



ANDERSEN TAX[®]



**Modernization of
the tax regime in
Kenya**



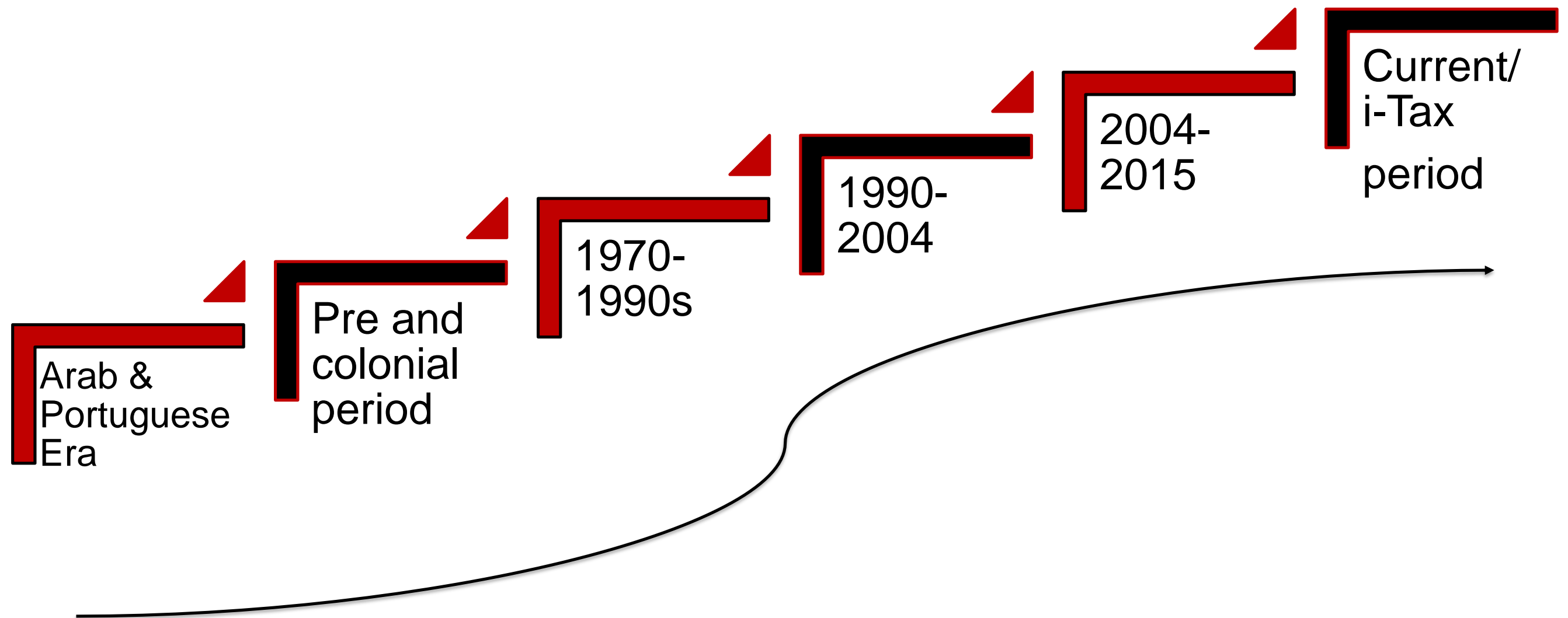
Scope

- What is modernization in respect to taxation?
- Odyssey of taxation in Kenya
 - ✓ A glimpse of Kenya tax history
 - ✓ Current & future outlook
- What role has technology played in our tax regime
- Proposed legislative and regulatory changes
 - ✓ Draft income tax bill- 2018
 - ✓ Finance bill 2019

What is modernization in respect to taxation?

- It is a contemporary approach to taxation adopted by governments
- This is largely driven by:
 - Globalization;
 - Technological development;
 - Administrative challenges;
 - Presence of customized & diverse tax laws in countries;
 - and
 - Emerging business structures.

