

The Clerk,

National Assembly of Kenya,
Parliament Buildings,
P.O. Box 41842 – 00100,
Nairobi.

AND TO:

The Chairperson,

Finance and National Planning Committee,
National Assembly of Kenya,
Parliament Buildings,
Nairobi.

Date: **May 2026**

Our Ref: **DRAKE/MEMO/FB2026/001**

MEMORANDUM

RE: PUBLIC PARTICIPATION — THE FINANCE BILL, 2026

(National Assembly Bills No. 26 of 2026)

Submitted Pursuant to Article 118(1)(b) of the Constitution of Kenya, 2010

I. INTRODUCTION AND LOCUS STANDI

1. The Domain Registrars Association of Kenya (hereinafter referred to as 'DRAKE' or 'the Association') hereby submits this Memorandum to the National Assembly of Kenya pursuant to Article 118(1)(b) of the Constitution of Kenya, 2010, which places an obligation upon Parliament to facilitate public participation in its legislative and other business. This Memorandum is further submitted in accordance with the National Assembly Standing Orders.
2. DRAKE is an independent industry association established to promote the internet and its integration into Kenya's technological, research, educational, social, and business infrastructure. The Association represents accredited domain name registrars licensed by the Kenya Network Information Centre (KeNIC) to register and manage .KE country code top-level domain (ccTLD) names on behalf of Kenyan individuals, businesses, and institutions. The .KE domain name system constitutes a critical component of Kenya's sovereign digital infrastructure.
3. DRAKE has direct and material interest in the Finance Bill, 2026 (hereinafter 'the Bill'). Several provisions of the Bill will, if enacted in their current form, significantly affect the commercial

viability of .KE domain registrars, impede the growth of Kenya's digital identity infrastructure, and contradict the Government of Kenya's own digital economy policy commitments under the Digital Economy Blueprint (2019), the Digital Superhighway Program, and Vision 2030 Flagship Project No. 7 on ICT infrastructure.

4. DRAKE is currently executing the #1MDOTKE Campaign — a national initiative targeting growth of the .KE domain namespace from 122,289 registered domains to one million (1,000,000) by the year 2028, with a projected ecosystem value of KES 30 billion and 100,000 direct and indirect jobs. The Finance Bill, 2026 intersects directly with this campaign across multiple provisions.
5. The Association respectfully urges the Finance and National Planning Committee to consider the submissions herein, which are made in the public interest and in furtherance of Kenya's digital economy development objectives.

II. BACKGROUND: THE .KE DOMAIN ECOSYSTEM

6. The .KE ccTLD is Kenya's sovereign domain namespace, administered by KeNIC under a mandate from the Internet Corporation for Assigned Names and Numbers (ICANN). DRAKE member registrars are the sole authorised channel through which Kenyan individuals, businesses, and institutions register .KE domain names. Domain registration services form the foundational layer of Kenya's digital economy — every Kenyan digital business identity, government digital service, educational institution online presence, and e-commerce operation begins with a domain name.
7. DRAKE's #1MDOTKE Campaign addresses this gap through four target market segments: Micro, Small and Medium Enterprises (MSMEs) — targeted at 500,000 domains; graduates and professionals — 300,000 domains; learning institutions — 100,000 domains; and international tourists — 100,000 domains. The Campaign deploys 1,450 ward-level Digital Hubs and 47 County Centres of Excellence, creating an estimated 100,000 direct and indirect employment opportunities by 2028.
8. The Finance Bill, 2026 cuts across this campaign in ways that demand parliamentary attention. DRAKE submits that certain provisions, if enacted without amendment, will increase the cost of digital identity services for Kenyans, create disproportionate compliance burdens on small domain registrar enterprises, and undermine the Government's own digital economy targets.

III. STRUCTURE OF THIS MEMORANDUM

9. This Memorandum is organised as follows:
 - Part IV — Clauses Recommended for AMENDMENT: Six (6) provisions which, in their current drafting, will cause harm to the .KE domain ecosystem and Kenya's digital economy, but which address legitimate policy objectives and can be salvaged through targeted amendment.
 - Part V — Clauses Recommended for APPROVAL: Four (4) provisions which are well-designed, innovation-supportive, and deserve passage without amendment.
 - Part VI — Clauses Recommended for DELETION: Two (2) provisions which are either structurally defective, internally inconsistent with Kenya's treaty obligations, or fail basic standards of legislative transparency.

