

ICPAK ANNUAL TAX CONFERENCE

Efficiency and Effectiveness in Tax Management

VAT ACT 2013

“IMPACT ANALYSIS”

LEISURE LODGE RESORT, MOMBASA

Wednesday, 18 September, 2013

PRESENTER

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VAT ACT 2013

Impact Analysis

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LEST WE FORGET

- ☐ **VAT Act replaced Sales Tax (in 1990) and was seen & said to be a tax of the future!**
- ☐ **VAT Bill 2011 – date of Bill 9.06.2011 (Died)**
- ☐ **VAT Bill 2012 – date of Bill 14.06.2012 (Died)**
- ☐ **VAT Bill 2013 – Presidential Assent 14.08.2013 – Gazetted 23.08.2013, Commencement 02.09.2013 and became an Act (VAT Act, 2013)**

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NEWSPAPER / PUBLIC REACTIONS

PEOPLE

Reality of new VAT law hits consumers hard



The reality of the effects of the newly enacted Value Added Tax (VAT) law started to sink in

Posted by: The People in Business September 4, 2013-
By BRIAN NGUGI

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NEWSPAPER / PUBLIC REACTIONS



Prices of items start going up as taxman effects VAT Bill



**PHOTO: FILE/STANDARD -
By MACHARIA KAMAU**

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NEWSPAPER / PUBLIC REACTIONS

DAILY  NATION

Kenyans forced to make hard choices as VAT law hits

Experts warn the benefits government seeks through law could be too costly for the poor



**Posted Saturday,
September 7, 2013 | by -
KENFREY KIBERENG**

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THE STANDARD
Kenya's Leading Newspaper

Consumer shock as food prices rocket



Retailers take advantage of VAT law to increase prices of essential goods not covered by new tax

By JACKSON OKOTH AND WINSLEY MASESE

Unscrupulous traders are robbing shoppers in broad daylight by applying value-added tax (VAT) to exempt food items, piling pressure on wary consumers.

A survey of retail outlets and markets across the country by The Standard yesterday revealed that supermarkets and other retail outlets had increased the price of bread along with other essential goods, even though the item was excluded from the list of items subject to VAT on September 2.

Other food prices that have been regularly hiked by retailers are those of maize flour, rice, fresh eggs, tomatoes and onions.

In an open admission of this market failure, Cabinet Secretary in the National Treasury Henry Rotich visited a noted businessman, not to take advantage of the law to exploit consumers.

The new VAT law passed by Parliament in August has already

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Item	Old Price	New Price
MILK	45/-	60/-
BREAD	62/-	75/-
EGGS	240/-	270/-
RICE	630/-	730/-

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MICHELIN ENERGY XM2

KINGSWAY TYRES LIMITED
KOTELINE 2220956, 0722 237719 www.kingswaytyres.com

By Jackson Okoth and Winsley Masese – Thursday, 5th September, 2013

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Impact Analysis – Refunds Dilemma



**(A) Development
& Recurrent
Expenditure**

**VAT Refunds (B)
Proper Cases &
Fraudulent Claims**

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- **There was need to review the law, simplify it and control VAT refunds which has been competing for funds with other public cash requirements (development and recurrent).**

⇒ **Current refund backlog Kshs. 28 Billion (Approx.)**

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New act is designed under the same concept as the old one:

- **Allows for input tax even in the case of zero rated supplies.**
- **Where input tax is higher than output a refund would still arise.**
- **Exemption of some goods / services is still applicable, but reduced.**

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OLD VERSUS NEW ACT

	Old	New
■ Parts	14	17
■ Sections	59	68
■ Schedules	8	2
■ Rates	3 (0,12 &16%)	2 (0&16%)

SCHEDULES REDUCED after some provisions were captured in the main body of the law e.g. rate of VAT.

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- **Allowing for formation of committee to compound offences**
- **Providing for public and private ruling**
- **Dealing with tax avoidance schemes**
- **Giving only two schedules, for exempt and zero rated items**

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Has clarified certain areas by giving new definitions :-

❖ **Money**

❖ **Person**

❖ **Non-Resident Person**

❖ **Tax Representative**

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Impact Analysis

DEFINITIONS:

- ☐ **MONEY** – any coin or paper currency that is legal tender in Kenya;
a bill of exchange, promissory note, bank draft, or postal or money order;
any amount provided by way of payment using a debit or credit card.

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DEFINITIONS:

□ PERSON – means an individual, company, partnership, association of person, trust, estate, the Government, a foreign government, or a political subdivision of the Government or foreign government

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Impact Analysis

Definitions

- ❑ **NON-RESIDENT PERSON** - a person who makes taxable supplies but does not have a fixed place of business in Kenya
- ❑ **TAX REPRESENTATIVE** – a person resident in Kenya appointed by the non-resident or the Commissioner to have the responsibility of doing all things required under the Act on behalf of the non-resident person

NB : Input Tax / Output Tax definitions have been moved from Section 10 to Section 2 to be with other definitions.