Odyssey of taxation



Glimpse of tax history in Kenya

- Taxation in Kenya dates back to 1500 when Arab Sultans imposed levies and harbor fees on traders Zakat, Sadaqa and capitation tax
 - ✓ Zakat- 2.5% of the savings and idle cash assets
 - ✓ The Sultanate imposed this on cloves, ivory and slaves
- It is reported that between 1809 & 1814 Sultan of Oman collected a capitation tax estimated at \$75,000
- Later in the 18th the Portuguese arrived and imposed taxes to maintain their rulers in the coast
- Flash forward to colonial period, the British introduced new regime

Colonial era(1900s)

- To prop up local economy and avail funds to rule the region via taxes and foreign funding; the British rolled out the following on locals;

Hut tax

- The 1st form of taxation in Kenya was introduced in 1900 in the form of hut tax
- the tax base of this tax was the hut.
- The tax was 1 rupee per hut

Poll tax

- Introduced in 1910
- The tax base was the person
- All men were to pay the tax in addition to the hut tax

Colonial era(1900s)

Proposed Crown land Bill 1908

- Proposed the levying of a graduated land tax on individual holdings
- Proposed a land tax of 6 cents for every 75 cents for leases worth more than KShs 180 rent
- Any holder of more than 50,000 acres of land would pay four times the land tax.

1915 Crown Land Ordinance

- Replaced the proposed bill which was rejected
- This bill helped shape our current land policy, land market and mortgaging

Colonial era (1900s)

Income tax regulations

- Was a simplified form of the United Kingdom Income Tax Act of 1920
- Tax rates were graduated according to the income of the tax payer

The Income Tax Ordinance 1937

- Introduced through the Devonshire White Paper.
- It was hoped that it would work successfully in Kenya because it had worked very well in India and South Africa.
- The tax base was to be business profits, salaries and wages, rent and income from agricultural produce or livestock.

Colonial era

The East African Tax Department – 1948

- Formed by the three governors of East Africa who saw no need of running taxes individually
- Formalized by the East Africa Income Tax (Management) Act in 1952

Independence era

Sessional Paper no:10 of 1965

- Set out the first fiscal strategy after independence
- Proposed the following policies
 - i. Exempting from direct taxes people making extremely low incomes.
 - ii. Retaining the progressive income tax
 - iii. Adopting progressive inheritance taxes.
 - iv. Making any capital gains tax progressive.
 - v. Exempting basic necessities from sales and excise taxes.
 - vi. Taxing luxury items heavily

Independence era

The Income Tax Act of 1973

- Commenced on 1st January 1974
- Codified as Chapter 470 of the laws of Kenya
- It is the current income tax legislation in Kenya
- The Act also saw the creation of an Income Tax Department within Treasury with the sole responsibility for the provision for the charges, assessment and collection of Income Tax.

Early 90's

- Major reorganizations and strengthening of the fiscal and tax management function in the Treasury occurred.
- Led to the introduction of Personal Identification Numbers (PINs)
- All taxpayers had to have PINs which had to be produced in order to make transactions.
- Government declared a tax amnesty to all taxpayers who declared their true income or sources which they had hidden in the past

