

# BUDGET NEWSLETTER

## 2016/2017

THE POWER OF BEING UNDERSTOOD  
AUDIT | TAX | CONSULTING



## ECONOMIC REVIEW

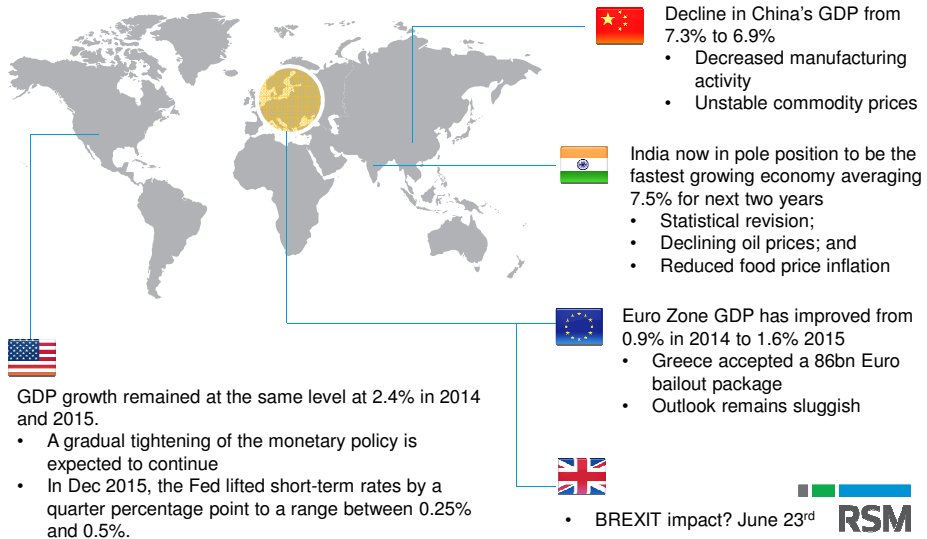
Presented By - Sachan Benawra



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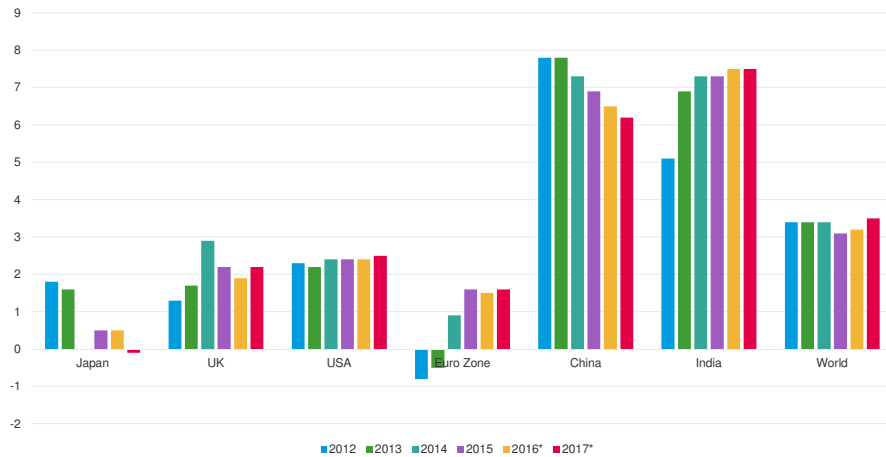
## Global Economy Overview

In 2015, GDP growth declined to 3.1% in 2015 from 3.4% in 2014.



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## Global Economy – Real GDP Growth (%)



SOURCE: WORLD ECONOMIC OUTLOOK: OCTOBER 2015 & APRIL 2016  
IMF. FIGURES FOR 2016 & 2017 ARE PROJECTIONS.



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## Africa Economic Highlights

### Sub-Saharan Africa

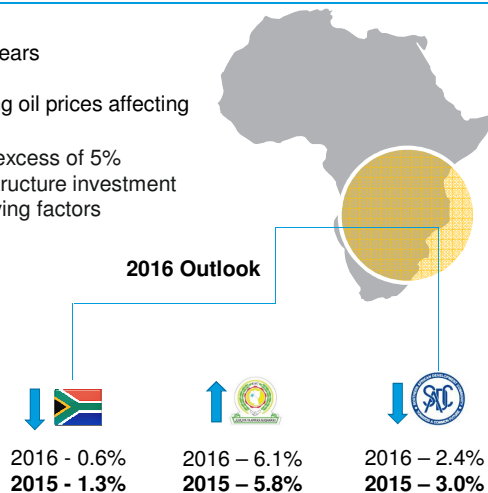
- Economic activity at lowest level in 15 years
- GDP declined from 5.1% to 3.4%
- Unstable commodity prices and declining oil prices affecting major oil economies - Nigeria
- Most oil importing countries growing in excess of 5% (Kenya, Senegal, Cote d'Ivoire) – Infrastructure investment and strong private consumption key driving factors

### Regional Blocks

- SADC recorded slowed growth of 3% - 2015 (3.2%, 2014) – Declining South African Economy
- EAC average growth rate of 5.8% - 2015 (6.0%, 2014) – Regional elections, political instability

### Outlook

- Further decline expected due to the lower demand by China, largest single trading partner of Sub-Saharan Countries
- Currency devaluations remain a concern



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# World Economic Forum – Global Risk Assessment 2016

## Top 10 risks in terms of Likelihood

- 1 Large-scale involuntary migration
- 2 Extreme weather events
- 3 Failure of climate change mitigation and adaptation
- 4 Interstate conflict
- 5 Natural catastrophes
- 6 Failure of national governance
- 7 Unemployment or underemployment
- 8 Data fraud or theft
- 9 Water crises
- 10 Illicit trade

## Top 10 risks in terms of Impact

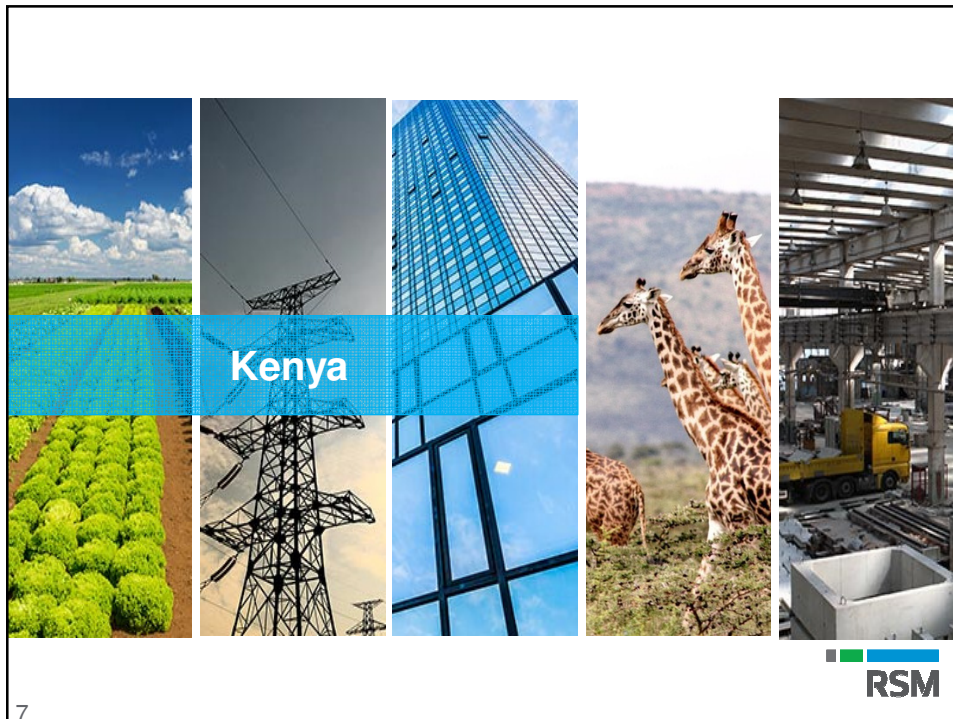
- 1 Failure of climate change mitigation and adaptation
- 2 Weapons of mass destruction
- 3 Water crises
- 4 Large-scale involuntary migration
- 5 Energy price shock
- 6 Biodiversity loss and ecosystem collapse
- 7 Fiscal crises
- 8 Spread of infectious disease
- 9 Asset bubble
- 10 Profound social instability

### Categories

- ◆ Economic
- ◆ Environmental
- ◆ Geopolitical
- ◆ Societal
- ◆ Technological



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## Economic Overview

- Kenya's economy continues to gain momentum – GDP expanded by 5.6% in 2015, a slight improvement compared to 5.3% in 2014.
- Interest rates recorded mixed performance:
  - Central Bank Rate (CBR) increased from 8.5% in December 2014 to 11.5% December 2015
  - 91 Day Treasury Bill is now hovering at 7.5% against the highest recorded in October 2015 of 22%
- The Kenya Shilling depreciated against the major trading international currencies.
- Total public debt has increased by a staggering 70% in a span of 4 years from Shs 1.5 trillion to Shs 2.6 trillion between 2012 to 2015. When measured against GDP, this represents an increase of 6%.
- Total exports rose by 8.2% to Shs 0.6 trillion in 2015, while total imports declined by 2.5% to Shs 1.6 trillion.
- For the first time in over 5 years, the rise in the total export earnings compared to the decline in the total import bill led to the improvement of export-import ratio from 33.2% in 2014 to 36.8% in 2015.



