



ERNST & YOUNG
Quality In Everything We Do

Presenter

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Ernst & Young

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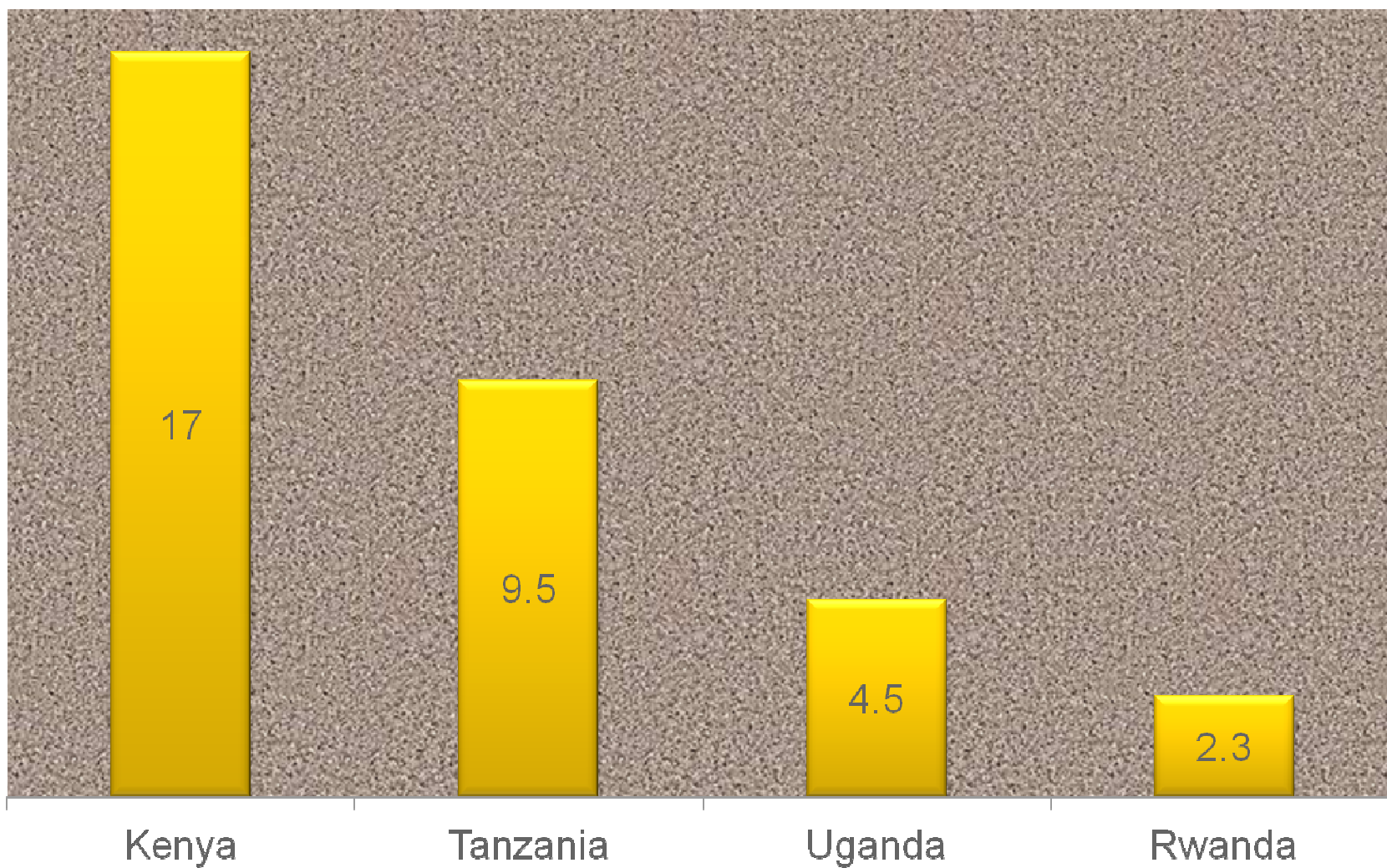
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Macroeconomics statistics for EAC countries, 2011

Indicator	Kenya	Tanzania	Uganda	Rwanda	Burundi
Population (Million)	39.5	43.6	35.8	11.7	10.5
GDP (US \$ Billion)	36.1	23.2	16	6	1.7
Real GDP growth (%)	4.4	6.1	6.4	7.0	4.8
Inflation (%)	14	7	6.5	3.9	8.7
Revenue/GDP (%)	24	21	15	26	23
VAT rate (%)	16	18	18	18	-
Corporate tax rate (%)	30	30	30	30	-

Sources: Economic Surveys & World Bank Various Issues

Budget Size (US\$ Bn) – 2012/2013



Common Tax Reforms in the EA Region

► Gaming & Betting

- Kenya - Introduced withholding tax in 2011
- Uganda - Gambling and lottery services exempted from VAT
- Tanzania - Holders of gaming licences taxed under the Gaming Act exempt from paying income tax
- Rwanda - Tax on gaming activities introduced