- Part VII — Cross-Cutting Recommendations: Three systemic gaps in the Bill requiring either amendment or formal policy commitment.
- Part VIII — Summary and Concluding Submissions.

IV. CLAUSES RECOMMENDED FOR AMENDMENT

The Association respectfully submits that the following clauses be amended as set out hereunder. In each case, the policy objective of the clause is acknowledged; the submission is directed at the drafting deficiency, not the underlying intent.

4.1 Clause 2(c) — Amendment of Section 2 of the Income Tax Act: Redefinition of 'Royalty'

RECOMMENDATION: AMEND | Clause 2(c) of the Bill — Expanded Definition of 'Royalty'

Bill Text: *...any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance or support fees... [and] a proprietary digital platform... including access, participation or usage rights...*

The Bill proposes to replace the existing definition of 'royalty' in the Income Tax Act (Cap. 470) with an expanded definition that, for the first time, expressly includes: (i) maintenance and support fees for software; (ii) training fees related to software; and (iii) access or participation fees for any proprietary digital platform.

The Association submits that this redefinition, as currently drafted, will reclassify the following ordinary domain registrar business transactions as royalties subject to withholding tax: (a) annual domain name renewal and maintenance fees charged by registrars to domain holders; (b) fees for managed digital presence subscription services; (c) payments by registrars to international SSL certificate authorities and security infrastructure providers; and (d) fees for DNS management and configuration services.

The practical consequence is a cascade of WHT obligations across every layer of the Digital Title Deed service bundle — domain + email + website + SSL + payment gateway — that DRAKE member registrars deploy at point of registration. This will make last-mile digital identity deployment through ward-level hubs operationally and financially unviable.

Furthermore, the expanded definition exposes domain registrars to a 20% non-resident WHT on every payment to foreign SSL certificate authorities, DNSSEC service providers, and hosting infrastructure companies — increasing the cost of the Digital Title Deed bundle by up to 20% on security components alone.

The legislative intent — taxing genuine intellectual property royalties paid to non-residents extracting economic value from Kenya — is sound and DRAKE supports it. The deficiency is in the breadth of the definition, which sweeps in operational service fees alongside genuine IP royalty payments.

Proposed Text / Action: *Insert the following new proviso to the redefined definition of 'royalty': 'Provided that this definition shall not apply to: (i) fees paid for the provision of managed information technology services, including domain name registration, domain hosting, domain management, and associated domain security services, where no intellectual property right is permanently transferred or exclusively licensed to the payer; (ii) payments made to authorised*

internet infrastructure service providers for domain name system (DNS) management, SSL certification, and DNSSEC configuration services in the ordinary course of providing internet connectivity services.'

4.2 Clause 2(b) — Amendment of Section 2 ITA: 'Management or Professional Fee' Expanded to Include Card Transaction Fees

RECOMMENDATION: AMEND | Clause 2(b) of the Bill — Interchange and Merchant Service Fees as Management Fees

Bill Text: ...and includes interchange fees and merchant service fees arising from transactions that use a card as a means of payment...

The Bill proposes to expand the definition of 'management or professional fee' in the Income Tax Act to expressly include interchange fees and merchant service fees arising from card-based transactions. This brings such fees within the withholding tax net.

DRAKE submits that this provision, while targeted at payment network rents, will increase the cost of card-based domain registration payments for MSME customers and will adversely affect the economics of the #1MDOTKE Campaign's target markets. The administrative cost of deducting and remitting WHT on micro-transaction merchant fees — where a domain registration costs KES 1,500 and the merchant fee is KES 30–45 — is disproportionate to the revenue yielded.

More fundamentally, this provision creates an incentive for businesses to avoid card payment systems in favour of mobile money — a regressive outcome that reverses Kenya's financial sector formalisation progress.

Proposed Text / Action: Insert a proviso: 'Provided that this paragraph shall not apply to interchange fees and merchant service fees arising from individual transactions with a gross value of less than five thousand shillings (KES 5,000), so as not to impose disproportionate compliance obligations on micro-transaction digital commerce operators.'

4.3 Clauses 31 and 32 — Amendment of the First and Second Schedules to the Value Added Tax Act: Absence of Digital Infrastructure Exemptions

RECOMMENDATION: AMEND | Clauses 31 and 32 of the Bill — VAT Schedules — No Digital Identity Infrastructure Exemption

Bill Text: Clause 31 amends the First Schedule (exempt supplies) to add dialyzers, scrap metal, mobile phones, motorcycles, electric vehicles, and PPP infrastructure. Clause 32 amends the Second Schedule (zero-rated supplies). Neither clause addresses domain registration services.