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## Sector Highlights – 2015 Performance



- Improved performance on the backdrop of good weather
- Sector recorded improved earnings from tea and horticultural exports
- Earnings from coffee declined by 27% due to decreased output as a result global decline in coffee prices



- Growth of 13.6% experienced broadly based on infrastructure projects
- Cement production and consumption rose however exports of cement declined by 5.7%
- Total installed electricity capacity increased by 6.3% together with electricity generation which increased by 4.1%



- Deposit liabilities held by commercial banks grew by 17.1%.
- 2 banking institutions were placed under receivership causing concern on the financial health of the sector.
- NSE share 20 index dropped by 21% in 2015 due to the weakening shilling against dollar outflows



- Tourism earnings declined by 12.6% – travel advisories and perceived insecurity
- In 2015, Government increased budgetary allocation from Shs 5.6 bn to 10.7 bn.



- Manufacturing output increased from 3.2% to 3.5% in 2015 - lower petroleum prices and reduced production costs spurring growth
- Cheap imports, high cost of capital and disincentives to export delayed VAT refunds affecting the sector



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## Budget Projections

### “Consolidating Gains for a Prosperous Kenya”

	<b>Shs Billion</b>	
Ordinary revenue	1,376.4	<ul style="list-style-type: none"> <li>• The Budget is still in the final stages of the approval process and as a result the Finance Bill 2016 is pending issuance</li> <li>• Over budget deficit has increased by Shs 122 billion (21%) from 2015/2016 budget</li> <li>• The fiscal deficit of Shs 691.6 billion in the FY 2015/2016 will be financed by net external financing of Shs 462.3 billion (an increase of 36% from last years budget) and domestic borrowing of Shs 229.3 billion</li> <li>• External borrowing represents now represents 6.3% of GDP (5.2% previously) and domestic borrowing is now 3.1% of GDP (previously 3.5%)</li> </ul>
Ministerial: Appropriation - in - Aid	124.2	
Grants	72.6	
	<b>1,573.2</b>	
Recurrent expenditure	852.8	
Development expenditure	809.0	
County allocation	284.8	
Interest payment and pensions	311.0	
Net lending	2.1	
Contingencies fund	5.0	
	<b>2,264.7</b>	
<b>Overall budget deficit</b>	<b>(691.6)</b>	
<b>Financed by:</b>		
Net external borrowing	462.3	
Domestic borrowing	229.3	
	<b>691.6</b>	
Unfunded expenditure	0.0	



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## Kenya's Perceived Position

**Bloomberg**

One of the 7<sup>th</sup> Best Countries in for investments and 2<sup>nd</sup> biggest market for retail investors



Ease of Doing Business Report – improved from 129 to 108 out of 189 economies



Global Competitiveness Report 2015/2016 - Kenya ranked 42 out of 140 countries for Financial Market Development



1<sup>st</sup> in world for leveraging technology for financial inclusion



Corruption Perceptions Index measures the perceived levels of public sector corruption worldwide. Kenya ranks 139 / 168 countries.

- Uganda is joint with Kenya at 139
- Tanzania - Ranked 117
- Rwanda - 44



The CAF World Giving Index, is a leading authority on global generosity.

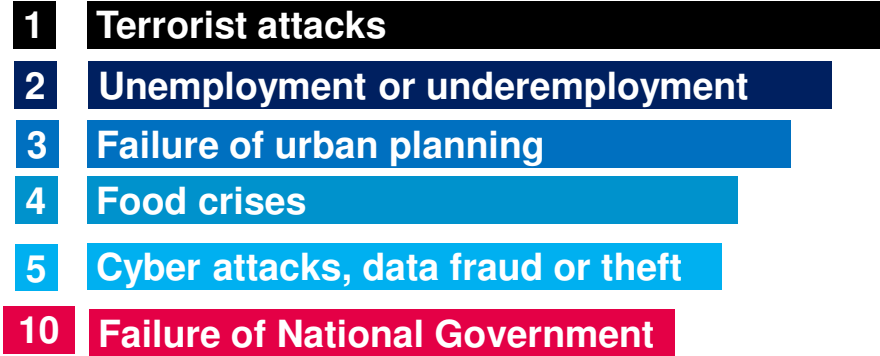
- Ranked number 15 in the globally
- Number 1 in Africa



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## Highest Concern for Doing Business – Kenya

### Top 5 Risks



Source: Global Risks Report 2016



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## Challenges

- Insecurity
- Civil services not aligned to manage available resources / serving the public - changing culture and capacity building
- High cost of living and unemployment
- Narrow range of exports and the slow growth in their value compared to the growth of imports
- High cost of financing and its impact on private sector borrowing
- Major economic and social disparities across regions of the country;
- Wastage in public expenditure
- A rapid population growth rate, proliferation of informal settlements and governance problems



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## DIRECT AND INDIRECT TAXES

Presented By - Stephen Okoth



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### Personal Tax

- Income tax changes are effective from 9<sup>th</sup> June 2016 unless specifically indicated

#### **Personal Relief**

- Personal relief increased from Shs 13,944 p.a. to Shs 15,360 p.a. (w.e.f. 1<sup>st</sup> Jan 2017)
- Tax bands had not changed since 2005
- Tax free income increased from Shs 11,137 per month to Shs 12,260

#### **PAYE Bands - from 1<sup>st</sup> January 2017**

From (pa)	To (pa)	%	Tax for Band
-	134,164	10	13,416
134,165	260,567	15	18,960
260,568	386,970	20	25,280
386,971	513,373	25	31,600
	Over 513,373	30	



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## Personal Tax

### Current PAYE Bands to 31<sup>st</sup> December 2016

From (pa)	To (pa)	%	Tax for Band
-	121,968	10	12,196
121,969	236,880	15	17,236
236,881	351,792	20	22,982
351,793	466,704	25	28,728
Over 466,704		30	

### Exempt Income

- Bonuses, overtime and retirement benefits paid to low income earners (i.e. earning Shs 121,969 p.a.) are exempt from tax (w.e.f. 1<sup>st</sup> July 2016)



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## Income Tax - Administrative Matters

### Ordinary revenue

- 2015/16 - Shs 1.184 trillion (18% of GDP)
- 2016/17 - Shs 1.376 trillion (18.6% of GDP)

### Taxing the Informal Sector

- KRA to explore ways of taxing the informal sector
- Possible introduction of presumptive tax

### iTax

- KRA to have additional powers to collect information in advance of the return dates for the purposes of pre-populating the information in the iTax system

### Revised Income Tax Act

- Plans to table this in the next financial year



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## Income Tax - Administrative Matters

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### Residential Rental Income Tax Rules, 2016

Rules cover:

- Submission of returns and payment of tax
- Penalties and interest
- Disallowing expenses and capital deductions
- Disputes
- Transitional provisions including non-deduction of losses brought forward from 31<sup>st</sup> Dec 2015
- Election for exemption procedures



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## Income Tax - Amnesty

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- Tax amnesty in respect of any income for and up to 31<sup>st</sup> Dec 2016 that has been declared for 2016 by the person earning taxable income outside Kenya provided that the return and accounts are submitted on or before 31<sup>st</sup> Dec 2017
- Principal taxes, penalties and interest for and up to 2016 to be remitted on submission of the return
- Commissioner shall not follow up on the source of income and assets
- W.e.f. 1<sup>st</sup> January 2017
- Not applicable where a person has already been assessed or is under a tax audit



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## Income Tax - Revenue Measures

### **Interest on EADB Bonds**

- Bonds issued by the East African Development Bank and traded on the NSE will be exempt from tax (w.e.f 1<sup>st</sup> July 2016)
- Conversely, any costs related to exempt income will not be allowed for tax

### **Reduced Rate of Corporation Tax**

- Rate of tax for a company that constructs 1,000 residential units annually, subject to approval by CS responsible for housing) reduced from 30% to 20% (w.e.f. 1<sup>st</sup> Jan 2017)

### **Tax Incentive from Hiring of Apprentices**

- An additional rebate of 50% on salaries paid by employers who engage at least 10 apprentices who are university graduates, for 6 to 12 months
- To be claimed within 3 years