► PAYE thresholds

- Kenya - Maintained
- Uganda - Increased from UShs 130,000 to UShs 235,000
- Tanzania - Increased from TShs 135,000 to TShs 170,000
- Rwanda - Maintained

► Excise Duty - major reviews in EAC

Introduction

County Governments

Overview of general financing under the new constitution

2012/13 Budget: Devolution Allocations

- ▶ Devolution in 2012/13 to cost KShs 151 Billion (26% of audited revenue for FY 2011/12)
 - ▶ Constitutional minimum is 15%
- ▶ Counties should be encouraged not to rely on allocation only
 - ▶ Las Vegas in US – centre for entertainment in the world
 - ▶ Wisconsin in US – Bread basket of US

Sources of Revenue –Article 209,211 and 212

National Government

- ▶ Income Taxes.
- ▶ Value added tax.
- ▶ Excise tax.
- ▶ Customs duties and any other import/export duties on goods.
- ▶ Charges for Services provided.
- ▶ Borrowing.

County Government

- ▶ Property taxes.
- ▶ Entertainment taxes.
- ▶ Charges for services provided.
- ▶ Borrowing (only if guaranteed by national government and with the approval of the County Government's Assembly)

Introduction

AMENDMENTS UNDER INCOME TAX ACT

Amendment of Sec 116: Offences by Officials

- Corporate veil to be lifted and Senior officers to be held liable for tax assessed on the company
 - Senior officer referred to as “**a director, general manager, secretary**, or other similar officer, of the body corporate, or the person was acting or purporting to act in that capacity”
 - A **court** may order such a senior officer to make payment to the Commissioner of the whole or such part as **remains unpaid** of the tax assessed by the Commissioner either in addition to or in substitution of any other penalty
 - Implications
 - Increased compliance – tax from liquidated companies
 - Tax awareness at board level
 - Management related insurance policies
 - Directors may engage personal tax advisers
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Amendment of Sec 116: Offences by Officials Cont'd

- Critics
 - At what point will the court make this order?
 - It's hard to determine the director who will carry this tax burden
 - Akin to oriental countries, we may experience some political victims in future
- **Effective date 1 January 2013**

Taxation of President, MP's, etc

- Exemptions under 1st Schedule:
 - **Para 3:** That part of the income of the President derived from salary, duty allowance and entertainment allowance paid or payable to him from public funds in respect of or by virtue of his office as President.
 - **Para 37:** All allowances payable to the Speaker, Deputy Speaker, Vice President, Ministers, Assistant Ministers, and all other Members of Parliament are exempt from income tax under S. 5 of the National Assembly Remuneration Act
 - **Art. 5** of Constitutional Offices (Remuneration) Act (Cap 423)
 - Hitherto untaxed income of the above persons to be taxed in line with **Article 210** of the Constitution
 - Implications
 - More tax compliance as leaders lead from front
 - Presidency and other powerful position loosing past glory
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Taxation of President, MP's, etc cont'd

- Critics
 - May be a zero sum game as leaders may adjust their emoluments upwards
 - The current parliament may not accept this amendment
 - The decision to tax the leaders is long overdue
- **Effective date 15 June 2012**

Advance Tax Rules, 2012

- Section 12A of the Act imposes advance tax on commercial vehicles.
 - Para 8 of 3rd Sch.
 - There are no rules governing the conditions for payment of this tax.
- The Bill introduces issuance of rules governing the payment of advance tax by owners of commercial vehicles
- Such persons will be required to:
 - Pay tax on or before **20th day of 1st month of year** of income and in cases of transfer of ownership; before new owner is registered as such
 - Maintain proper records for purposes of determining advance tax
 - **File returns** as prescribed by the Commissioner (S.52B) – penalties under Section 72 are payable upon failure to file a return
- The rules have also introduced penalties for non-compliance and a mechanism for dispute resolution.
- Implications
 - More compliance in transport sector

Advance Tax Rules, 2012 cont'

- Critics
 - Too much regulation in an area that brings less revenue
 - Inefficiency by KRA on registration of motor vehicles may hamper the gains made by the new tax legislation
- **Effective date 15 June 2012**

S.54: Tax Agents Regulations

- Section 54 (4A & 4B) deleted to pave way for rules governing the operations of Tax Agents issued under KRA Act.
 - Under the rules:
 - Tax agents to **apply** to KRA for **registration**.
 - Penalty of non registration: fine not exceeding **KShs 100,000** or imprisonment for a term not exceeding **2 years** or both
 - Minister to establish **a tax agent's committee** (to include Chairman from private sector and members from ICPAK, LSK & KRA)
 - Para 8 (3): the Committee shall be appointed by the Commissioner in writing
 - Refer members to their professional bodies
 - Commissioner to maintain a register of tax agents
 - Qualifications to include CPA(K), Advocate, tax administrator for 10 yrs - all **must be tax compliant**
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S.54: Tax Agents Regulations cont'