The Association notes with concern that the Finance Bill, 2026 introduces no exemption or zero-rating for domain name registration services, despite the Government's stated commitment to universal digital access under the Digital Superhighway Program and the Kenya National Digital Master Plan 2022–2032.

Under the Value Added Tax Act (Cap. 476) as currently in force, domain registration services are potentially subject to VAT at 16% as digital services. The Bill, in amending both Schedules

to grant specific exemptions to solar batteries, motorcycles, electric vehicles, and PPP infrastructure goods and services, conspicuously omits any provision for the domain name registration services that constitute the foundational layer of Kenya's digital economy.

This asymmetric treatment is internally inconsistent: the Government simultaneously funds the Digital Superhighway Program (school tablets, fibre connectivity, ward digital hubs) while maintaining a tax regime that imposes VAT on the domain name services that give those devices and connections their digital identity and commercial utility.

For the schools segment specifically: if the Government mandates .sc.ke domain names as official communication channels for NEMIS and KEMIS — as is envisaged in the #1MDOTKE Campaign's Ministry of Education engagement — imposing 16% VAT on a government-mandated digital requirement for public schools is both inequitable and contradictory to the policy.

Across the Campaign's 1,000,000 target domains, a 16% VAT on registration fees represents an estimated additional KES 200 million per year in costs borne by MSMEs, schools, graduates, and individual citizens — a direct tax on digital participation.

Proposed Text / Action: *The Association requests insertion of a new paragraph in Part II (Exempt Services) of the First Schedule to the VAT Act: 'The supply of domain name registration, renewal, transfer, and associated domain management services in respect of domain names registered under the .KE country code top-level domain (.ke ccTLD), including second-level domains (co.ke, or.ke, ne.ke, sc.ke, ac.ke, me.ke, and others), by an accredited registrar licensed by the Kenya Network Information Centre.' Alternatively, at minimum, the Committee should zero-rate domain registrations under .sc.ke (schools) and .ac.ke (academic institutions) in furtherance of the Government's DigiSchool policy.*

4.4 Clause 35 (as it amends Section 35 ITA) — Withholding Tax on Digital Marketplace Payments and Digital Content Monetisation

RECOMMENDATION: AMEND | **Clause 35 (amending Section 35(3)(l) and (n) ITA) — WHT on Digital Marketplace and Digital Content — No Micro-Transaction Threshold**

Bill Text: *Section 35(3)(l): digital content monetisation. Section 35(3)(n): making or facilitating payment on a digital marketplace. Third Schedule: 5% resident WHT on both.*

The Bill introduces two separate WHT obligations — at 5% each — for (l) digital content monetisation and (n) payments facilitated on a digital marketplace. DRAKE member registrars operate online domain registration portals that are, by definition, digital marketplaces facilitating the purchase of digital services.

The Association raises the following specific concerns. First, the Bill creates a double-jeopardy risk: a single domain registration transaction (the purchase of a .KE domain through a registrar's online portal) could simultaneously attract WHT under both (l) — as it involves digital content (the domain itself is a digital asset) — and (n) — as the registrar's portal is a digital marketplace. The Bill contains no mutual exclusivity provision, and no KRA guidance has been issued on which category applies to any given transaction.

Second, the imposition of WHT obligations on micro-transactions — domain registrations typically range from KES 800 to KES 3,000 per year — creates a compliance burden entirely

disproportionate to the revenue yielded. A 5% WHT on a KES 1,500 domain registration yields KES 75 in tax, while the administrative cost of deducting, accounting for, remitting to KRA, and issuing WHT certificates for thousands of such transactions annually will cost registrars multiples of that amount.

Third, the practical enforcement of WHT obligations at the point of last-mile customer registration — a ward-level Digital Identity Architect registering a mama mboga's first .co.ke domain — will impede adoption precisely in the underserved segments the Government's digital economy agenda seeks to include.

Fourth, Section 10(4) of the Income Tax Act (as it will read post-amendment) places the obligation to deduct and remit WHT on the platform operator — the DRAKE member registrar. This creates regulatory exposure for member registrars on millions of micro-transactions without a corresponding administrative support framework from KRA.

