Finance Act, 2025: Some Implementation Challenges

By Robert Waruiru

Ever since the court declared the Provisional Collection of Taxes and Duties Act unconstitutional and Kenya's transition to the widely publicized budget making process, few legislative endeavours have captured the imagination of Kenyans as the Finance Acts. And rightly so, given that tax is the price we all pay to live in a civilized society.

The president assented to the Finance Act, 2025 on 27 June 2025 in line with the provisions of the Public Finance Management Act, 2012. This Act, which seeks to raise an additional KES 35 billion, has 66 sections. Of these, two will come into force on 1 January 2026 whilst the rest came into force on 1 July 2025.

Compared to the moribund Finance Bill, 2024, there is no doubt that the Finance Act, 2025, is less aggressive in terms of revenue mobilization. The Finance Bill, 2024, sought to raise an additional KES 344 billion in taxes. It is no wonder then that the majority of the Finance Act, 2025, changes are administrative and seek to optimize tax administration and expand the tax base - an initiative commonly referred to as Tax Base Expansion, (TBE).

To properly understand the drive for TBE, the 2025 Economic Survey provides some vital insights. Kenya has a population of 53.3 million with a mean age of 19 years. From a tax perspective, holding all else constant, this population's purchasing power may also be limited leading to lower consumption taxes.

The survey also indicates that as of 2024, wage employees were 3.4 million whilst the informal sector accounted for 17.3m people for a total employed population of 20.7 million.

From these statistics, it is easy to see the concern of employees, particularly those in formal employment, who contributed KES 561 billion or roughly a quarter of the Exchequer revenues in the year ended June 2025. It is probably why the government has implemented some of the Medium-Term Revenue Strategy proposals such as transitioning pensions from exempt-exempt-tax to exempt-exempt-exempt.

In an attempt to level the playing field for pensions, the Finance Act, 2025, exempted gratuity payments from tax. A very noble initiative, especially for contract employees, especially those in the agriculture and hospitality sectors who earn gratuity.

However, the devil is always in the detail. The gratuity exemption was housed under paragraph 53 of the First Schedule to the Income Tax Act, Chapter 470 of the Laws of Kenya (ITA). Paragraph 53 exempts "payment of pension benefits from pension and provident funds" on attainment of set criteria including membership of such pension funds for at least 20 years.

Some practical questions that arise include do pensions or provident funds pay gratuity? Typically, it is an employer who pays gratuity at the end of a time bound contract of service. Secondly, and perhaps more critically, Section 5(2) of the ITA still lists gratuity payments as taxable income.

It is important for policy makers to clarify and resolve this conflict so that the envisaged tax relief is accessible to taxpayers. To be sure, a separate line, say as paragraph 53B with corresponding amendments to Section 5 of the ITA would decisively resolve the conflict.

Another potential issue which is an oversight is that the requirement for the Cabinet Secretary to make Significant Economic Presence Tax (SEPT) Regulations under Section 12E(6) of the ITA within "*six months from the commencement date of this provision*".

SEPT came into force on 27 December 2024. Therefore, the CS ought to have issued the Regulations on the day the Finance Act, 2025, was assented to – an impossible task given the need for public participation.

Kenya has been at the forefront in terms of developing innovative taxes as evidenced by excise duty on a raft of supplies previously outside the scope of excise duty. Through the Finance Act, 2025,

government overhauled the excise and tax regime of the betting sector and it will be interesting to see the impact on revenue. However, the bigger issue is how to tax other games of chance including lotteries and prize competitions where there are no “withdrawals” from a wallet and in some cases, no “gaming wallets.”

Given the aim of optimizing tax administration, it was surprising to see the policy shift on taxation of gains from transportation of goods embarked/loaded from Kenya for the shipping industry.

Prior to 1 July 2025, the tax on such gains, known as freight tax, was collected by the shipping agents as practically all ship owners/liners are non-resident persons. With the new amendment, the tax on such freight is now a withholding tax obligation of the customer paying the export freight. Therefore, instead of collecting tax from about 50 shipping agents, KRA will now have to contend with collecting the tax from all exporters, no doubt more than 50 taxpayers.

Further, one can expect disputes around the base subject to freight tax, including items such as demurrage which is not related to exports.

The other amendment likely to generate quite a bit of controversy is that touching on insurance companies. Under the ITA, life insurance companies are permitted to deduct negative transfers in respect of the life fund - that is where for example shareholders injected money to eliminate actuarial deficits in 2021 are allowed to deduct such an injection in 2023 when determining the company’s tax liability.

The Finance Act, 2025, amendments suggest that it is only negative transfers in respect of “life funds” that will enjoy this benefit. Most life insurance companies operate other funds such deposit administration and deferred annuity funds which typically will have a guaranteed return. Therefore, when the fund’s return is lower than the guaranteed return, the shareholders will inject money to bridge that deficit. Conversely, are transfers to shareholders from these other funds now tax exempt?

In my view, and especially because the Insurance Act does not distinguish the funds beyond shareholders’ funds and other funds, it is manifestly unfair to limit such negative transfers.

The last one that is somewhat confusing is the requirement for all imports into the country to have a certificate of origin (COO), failing which the goods are forfeited to the Commissioner, Customs and Border Control.

Typically, one would procure a COO if they wanted to access a preferential customs duty rate. Therefore, if one is importing a pre-owned car from Japan, other than for trade statistical purposes, one does not need to incur the additional COO fee. The additional COO cost means that the Cost Insurance Freight (CIF) value for duty purposes is marginally higher resulting in higher taxes.

Further, what happens to goods imported from a third country where they are not manufactured? Can such a supplier legitimately issue a COO? Likely not, which complicates matters for importers.

It is reasonable to expect that given some of these challenges, there will be a Tax Laws Amendment Act before the Finance Bill, 2026, begins in April 2026.

Tax stability is an important aspect of business and we would do well to limit mid-term amendments. Indeed, the National Tax Policy envisages amendment cycles of between 3 to 5 years to permit policy makers the opportunity to carefully assess the impact of tax law changes.

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