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## Income Tax - Revenue Measures

### **Deemed Interest**

- The definition of deemed interest has been moved from the body of the Act to the definition section

### **Low Rental Income**

- Residential rental income below Shs 144,000 per annum per person will be exempt from income tax

### **Capital Gains Tax**

- Transfers of assets between spouses, immediate family members, as well as to a company where spouses or a spouse and immediate family members hold 100% of the shareholding shall be exempt from CGT
- Immediate family members is defined to mean children of the spouses or former spouses



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## Income Tax - Revenue Measures

### Withholding Tax On Rental

- Finance Act 2015 had a provision for the deduction of withholding tax at a rate of 12%, but this had not been codified in Section 35
- Withholding tax now deductible on payment of rent, premium or similar consideration for the use or occupation of immovable property
- However, this is only applicable to a person appointed for that purpose by the Commissioner, empowering the Commissioner to appoint tenants and agents as withholding tax agent
- The withholding tax rate also reduced from 12% to 10% (w.e.f. 1<sup>st</sup> Jan 2017) - This is an error as the rate should have been reduced from 9<sup>th</sup> June 2016



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## VAT - Administrative Measures

- All VAT changes take effect from 9<sup>th</sup> June 2016 unless specifically mentioned
- Withholding VAT regime is re-introduced. Government agencies and appointed agents will be required to withhold 6% of the taxable value and remit to KRA directly. 10% of the taxable value will be paid to the suppliers
- Instead of the Cabinet Secretary for Treasury, the Kenya Film Commission ("KFC") will be the authority to recommend exemption of goods imported or purchased locally by local film producers and local filming agents
- Procedures are proposed for appointment of tax representatives by non-resident persons with no fixed place of business in Kenya



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## VAT - Revenue Measure

### **Imports from EPZ**

- Purchases of made-up garments and leather footwear manufactured in an EPZ at the point of importation is VAT exempt

### **Animal Feeds**

- Specific raw material used in the manufacture of animal feed is now exempt, thereby making the final products more affordable to farmers
- The exempted raw materials include maize bran, wheat pollard or wheat bran, cotton seed cake or sunflower seed cake
- The current VAT treatment favoured integrated manufactures of oil, flour and animal feed to those specifically producing only animal feeds



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## VAT - Revenue Measure

### **Tourism**

- Entry fees into national parks now exempted from VAT
- Commissions earned by tour operators also exempted
- Previously taxed at 16%

### **Petroleum Products**

- Petroleum products to remain VAT exempt from an additional year from September 2016
- These products including oils, motor and aviation spirits, white spirits, kerosene and gas oil were to become taxable at 16% on the expiration of the 3 year transition introduction by the VAT Act, 2013
- LPG will remain exempted



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## VAT - Revenue Measure

### **Service Charge**

- Service charge paid in lieu of tips is excluded from taxable value of supplies by hotels and restaurants (w.e.f 1<sup>st</sup> January 2017) provided that:
  - the charge is distributed directly to employees in accordance with a written agreement with the employee; and
  - charge does not exceed 10% of the price of the service, excluding such service charge.

### **Official Aid Funded Projects (Vehicles)**

- Motor vehicles for use in official aid funded projects are now exempt, just like other taxable goods used in that regard

### **Military Supplies**

- Military supplies, equipment and machinery, including specialised motor vehicles imported or purchased locally for official use by Kenya Defense Forces (“KDF”) or National Police Service are now exempted from VAT



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## VAT - Revenue Measure

### **Aviation**

- Direction finding compasses, instruments and appliance for aircraft exempted

### **Exemptions for National Museums**

- Museum and natural history exhibits and specimens and scientific equipment for public museums
- Chemicals, reagent, films, filmstrips and visual/aids equipment imported or purchased the by National Museums
- The repatriation of Kenyan artifacts



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## VAT - Revenue Measure

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### **Exempt Items**

- Goods and services for direct and exclusive use in the construction of recreational parks upon recommendation by the CS responsible for matters relating to recreational parks
- Goods for direct and exclusive use in the construction of specialised hospitals with accommodation facilities upon recommendation by the CS responsible for health
- Wheat seeds exempted. This aligns the tax treatment with other seeds

### **Zero-rated Items**

- Medicaments containing antibiotics of tariff 3003.20.00



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## VAT - Revenue Measure

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### **Miscellaneous VAT Changes - (w.e.f. 1<sup>st</sup> July 2017)**

- Definition of the word “export” is enhanced to include (sales to) Special Economic Zones Enterprises (SEZs). Supplies to SEZs were previously exempted but now they will be zero rated
- Definition of the word “importation” is enhanced to include (purchases from) Special Economic Zones Enterprises
- Special Economic Zones Enterprises, just like EPZs, where supplies to them are to be zero-rated



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## VAT - Revenue Measure

### **Miscellaneous VAT Changes (w.e.f. 1<sup>st</sup> July 2017)**

The term “hotel” has now been clarified to “include serviced flats, serviced apartments, beach cottages, holiday cottages, game lodges, safari camps, bandas, or holiday villas and other premises or establishments used for similar purposes but does not include:

- premises under a lease or licence of not less than one month, unless the agreement relating thereto provides that by prior arrangement the occupier may, without penalty, terminate the lease or licence on less than one month’s notice; or
- premises operated by an educational or training institution approved by the CS responsible for education for the use of the staff and students of that institution; or
- premises operated by a medical institution approved by the CS responsible for health, for the use of the staff and students of that institution.



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## Customs - Administration Measures

### **Imports**

- The effective date of Customs duties is on 1<sup>st</sup> July 2016
- Imports into Kenya to be on Cost and Freight basis (CFR) and the insurance component to be insured locally
- KRA will work with the stakeholders to ensure implementation of the Insurance Act in this matter
- KRA to use Certificate of Conformity (CoC) while valuing imported goods
- New legislation to be proposed to streamline the training, licencing and regulation of clearing agents. Proposals are to harmonise the approach at the EAC level



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## Customs - Revenue Measure

### Iron and Steel Products

- A specific import duty of 25% of USD 200 per metric ton introduced on a number of imported iron and steel products available in the regional markets for one year
- Duty is increased **from 0% to 10%** on the iron and steel products of the following HS codes: 7208.52.00, 7208.53.00, 7208.54.00 and 7208.90.00
- Duty is increased **from 10% to 25%** on iron and steel products of HS Codes 7213.10.00, 7213.20.00, 7213.99.00, 7227.10.00, 7227.20.00, 7227.90.00
- Duty is increased **from 10% to 25%** on finished iron and steel products of 7308.10.00, 7308.20.00, 7308.40.00, 7318.15.00. 9406.00.90
- Specific duty is introduced on iron and steel products at 25% or USD 200/MT



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## Customs - Revenue Measure

### Made-Up Fishing Nets

- Duty increased from 10% to 25%

### Smart Cards and Sim Cards

- Duty increased from 10% to 25%

### Worn Clothes and Other Worn Articles

- Specific duty increased from USD 0.20per Kg to USD 0.40per Kg



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## Customs - Revenue Measure

### Aluminium

- To promote the manufacture of aluminium cans, the duty on plates and sheets of aluminium alloys not available in the region reduced from 25% to 0% under the duty remission scheme
- Import duty on aluminium cans increased from 10% to 25%.

### Stoves

Import duty on energy saving stoves is reduced from 25% to 10%. This is to encourage the use of energy efficient stoves that support conservation of the environment. The reduction will align the energy efficient stoves with similar stoves and cookers that use gas, electricity and other fuels that attract import duty at 10%



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## Customs - Revenue Measure

### Oil or Petrol Filters for Engines

- Duty increased from 10% to 25%

### Duty Remissions

- Inputs for the manufacture of matches: Duty remitted at a rate of 0%. This is aimed at protecting the low forest cover in the region
- Nylon yarn: Duty remitted at 0% instead of 25%
- Trigger sprays and lotion pumps: Duty remitted at 10% instead of 25%. This measure is informed by the realisation that these products are not available locally
- Inputs for manufacture of solar equipment's: Duty remitted at 0%. This will increase the use of solar energy
- Bars and rods for manufacture of automobile accessories: Duty remitted at 0%
- Aluminium plates and sheets for manufacture of cans: Duty remitted at 0% instead of 25%. This is to support the local industry



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## Customs - Revenue Measure

### **Duty Remissions**

- Motor cycle kits: Duty remitted at 10% for one year
- Wheat grain: Duty remitted at 10% instead of 35%
- Inputs for agricultural equipment's: Duty remitted at a rate of 0%
- Raw sugar for refining into industrial sugar: Duty remitted at 0% for one year on condition that the refined sugar shall be sold only to manufacturers in the region except Tanzania
- Industrial sugar: Duty remission is reduced from 90% to 85% for FY 2017/2018, 80% for FY 2018/19 and 75% for FY 2019/20
- Palm stearin RBD: Removed from the remission scheme