Proposed Text / Action: *The Association recommends: (i) Insert a proviso to Section 35(3)(l) and (n) establishing mutual exclusivity — a single transaction is subject to either paragraph (l) or paragraph (n), not both, with the operator determining the applicable category based on the primary nature of the transaction; (ii) Insert a materiality threshold: 'This subsection shall not apply to individual transactions with a gross value of less than five thousand shillings (KES 5,000)'; (iii) Exclude domain name registration and renewal services from both categories, or at minimum direct KRA to issue a binding public classification notice within 30 days of enactment.*

4.5 Clause 27 — New Section 17A to the Value Added Tax Act: Input Tax Clawback on Exemption Change

RECOMMENDATION: AMEND | **Clause 27 of the Bill — Input Tax Clawback When Supply Becomes Exempt — No Transition Period**

Bill Text: *New Section 17A(1): Where a registered person has deducted input tax on supplies which subsequently become exempt and remain unsold, the person shall account for an amount equal to that input tax in the tax return for the period when the supply became exempt.*

DRAKE submits that the new Section 17A, as drafted, imposes an immediate and retrospective financial liability on registered businesses whose supply category changes — whether by government policy decision, new exemption introduction, or regulatory reclassification — without any transitional protection.

For domain registrars that have invested in technology infrastructure, billing systems, and digital hub equipment while claiming input tax under the standard VAT regime, a future reclassification of domain services as exempt supplies would trigger an immediate obligation to repay all previously claimed input tax — even where that tax has already been absorbed into the cost of services rendered.

This provision creates a significant regulatory uncertainty risk that will deter domain registrars from VAT registration and input tax claims, defeating the neutrality objectives of the VAT system.

Proposed Text / Action: *Insert a new subsection: 'Section 17A shall apply only in respect of input tax deducted on or after the date on which the relevant supplies became exempt, and shall*

not apply to input tax deducted in respect of goods or services acquired and used in business operations prior to the date of the exemption. A transitional period of not less than twelve (12) months shall apply before any clawback obligation under this section takes effect following a change in the exemption status of any supply.'

4.6 Clause 5(7) and (8) — Amendment of Section 5 ITA: 'Eligible Start-Up' Definition for Share Option Deferral

RECOMMENDATION: AMEND | Clause 5(7) and 5(8) of the Bill — Eligible Start-Up Definition — Turnover Ceiling and 'Training Business' Exclusion

Bill Text: Section 5(8): 'eligible start-up company' means a business incorporated in Kenya that (a) has an annual turnover of not more than one hundred million shillings; (b) does not carry on management, professional or training business...

DRAKE supports the principle of share option tax deferral for eligible start-ups. However, the definition of 'eligible start-up company' in subsection (8) contains two drafting defects that will inadvertently exclude the digital enterprise companies central to the #1MDOTKE Campaign.

First, the exclusion of businesses 'carrying on training business' from the eligible start-up definition could be construed to exclude Digital Identity Architect training enterprises and domain registrar companies that deliver digital literacy and technical certification Programs as part of their service offering. The intent of the exclusion — to prevent management consulting and professional training firms from availing of start-up incentives — is clear, but the drafting is insufficiently precise to achieve that intent without collateral damage to digital skills enterprises.

Second, the KES 100 million annual turnover ceiling is too low for Kenya's digital economy context. A domain registrar or digital services business that successfully scales to KES 100 million in annual revenue has, by that point, exhausted its access to the equity incentive at precisely the stage when it most needs to attract and retain technical talent. The Kenya Revenue Authority's own classification places medium enterprises at up to KES 500 million in annual turnover.

Proposed Text / Action: Two amendments are proposed: (i) In Section 5(8)(b), replace 'does not carry on management, professional or training business' with 'does not carry on management, professional, or executive training business, save that this paragraph shall not apply to enterprises primarily engaged in the provision of digital skills training, technology certification, or internet infrastructure services'; (ii) In Section 5(8)(a), replace 'one hundred million shillings' with 'five hundred million shillings', consistent with KRA's medium enterprise classification.

V. CLAUSES RECOMMENDED FOR APPROVAL

The Association commends the following provisions to the Committee for passage without amendment. They represent sound policy design that is consistent with Kenya's digital economy development objectives and internationally recognised best practice.

