



**ICPAK PRESS STATEMENT - ISSUED ON THE SIDELINES OF THE 5<sup>TH</sup> PUBLIC  
SECTOR ACCOUNTANTS CONFERENCE HELD AT THE LEISURE LODGE BY CPA  
ROSE MWAURA, ICPAK CHAIRMAN.**

*16<sup>TH</sup> OCTOBER 2019*

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As mandated under the Accountants Act and in accordance with our credo to uphold public interest, we wish to bring to the attention of the public various issues of national importance.

**(a) Public Debt**

Last week Parliament gave the Government the greenlight to borrow more money after Members of Parliament raised the debt ceiling to Kshs 9 trillion reflecting the government's increasing appetite for loans despite concerns over the pace at which the debt is accumulating.

Parliament has through Legal Notice No. 155 of 26th September 2019 approved the change to a numerical limit of total public debt of Ksh 9 trillion in place of the current 50 percent of the GDP in net value terms. Almost 90% of GDP.

According to the recent Central Bank of Kenya (CBK) statistics, the country's debt currently stands at Kshs 5.81 trillion, which includes Kshs 3.01 Trillion of external and 2.8 Trillion of domestic debts as at 30 June 2019. According to the statistics from the National Treasury, Medium Term Debt Management Strategy 2019, debt sustainability indicators show that Kenya faces a moderate risk of external debt distress due since public debt is estimated at 52.7 percent of GDP which is lower than the World Bank debt sustainability threshold of 70 percent. Kenya public finance management threshold was initially set at 50 per cent of net present value of debt to GDP ratio in line with the East Africa Community debt threshold.

Current debt levels are almost at 60% of GDP compared to the 70% threshold set by the World Bank.

Parliament argues that this change will allow government to access concessional funding sources, release monies that would otherwise be borrowed by government from Commercial Banks to individuals and MSMEs. In addition, the previous limit was unclear and difficult to verify compliance and thus undermines accountability.

Against this backdrop, the Institute recommends that the State to be guided by Article 206 of the Constitution of Kenya and provisions of the Public Finance Management Act, 2012 in the management of public resources. We are asking the Government to Prioritize the following:

- (i) **Fiscal Consolidation:** The Institute takes note of the recent expenditure rationalization measures adopted by the National Treasury such as controlling costs around foreign

travel, hospitality, cleaning and having regular audits of the payroll register among others.

We are happy to see that the Government is recognizing the need for fiscal consolidation to reduce budget deficit. As a country we must start living within our means which means acknowledging the limitations of our revenue collections and designing our spending around this and not vice versa.

All expenditure rationalization measures must have tangible targets and outcomes and should not hinder service delivery.

Efficiency gains, not additional funding, is the key to effective implementation of government projects without further accumulation of debt. The 2019/2020 budget has indicated a commitment to fiscal consolidation through limiting government spending as well as enhancing revenue collection. Efficiency gains entail effective utilization of public resources such that the country is able to achieve more with fewer resources

- (ii) Over the medium term, the National Government's borrowings should be used only for financing development expenditure and not for recurrent expenditure.

Public debt and obligations should be maintained at a sustainable level. According to the Parliamentary Budget Office (PBO), in order to finance major infrastructural and other flagship project, sustained borrowing needs for the country have quadrupled over the past seven years and as a result, the stock of debt has had an annualized growth rate of 16% for since June 2013 to reach Ksh. 5.8 Trillion as at the end of June 2019. If debt is mainly for financing development expenditure as stipulated by section 15(2)(c) of the Public Finance Management Act then it will be sustainable in the long-run.

The prudent use of the borrowed funds also is very critical and must be addressed.

- (iii) The objectives for debt management should be clearly defined and publicly disclosed, and the measures of cost and risk that are adopted should be explained.

The government should also consider the following measures to enhance public financial management.