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## Customs - Revenue Measure

### **Stay of Application of CET**

- Rice: Duty on rice to Kenya shall be at 35% or USD 200/MT, whichever is higher, instead of 75% or USD 345/MT
- Iron and Steel Structures: Duty rate for the goods imported into Kenya to remain at 25% or USD 250/MT, whichever is higher, for FY2016/17
- Screws, Bolts and Nuts: Duty remains at 25% or USD 250/MT, whichever is higher
- Revenue Stamps: Duty rate on revenue stamps for Kenya to increase from 0% to 25%.
- Paper and Paper Board: Duty increased from 10% to 25%
- Gas Cylinders: Duty increased from 0% to 25%
- Made up garments and footwear manufactured in EPZ: Duty rate reduced to 0%



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## Customs - Revenue Measure

### Exemptions

- **Incinerators for hospitals and Blood Collection Tubes:** This is to make the items affordable to hospitals
- **Refrigeration equipment's for funeral homes.** This is to ensure equipment for keeping dead bodies is affordable to mortuaries
- **HVAC Air conditioning equipment used manufacturers of pharmaceutical products.** This is to support the local industry in meeting WHO standards

### Removal from Exemptions:

- Uniforms for hospital staff are no longer exempted
- Spare parts and accessories for solar equipment no longer exempted from duty
- Inputs for agricultural equipment are also deleted from exemptions



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## Excise - Revenue Measures

The effective date of Excise duty is on 9<sup>th</sup> June 2016

### Kerosene

- Excise duty is introduced on illuminating kerosene at Shs 7,205 per 1,000 litres

### Motor Vehicles

- A flat 20% duty introduced instead of the fixed duty based on the age of the vehicle. Previously the rates were:
  - Motor vehicle less than 3 years old - Shs 150,000
  - Motor vehicles over 3 years old - Shs 200,000.

### Cosmetics and Beauty Products

- Excise duty is imposed at 10% on perfumes, toilet waters, make-ups, pedicure and manicure products, hair care, shaving preparations



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## Excise - Revenue Measures

### **Plastic Bags**

- Other plastic bags (of tariff 3923.21) will also now attract excise duty at Shs 120 per kg like plastic shopping bags. These two products may be used interchangeably
- Vacuum bags for packing food juices, tea and coffee have been excluded

### **Water**

- Ordinary water is now specifically excluded from excise duty. Mineral water and aerated water will continue to attract duty at Shs 5 per litre

### **Official Aid Funded Projects**

- Materials, equipment and motor vehicles imported or purchased locally for the implementation of official aid funded projects are now exempted from excise duty to the extent provided for under the financing agreement.



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## Excise - Revenue Measures

### **Inflation Based Increase**

- Based on the provision of the Act all specific duties will be adjusted by inflation from the beginning of a financial year. This should have been adjusted from 1<sup>st</sup> July 2016, but KRA have indicated that they will not adjust the rates for this financial year

### **Film Industry**

- Based on the provision of the Act all specific duties will be adjusted by inflation from 1<sup>st</sup> July 2016

### **Special Economic Zones (SEZs)**

- SEZs are now treated as areas outside Excise Jurisdiction and as such a sale of goods or services to an SEZ is regarded as an export. Similarly purchases from an SEZ is regarded as an import (w.e.f. 1<sup>st</sup> July 2016)



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## MISCELLANEOUS AMENDMENTS AND THE COMPANIES ACT, 2015


Presented by – Simon Fisher



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## FINANCIAL SECTOR ACHIEVEMENTS

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- Kenya ranked 42 out of 140 countries for Financial Market Development in the 2015/16 World Economic Forum Global Competitiveness Report
  - Capital markets in line for a Global Financial Centre ranking after being voted the most innovative in Africa by Africa Investor
  - In 2015, Kenya ranked position 1 in the world for leveraging technology to drive inclusion by Brookings Financial and Digital Inclusion Project (FDIP)



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## BANKING INDUSTRY

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### Measures to strengthen bank supervision

- Central Bank Bill to be presented to parliament
- Oversight of commercial banks IT systems to be enhanced
- Central Bank to strengthen supervision function in terms of numbers and competencies (ICT and forensic audits)
- Strengthening corporate governance practices in banks
- Review of quantum of penalties for regulatory violations
- Publication of Central Bank's enforcement actions



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## BANKING INDUSTRY - continued

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- Re-introduction of measures to increase the minimum core capital requirements for banks to (Shs 5 billion by 31<sup>st</sup> December 2019) to ensure a strong and stable banking system
- Increase in penalty for violation of the Banking Act or the Prudential Guidelines from the current maximum of Shs 5 million to Shs 20 million with the possibility of additional penalties for each day that the violation continues



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## BANKING INDUSTRY - continued

### Cross border information sharing

- Additional amendments to the Banking Act as well as the SACCO Societies Act to facilitate cross border information sharing and to allow SACCOs and utility companies to more effectively participate in the Credit Information Sharing (CIS) framework

### Naming of SACCOs

- Only SACCOs that are licensed for deposit taking will be allowed to use the acronyms DTS or DT-SACCO for deposit taking SACCO Society

### Online forex trading

- Measures taken to develop a legal framework for online trading of foreign currency which goes hand in hand with making Nairobi an International Financial Hub. There are therefore proposals to amend the Capital Markets Authority Act and relevant regulations for effective and secure online foreign exchange trading



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## RETIREMENT BENEFIT SCHEMES

- Institutions licensed by the Retirement Benefits Authority to be issued with non-renewable perpetual licences, on the same basis as banks are now licensed
- The investment guidelines for retirement benefit schemes are to be reviewed to allow investment in new products, including exchange-traded derivatives and Real Estate Investment Trusts
- The Retirement Benefits Occupational and Individual Regulations are to be amended to allow separate medical funds to be established, into which employees can contribute so that they can purchase medical cover on retirement



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## INSURANCE INDUSTRY

### Solvency

- Insurance Act was amended in the last Finance Act to facilitate a risk based solvency approach. The current budget proposes additional amendments expanding the allowable forms of capital and reflecting the new gross premium valuation methodology across different classes of business

### Claim settlement

- Maximum time in which a claim is settled to be reduced from 90 to 30 days

### Takaful Insurance Products

- Sharia compliant or Takaful insurance products to be anchored in the Insurance Act. Regulations will also be issued to govern Takaful Insurance



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## OTHER MISCELLANEOUS AMENDMENTS

### Levies

- Road Maintenance Levy is to be increased from Shs 12 per litre to Shs 18 per litre on all petroleum products
- Tea and sugar development levies to be removed. The institutions that were funded from these levies will now be funded from the exchequer
- Other levies, e.g. National Environment Management Authority and National Construction Authority to be removed in order to reduce the cost of doing business



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## OTHER MISCELLANEOUS AMENDMENTS – Con't

### Competition Act

- The Act is to be amended to:
  - make it obligatory for stakeholders to provide information to the Authority when requested to do so;
  - clarify that the penalty levied on companies that engage in restrictive trade practices is to be a maximum of 10% of the company's gross annual turnover; and
  - remove mergers whose effect has no great impact on competition or restrictive trade practices from the scope of the Act



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## OTHER MISCELLANEOUS AMENDMENTS – Con't

### Air Passenger Service Charges

- To be increased
  - from \$40 to \$50 for external travel
  - from Shs 500 to Shs 600 for internal travel
- The additional revenue earned will be used exclusively for the promotion of tourism

### Clearing agents

- Legislation will, subject to agreement at EAC level, be introduced that will streamline the training, licensing, and regulation of Kenyan clearing agents, with a view to strengthening controls on the import supply chain

### Public Private Partnership Act

- Currently County Governments are not recognised as potential procuring entities under the Act. The Act will be amended so that the private sector can participate in projects undertaken by County Governments



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## PROPOSED CHANGES TO LEGISLATION

The Cabinet Secretary mentioned the following new legislation in the pipeline:

- Central Bank Bill
- Moveable Property Security Rights Bill
- The Nairobi International Financial Centre (NFIC) Bill
- The Financial Services Authority (FSA) Bill

Not mentioned was the Companies Act, 2015, which has been passed but only partially brought into force



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## The Companies Act 2015 - Introduction

- Assent - 11<sup>th</sup> September 2015
- Published - 15<sup>th</sup> September 2015
- Modelled on the UK Companies Act 2006
- 42 PARTS - 1026 SECTIONS
- 6 SCHEDULES
- 750 pages