5.1 Third Schedule (as amended) — NIFC-Certified Start-Up Preferential Corporate Tax Rate

RECOMMENDATION: APPROVE | **Third Schedule — Income Tax Rates — NIFC Start-Up: 15% CIT (Years 1–3), 20% CIT (Years 4–7)**

Bill Text: *In the case of a start-up certified by the Nairobi International Financial Centre Authority, fifteen per cent for the first three years and twenty per cent for the succeeding four years.*

The preferential corporate income tax rate of 15% for NIFC-certified start-ups, reducing to 20% for years four through seven, is among the most strategically significant incentives in the Bill for Kenya's digital economy. It directly benefits the youth-led certified domain registrar enterprises and Digital Identity Architect businesses that constitute the third tier of the #1MDOTKE Campaign's execution engine.

At the standard CIT rate of 30%, early-stage digital businesses face a tax burden at precisely the phase when capital is most scarce and reinvestment is most critical. The NIFC rate halves that burden for three years and reduces it by one-third for a further four years — a seven-year window that aligns with the typical commercialisation cycle of African technology businesses.

This provision is competitively essential. Regional hubs — Kigali, Mauritius, Accra — have long offered tiered tax incentives for technology companies. Kenya has historically been disadvantaged in attracting and retaining technology investment as a consequence. This provision begins to correct that.

DRAKE endorses this provision fully and requests the Committee to direct the NIFC Authority to publish, within 60 days of enactment, a clear, transparent, and streamlined certification process with published eligibility criteria.

5.2 Clause 5(7) — Share Option Tax Deferral for Eligible Start-Ups (Subject to Proposed Amendments in 4.6 Above)

RECOMMENDATION: APPROVE | **Clause 5(7) of the Bill — Share Option Tax Deferral — Deferred PAYE on Equity for Start-Up Employees**

Bill Text: *Where an employee is offered company shares in lieu of cash emoluments by an eligible start-up, the taxation of the benefit shall be deferred until the earlier of: expiry of five years, disposal of shares, or cessation of employment.*

DRAKE endorses the principle of this provision without reservation. The ability to offer equity compensation with deferred tax liability is fundamental to recruiting and retaining skilled technical workers in start-up and scale-up digital enterprises. Kenya has historically been unable to offer this tool, placing domestic digital start-ups at a talent disadvantage relative to multinationals that can offer globally-structured equity packages.

The provision directly supports the #1MDOTKE Campaign's objective of converting top-performing Digital Identity Architects into co-owners of the digital registrar enterprises they are building — a model that aligns individual incentive with national digital infrastructure goals.

Subject to the amendments proposed in paragraph 4.6 above — broadening the eligible start-up definition and raising the turnover ceiling — DRAKE recommends this provision for passage.

5.3 Clause 3 — Amendment of Section 5 ITA: Employer Gratuity Contributions as Deductible Expenditure

RECOMMENDATION: APPROVE | **Clause 3 (amending Section 5(3)(ga) ITA) — Gratuity on 3-Year Contracts — Up to 31% of Basic Salary, Employer-Deductible**

Bill Text: Any contribution to a gratuity in respect of employment or services rendered: Provided that (i) the gratuity was for a contract of service for a continuous period of at least three years; (ii) total contributions do not exceed thirty-one per cent of the basic salary.

This provision incentivises long-term employment relationships, reduces informality in labour contracting, and provides digital economy workers — particularly those in the gig and contractor-based domain registrar sector — with meaningful deferred compensation security.

For the #1MDOTKE Campaign's County Centre technical specialists on 3-year engagement terms, this provision enables DRAKE member registrars to offer competitive, tax-efficient retention packages that reduce turnover in mission-critical roles. The three-year minimum service requirement is an appropriate safeguard against misuse.

DRAKE endorses this provision and recommends passage as drafted.

5.4 Section 15(2) ITA (Confirmed) — Scientific Research and Development Deductions

RECOMMENDATION: APPROVE | **Section 15(2) ITA — as confirmed in the Bill — R&D Deductions — Capital and Non-Capital Scientific Research Expenditure**

Bill Text: Any expenditure incurred by a person for the purposes of a business: (i) expenditure of a capital nature on scientific research; (ii) expenditure not of a capital nature on scientific research; or (iv) a sum paid to any university, college, or research institute approved by the Commissioner.

The R&D deduction framework is of direct relevance to DRAKE's mission. The development of the Digital Identity Architect training curriculum — a comprehensive Program covering domain registration, DNSSEC/SSL configuration, DNS management, web presence deployment, and MSME digital onboarding — constitutes educational technology research with no domestic precedent.