➤ Implications

- Enhanced compliance as tax agents become more professional due to high regulation
- End of the game for brief-case tax agents
- Minister/ Commissioner now has powers over tax agents

➤ Critics

- KRA will influence the appointment of the tax agents committee
 - Vocal but honest tax agents representing the rights of their clients may become victims
 - The Secretary is a KRA's appointee
 - Legislation is under KRA's Act
- Malice and personal differences may be sorted out through this legislation
- Qualifications leave out graduates with key areas of specialization

➤ **Effective date 1 January 2013**

Taxation of Non- Resident Persons in the business of Telecommunication

- Non-resident companies engaged in the business of telecommunication business brought into the ambit of withholding tax through amendments under S. 34(2) and S. 35(1)
 - Amendment meant to align the taxation of non-residents under Section 9(2)
- The rate of withholding tax has been specified as 5% and will be final tax for non-resident telecommunication companies.
- Implications
 - Clarity in tax law
- Critics
 - The amendments is long overdue
- **Effective date 15 June 2012**

Local Committee and Tribunal Rules

- Introduction of rules prescribing qualifications for members sitting in the Local Committees and Tribunals through:
 - Amendment of Sec 82(2A) & Sec 82(2B) for LCs
 - Amendment of Sec 83 (8) for Tribunal
- The rules include:
 - **Qualifications:** degree in taxation, finance or accounting, being tax compliant and persons of high moral character and integrity – should not be serving employee of KRA and for a civil servant, having completed 3 years since leaving employment
 - Circumstances and conditions when one can cease from being a member
- Implications
 - **Transparency** in appointment/cessation from membership
 - **Professionalism** in appeal processes
- Critics
 - Qualifications leave out graduates with key areas of specialization

Effective date 1 January 2013

Amendment of Income Tax (Local Committee) Rules

- Through deletion of Rule 6(1)(d), the tax payer will no longer be required to furnish a certificate from the Commissioner to the clerk of the Local Committee confirming the receipt of the return and accounts
 - The certificate has been an impediment to justice as it could stop a tax payer from being heard upon the delays by the Commissioner
- Rule 7A has been inserted
 - The Commissioner is required to file his response (statement of facts) to tax payers appeal within 30 days
- Implications
 - The amendment to bring certainty in the appeal process
 - The amendment to harmonize similar conditions that a taxpayer faces as he seeks justice in the appeal process

Effective date 15 June 2012

Capital Deductions for Commercial Buildings

- Para 1 and 5 of 2nd Sch. amended to exclude commercial buildings from industrial building computation.
 - Introduction of this incentive in 2009 was intentioned to be for non-industrial activities
 - Industrial buildings under Para 3 of 2nd Sch. prohibited deduction of costs of offices, retail shop, and show rooms
- A new Para 6A has been introduced specifying that a person who incurs capital expenditure on commercial building and provides roads, water, power, sewer and other social infrastructure shall qualify for commercial building deduction at a rate of 25%
 - Commercial building has now been defined to include offices, shops and show rooms.
- **Implications**
 - More incentives for investors in real estate
- **Effective date 1 January 2013**

Capital Deductions for Commercial Buildings cont'

- Critics
 - Other non-industrial buildings excluded: rental residential buildings and hostel or a building in use for educational/ training purposes
 - Rich man's tax incentive
- **Effective date 1 January 2013**

Capital Deductions for Hotel Buildings

- Para 26 of 2nd Sch. amended to include hotels for purposes of investment deduction where the hotel building has been sold or transferred before being put to use by the investor who constructed it
 - The buyer for such a hotel building will be allowed Investment Deduction on the cost of construction or amount paid on purchase, whichever is higher
 - This amendment is welcome move to investor in real estate and players in the hospitality industry
 - Implications
 - Clarification of tax legislation
 - Critics
 - The amendment was long overdue
 - **Effective date 1 January 2013**
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Churches, NGOs and Trusts

- As per the Budget Statement, the Income Tax Act is to be amended to empower the Minister to make rules for purposes of administering the exemption of Trusts, Churches and NGO's.
 - Amendment of Para 10 of 1st Sch in line with previous Public Notices by KRA.
 - The above hitherto tax exempt bodies to re-apply for exemption after every 3 years
 - The Minister, on recommendation of the Commissioner, to renew exemption certificates for persons making an application at least 6 months before the expiry date.
 - Implications
 - More tax compliance by Trusts, Churches and NGO's
 - Critics
 - Reference to churches instead of religious organizations
 - **Effective date 1 January 2013**
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Income Tax (Transfer Pricing) Rules -2006

- Transfer pricing rule 8 included to allow the Commissioner prescribe the conditions and procedures to guide the application of the transfer pricing methods
- Implications
 - Many multinational companies may be forced to adopt TP methods different from what their head offices are using
- Critics
 - What is motive of this?
 - It is suspect that the Commissioner may opt for methods that will yield more revenue without any other consideration
- **Effective date 14 June 2012**

Questions