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## Companies Act 2015

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### Transitional arrangements

- Sections dealing with company formation, company directors, company secretaries, and share capital were brought into force with effect from 6 November 2015
- Sections dealing with accounting records, financial statements, annual reports and audit, among others, have not yet been brought into force
- Even when these sections are brought into force, the sections of the old Act dealing with accounts and audit will continue to apply to financial years that began before these sections were repealed – i.e. even if they were repealed today by bringing into force the respective sections of the new Act, financial statements for the year ending 31 March 2017, or earlier, would still be prepared in compliance with the old Act



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## Companies Act 2015

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### Fines

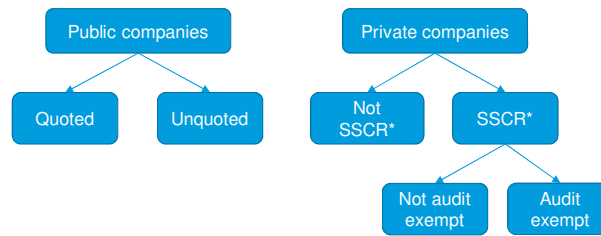
- Almost every requirement of the Act has a fine specified for non-compliance
- These lie generally in the range of Shs 200,000 to Shs 1,000,000 (for each officer in default), and in some cases there are fines per day if the default is not rectified of between Shs 20,000 and Shs 100,000, and/or 5 years imprisonment
- However, these penalties are generally payable “on conviction”, suggesting that someone would have to take you to Court. It is not clear whether the Registrar of Companies will actively pursue prosecutions



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## Companies Act 2015 – Accounting records and financial statements

Different provisions apply to different kinds of company



\*SSCR = Subject to the Small Companies Regime



56

## Companies Act 2015 – Auditing of financial statements

### Exemption

- For a **small** company to be exempt from audit, its turnover must be not more than Shs 50 million and the value of its net assets not more than Shs 20 million
- A company that is part of a **group** is not entitled to exemption unless the group qualifies as a **small group**



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## Companies Act 2015 – Auditing of financial statements

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### Filing of financial statements

- All companies will have to file their annual financial statements and reports with the Registrar
- Companies subject to the Small Companies Regime only have to file a balance sheet



58

## Companies Act 2015 – Accounting records and financial statements

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### Additional disclosures in financial statements

- For a **group**, and a company **not subject to the small company regime**, the average number of persons employed within each 'category' must be disclosed in the notes
- The 'categories' are to be determined by the directors, having regard to the manner in which the company's activities are organised
- The notes shall also disclose:
  - a) Wages and salaries paid or payable to those employees
  - b) Costs incurred in respect of retirement and other benefits for employees



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## Directors' reports

- For companies **not subject to the small companies regime**, the report shall also include a business review containing a fair review of the company's business and a description of the principal risks and uncertainties facing the company
- There are additional requirements for quoted companies

## Directors' reports

- For any company **for which an audit has been carried out** the directors' report shall include a statement that, with respect to each director, there is no relevant information of which the company's auditor is unaware, and the director has taken all reasonable steps so as to be aware of any relevant audit information and to establish that the company's auditor is aware of that information
- Failure to take reasonable steps to prevent the directors' report including a false statement of the above could result in a fine not exceeding Shs 1 million or 5 years imprisonment or both

### Publication of financial statements and reports

- **Private companies** will not be required to hold an annual general meeting (AGM)
- **Every** company shall send a copy of its financial statement and reports to every member of the company
  - A **private** company must do this within 9 months of the balance sheet date
  - A **public** company must do this at least 21 days before the date of the AGM
- Failure to do so could result in a fine not exceeding Shs 1 million and Shs 100,000 per day per director upon conviction



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### Changes for years ending 31 December 2016

- For unlisted companies the main change is the order in which paragraphs are placed - the opinion will come first - but there will be specific reference to:
  - other information in the annual report
  - The directors' responsibility for assessing the company's ability to continue as a going concern
- For listed companies the report will include a section on key audit matters



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THE TAX PROCEDURES ACT, 2015

ALTERNATIVE DISPUTE RESOLUTION (ADR)  
FRAMEWORK

THE TAX APPEALS TRIBUNAL ACT, 2013

Presented By – Ashif Kassam



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A white line-art world map is centered on a blue background. The map is populated with various small icons representing different aspects of global business and industry, such as a factory, a ship, a plane, a house, a gear, and a person. The map is enclosed in a dashed white border.

THE TAX PROCEDURES ACT, 2015



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# Contents

- Background and commencement
- Consequential amendments
- Administration of tax laws
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- PIN
- Tax Compliance Certificate
- Tax arrangements
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- Appointed persons
- Tax Agents
- Continuing obligations
- Prescribed forms
- Official languages
- Record keeping
- Electronic tax systems
- Submission of documents
- Due dates
- Admissibility of documents
- Notices by Commissioner
- Rulings
- Enforcement
- Tax returns
- Tax assessments
- Defects and rectifications
- Tax decisions, objections and appeals
- Late interest payment
- Penalties
- Offences
- Collection and recovery



66

## Background and Commencement

- Unless a tax law provides a specific procedure that is unique, the procedures provided under this Act apply
- Tax laws defined to include:
  - The Tax Procedures Act (TPA)
  - Income Tax Act (ITA)
  - Value Added Tax Act (VATA)
  - Excise Duty Act (EDA)
  - Regulations or other subsidiary legislation made thereunder



67

## Taxpayers - Use of PIN

- State PIN on any return, notice or other document submitted or on any documentation required for a specified transaction
- PIN shall not be used by any other person (other than a tax agent) other than to whom it was issued
- The PIN may be used by a tax agent when:
  - the person has given written permission to the tax agent to use the PIN; and
  - the tax agent uses the PIN only in respect of the tax affairs of the person.



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## Taxpayers - Specified Transactions for which PIN is required

- Registration of titles and stamping of instruments
- Approval of development plans and payment of water deposits
- Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles
- Registration of business names
- Registration of companies
- Underwriting of insurance policies
- Trade licensing
- Importation of goods and customs clearing and forwarding
- Payment of deposits for power connections
- All contracts for the supply of goods and services to Government Ministries and public bodies
- Opening accounts with financial institutions and investment banks



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## Tax Compliance Certificate

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- TCC shall be valid for the period specified in the certificate, upon the applicant fulfilling conditions that the Commissioner may impose
- The Commissioner may revoke a TCC if the Commissioner finds that the person has failed to honour a demand for tax or has violated the provisions of a tax law



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## Refund of Overpaid Tax

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- When a taxpayer has overpaid a tax, the taxpayer may apply to the Commissioner, in the approved form within five year of the date on which the tax was paid
- Commissioner may ascertain the validity of the refund and subject the claim to an audit
- Commissioner shall notify in writing of the decision in relation to the application



71

## Refund of Overpaid Tax

- Overpayment to be applied in the following order:
  - in payment of any other tax owing by the taxpayer under the tax law;
  - in payment of a tax owing by the taxpayer under any other tax law; and
  - any remainder shall be refunded to the taxpayer.



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## Taxpayers - Tax Representatives

- A person is the TR of another person for the purposes of this Act or a tax law in the case of:
  - individual under a legal disability - guardian or other legal representative
  - company – CEO, MD, company secretary, trustee or a resident director or similar officer acting or purporting to act in such a position
  - an association - person responsible for accounting
  - a partnership or limited partnership - a partner or a manager responsible for accounting
  - a trust (other than of an estate) - trustee of the trust
  - appointed person (administrator, personal representative, executor of a will, trustee-in-bankruptcy, receiver or liquidator) - person appointed in respect of the taxpayer under that section



73

## Taxpayers - Tax Representatives - Obligations

- Responsible for performing any duty or obligation imposed by a tax law including the submission of returns and payment of a tax
- TR to comply with the requirements of the tax law
- More than one TR - each of them responsible for the obligations
- Where a TR pays tax on behalf of and with the authority of a taxpayer, the TR shall be indemnified by the taxpayer
- Subject to certain provisions, any tax payable shall be recoverable from the TR only to the extent of the income or assets of the taxpayer that are in the possession or under the control of the tax representative



74

## Taxpayers - Tax Representatives (TR) - Personal Liability

- TR personally liable for the payment of any tax due if the TR:
  - alienates, charges, or disposes of any monies received or accrued in respect of which the tax is payable; or
  - disposes of or parts with any monies or funds belonging to the taxpayer that are in the possession of the TR or which come to the TR after the tax is payable, when such tax could legally have been paid from or out of such monies or funds.



