute tax burden to the trustee and exempting the post-tax distribution, KRA simplifies its audit trail. It is vastly easier to audit one registered Trust than to hunt down twenty beneficiaries to verify their individual tax returns.

making distributions, permanently altering how family offices and wealth managers structure their asset liquidity.

### Alignment of Insurance "Statutory Funds" for Tax Purposes (Sec. 19)

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#### \* The Bill

Replaces the term "life insurance fund" with "statutory fund" throughout Section 19, linking the definition directly to Section 45 of the Insurance Act.

#### \* Current Position

The ITA used its own terminology to dictate how long-term insurance businesses separate life business from general business.

#### \* The "Why"

Discrepancies between the Insurance Regulatory Authority (IRA) definitions and KRA definitions led to complex, drawn-out audits. Harmonizing the terminology ensures actuaries and tax auditors are operating from the exact same regulatory baseline.

#### Audit Exposure

Reduces initial audit friction but forces insurance companies to ensure their IRA statutory reporting perfectly mirrors their KRA tax computations. Any variance between the two regulatory filings will now automatically trigger a KRA assessment.

## SECTOR FOCUS 6: KRA ADMINISTRATIVE TIMELINES AND CASH FLOW

## IMPLICATIONS

### Accelerated Deadlines for Annual Income Tax and Nil Returns (Sec. 52 & 52B)

#### \* The Bill

Changes the deadline for submitting an income tax return and self-assessment from the "last day of the sixth month" to the "last day of the fourth month" following the end of the year of income. Nil returns must be filed within one month.

#### \* Current Position

Taxpayers currently have six months (e.g., until June 30th for a Dec 31st year-end) to file and settle final assessments.

#### \* The "Why"

The government is facing a severe liquidity crunch. Shortening the filing window by two months accelerates the final tax settlement, pulling billions of shillings forward in the fiscal calendar. The aggressive one-month deadline for nil returns is designed to quickly clean up the iTax ledger, allowing KRA's debt and enforcement teams to focus their bandwidth on active, revenue-generating audits rather than chasing dormant entities.

#### High Risk Exposure

**Massive operational strain on corporate finance teams and external auditors.**

Compressing the audit and tax provisioning window by two months increases the risk of erroneous filings, late penalties, and forces companies to secure cash for final tax settlements 60 days earlier than historically budgeted.

NIL RETURNS	INCOME TAX	OLD DEADLINE
<b>1 MONTH</b>	<b>4 MONTHS</b>	<del>6 MONTHS</del>

### 5-Day Tax Payment Rule for Maritime and Aviation Operators (Sec. 9)

### \* The Bill

Dictates that the tax charged on non-resident ship owners and air transport operators shall be payable within five days after the payment is received or the ship leaves the port of lading, whichever is earlier.

### \* Current Position

Income from carriage of passengers/cargo embarking in Kenya by non-residents is deemed derived from Kenya, but the payment timelines followed standard, longer corporate cycles.

### \* The "Why"

Flight risk mitigation. International shipping lines and charter airlines have highly fluid assets. KRA has historically struggled to collect tax months after a vessel has left Mombasa. By forcing settlement within five days, essentially treating it like a customs duty, KRA secures the cash before the asset leaves its jurisdiction.

### High Risk Exposure

**Drastic working capital shock for local shipping agents and airlines.**

They must execute immediate, hyper-accelerated cash sweeps to settle KRA within 120 hours. Missing this window risks the physical detention of multi-million-dollar vessels and aircraft on the tarmac or at the docks.

## SECTOR FOCUS 7: INDIVIDUAL RELIEFS AND EMPLOYMENT BENEFITS

### Tax Exemptions on End-of-Contract Gratuities and CBK Mortgages (Sec. 5 & 15)

#### \* The Bill

Exempts employer contributions to a gratuity from tax if the contract is continuous for at least 3 years and contributions don't exceed 31% of basic salary (provided the employee isn't already claiming pension deductions under 22A). It further allows the deduction of interest (up to KSh 360,000) on housing loans advanced by the Central Bank of Kenya (CBK).

#### Strategic Opportunity

A positive exposure. Companies can now structure highly tax-efficient, attractive

### \* Current Position

Gratuities were highly scrutinized and aggressively taxed by KRA upon payout. Furthermore, while commercial bank employees enjoyed mortgage interest deductions, CBK staff were technically excluded due to rigid definitions of "approved financial institutions."

### \* The "Why"

Gratuities: It harmonizes the treatment of gratuities with registered pension contributions, offering a legitimate, tax-efficient savings vehicle for contract workers. CBK Mortgages: An equity fix to extend standard banking industry perks to the regulator's own staff.

compensation packages for expatriates and C-suite executives on fixed-term contracts without the looming threat of KRA cannibalizing the end-of-term payout.

## 🔗 Statutory Tax Exemption for Death Benefits (First Schedule)

### \* The Bill

Amends paragraph 53 of the First Schedule to explicitly exempt "benefits arising due to death" from income tax.

### \* Current Position

Death benefits lacked ironclad statutory exemption, leaving them vulnerable to aggressive KRA payroll audits.

### \* The "Why"

Codifying empathy. It stops overzealous tax auditors from attempting to levy PAYE or income tax on compassionate payouts to grieving families, removing a highly unpopular area of dispute..

### ☑️ Strategic Opportunity

Protects corporate life insurance and compassionate payout policies. Employers no longer need to provision for, or withhold, PAYE on terminal death benefits, ensuring 100% of the allocated funds reach the grieving beneficiaries.

## 🗑️ Repeal of Obsolete Pension Surplus Provision (Sec. 8)

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### \* The Bill

Deletes subsection (5A) of Section 8.

### \* Current Position

Section 8(5A) historically dealt with the highly complex, transitional accounting of accumulated pension surplus funds spanning before and after 1991.

### \* The "Why"

Deadwood removal. The provisions managing pre-1991 pension surpluses are largely obsolete over three decades later. Treasury is simply stripping out antiquated legislation.

### ☑️ Neutral Impact

Negligible financial impact, but it cleans up the statutory reporting requirements and removes legacy compliance headaches for pension scheme administrators.

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## 🔔 Are your operations exposed by the Finance Bill 2026?

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