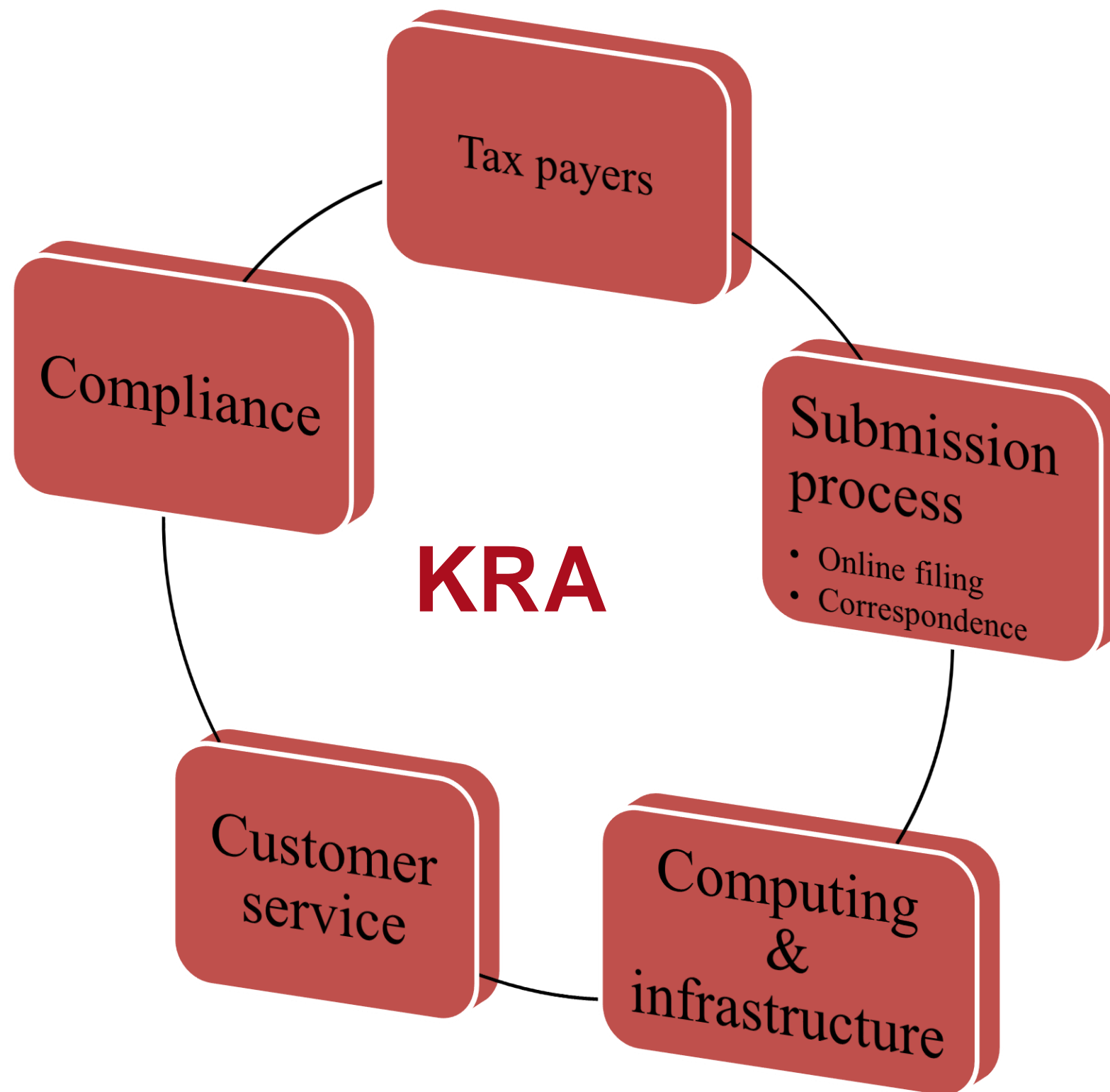
Kenya Revenue Authority

- Established by an Act of parliament on 1st July 1995
- Was the culmination of the reforms and reorganizations that the government had taken in the tax management sector
- The authority is charged with the responsibility of collecting revenue on behalf of the government

2004 onwards

- Manual tax system posed various administrative challenges
- KRA drafted its 2nd Corporate plan bringing about reforms
vide: *Revenue Administration Reform and Modernization Programme (RARMP) in 2004/05.*
- It advocated for three drastic changes and systems:
 - ✓ Integrated Tax Management Systems (ITMS)
 - ✓ Electronic Tax Registers (ETR's) – VAT
 - ✓ 2005 Simba System- to sort the challenges in customs

Current tax system(i- tax)



iTax – Every thing is connected

- Registrar of Motor Vehicles
- Commissioner of Lands
- Registrar of Companies
- County Government – building approval
- Department of immigration
- Registrar of Births
- Intelligence gathering