75

## Taxpayers - Appointed Persons

- Include an administrator, personal representative, executor of a will, trustee-in-bankruptcy, receiver, or liquidator who has been appointed to administer, manage, liquidate, or wind up the affairs of a taxpayer, including a deceased taxpayer
- Required to notify the Commissioner of the appointment within 15 days
- Commissioner to notify an appointed person amount of tax that is payable or will become payable within 2 months of receiving the notification



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## Taxpayers - Appointed Persons - Procedures for Sell

- Subject to certain priority, an appointed person shall:
  - not dispose of an asset without prior approval of the Commissioner until notified of the tax payable or the expiry 2 months without the Commissioner notifying the appointed person of the tax payable;
  - set aside the amount notified by the Commissioner out of the proceeds of sale of an asset, or a lesser amount as agreed to by the Commissioner; and
  - be personally liable to the extent of the amount required to be set aside for the tax payable.
- Appointed person can pay following in priority:
  - a debt that has priority, in law or equity, over the tax payable; or
  - the expenses properly incurred by the appointed person including the appointed person's remuneration.



77

## Tax Agents - Appointment and Representation

- A person, other than a tax agent, shall not:
  - represent another person as that person's tax agent; or
  - offer assistance to another person for a reward in respect of that person's rights or obligations under a tax law unless that person is a legal practitioner acting in the ordinary course of the person's profession.



78

## Taxpayers - Continuing Obligations

- Every person carrying on a business shall, within 30 days notify the Commissioner of any changes:
  - in the place of business, trading name and registered address; or
  - in case of:
    - an incorporated person - persons holding 10% or more of the issued share capital;
    - a nominee ownership - disclose the beneficial owner of the shareholding;
    - a trust - the full identity and address of the trustees and beneficiaries of the trust;
    - a partnership - the identity and address of all partners; or
    - cessation or sale of the business - all relevant information regarding liquidation or details of ownership.



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## Due Date for Submission

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- If the date for:
  - submitting or lodging a tax return, application, notice, or other document;
  - the payment of a tax; or
  - taking any other action under a tax law,falls on a Saturday, Sunday or public holiday, the due date shall be the previous working day; provided that a person who submits a tax return in electronic form and pays the tax electronically, the due date remains the date specified in the relevant tax law.



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## Rulings - Public Ruling

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- Binding on the Commissioner and not be binding on a taxpayer
- Notice in at least 2 newspapers with a nationwide circulation - a heading specifying the subject matter of the ruling and an identification number
- Take effect on the date specified in the public ruling or from the date published
- Set out the Commissioner's opinion and shall not be a decision of the Commissioner



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## Rulings - Public Ruling Withdrawal

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- A public ruling that has been withdrawn shall:
  - continue to apply to a transaction commenced before the public ruling was withdrawn; and
  - not apply to a transaction commenced after the public ruling was withdrawn to the extent that the ruling is withdrawn.



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## Rulings - Private Ruling

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- An application shall be in writing and shall:
  - include all relevant details of the transaction together with all relevant documents;
  - specify precisely the question on which the interpretation is required; and
  - give a full statement including the tax law.
- To be issued 45 days the application
- Notify the applicant if Commissioner decides not to make a private ruling
- Private ruling binding on the Commissioner if the taxpayer has made a complete and accurate disclosure of the transaction and the transaction has proceeded in all material respects as described in the application
- A private ruling that is inconsistent with a public ruling that is in existence at the time of the making of the private ruling shall supersede the public ruling to the extent of the inconsistency with the public ruling



83

## Rulings - Publication of a Private Ruling

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- Publication in at least 2 daily newspapers by without disclosing the identity of the applicant
- Any person may rely upon the published ruling as a statement binding on the Commissioner based on the facts set out in the ruling and for the reporting period covered by the ruling
- When a ruling has been withdrawn, the Commissioner shall immediately publish a notice of withdrawal giving the date from which the ruling shall cease



84

## Enforcement

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- Power to inspect documents
- Powers to seize and search - with a warrant, have full and free access to any property, documents, or data storage device and also to secure these before obtaining a warrant
- Notice to appear before the Commissioner - where person has committed an offence under a tax law
- Production of records - produce for examination documents (including in electronic format) that are in the person's custody or control



85

## Tax Returns - Extension of Time

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- Extension of time required to submit the tax return - application before the due date
- Commissioner may grant an application if satisfied that there is reasonable cause, and shall notify the applicant in writing
- An extension shall not alter the due date for payment of any tax due



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## Tax Assessments - Self Assessment

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- A taxpayer who has made a SAR may apply within 5 years of the submission date to make an amendment to the SAR
- - Commissioner may:
  - amend the SAR; or
  - refuse the application,and shall notify the taxpayer within 30 days of receiving the application.



87

## Tax Assessments - Default Assessment

- Where a taxpayer has failed to submit a tax return, the Commissioner may, based on the information available and to the best of his judgement, make an assessment referred to as a “**default assessment**” specifying:
  - tax assessed;
  - late submission and payment penalty and interest payable;
  - reporting period to which the assessment relates;
  - due date for payment of the tax, being not less than 30 days from the date of service of the notice; and
  - the manner of objecting to the assessment.
- Unless there is gross or willful neglect, evasion or fraud, a DA shall not be made after 5 years



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## Tax Assessments - Advance Assessment

- Risk of tax default make an “**advance assessment**” based on available information and using best
- May be made before the return due date
- Made in accordance with the tax law in force at the date the assessment is made
- Notice shall specify the:
  - amount of tax assessed;
  - amount of any penalty payable;
  - reporting period to which the assessment relates;
  - due date for payment; and
  - the manner of objecting to the assessment.
- Taxpayer still required submit a tax return as required



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## Tax Assessments - Amended Assessment

- Commissioner may amend an assessment (“original assessment”) by making alterations or additions, from the available information and to the best of the Commissioner’s judgement
- In the case of gross or willful neglect, evasion, or fraud - at any time
- In other cases within 5 years of:
  - for SAR - the date the taxpayer submitted the SAR; or
  - for any other assessment - the date the Commissioner notified the taxpayer of the assessment.



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## Tax Decisions, Objections and Appeals - Objections

- A notice of objection is validly lodged if:
  - It states precisely the grounds, the amendments required, and the reasons for the amendments; and
  - the taxpayer has paid the entire amount of tax due that is not in dispute.
- Commissioner to consider the objection and decide either to allow the objection in whole or in part, or disallow it - “objection decision”
- Notify the taxpayer of the objection decision in the case of an objection to an assessment, making an amended assessment
- An objection decision shall include a statement of findings on the material facts and the reasons for the decision
- Where an objection decision not made within 60 days - the objection shall be allowed



91

## Collection and Recovery - Order of Payment

- Payments to be applied in the following order:
  - payment of principal tax;
  - payment of penalty; and
  - payment of late payment interest.
- More than one tax liability - applied against the tax liabilities in the order in which the tax liabilities arose



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## Collection and Recovery - Late Interest Payment

- Late payment interest - 1% per month or part thereof
- Computed as simple interest
- Late payment interest:
  - in respect of withholding tax; or
  - in respect of tax due from a tax representative, appointed persons, company officers, payers, appointed agents or transferee,shall be borne personally by the person and not be recoverable from any other person.



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## Penalties - General Provisions

- A person shall not be subject to both the imposition of a penalty and the prosecution of an offence in respect of the same act or omission
- Commissioner shall decide whether to make a demand for the penalty or to prosecute the offence
- A person may apply in writing to the Commissioner for the remission of the penalty giving the reasons for the application
- The Commissioner may upon an application or on the Commissioner's own motion and with the approval of the CS Treasury remit, in whole or in part, any penalty payable by a person except a penalty imposed on account of tax avoidance



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## Penalties - Failing to Keep Documents / Late Submission

Offence	Penalty
<ul style="list-style-type: none"> <li>• Failure without reasonable cause to keep, retain, or maintain a document required under a tax act</li> </ul>	<ul style="list-style-type: none"> <li>• Shs 100,000/= or 10% of the tax payable to which the document relates for the reporting period to which it relates; whichever is higher</li> </ul>
<ul style="list-style-type: none"> <li>• Failure to submit a tax return after the due date</li> </ul>	<ul style="list-style-type: none"> <li>• Employment income - Shs 10,000/= or 25% of the tax due, whichever is higher</li> <li>• Turnover tax - Shs 5,000/=</li> <li>• Other cases - Shs 20,000/= or 5% of the tax payable, whichever is higher</li> </ul>
<ul style="list-style-type: none"> <li>• Failure to submit a document, other than a tax return, as required under a tax law by the due date. Penalty ceases at the time the document is received by the Commissioner</li> </ul>	<ul style="list-style-type: none"> <li>• Shs 1,000/= for each day or part day thereof, not exceeding Shs 50,000/=</li> </ul>

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## Penalties - Tax Shortfall