- a) Expenditure Vs Revenue: In the past few years, public expenditure has been growing at a faster pace than revenue. The major outcome has been huge budget deficits.
- b) Consider PPP framework as a better alternative: The government ought to enhance these partnerships to tap into the benefits that the contribution of the private sector brings to the economy which will eventually help bring down the level of external debt financing.
- c) Implementation of budget monitoring reports: Act on Auditor General and Controller of Budget recommendations in respect to public debt and theft of public funds
- d) Enhance accountability in public and private sectors to free more resources to development.
- e) Public availability of information on debt management policies and overall national debt book including an audit of the debt stock by the Auditor General and publication of the results;

## **(b) Tax amnesty**

Two weeks ago, the Institute released a report on the implication of Tax amnesty which covered the periods starting on 31st December 2016 to 30th June 2018. The amnesty was later extended to 30<sup>th</sup> June 2019 by the Finance Act 2018.

According to KRA, the uptake of the amnesty was a success with 3,532 amnesty applications approved totaling to Kshs 118.8 billion as at the close of the amnesty period, 30 June 2019. However, there were no set outcomes in terms of how much was expected to be repatriated and therefore it was not possible to assess the rate of success of the amnesty from the data available.

ICPAK's study identified several challenges including: system downtime and application challenges, lack of clear communication strategy, fear of uptake, weak monitoring and evaluation mechanisms and, issues relating to data management.

Considering these challenges and the need to generate more revenue in order to address budgetary deficits, the Institute proposes implementation of the following measures:

1. KRA to develop and implement a clear communication strategy on tax amnesty.
2. To avoid tax amnesty misuse, KRA to develop a strategy which has inbuilt guidelines to ensure that the money repatriated to the country is not returned outside the country but invested in the country for a specified period.
3. Enhance the policy to include declaration of real assets including movable and immovable assets.
4. Ensure that the main tax management system (iTax) has adequate capacity and global access to enable applicants to file their request from all corners of the world. In the absence of a robust IT program, a manual system to assist in compliance should be instituted.
5. Ensure future Tax Amnesty Programmes should have clear policy measures geared towards increased tax revenues for the country in the medium to long term. For improved tax revenues, the tax amnesty should be extended to non-filers and delinquents.
6. Use the data and intelligence gathered to enhance future compliance and improve the tax regime in the country.

**(c) ICPAK membership concerns on the treatment of taxpayers, tax agents and tax practitioners**

The Institute is concerned by the vilification and harassment of tax payers and ICPAK members acting in their capacity as tax agents and tax practitioners.

It is important to point out the critical and complementary role that ICPAK members acting as, employees (financial and tax accountants), independent tax advisors and consultants play in enhancing tax compliance and revenue collection;

ICPAK members merely advise clients on the applicable law and applying the law to a given set of facts, proffer an advisory opinion for the client's consideration. It would be unjust for the tax administrator and the DCI to criminalize such advisory acts and or arrest taxpayers and agents over matters that are currently under review at the Tax Appeals Tribunal or in Alternative Dispute Resolution. Our members' singular objective is to ensure that clients pay the appropriate taxes in line with the legal provisions.

We are further concerned that the investor confidence is rapidly eroding due to the fact that taxpayers and the economy at large are hurting as a result of the aggressive approach taken in enhancing tax compliance including arrest of tax payers and agents by the DCI officers.

Section 32 of the Tax Appeals Tribunal Act provides for procedures for referral of matters to the High Court in case any of the parties do not agree to the outcomes of the TAT or ADR. We are seeing instances where tax-payers and agents are being arrested and taken to court over matters

that are currently under review at the Tax Appeals Tribunal. This goes against the fair administrative practices.

It is useful to highlight the High Court’s pronouncement on 14<sup>th</sup> October 2019 in *Africa Spirits Limited vs Director of Public Prosecution, Inspector General of Police and 7 Others High Court Miscellaneous Criminal Application Number 407 of 2019*. Judge L Kimaru, at page 22 of this judgment, ruled that under Kenyan tax laws KRA is the body that is recognized and authorized to administer tax laws. Consequently, in the performance of its duties, the DCI “*must exercise jurisdictional deference to other authorities that have been established by statute to fulfil their mandates.*” The DCI investigations must not overreach its jurisdiction.

Guided by this ruling, we look forward to KRA appropriately discharging its statutory mandate without the interference of the DCI. Section 7 of the Tax Procedures Act gives KRA all the mandate it requires including acting as a police officer.

We are confident that the existing tax laws provide a sufficient and robust framework for amicably resolving and where appropriate, penalizing tax non-compliance without harassing tax payers and practitioners.

**CPA Rose Mwaura**

Chairman, ICPAK

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