Technology - impact on revenue collection

- Increased revenue collection in the latter years attributable to
 - ✓ Ease in filling and improved compliance amongst citizens
 - ✓ Blocking of loopholes of revenue loss present in manual systems
 - ✓ Wider tax base
- Assisted to detect and curb tax evaders by establishing tax payers database
- Improved accountability of revenue collected

Technology - Impact on Taxpayers

- Service delivery
 - ✓ Taxpayers can access tax ledgers conveniently
- Timeliness
 - ✓ Shortened the duration to file taxes & objection and generation of tax payment slips
- Effectiveness
 - ✓ From customers feedback it's easier and faster to follow up and address tax challenges online
- Enhanced accountability
 - ✓ Presence of ledgers of tax payers account and trail of activity in the account
- Improved transparency
 - ✓ Noted as people feel confident when they can track their issues with the taxman

Technology and compliance

- Compliance management via
 - ✓ Ease and facilitation to file amended tax records
 - ✓ Helps tax payers and their agents via online advisory
- Debt and Enforcement
 - ✓ Assessment and notification of tax liability via emails
 - ✓ Improves consistency on follow-up of debts
 - ✓ Has eased application of waiver and tax amnesty
- Acting as tax policy advisor
 - ✓ I-tax & KRA website encloses with it tax acts, FAQ, support videos which are helpful to tax agents, tax payers & revenue officers

Technology - compliance

9:02

4G 93

Penninah.Munga@kra.go.ke

to me, Ephraim.Munene

From: Kenya Revenue Authority <kenyarevenueauthority@kra.go.ke>

Date: Mon, Sep 16, 2019 at 3:14 PM

Subject: INSTALMENT TAX AND BALANCE OF TAX- SEPTEMBER 2019

To: [REDACTED]

Dear Esteemed Taxpayer,

Our records show that you are a player in the **Digital Economy** and you have never filed your returns nor paid the relevant taxes.

For purposes of being tax compliant, You are required to file all outstanding returns due and pay all the relevant taxes within Seven (7) days of this communication.

Please note that taxpayers in **Digital Economy** are required to file and pay the following taxes;

PAYE- Applicable to employers who pays salaries and wages within PAYE threshold, the tax is due on or before 9th of the Succeeding every month

VAT- Applicable to suppliers of goods and services with a turn over of five million and above in any period of 12 months payable on or before 20th of the Succeeding Month

Excise Duty- Applicable to suppliers of goods and services which are excisable payable on or before 20th of the Succeeding Month.

Corporation taxes- any person with an income accruing from gains or profits from any business, employment or services rendered (E-commerce industry) . the Tax payable on or before 30th June for individuals and Partnerships and

on or before Six (6) months after the end of the accounting date for Corporates.

Dear [REDACTED]

RE: DTD – TAX SERVICE OFFICE – WEST OF NAIROBI TAXPAYERS’ REMINDER TO PAY INSTALMENT TAX AND BALANCE OF TAX- SEPTEMBER 2019.

Kenya Revenue Authority recognizes and appreciates your invaluable contribution to the governments’ revenue generation agenda.

In an effort to enhance tax compliance, the Tax Service Office - West of Nairobi reminds you about the obligation to pay your Installment tax and Balance of tax for your company **on or before the 20th September 2019.**

If you have any challenges in making the payment please contact your Account Manager and/or Relationship Manager for further guidance.

Thank you for your continued support.

From: taxbaseexpansion@kra.go.ke [mailto:taxbaseexpansion@kra.go.ke]

Sent: 24 September 2019 16:01

To: [REDACTED]

Subject: RE: NOTICE OF ASSESSMENT

Good Afternoon,

Find attached notice of assessment for your estimated VAT amount you owe KRA.