Offence	Penalty
<ul style="list-style-type: none"> <li>Knowingly making a statement or omitting from a statement any matter without which the statement is false or misleading in a material particular; and if the tax liability of that person or another person computed on the basis of the statement is less than it would have been had the statement not been false or misleading ("tax shortfall")</li> </ul>	<ul style="list-style-type: none"> <li>75% of the tax shortfall when the statement or omission was made deliberately; or 25% in any other case</li> <li>The penalty increased by 10% on second application; or 25% on third or subsequent applications</li> <li>The penalty reduced by 10% when that person voluntarily discloses to the Commissioner the statement or omission prior to the discovery by the Commissioner of the tax shortfall; or the commencement of a tax audit, whichever is the earlier</li> </ul>

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## Penalties - Tax Avoidance and Electronic Tax Systems

Offence	Penalty
<ul style="list-style-type: none"> <li>Application by the Commissioner of a tax avoidance provision in raising of an assessment</li> </ul>	<ul style="list-style-type: none"> <li>Double the amount of tax that has been avoided</li> </ul>
<ul style="list-style-type: none"> <li>Failure to submit a tax return in electronic form or paying a tax electronically, and then failing to satisfy the Commissioner within 14 days of receiving a written notice from the Commissioner requesting the reasons for the failure</li> </ul>	<ul style="list-style-type: none"> <li>Shs 100,000/=</li> </ul>



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## Penalties - Tax Avoidance and Electronic Tax Systems

Offence	Penalty
<ul style="list-style-type: none"> <li>Failure to appear before the Commissioner pursuant to a notice issued for an apparent offence committed under a tax law</li> </ul>	<ul style="list-style-type: none"> <li>Shs 10,000/= in case of an individual and Shs 100,000/= in any other case</li> </ul>
<ul style="list-style-type: none"> <li>Fraudulent claim for a refund of tax</li> </ul>	<ul style="list-style-type: none"> <li>Two times the amount of the claim</li> </ul>



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## Offences - Sanctions

Offence	Sanction
<ul style="list-style-type: none"> <li>General</li> </ul>	<ul style="list-style-type: none"> <li>Fine not exceeding Shs 1 million and to imprisonment for a term not exceeding 3 years, or to both</li> </ul>
<ul style="list-style-type: none"> <li>Offences relating to failure to observe the duties of an Appointed Person; not providing security for payment; failure to rescue property distrained or goods seized; failure to comply with an agency notice; failure to comply with a High Court order made for the preservation of funds; departing or attempting to depart from Kenya in contravention of a departure prohibition order; not paying a transferred tax liability; or an offence committed by officers and staff of the authority</li> </ul>	<ul style="list-style-type: none"> <li>Fine not exceeding Shs 2 million and to imprisonment for a term not exceeding 5 years, or to both</li> </ul>

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## Offences - Sanctions

Offence	Sanction
<ul style="list-style-type: none"> <li>• Tax fraud including omitting from the return amounts which should have been included; claiming of relief or refund not entitled to; making incorrect statements which affect the tax liability; preparing false books of account or other records; or deliberately defaulting on any obligations imposed</li> </ul>	<ul style="list-style-type: none"> <li>• Fine not exceeding Shs 10 million or double the tax evaded, whichever is higher or to imprisonment for a term not exceeding 10 years, or to both</li> </ul>
<ul style="list-style-type: none"> <li>• Acting as a tax agent without being licensed; failing to notify the Commissioner in a meeting at least 7 days before ceasing to carry on the business as a tax agent; or assisting a taxpayer to create a tax avoidance scheme, or abets or aides a taxpayer to evade tax</li> </ul>	<ul style="list-style-type: none"> <li>• Fine not exceeding Shs 5 million or double the tax evaded, whichever is higher, or to an imprisonment for a term not exceeding 5 years, or to both</li> </ul>

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## Collection and Recovery - Extension of Time to Pay

- Apply in writing to the Commissioner for an extension of time to pay a tax due
- The Commissioner may, if satisfied that there is reasonable cause:
  - grant the taxpayer an extension of time; or
  - require the taxpayer to pay the tax in such instalments as the Commissioner may determine.
- Default - the whole balance outstanding at the time of default shall become immediately payable
- Liable for any late payment interest arising from the original date



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## Collection and Recovery

- Security for payment - a person to furnish a security in such manner and in such amount as the Commissioner may prescribe
- Security on property - direct the Land Registrar to create a security over any land or building to the extent of the taxpayer's interest
- Distress order - issue a distress order for recovery of an unpaid tax by distress and sale of the movable property of a taxpayer
- Recover by suit - an unpaid tax as a civil debt due to the Government and, where the amount does not exceed Shs 100,000/=, the debt shall be recoverable summarily



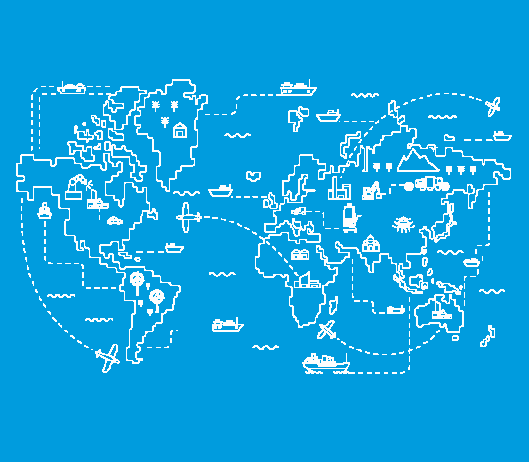
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## Collection and Recovery


- Agency notice - where there are reasonable grounds to believe that the taxpayer will not pay the tax by the due date - require a person to pay the amount specified in the notice to the Commissioner
- Preservations of funds - require a person to preserve such money, and not transfer, withdraw, dispose of or otherwise deal with that money except as provided for in the notice for a period of 10 working days or until the application by the Commissioner is heard and determined by the High Court
- Seize goods on which tax is or may become due
- Departure prohibition orders



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ALTERNATIVE DISPUTE RESOLUTION (ADR) FRAMEWORK



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## Legal Backing


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**Tax Procedures Act (TPA)**

- Court or Tribunal permits settlement of the dispute outside the judicial process - settlement shall be made within 90 days
- Where parties fail to settle the dispute within 90 days - referred back to the body that granted the leave

**Tax Appeals Tribunal (TAT) Act**

- Parties may at any stage apply to the Tribunal to be allowed settle outside the Tribunal
- Tribunal to grant the request under such conditions as it may impose
- Parties to report to the Tribunal the outcome



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## KRA Internal Structure for ADR

### **Commissioner General**

- Guidance, oversight and general directions including making necessary appointments

### **Corporate Tax Dispute Resolution Division (CTDR)**

- Secretariat, management and oversight of the process

### **ADR Suitability Evaluation Team**

- Vet the tax disputes referred for suitability



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## KRA Internal Structure for ADR

### **Commissioner's Technical Team**

- Submit the KRA case
- Assist the facilitator and facilitation panel to identify the contentious and non-contentious issues
- Assist the parties conduct the discussions to the extent that parties are able to reach an agreement

### **Facilitation Panel**

- Minimum of 3 persons - 2 quorum
- Assist the facilitator and the parties to identify the contentious and to narrow these
- Analyse the arguments submitted and help in coming up with a resolution



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## KRA Internal Structure for ADR

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### The Facilitator

- Convene ADR meetings through CTDR
- Chair the ADR sittings / providing administrative guidance
- Attesting to the signing of the ADR agreements
- Assist parties are able to reach an agreement



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## Disputes Inappropriate for ADR

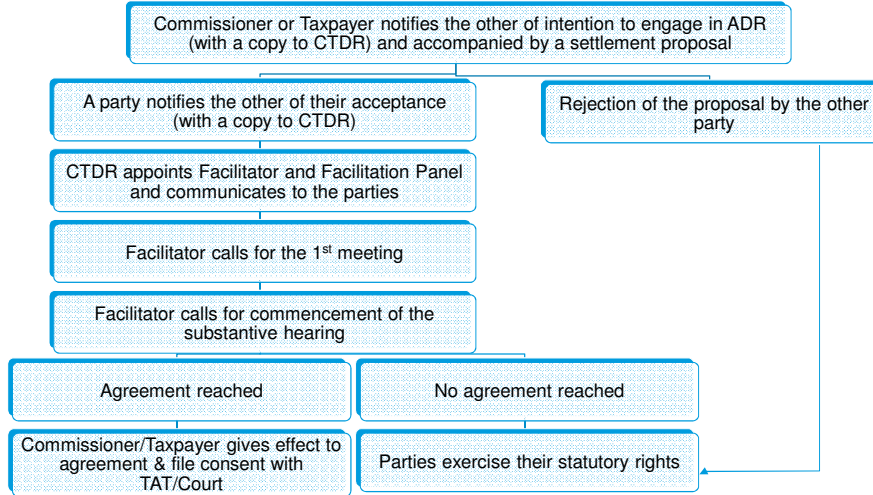
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- Dispute touches on tax evasion or fraud
- Settlement would be contrary to the Constitution / Tax or other Laws
- Public interest to have judicial clarification of the issue
- Pursuit through the Courts will significantly promote compliance
- Consistent or deliberate non-compliance