A formal research collaboration with an approved Kenyan university or TVET institution on the #1MDOTKE Campaign's domain adoption methodologies qualifies as scientific research for deduction purposes. This converts the Campaign's curriculum development costs into fully deductible R&D expenditure and generates publishable research on Kenya's digital identity adoption pathways — contributing to the knowledge economy the Government seeks to build.

DRAKE endorses this provision. The Association requests the Committee to direct the KRA Commissioner to publish an updated list of approved research institutions, with explicit inclusion of national TVETs, within 90 days of enactment.

VI. CLAUSES RECOMMENDED FOR DELETION

The Association respectfully submits that the following clauses be deleted from the Bill. In one case, the underlying policy objective — if any — would be better served by a separate, properly consulted instrument. In the other case, the clause fails basic standards of parliamentary transparency and should be withheld until the deficiency is remedied.

6.1 Clause 2(c)(a)(vii) — Payment Network and Card Scheme Fees as 'Royalties'

RECOMMENDATION: DELETE | **Clause 2(c)(a)(vii) of the Bill — Payment Networks, Card Schemes, and Settlement Systems as Royalties**

Bill Text: *...a proprietary digital platform, payment network, payment-card scheme, payment processing system, switching system, clearing system or settlement system, including access, participation or usage rights in such system through a card, whether the consideration is periodic or transaction-based and whether or not the payment is described as a service fee, transaction fee, network fee, assessment fee, processing fee or similar charge...*

DRAKE strongly submits that this specific sub-provision should be deleted from the Bill. It seeks to reclassify international payment network participation fees — transaction fees, network fees, assessment fees, and processing charges paid to or through payment-card schemes — as royalties subject to a 20% non-resident withholding tax.

The concerns are fourfold. First, this provision creates a direct conflict with Kenya's obligations under existing bilateral investment treaties and the WTO General Agreement on Trade in Services (GATS). Payment network fees are financial services fees that are afforded specific protections under GATS and several of Kenya's bilateral investment agreements. Unilaterally reclassifying them as taxable royalties exposes Kenya to international arbitration claims and potential retaliatory trade measures.

Second, in practical terms, international payment networks will either exit the Kenyan market, reduce their product offering, or pass the 20% WHT cost through to Kenyan financial institutions and their customers. The ultimate burden falls on Kenyan merchants and consumers in the form of higher transaction costs — a regressive outcome that is directly contrary to Kenya's financial inclusion and digital payments objectives.

Third, for DRAKE member registrars who process domain registration payments through card-based payment gateways, this provision will increase the cost of every card-processed domain registration, impeding the #1MDOTKE Campaign's ability to serve MSMEs through digital payment channels.

Fourth, the Communications Authority of Kenya and the Central Bank of Kenya are the competent regulators of payment network fees in Kenya. Any policy decision to levy a tax or regulatory charge on international payment network participation fees should be developed jointly with these regulators, following consultation with the financial services industry, and introduced through a separate, targeted instrument — not inserted into a general Finance Bill without stakeholder engagement.

Proposed Text / Action: *Delete Clause 2(c)(a)(vii) from the Bill in its entirety. If Parliament considers that payment network fees represent an undertaxed source of economic rents, the Association recommends that Treasury commission a separate economic impact assessment in consultation with CBK, CA, and the payments industry, and return with a specific, treaty-compliant instrument in the Finance Bill 2027.*

6.2 Clause 31(a)(i) — Deletion of VAT First Schedule Paragraph 49 Without Reproducing Its Content**RECOMMENDATION: DELETE | Clause 31(a)(i) of the Bill — Deletion of VAT Exempt Supply — Paragraph 49 Not Reproduced in Bill**

Bill Text: *Clause 31(a)(i): 'Section A of the First Schedule to the Value Added Tax Act is amended — (a) in Part I — (i) by deleting paragraph 49...' [The current text of paragraph 49 is not reproduced anywhere in the Bill or its Explanatory Memorandum.]*

This is a fundamental legislative drafting failure. The Bill proposes the deletion of a VAT exemption — paragraph 49 of Part I of the First Schedule to the VAT Act — without reproducing the current text of that paragraph anywhere in the Bill or its accompanying Explanatory Memorandum.

Parliament is being asked to approve the removal of a VAT exemption without knowing what supply or category of goods or services is presently exempted under that paragraph. This is contrary to the basic principle of transparency that underlies the legislative process.