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- **Section 49:8** Books used in Audit to be returned within 14 days of the conclusion of the audit. Audit going beyond 6 months must be approved by the Commissioner
- **Section 50:** Commissioner's response to objection must be **given in 60 days** or else it is **deemed** Commissioner has accepted taxpayers objection notice

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Section 66: Tax avoidance schemes

- **Commissioner is given power to make adjustment and issue assessment where he is satisfied a tax scheme was in place and extended a tax benefit**
- **Scheme must have provided a tax benefit such as reduced tax liability, increase input tax, entitlement to refund, postponement of payment of tax and acceleration of entitlement to input tax deduction.**

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- **Zero Rated Supplies: number reduced:
To eight(8). Restricted to exports,
international travel, transfer of business
and supply of natural water**
 - **Public bodies and privileged persons: Reduced
to nine (9)**
- ⇒ **HOPED FOR IMPACT :-
REFUNDS WILL REDUCE TO MANAGEABLE
LEVELS ?**

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The Expected

The government would bring down the cost of living
VERSUS the new VAT regime would result in increases
in price of basic items

- Parallel Markets will emerge for certain commodities
- Jobs will be lost
- Expected revenue will be eroded
- The poor will be most affected
- The economy will be working for other economies ?
- **? MEASURES TO CUSHION THE POOR ?!**

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The Expected

- ➡ **Parallel border activities may increase to capture and correct the market in Kenya via Uganda, Tanzania, Somalia and even Sudan or Ethiopia ? ? ?**

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Unexpected Expected



A July study by Ipsos Synovate showed that Kenyans are opposed to VAT on essential goods, saying it will exacerbate economic conditions

9 out of every 10 Kenyans said they were against plans to levy VAT on basic commodities and services such as milk, exercise books, cooking gas and electricity. They argued the tax will increase the cost of living and hurt the majority poor. (Daily Nation - Posted Friday, August 23, 2013 | by- DAVID HERBLING)

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Unexpected Expected

“Goods in stock which were exempt prior to September 2, 2013 and were bought without VAT and are now taxable should attract 16 per cent VAT,” (Kenya Revenue Authority Commissioner-General John Njiraini).

Goods previously zero-rated but have now been migrated to the tax bracket

☐ Processed milks are in the tax bracket. Prices of common brands of processed fresh milk **shot up from an average price of Sh45/= per 500ml sachet to Sh55/= - only unprocessed or raw milk is tax-free**

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Unexpected Expected

- ☐ **16 % tax on all electricity consumption. Electricity consumers will pay higher monthly bills – This is part of what is feeding price increases on items still exempt or zero rated.**
- ☐ **Cooking gas, exercise books, text books and mobile phones also attract a 16 % tax charge – ABOVE AVERAGE PRICE INCREASES**

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Unexpected Expected

- ❑ Kenya's tourism stakeholders are coming to terms with the insistence by the Kenya Revenue Authority to demand payment of 16 percent VAT on park and reserve fees, once again raising the cost of safari vacations at a time when the industry faces continued challenges. [September 3, 2013 by Aviation, tourism, travel and conservation news – DAILY]
- ❑ 16% tax charge on sale of all commercial properties

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Impact Analysis

COLLATERAL DAMAGE & DEBRIS

1)Free Price Environment

Prices of common brands of processed fresh milk such as KCC, Tuzo, Brookside, Molo Milk and Fresha has already shot up from an average price of Sh45/= per 500ml sachet to Sh55 in Nairobi and Malindi an average of Sh. 60/=.

⇒FREE MARKET ECONOMY !

⇒PRICE CONTROLS NOT GOOD FOR BUSINESS ?

⇒CAN THE IMPACT BE MANAGED – NO OR YES ?

⇒GoK SAYS IN THE LONG TERM – YES !

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To Control or Not to Control Prices

KRA Statement - Monday, September 9, 2013 - BY STAR REPORTER

"It is evident that a number of traders are using amendment to the VAT Act to increase prices by collecting the tax on exempt goods and services. This is illegal and punishable by law," said KRA in a statement.

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Impact Analysis

2) Problem of Inefficient Market Mechanism

- **The taxman is expected to face numerous challenges in the enforcement of the new law.**
- **Tax Schemes**
- **Fraud**
- **Lack of adequate capacity**

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3) Political Ramifications

- ❖ **VAT 2013 will easily be a major political campaign factor for 2017 elections if not reformed and if revenues don't end up justifying it.**
- ❖ **Whether or not talks of Programs to shield the poor will come to fruition, fail or succeed is for you to judge – wait & see !**

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4) Will Collections Increase – Impact Revenue

The Treasury expects to collect from the new VAT measures (past pronouncements / justifications). Could raise : -

Kshs. 5 Billion

Kshs. 10 Billion

Kshs. 100 Billion

NOBODY KNOWS TIME WILL TELL !

VAT ACT 2013

Impact Analysis

4) Will Collections Increase – Impact Revenue

**Simplistic View : -Year 2013 / 14 Budget : -
Total**

Budget -	-	Kshs. 1.4 Trillion
Returned (2013)	-	Kshs. 340 Billion
Real Need (Approx.)		Kshs 1.1 Trillion ? ?

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WILL COLLECTIONS INCREASE ? (VAT 2013 IMPACT)

Measurement of VAT Act Impact

- ☐ **VAT to GDP from 1990 rose to 10% but declined to 6% by 2012 / 2013. What happened to the 4% fall ?**
- ☐ **With Zero Rated and Exempt Supplies reduced, VAT Revenue should rise. It will need the other sectors of the economy to support it.**

If it does go up, then should exceed 10% of GDP – then all should be happy.

THANK YOU FOR SUPPORTING ICPAK OUR INSTITUTE



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