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## ADR Process - Process



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## ADR Process - Reservation of Rights

- Held “without prejudice” to the statutory or other rights of the parties
- Representation or documentation may not be tendered in any subsequent discussions
- No person shall be compelled to give evidence in any subsequent discussions/proceedings or make public any document produced
- Settlement reached only applicable to that dispute and form a precedent
- Where an agreement not reached - parties at liberty to proceed with the appeal/case before the body where it is filed
- Where an agreement not reached before confirmation of the assessment - Commissioner to confirm the assessment and the taxpayer to proceed on appeal

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## ADR Process - Timelines

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### **Objection Stage before Confirmation of the Assessment**

- Timelines to respond to an objection:
  - TPA - within 60 days from the date of an objection
  - EACCMA - 30 days from the date of application by an importer
- Taxpayer/importer must be given an opportunity to be heard through ADR before confirmation



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## ADR Process - Timelines

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### **Disputes Pending before TAT / Court**

- Timelines that may be dictated by TAT/Court within which parties must resolve the dispute through ADR:
  - TPA - settlement within 90 days from the date of leave failing which dispute shall be referred back to the Court / Tribunal
  - TAT - The Tribunal shall grant the request to settle a dispute outside the Tribunal under such conditions as it may impose, and the parties shall report to the Tribunal the outcome of the settlement
- Parties engaging in ADR shall compliance with the set timelines



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## ADR Process - Agreement, Settlement and Approvals

- Commissioner within 14 days of signing amend the assessment
- Assessment shall not be subject to an objection or appeal except to:
  - correct an arithmetical error or an error on the face of the assessment
  - to alter the assessment if it is not in line with the terms of the signed agreement
- Waiver of penalties and interest – application within the timelines provided in the Tax Laws
- Waiver application - Commissioner shall forward the application to the relevant authority within 14 days from the application date



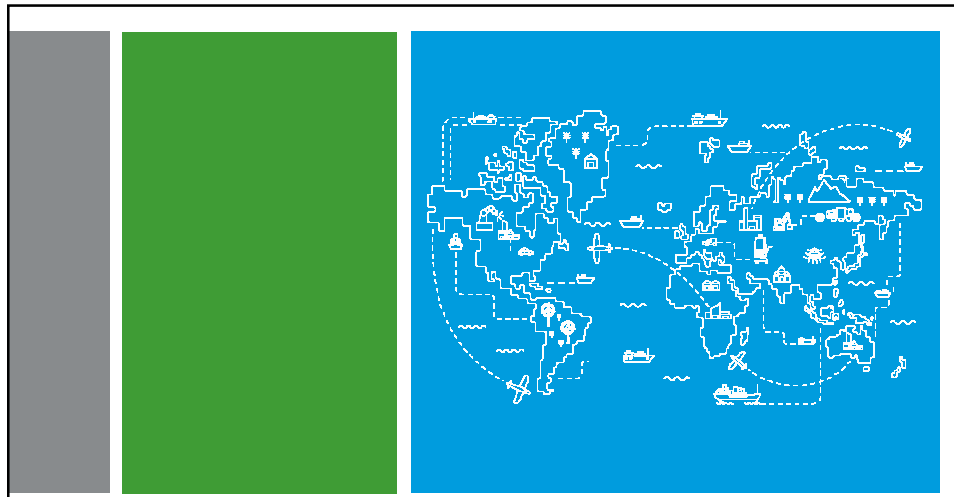
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## Termination of the ADR


- Termination for any of the following reasons:
  - Failure to attend meeting with no justifiable cause
  - Failure to carry out a reasonable request by the Facilitator
  - Parties are of the opinion that the dispute cannot be resolved due to demonstrated conduct by one or both parties
  - Where one or both the parties wishes to terminate upon giving reasons to the Facilitator
- Upon termination either party shall be at liberty to exercise their statutory rights



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THE TAX APPEALS TRIBUNAL ACT, 2013



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## Tax Appeals Tribunal - Membership


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**Tribunal**

- Consist of a Chairperson and between 15 and 20 members appointed by CS Treasury
- Not more than 5 members shall be advocates of the High Court of Kenya
- The Tribunal shall be staffed (including the Secretary) and paid through the National Treasury

**Panel**

- At least 3 members of which one shall be an advocate.
- Chair - Chairperson of the Tribunal if a member or then an advocate or a member of ICPAK designated by him
- Clerk (equivalent to a High Court Clerk) for each panel designated by CS Treasury - also act as the secretary
- Where panel is below 3 - adjournment.



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## Panel Constitution

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- At least 3 three members of which at least one shall be an advocate
- At a hearing:
  - if the Chairperson is a member of the panel, the Chairperson shall preside; or
  - in other cases, the Chairperson shall designate one of the members being an advocate of the High Court or a member of ICPAK to preside.
- Where panel below 3 members - proceedings adjourned, and the Chairperson shall assign another member



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## Appeals - Provisions of the TPA

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- A person dissatisfied with an appealable decision may appeal to the Tax Appeals Tribunal
- A notice valid if the taxpayer has paid the tax not in dispute or entered into an arrangement
- The burden shall be on the taxpayer to prove that a tax decision is incorrect
- In an appeal the taxpayer shall rely only on the grounds stated in the objection



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## Appeals - Notice

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- Appeal by giving a notice in writing to the Commissioner paying a non-refundable fee of Shs 20,000/=
- A notice of appeal shall:
  - be in writing;
  - be submitted within 30 days upon receipt of the decision of the Commissioner.
- Appellant to a copy of the appeal on the Commissioner within 2 days after giving notice of appeal to the Tribunal
- Finance Bill has introduced a provision for extension of time to file a notice of appeal



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## Appeals - Notice

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- Within 14 days of filing the notice submit enough copies, as advised by the Tribunal, of:
  - a memorandum of appeal;
  - statements of facts; and
  - the tax decision.
- Unless the Tribunal orders otherwise, appeal limited to the grounds stated in the appeal



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## Appeals - Extension and Time to Determine

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- Tribunal may extend the time for submitting the appeal documents on grounds of absence from Kenya, sickness, or other reasonable cause
- The Tribunal shall hear and determine an appeal within 90 days from the date the appeal is filed



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## Appeals - Commissioners Response

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- The Commissioner shall, within 30 days after being served with a copy of an appeal submit to the Tribunal enough copies as may be advised by the Clerk, of:
  - a statement of facts including the reasons for the tax decision; and
  - any other document which may be necessary for review of the decision.
- The Tribunal may require the Commissioner to submit additional documents that may be in the Commissioner's possession or control
- Finance Bill introduces provision allowing the Tribunal to extend the deadline for submission when there are compelling circumstances
- Bill also introduces provision requiring the Commissioner to serve the statement of facts on the appellant within 2 days of lodging the same with the Tribunal



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## Appeals - Hearing

- The Secretary shall advise the parties of the time and place of the hearing at least 14 days before the commencement of hearing
- If it is proved to the satisfaction of the Tribunal that owing to absence of the appellant from Kenya or due to sickness or any other reasonable cause, the appellant is prevented from attending on the date and the time fixed for hearing, the Tribunal may adjourn the hearing for such reasonable time as it may think appropriate
- The Tribunal shall ensure that every party is given a reasonable opportunity to:
  - present his case; and
  - inspect any documents in relation to the proceedings and make submissions



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## Appeals - Decision

- Decision - by majority vote of the members present, and in the case of equality, the Chairperson shall have a casting vote
- The Tribunal shall make a decision in writing:
  - affirming the decision under review;
  - varying the decision under review; or
  - setting aside the decision under review and either:
    - making a decision in substitution for the decision so set aside; or
    - referring the matter to the Commissioner for reconsideration in accordance with any directions or recommendations of the Tribunal.



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## Appeals - Decision

- Give reasons in writing for the decision including findings on material questions of fact and reference to the evidence
- Copy of decision, including the reasons to be served on each party
- Decision to come into operation on date of the decision or on such other date as may be specified
- Decisions and evidence including a transcript of the hearings are public records open to inspection
- Publication of its decisions - to be sent to Editor Kenya Law Reports for publication with 14 days of the ruling
- The Tribunal shall ensure that it takes measures to prevent the disclosure of trade secrets or other confidential information



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