Regards
Project
Manager
Tax
Base
Expansion
Domestic
Taxes Department



File your tax
returns and chill
#Tujenge

Don't get caught up in the last minute rush. File your tax returns before 30th June 2019.
Log on to <https://itax.kra.go.ke> today!



Tuape Ushuru, Tujenge!



<https://www.kra.go.ke/images/KRA-Mail-Disclaimer.pdf>

Challenges arising from technology

- Mismatch in assessments
 - ✓ suppliers experiencing inconsistencies with VAT input taxes calculated by the VAA
- Tax base
 - ✓ Compared to the population statistics and number of registered taxpayers , a huge variance is visible thus the system does little to bridge the principle of equity
- Mismanagement and fraud by officers denying Kenya its revenue
- System failures
 - ✓ Time outs and bugs during tax payers end year at times has discouraged all parties involved
- Customer feedback
 - ✓ The feedback at times is delayed and inconsistent

New Regulations

➤ ADR Regulations

- ✓ Aims for win-win amicable resolutions on tax disputes.
- ✓ Will help tax man recover shortfall taxes and still enable continuity of businesses.

➤ VAT Regulations 2019

- ✓ Places emphasis on electronic registers
- ✓ Bound to improve on VAA
- ✓ Seeks to improve VAT collection.

Roundtable Report

KRA responses to issues raised

- Tax base expansion
 - ✓ Proposal to have special tax regime for SMEs and micro enterprises
- VAT Act implementation
 - ✓ WHVAT-guidelines on appointment of WHVAT agents
- Tax disputes resolution and litigation
 - ✓ ADR mechanism to fast-track dispute resolution
- Lengthy VAT refunds process
 - ✓ Streamlining process to ensure efficiency
- Efficiency in cargo clearance
 - ✓ SGR operations has improved clearance time

KRA's 6th corporate Plan

Strategic priorities

VISION

To facilitate Kenya's transformation through innovative, professional and customer focused tax administration

MISSION

Building trust through facilitation so as to foster compliance with tax and customs legislation

CORE VALUES

Trustworthy
Ethical
Competent
Helpful

Strategic priorities

- Enhance revenue collection and strengthen enforcement
- Strengthening the revenue administrative capacity & enhancing transparency & fairness;
- Creating a staff establishment that is professional, courteous, accessible and pro-active in solving customer problems;
- Enabling business by leveraging on technology

Strategic priorities

➤ Enhancing revenue collection

- ✓ Broadening the tax base through an enhanced taxpayer recruitment;
- ✓ Revamped debt programme;
- ✓ Enhanced efficiency of the audit programme;
- ✓ Implementation of ADR;
- ✓ Becoming the lead border agency;
- ✓ KRA becoming a fully automated single collector;
- ✓ Fully implementing the enterprise risk management framework;
- ✓ Reforming the organizational structure to meet the challenges of implementation.

Strategic priorities

➤ Creating a staff establishment

- ✓ The 'people issues' will be central to the achievement of the Plan targets as KRA staff will need to grow revenues by over 20%
- ✓ Targets will be contingent on highly motivated staff, exhibiting high levels of staff satisfaction.

Strategic priorities

➤ Enabling business by leveraging on technology

- ✓ Implementation of enhanced business systems to ensure accountability;
- ✓ Implementation of a full electronic customer service to enhance service delivery;
- ✓ Exploit technological advances such as cloud computing and mobile platforms to improve

Have these initiatives led to an increase in revenue collection?

	KShs. “billions”					
Item	2013	2014	2015	2016	2017	2018*
Revenue collected	775.7	919	1,031.8	1,153	1,306.6	1,440.2
GDP	4,496	5,402.6	6,284.2	7,194.1	8144.4	8904.9
Tax to GDP (%)	17.25	17.01	16.42	16.03	16.04	16.17

Source

*Kenya gazette vol cxxi – No 93
Budget policy statement
Economic survey

Review of proposed legislative and regulatory changes

Finance bill 2019

Income tax bill
2018

Finance Bill 2019 Highlights

Income Tax

➤ **Withholding tax on new services**

- ✓ Security services
- ✓ Cleaning & Fumigation
- ✓ Catering (outside hotel)
- ✓ Transport of goods
- ✓ Sales promotion
- ✓ Marketing and advertising services