The practical consequence is that businesses and individuals currently benefiting from the exemption under paragraph 49 will have no prior notice of the change, no opportunity to make representations, and no ability to adjust their pricing, contractual arrangements, or tax compliance posture before the exemption is removed.

The National Assembly Standing Orders and the legislative best practice principles that underpin Kenya's constitutional order require that Bills amending existing statutes reproduce sufficient context to enable meaningful public participation and informed parliamentary debate. Clause 31(a)(i) fails that standard.

The same concern applies, to varying degrees, to the deletions of paragraphs 58, 62, and 109 of the First Schedule, none of which are reproduced in the Bill.

Proposed Text / Action: *The Association respectfully requests that the Finance and National Planning Committee decline to approve Clause 31(a)(i) — and any other clause deleting a Schedule paragraph whose content is not reproduced in the Bill — until the National Treasury tables an Addendum to the Bill setting out the full text of every paragraph proposed for deletion. This is a matter of parliamentary process and public participation, not merely drafting preference.*

VII. CROSS-CUTTING POLICY RECOMMENDATIONS

Beyond individual clauses, DRAKE submits three systemic recommendations for the Committee's consideration.

7.1 A '.KE First' Digital Identity Mandate

10. The most impactful single action Parliament can take for Kenya's digital economy in this legislative cycle — at near-zero fiscal cost — is to insert a '.KE First' provision that makes a valid .KE domain name a prerequisite for: (a) formal registration under the Business Registration Service; (b) eligibility for government procurement; and (c) access to NIFC

start-up certification and other government-administered digital economy incentives introduced by this Bill.

11. The fiscal rationale is compelling: mandatory digital identity for registered businesses creates a verifiable digital front door for every enterprise in KRA's tax register, supporting eTIMS compliance, digital invoicing, and tax base widening — all objectives the Government has explicitly committed to. The revenue benefit to the exchequer from improved SME tax compliance will far exceed the cost of any accompanying domain registration fee subsidy.
12. DRAKE formally requests the Committee to introduce an amendment to the Finance Bill, 2026 inserting a new clause mandating .KE domain registration as a condition of formal business registration, government procurement eligibility, and access to the NIFC start-up preferential tax rate introduced under this Bill.

7.2 An eTIMS Micro-Transaction Safe Harbour for Domain Registrars

13. The Bill's reinforcement of the eTIMS mandatory invoicing requirement (Section 16(1)(c) ITA) is sound policy. However, domain registrars processing millions of micro-transactions annually — domain registrations at KES 1200–3,000 each — face an operational impossibility if each individual transaction must generate a standalone eTIMS invoice, particularly for transactions processed through ward-level Digital Hubs in areas with intermittent internet connectivity.
14. DRAKE requests the Committee to include, as part of the Finance Bill or as a condition of passage, a direction to the KRA Commissioner to publish, within 90 days of enactment, eTIMS compliance guidelines that: (a) permit bulk aggregate daily invoicing for high-volume micro-transaction registrar operators; (b) specify minimum KRA system uptime and reliability standards that must be met before penalty provisions for eTIMS non-compliance take effect; and (c) provide an eighteen-month implementation grace period for digital businesses integrating eTIMS APIs.

7.3 A Standing Digital Economy Tax Consultative Framework

15. The digital economy provisions of the Finance Bill, 2026 — the royalty redefinition, the digital marketplace WHT, the digital content monetisation WHT, the NIFC start-up incentive — have been developed without a formal, documented consultative process with Kenya's ICT industry, domain name sector, fintech operators, or digital platform enterprises. The provisions are internally inconsistent, create overlapping obligations, and in several cases directly contradict each other and the Government's own digital economy policy commitments.
16. DRAKE submits that this is a structural failure, not merely a drafting failure. Kenya needs a permanent Digital Economy Tax Consultative Committee — co-chaired by the National Treasury and the Ministry of ICT and Digital Economy, with mandatory industry representation — that must be consulted before any digital economy tax measure is included in a Finance Bill. This Committee should publish its findings and recommendations before Budget Day each year, providing the public and Parliament with a transparent basis for evaluating proposed digital economy tax measures.

17. DRAKE formally requests the Committee to include, as a condition of passage of the digital economy provisions of this Bill, a Parliamentary Resolution directing the Cabinet Secretary for Finance to establish such a Committee within 180 days of enactment.