Income Tax

➤ **3% Turnover tax**

- ✓ By 20th of following month
- ✓ 15% presumptive tax
- ✓ Gross receipts

1 January 2020

➤ **CGT increases to 12.5%**

➤ **Digital market – online trading**

- ✓ VAT to apply as well

1 October 2019

Income Tax

➤ **15% Income Tax** – plastic recycling companies

- ✓ First 5 years

➤ **Amnesty** for SME's listing under GEMS program

- ✓ Penalties & interest waived

1 October 2019

➤ **30% income tax** not applicable on exempt dividends

➤ **Exemption** for Ajira Digital Program

- ✓ Digital free lance workers
- ✓ 10,000 p.a 'tax'

1 January 2020

Tax Procedures

➤ Departure prohibition order

- ✓ Extended to company representatives e.g CEO, MD, Co secretary, treasurer

➤ 60 day Commissioners response to objection

- ✓ Pegged on the date further information is provided
- ✓ Process moved to ADR team

➤ PIN requirements

1 October 2019

- ✓ Professional membership bodies – entry & renewal
- ✓ Pay bill & till no registration
- ✓ Can obtain PIN exemption

VAT

➤ VAT on imported services

✓ Unregistered person

1 October 2019

➤ **2% WVAT** down from 6%

Excise Duty

➤ Betting services

- ✓ 10% of amount wagered/staked

1 October 2019

➤ Fuel guzzlers over 3000 cc (Petrol) 2500cc (Diesel)

- ✓ 35%

➤ General penalty

- ✓ Kshs 2m and/or 2 years imprisonment

Draft Income Tax Bill 2018

Overview

- The Income Tax Bill, 2018 (the bill) has 11 parts, 65 sections and 8 schedules.
- It operationalizes the TPA
- CGT and TP provisions have now been expanded to full schedules.
- On digital transactions and TP – Regulations to be passed

Has the bill met our expectations

- It is simple
- It has less jargon
- Less bulky
- Responds to the needs of a modern economy
- Aligned to our economic development goals and the Big Four

Agenda

New definitions

- **All loans-** now excludes local loans
- **Control** - arise through
 - ✓ shares (not less 20% of voting power),
 - ✓ loans (75% of assets),
 - ✓ guarantee exceeding 75% of all guarantee,
 - ✓ Appointment of more than 50% of the board,
 - ✓ use of intangibles,
 - ✓ monopoly of sales and purchases > 90%

Definitions...

- **Deemed interest-** rate depends on the foreign market rate where funds are sourced from
- **Management or professional fee-** expanded to include payments incidental to the provision of such services.
- **Permanent home -** Where a person lives or the place where personal and economic interests are closest

Definitions...

- **Permanent establishment:** Expanded to include;
 - ✓ **Warehouse** for a person providing storage facilities to others
 - ✓ **Farm, plantation, forestry plantation** or wherever related activities are carried on
 - ✓ A sales outlet
 - ✓ **Professional services** provided including through an agent for a period exceeding **91 days** in a twelve month period

Dividend income

➤ Includes:

- ✓ Cash or assets distributed to;
- ✓ Discharge of obligation on behalf of;
- ✓ Loans paid on behalf of;
- ✓ Amount used by the company for the benefit of; and
- ✓ An amount that distorts or reduces the taxable income due to transactions with; a shareholder or a person related to the shareholder

Key changes

- **Value of a benefit-** The **KShs. 3,000** threshold has been dropped.
 - ✓ proposes the value of benefit to be higher of the cost to the employer or the fair market value.
- Threshold for **exempt dividends** for companies has been raised from **12.5%** to **25%**.
- **Thin capitalisation test-** increased 3:1 to 2:1
- **Per diems-** The **KShs 2,000** dropped in favour SRC rates.
- Compensating tax reduced from **42.8%** to **30%**

Key changes...

➤ Repatriated income tax

- ✓ The tax rate is 10% in addition to branch tax at 30%.

➤ Sacco – all non-member interest taxed

➤ Relief for payments for a health policy

➤ Limitation on benefits under DTAs expanded to;

- ✓ include businesses that are actively engaged in generation of income.

➤ **Exemption** – bill reserves the right to exempt

- ✓ The first schedule has reduced the number of organizations that are tax exempt.
- ✓ This includes parastatals and other foreign bodies that were exempted in the repealed act

Key changes...expenses

- Capital expenses **on lease-** (Repealed)
- **Capital alterations** made to maintain **rent-** Repealed.
- Diminution in value- rate reduced from 33.3% **to 25%.**
- Extension of losses- the **CS** can extend by **2 years**
- If **WHT is not accounted for**, the expense will not be allowable for tax purposes.
- Disallows expenses not included in the **income** of the **beneficiary**

Key changes – cross border transactions

- **Preferential tax regime** means a jurisdiction that:
 - ✓ does not tax income or taxes income at a tax rate less than sixteen percent; or
 - ✓ Does not have an effective exchange of information arrangement; or
 - ✓ Does not allow access to banking information; or
 - ✓ lacks transparency on the details of its application including details of; corporate structure, ownership of the legal entities located therein.

Key changes – cross border transactions

➤ TP Documentation

- ✓ Taxpayers need to maintain TP documentation.
- ✓ penalty of 2% of the transaction value imposed if TP documentation is not maintained.

➤ Country by country reporting

- ✓ to be filed by parent company or a constituent company
- ✓ To be filed not later than twelve months after the last day of reporting of the MNE

Cross border transactions...

- **ALP for commodities where quoted or public price is available the price should be determined in line with;**
 - ✓ an international or domestic commodity exchange market; or
 - ✓ recognized price reporting statistical or governmental price setting agencies; or
 - ✓ any other index that is used as a reference by unrelated parties to determine prices in transactions between them;

Cross border transactions...

❖ **ALP for intangible must take into account the contractual arrangements in respect of;**

- ✓ development,
- ✓ enhancement,
- ✓ maintenance,
- ✓ Protection, and
- ✓ exploitation of the asset

Investment Allowance

Capital expenditure incurred on	Current Rate	Rate of Investment Allowance
a) Commercial building.	25%	10% per annum in equal instalments
b) Hotel building - first year of use	25%	60%
c) Building used for manufacture	100%	100%
d) Petroleum gas storage facilities	150%	60%
Residual value in (b) and (d) above.		25% p.a in equal instalments
e) Educational buildings.	50%	10% per annum
f) Hospital buildings.	-	100%

Investment Allowance

Capital expenditure incurred on	Current rate	Rate of Investment Allowance
a) Machinery used for manufacture.	100%	100%
b) Hospital equipment.	-	100%
c) Ships or aircrafts	100%	60%
Residual value in (c) above.		50% per annum
d) Farm works.	100%	100%

Investment Allowance

Capital expenditure incurred on	Current rate	Rate of Investment Allowance
Motor vehicles and earth moving equipment.	25% & 37.5%	25% per annum
Computer and peripherals and software	30%	25% per annum
Furniture and fittings.	12.5%	10% per annum
Telecommunications equipment	20%	10% per annum
Filming equipment	100%	10% per annum

Proposed tax rates

Current ITA	Proposed ITB 2018
Non-resident rate rental income tax rate is 30%	Non resident rental income tax proposed rate is 20%
Tax rate for branches is 37.5%	Proposed tax rate for branches is 30%
EPZ-10 year tax holiday and 10% for next 10 years and 30% thereafter	EPZ & SEZ tax rate 10%- first 10 years
SEZ-10%-10years, 14% next 10 years and 30% thereafter	15% - next 10 years Thereafter at 30%

Thank you for listening



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