VIII. SUMMARY OF RECOMMENDATIONS

Clause	Provision	Recommendation	Proposed Action
Clause 2(c)	Royalty — software maintenance, platform access fees	AMEND	Insert carve-out for domain registration and internet infrastructure services
Clause 2(b)	Mgt fee — interchange and merchant service fees	AMEND	Insert KES 5,000 micro-transaction threshold
Clauses 31 & 32	VAT Schedules — no digital infrastructure exemption	AMEND	Add .KE domain registration as VAT-exempt supply; zero-rate .sc.ke/.ac.ke
Clause 35 (S.35(3)(l)+(n))	WHT on digital marketplace and digital content	AMEND	Mutual exclusivity; KES 5,000 threshold; domain registration exclusion
Clause 27 (New S.17A)	Input tax clawback on exemption change — no transition	AMEND	Prospective only; 12-month transition period
Clause 5(7)+(8)	Eligible start-up — training exclusion; KES 100M cap	AMEND	Clarify training exclusion; raise ceiling to KES 500M
Third Schedule	NIFC start-up: 15% CIT (Y1-3), 20% (Y4-7)	APPROVE	Pass as drafted; direct NIFC to publish criteria within 60 days
Clause 5(7)	Share option deferral — eligible start-ups	APPROVE	Approve subject to Clause 5(8) amendments above
Clause 3 (S.5(3)(ga))	Employer gratuity on 3-year contracts — deductible	APPROVE	Pass as drafted
Section 15(2) ITA	R&D deductions — confirmed	APPROVE	Pass; direct KRA to update approved institutions list
Clause 2(c)(a)(vii)	Royalty — payment networks and card schemes	DELETE	Delete entirely; commission impact assessment for FB2027

Clause 31(a)(i)	Deletion of VAT para 49 — content not reproduced	DELETE	Withhold until Treasury reproduces full text of all deleted paragraphs
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IX. CONCLUDING SUBMISSIONS

18. DRAKE submits this Memorandum in good faith, in the public interest, and in the spirit of Article 10 of the Constitution of Kenya, 2010, which binds all State organs — including Parliament — to the national values and principles of good governance, including transparency, accountability, and sustainable development.
19. Kenya's .KE domain namespace is a sovereign digital asset. It is the foundation upon which every Kenyan business, institution, and individual builds their digital identity. Growing that namespace from 122,289 to one million domains is not merely a commercial objective for DRAKE member registrars — it is a national development imperative. Every school that registers a .sc.ke domain can communicate digitally with parents and the education ministry. Every MSME that registers a .co.ke domain gains access to e-commerce, digital payments, and formal economy participation. Every graduate who registers a .me.ke domain creates a verifiable professional identity in the global digital economy.
20. The Finance Bill, 2026, in its current form, imposes costs and compliance burdens on precisely the transactions that build this namespace — domain registration, maintenance, and digital identity service bundling. The amendments proposed herein are targeted, technically sound, and fiscally modest. They do not seek to reduce government revenue. They seek to ensure that Kenya's tax framework does not inadvertently tax the building blocks of the very digital economy the Government has committed to construct.
21. The Association is available to make oral submissions before the Finance and National Planning Committee at any time convenient to the Committee. DRAKE can also provide technical briefings on the .KE domain ecosystem, the #1MDOTKE Campaign, and the operational implications of the provisions addressed herein.
22. DRAKE respectfully requests that the Committee:
23. Receive and consider this Memorandum as part of the public participation process for the Finance Bill, 2026;
24. Invite DRAKE to make oral submissions at the Committee's public hearings on the Bill;
25. Adopt the specific amendments, approvals, and deletions proposed herein; and
26. Direct the National Treasury to engage DRAKE and the broader ICT industry in a formal consultative process for all digital economy tax provisions in future Finance Bills.

Signed on behalf of the Domain Registrars Association of Kenya (DRAKE):



Kariba Moko - Chairperson

Domain Registrars Association of Kenya (DRAKE)

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Davis Waithaka - Secretary General

Date: 25th May 2026

IMPORTANT NOTICE: This Memorandum is submitted for the purposes of public participation in the legislative process pursuant to Article 118 of the Constitution of Kenya, 2010. It represents the institutional position of the Domain Registrars Association of Kenya and does not constitute legal advice. The views expressed herein are those of DRAKE as an industry association and are submitted in the public interest. DRAKE reserves the right to supplement this Memorandum with additional written or oral submissions.